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A general outlook on the best interests of the child in private international law

Interview with **Professor Anastasia Grammaticaki-Alexiou**



In her course for The Hague Academy of International Law, Professor Anastasia Grammaticaki-Alexiou explored the topic 'Best Interests of the Child in Private International Law'. The course is now published by Brill in the *Collected Courses of The Hague Academy of International Law - Recueil des cours*.

Professor Grammaticaki-Alexiou is Professor Emerita of the Law School of the Aristotle University of Thessaloniki, Greece. Previously, she was a professor of private international law, art law, International protection of cultural property and comparative law in Greece and a visiting professor to the USA and Cyprus. She also taught in Australia, Slovakia and Italy. She is Chair of the Greek Committee of Private International Law of the Ministry of Foreign Affairs and has served as a judge at the Special Supreme Court of Greece.

Can you tell us a little bit about the course and its focus?

Yes, the focus of this course is the presentation of certain very "hot" international family law situations including international child abduction, inter-country adoption, international surrogacy, and the status of migrant and refugee children. In all these situations the concept of the best interests of the child plays a very important role and serves as a compass when difficult decisions affecting children have to be made.

Why is the subject matter of the course particularly relevant today?

Well, in the past, the rights of the child were neglected. It took the Industrial Revolution, the Great Depression, the two world wars and civil wars, and the poverty, malnutrition, untreated health problems, inadequate education, cruelty and crime that ensued, for the principle of the best interests of the child to appear in modern international instruments. The most comprehensive statement of children's rights is the 1989 UN Convention on the Rights of the Child which formally introduces the principle of the best interests of the child. This principle has become a fixture in many international instruments ever since and serves as a guiding principle for the treatment of children.

Can you give us an example of an interesting case that you covered?

We explored the well-known baby Manji case (*Baby Manji Yamada and Another v. Union of India, AIR 2008 SC 1554*). A Japanese couple made an agreement with an Indian surrogate to carry the embryo created from the husband's sperm and an ovum most likely offered by an unknown donor. The Yamadas divorced and it was decided that the intended father, Dr. Yamada, would retain sole custody of Manji.

According to Indian rules, the surrogate child's birth certificate had to be in the name of the genetic parents. Also, a child born through artificial reproduction (ART) was presumed to be the legitimate child of the genetic parents. Furthermore, if the intended parents divorced during pregnancy and the offspring was from a donor programme, the law of the land as pertaining to a normal conception would apply. Ultimately, Manji had three potential mothers: the former Mrs. Yamada, the anonymous egg donor and the surrogate woman.

In the course, we explored the issues that arose and how the best interests of the child principle helped the court reach a conclusion.

Is there anything surprising about the content of the course?

Yes, the idea that private international law is not a set of neutral, mechanical rules. Also, the course analyses the influence of culture, and more specifically of race, ethnicity and religion on the way the concept of the best interest of the child is interpreted in today's multicultural world.