

Children in Migration and International Family Law: The Child's Best Interests Principle at the Interface of Migration Law and Family Law: Book Review

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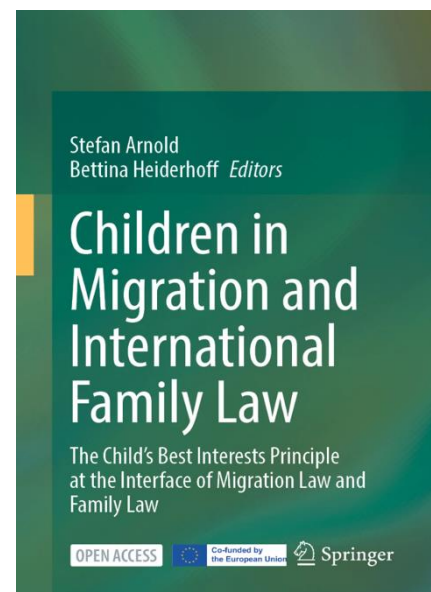
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Introduction

Children in Migration and International Family Law: The Child's Best Interests Principle at the Interface of Migration Law and Family Law, edited by Arnold and Heiderhoff (2025), is an interdisciplinary legal volume that examines how the principle of the child's best interests operates at the intersection of international family law and migration law within the European context. Produced as part of the EU-funded FAMIMOVE project, the book addresses the often-overlooked legal and institutional gaps that arise when children and families move across borders, particularly in situations involving asylum, refugee protection, and cross-border family relations.



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The book brings together contributions from leading scholars and practitioners across Europe to explore key issues such as international jurisdiction, age assessment, guardianship for unaccompanied minors, early marriage, kafāla, family reunification, and polygamous marriages. Through comparative and doctrinal analysis, the chapters demonstrate that although the child's best interests are firmly embedded in international conventions and EU law, their practical application remains fragmented and inconsistent across Member States. Overall, the volume argues for greater coordination between migration law and family law, stronger mutual trust among European legal systems, and more child-centred interpretations and legislative reforms to ensure that the rights and welfare of children in migration contexts are effectively protected.

Part I (Introduction) sets out the conceptual, legal, and institutional framework of the book by explaining the objectives of the EU-funded FAMIMOVE project and highlighting the structural disconnect between migration law and international family law. The introduction emphasizes that although both legal fields regularly affect the same subjects particularly children and families on the move they are often applied in isolation, leading to legal uncertainty, duplicated procedures (such as repeated age assessments), and inconsistent protection standards across EU Member States. Central to the discussion is the best interests of the child principle, which is universally recognized in international, EU, and national law but interpreted and operationalized very differently by migration authorities and family courts. The authors demonstrate how this divergence weakens effective child protection, especially in areas such as guardianship for unaccompanied minors, early marriage, and cross-border care arrangements like kafāla, while also situating the book against recent and forthcoming EU asylum reforms that risk further limiting children's rights. Critically, while the introduction provides a strong doctrinal and policy-oriented diagnosis of the problem and convincingly justifies the need for interdisciplinary coordination, it remains largely descriptive and EU-centric, offering limited empirical evidence from administrative practice and relatively cautious proposals for reform, which may reduce its immediate prescriptive impact for policymakers despite its high analytical and conceptual value.

Part II of *Children in Migration and International Family Law* examines three foundational issues that shape the protection of migrant children in the EU: the application of the child's best interests principle in international jurisdiction under the Brussels IIter Regulation, its role in EU law concerning third-country nationals, and the legal effects of age assessment. The chapters demonstrate that while the child's best interests are formally recognised as a substantive right, an interpretative principle, and a procedural rule, their implementation remains uneven across legal fields and Member States. González Marimón shows how Brussels IIter seeks to balance abstract jurisdictional rules with concrete child-centred considerations, while Goldner Lang

highlights how EU courts increasingly use the best interests principle to counterbalance restrictive migration policies affecting third-country nationals. Hüning's analysis of age assessment exposes a major structural weakness in EU practice, namely the lack of mutual recognition of age determinations, which often results in repeated, invasive procedures that undermine legal certainty and children's rights. Critically, although Part II offers a strong and coherent normative framework grounded in EU law, the CRC, and fundamental rights jurisprudence, it tends to rely heavily on judicial interpretation as a solution, leaving unresolved the political and administrative resistance that often prevents consistent application in practice. As a result, this section convincingly diagnoses systemic problems but could go further in proposing binding legislative or institutional mechanisms to ensure that the child's best interests principle is applied uniformly and effectively across migration and family law systems.

Part III, *The Guardianship for Unaccompanied Minor Refugees* section examines how different European legal systems address the protection of unaccompanied minors through guardianship and related protective measures, with a focus on Hungary, Germany, and the broader European framework. The chapters show that guardianship sits at the sensitive intersection of migration law, family law, and private international law, where the child's best interests should guide all decisions but are often undermined by fragmented legal regimes and restrictive migration policies. The Hungarian case illustrates how prolonged "crisis" legislation has effectively downgraded the protection of minors aged 14–18 by treating them similarly to adults, while the German analysis highlights a more comprehensive but still imperfect system, marked by institutional complexity, conflicts of interest, and practical challenges such as age assessment and cross-border recognition of guardianship. The concluding European perspective argues that although EU law has limited competence over substantive family law, instruments such as the Brussels IIter Regulation offer underused potential for improving cross-border continuity of protection. Critically, this part convincingly exposes the gap between legal standards and practice and underscores structural weaknesses particularly the lack of mutual trust and coordination among Member States but it remains cautious in proposing concrete, enforceable solutions, leaving open the question of how political realities and migration control priorities can be reconciled with genuinely child-centred guardianship systems.

Part IV, *Early Marriage* examines how European legal systems respond to marriages involving minors that were validly concluded abroad and later encountered in migration contexts. Through national case studies of Sweden, Germany, and Austria, followed by a comparative European analysis, this section shows how early marriage has become a highly politicised issue closely linked to migration. Sweden and Germany adopt increasingly strict non-recognition approaches, largely excluding individualised

assessments in favour of categorical rules aimed at child protection and symbolic boundary-setting. In contrast, Austria maintains a more flexible *ordre public* approach, allowing courts to consider the concrete circumstances of each case, including the age of the spouses at the time of assessment, consent, coercion, and the current interests of those involved. The concluding European perspective argues that rigid non-recognition policies may undermine the very individuals they intend to protect particularly young women and children by depriving them of legal security and access to rights, whereas a contextual, case-by-case approach better aligns with the child's best interests principle. Part IV makes a strong and persuasive contribution by revealing how early marriage law often reflects political symbolism and cultural demarcation more than genuine child-centred protection. Its comparative methodology is a key strength, as it clearly demonstrates that strict non-recognition regimes, while rhetorically aligned with child protection, risk producing harmful side effects such as legal invisibility, social vulnerability, and reduced access to welfare and family rights.

Part V: *Kafāla* examines the concept of *kafāla* as a child-care institution rooted in Islamic law and analyses how it is interpreted, recognised, and transformed within European legal systems, particularly in migration contexts. The chapters show that *kafāla* functions as an alternative to adoption in Muslim jurisdictions, aiming to provide care and protection for parentless children while preserving their biological identity. Through comparative perspectives from Islamic law and national practices in France, the Netherlands, and Belgium, as well as guidelines developed by International Social Service (ISS), this section highlights the legal fragmentation surrounding *kafāla* in Europe. Contributors demonstrate that European states variously classify *kafāla* as adoption, foster care, or a child protection measure, leading to inconsistent migration and family-law consequences, especially regarding residence rights, family reunification, and recognition across borders. The section ultimately calls for a more coherent European approach grounded in the 1996 Hague Child Protection Convention, EU fundamental rights standards, and the best interests of the child. Critically, Part V is one of the strongest sections of the book because it combines doctrinal legal analysis with cultural sensitivity, successfully avoiding the common Western tendency to equate *kafāla* with adoption. Its major contribution lies in revealing how mischaracterisation of *kafāla* can undermine children's legal security in migration procedures. However, while the section persuasively argues for a child-centred and uniform European framework, it remains cautious and largely descriptive in its policy recommendations, offering limited concrete guidance on how EU legislators could practically harmonise recognition without encroaching on Member State autonomy. As a result, Part V excels in diagnosis and normative framing but leaves some uncertainty as to how its proposals can be operationalised in future EU migration and family-law reforms.

Part VI of *Children in Migration and International Family Law*, edited by Stefan Arnold and Bettina Heiderhoff, addresses two highly practical and sensitive issues at the intersection of migration law, international family law, and private international law. The first chapter, by Alessia Voinich, analyses the role of the Court of Justice of the European Union (CJEU) in shaping the right to maintain family unity for beneficiaries of international protection. It highlights how EU secondary legislation and CJEU jurisprudence increasingly emphasise the child's best interests as a guiding principle when balancing family unity against Member States' discretion in asylum and migration matters. The second chapter, by Giovanni Zaccaroni, examines polygamous marriages and family reunification under EU law, focusing on the tension between protecting family life and upholding fundamental EU values such as gender equality and non-discrimination. Together, these chapters illustrate how complex family forms and migration realities challenge the coherence of EU law, particularly when children's rights and welfare are affected by restrictive reunification policies and divergent national approaches. Part VI makes a valuable contribution by engaging directly with legally and politically contentious topics that are often marginalised in discussions on child protection in migration contexts, especially family unity and polygamous family structures. Its main strength lies in the nuanced analysis of CJEU case law and the careful balancing of competing interests—state sovereignty, fundamental rights, and the best interests of the child. However, while the chapters convincingly expose doctrinal tensions and normative inconsistencies in EU law, they are more descriptive than prescriptive, offering limited concrete guidance for policymakers or national authorities faced with these dilemmas in practice. A stronger engagement with empirical impacts on children and families, as well as clearer reform-oriented proposals, would have enhanced the practical relevance of this final part. Nonetheless, Part VI effectively reinforces the book's overarching argument that fragmented legal responses at the EU level risk undermining the very child-centred principles that European migration and family law purport to protect.

CONCLUSION

Taken as a whole, *Children in Migration and International Family Law: The Child's Best Interests Principle at the Interface of Migration Law and Family Law* stands as a rigorous, timely, and intellectually coherent contribution to European legal scholarship on child protection in migration contexts. Across its six parts, the volume consistently demonstrates that while the best interests of the child are firmly entrenched as a normative cornerstone of international, EU, and national law, their practical realisation is systematically weakened by fragmented legal regimes, institutional silos, political sensitivities, and a lack of mutual trust among Member States. The book's major strength

lies in its interdisciplinary and comparative approach, which exposes how issues such as age assessment, guardianship, early marriage, kafāla, family reunification, and complex family forms are treated inconsistently depending on whether they fall under migration law or family law. At the same time, the volume is marked by a certain structural restraint: it excels in diagnosis, doctrinal analysis, and normative critique, but remains cautious in advancing concrete, enforceable reform proposals, often relying on judicial interpretation rather than binding legislative or institutional solutions. Despite this limitation, the book makes a compelling case for rethinking European migration governance through a genuinely child-centred lens and for strengthening coordination between legal fields that continue to operate in parallel rather than in dialogue. As such, it represents an essential reference for scholars, judges, policymakers, and practitioners seeking to understand and ultimately improve the protection of children and families on the move within Europe.

References

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