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## **CONTEMPORARY CHALLENGES OF THE CROSS BORDER MAINTENANCE OBLIGATIONS SYSTEM IN THE REPUBLIC OF MACEDONIA**

### **ABSTRACT**

*The legal rules in the Republic of Macedonia regarding cross border recovery of maintenance have been more or less unchanged from the Yugoslav Act Concerning the Resolution of Conflicts of Laws with Provisions of Other States in Certain Matters (PIL act of 1982). This means that most of the jurisdictional rules and the conflict of law rules are now turning 35 years. Meanwhile the Hague Conference of Private International Law has provided for two new legal acts, the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations which introduce new conflict of law rules regarding maintenance obligations. Moreover, the EU has adapted a new Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. In this context the Republic of Macedonia (as a EU candidate country) now faces contemporary challenges to adjust its legal system to the new jurisdictional criteria and conflict of law rules developed by the Hague Conference of Private International Law and the EU. This article firstly gives a brief overview of the current PIL rules regarding recovery of maintenance in the Republic of Macedonia, comparing them to the rules provided in the 2007 Hague Protocol and the Maintenance Regulation and secondly it will address the means of the adjustment of such rules in the Republic of Macedonia.*

**Keywords:** *Jurisdiction, Conflict of law rules, Maintenance, 2007 PIL Act of R. Macedonia, 2007 Hague Maintenance Protocol, Maintenance Regulation (EC) 4/2009*

### **1. GENERAL**

Private international law rules in Republic of Macedonia are regulated in the Private International Law Act (PIL Act of 2007).<sup>1</sup> In October 2007, Macedonia enacted its first codification in the area of Private International law as an indepen-

<sup>1</sup> Published in the “Official Gazette of the Republic of Macedonia” (Службен весник на Република Македонија) no. 87/2007 and 156/2010

dent country. However, this new codification of Private International Law was not the first systematization of such rules in the country.<sup>2</sup> In its structure, this legal act has many similarities with the Act Concerning the Resolution of Conflicts of Laws with Provisions of Other States in Certain Matters (PIL act of 1982)<sup>3</sup> which was a law enacted on a federal level in the Socialist Federative Republic of Yugoslavia (SFRY). The PIL act of 1982 law represented the first codification of private international law rules in SFRY. Before that law came into force, private international law legal issues in SFRY were either scattered among different acts or they were not regulated.<sup>4</sup> All of these legal issues and the legal vacuum that existed over some issues in SFRY were settled with the codification and coming into force of the PIL act of 1982.<sup>5</sup> This legal act remained in force in Republic of Macedonia until 2007, fifteen years after the dissolution of SFRY, on the base of the Constitutional Law for the application of the Constitution of Republic of Macedonia.<sup>6</sup>

Their similarity is evident, both laws are systematically divided in six chapters in which rules for international jurisdiction, conflict of law rules, recognition and enforcement rules and other rules are contained. In the aspect of family law issues the PIL Act of 2007 is strongly influenced from its predecessor. This provides for consistent understanding of the rules and the use of the practical and doctrinal materials in the interpretation of the solutions in the both PIL Acts.

The scope of application of both laws, the PIL Act of 2007 and the PIL act of 1982 is identical and given in Article 1.<sup>7</sup> A large part of these acts is directed towards solutions to private international law problems which refer to family relationships. There are special conflict of law rules, jurisdictional rules and rules regarding recognition and enforcement that regulate family law issues with foreign elements.

Specifically, in the PIL acts there are rules for the determination of the applicable law in vast number of family law issues such as matrimonial matters,<sup>8</sup> matrimonial

<sup>2</sup> Гавроска П., Дескоски Т., Меѓународно приватно право, Скопје, 2011, p. 66

<sup>3</sup> Act Concerning the Resolution of Conflicts of Laws with Provisions of Other States in Certain Matters (Zakon o rešavanju sukoba zakona sa propisima drugih zemalja u određenim odnosima), Official Gazette of the SFRY, no.43/1982

<sup>4</sup> Varadi, T, *et al.*, *Međunaodno privatno pravo*, deseto izdanje, JP „Službeni Glasnik“, Beograd, 2008 p. 61

<sup>5</sup> For the historical aspects of the PIL act of 1982 see, Živković, M., Stanivuković, M, *Međunarodno privatno pravo (opšti deo)*, Beograd, Službeni glasnik, 2006, p. 41-42

<sup>6</sup> Official Gazette of the Republic of Macedonia, No.52/1991

<sup>7</sup> cf Article 1 of the PIL Act of 2007 and Article 1 of the PIL act of 1982

<sup>8</sup> Articles 38-41 of the PIL Act of 2007

property regimes,<sup>9</sup> relationships between parents and children,<sup>10</sup> recognition, establishment and contesting of paternity or maternity,<sup>11</sup> maintenance obligations,<sup>12</sup> legitimization,<sup>13</sup> adoption,<sup>14</sup> custody rights and provisional measures.<sup>15</sup>

The PIL Act of 2007 contains rules for the determination of the jurisdiction of courts and other authorities of the Republic of Macedonia in matters having an international element. The general rules determines the jurisdiction of the courts of Republic of Macedonia on the base of the domicile of the defendant.<sup>16</sup> However in large numbers of family law issues, the PIL Act of 2007 departs from the general jurisdictional criteria and covers many family law issues with specific jurisdictional rules referring to matrimonial property regimes,<sup>17</sup> matrimonial matters,<sup>18</sup> establishment and contesting of paternity or maternity,<sup>19</sup> parental responsibility issues,<sup>20</sup> maintenance,<sup>21</sup> granting marriage license to minors,<sup>22</sup> adoption,<sup>23</sup> custody rights,<sup>24</sup> and provisional measures.<sup>25</sup>

The recognition and enforcement of foreign judicial decisions in the PIL act of 2007 is regulated in the IV Chapter and contains the conditions and the procedure for recognition and enforcement of all judicial decisions<sup>26</sup> or court settlements<sup>27</sup> rendered by foreign court or another authority which is in the State of origin equivalent to the judgment or settlement in court.<sup>28</sup> As was the case with the other PIL issues which are regulated with this law, the recognition and en-

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<sup>9</sup> Articles 42-44 of the PIL Act of 2007. Also Article 45 covers the determination of the applicable law regarding the property regimes in non-martial relationships

<sup>10</sup> Article 46 of the PIL Act of 2007

<sup>11</sup> Article 47 of the PIL Act of 2007

<sup>12</sup> Article 48 of the PIL Act of 2007

<sup>13</sup> Article 49 of the PIL Act of 2007

<sup>14</sup> Articles 50-51

<sup>15</sup> Article 17

<sup>16</sup> Article 52 of the PIL Act of 2007. The same jurisdictional criteria was provided in the 1982 PIL Act (Article 46)

<sup>17</sup> Article 72 of the PIL Act of 2007

<sup>18</sup> Articles 73-75 of the PIL Act of 2007

<sup>19</sup> Articles 76 and 77 of the PIL Act of 2007

<sup>20</sup> Articles 78, 81, 82 of the PIL Act of 2007

<sup>21</sup> Articles 79 and 80 of the PIL Act of 2007

<sup>22</sup> Article 83 of the PIL Act of 2007

<sup>23</sup> Article 87 of the PIL Act of 2007

<sup>24</sup> Articles 88 and 89 of the PIL Act of 2007

<sup>25</sup> Article 90 of the PIL Act of 2007

<sup>26</sup> Article 99(1) of the PIL Act of 2007

<sup>27</sup> Article 99(2) of the PIL Act of 2007

<sup>28</sup> Article 99(3) of the PIL Act of 2007

forcement applies to all matters which fall under the scope of application given in Article 1. Although in this aspect the grounds for recognition are referring to all decisions, there are several rules specifically mentioning family matters. These rules are related to the exception from the ground on non-recognition of decision in the cases of violation of the exclusive jurisdiction of the Court of Republic of Macedonia<sup>29</sup> and decisions relating to the personal status.<sup>30</sup>

The system for the cross border recovery of maintenance obligations in Europe is shared between the Hague Conference of Private International Law (Hague Conference) conventions and the European Union regulations.<sup>31</sup> The Hague Conference has dealt with the problem of cross border recovery of maintenance from the 1950's in the form of the Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children and the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children. Moreover in the 1970's the Hague Conference adopted two new conventions: the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations and the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations. The importance which is attributed to the question of cross border recovery of maintenance by the Hague Conference can be seen by fact that a third generation of conventions was presented in 2007: the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance and the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.<sup>32</sup> On the other hand the EU in 2009 introduced the Maintenance Regulation (EC) No 4/2009.<sup>33</sup> This regulation covers broad legal issues such as: rules regarding direct jurisdiction,

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<sup>29</sup> Article 104(2) of the PIL Act of 2007

<sup>30</sup> Articles 108-110 of the PIL Act of 2007

<sup>31</sup> Another Convention is relevant in this aspect that is the New York Convention on the Recovery Abroad of Maintenance from 1956 however it contains rules regarding the international cooperation between the authorities and does not contain direct jurisdictional rules and rules regarding the determination of the applicable law

<sup>32</sup> More on the position of the maintenance obligations regime established by the Hague Conference see, Walker, S., *Maintenance and Child Support in Private International Law*, Oxford and Portland, Oregon, 2015, p. 18-24

<sup>33</sup> Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations [2009] OJ L7/1. More on the background of the adoption of the Maintenance Regulation see, Ferrand, F., *The Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations*, Latest Developments in Private International Law, Díaz, C. B. (eds), Intersentia, Cambridge-Antwerp-Portland, 2011, p. 83-90

recognition and enforcement, legal aid and administrative cooperation. However there is huge interdependence between the Maintenance Regulation and the 2007 Hague Convention on Maintenance and the 2007 Hague Maintenance Protocol. Moreover, a genuine novelty in legal standardization<sup>34</sup> in the Maintenance Regulation is that instead of providing for conflict of law rules it contains a referring clause which allows for direct application of the 2007 Hague Protocol and its rules for the determination of the applicable law regarding maintenance.<sup>35</sup>

Large analysis is needed for the rules in the PIL Act of 2007 which are particular for the family law relationships and providing contextual analysis of these rules with the new tendencies in the cross border family law, however such aspect would exceed the purpose of this article.<sup>36</sup> Its goal is to analyze to take a look of the European system of cross border recovery of maintenance and compare them with the rules provided in the PIL Act of 2007 in order to answer two simple questions: Are the solutions provided in the PIL Act of 2007 compatible with the direct jurisdiction rules in the Maintenance Regulation and the conflict of law rules given in the 2007 Hague Protocol and which steps should Republic of Macedonia take in order to provide for standardized recovery of maintenance in cross border cases?

## 2. JURISDICTIONAL RULES

### 2.1. Jurisdictional rules contained in the Private International Law Act of Republic of Macedonia from 2007 regarding maintenance obligations

In the PIL Act of 2007 there are fifteen articles regarding family law issues that determine jurisdiction of the Courts of Republic of Macedonia even in situations when the defendant doesn't have domicile in Republic of Macedonia (special jurisdiction), only three articles refer to maintenance obligations. These rules are provided in Articles 79, 80, and 81 of the PIL Act of 2007.

<sup>34</sup> Župan, M., *Innovations of the 2007 Hague Maintenance Protocol*, in Beaumont, P., et al. (ed.), *The Recovery of Maintenance in the EU and Worldwide*, Oxford and Portland, Oregon, 2014, p. 314

<sup>35</sup> Article 15 of the Maintenance Regulation

<sup>36</sup> For more on the new tendencies in private international law in family matters see, Boele-Woelki, K., *The principles of European family law: its aims and prospects*, *Utrecht Law Review*, Volume 1, Issue 2, 2005, p. 160-168; Župan, M., *Evropska pravosudna suradnja u prekograničnim obiteljskim predmetima (European judicial cooperation in cross border family matters)*, *Pravni aspekti prekogranične suradnje i EU integracija: Mađarska – Hrvatska*, Pravni fakultet Sveučilišta Pečuh i Pravni fakultet u Osijeku, 2011, p. 591-618

Article 79 of the 2007 PIL Act is almost identical in the wording with Article 67 of the 1982 PIL Act.<sup>37</sup> It provides for special jurisdiction of courts of Republic of Macedonia in two cases: regarding maintenance of children and spouses or ex-spouses. In the first case, the Courts of Republic of Macedonia would have jurisdiction even in cases when the defendant does not have domicile in Republic of Macedonia, if alternatively one of these situations is met:

1. the lawsuit is filed by a child domiciled in the Republic of Macedonia;
2. the plaintiff and the defendant are citizens of the Republic of Macedonia, irrespective of their domicile; or
3. the plaintiff is a minor and a citizen of the Republic of Macedonia.<sup>38</sup>

In the second case which refers to maintenance between spouses and former spouses, the Courts of Republic of Macedonia would have jurisdiction even in cases when the defendant does not have domicile in Republic of Macedonia, if the spouses had their last common domicile in Republic of Macedonia and if the plaintiff is still domiciled in Republic of Macedonia at the time of the filing of the lawsuit.<sup>39</sup> In all of these cases of determining the jurisdiction regarding maintenance obligation, prorogation of jurisdiction is expressly excluded.<sup>40</sup>

It can be concluded that in the case of determining of the jurisdiction regarding maintenance of children in Republic of Macedonia the jurisdictional criteria are: the domicile of the defendant, child's domicile, cumulatively the nationality of the plaintiff and the defendant (irrespective of the domicile) and the nationality of the minor. In the second case the main jurisdictional criteria are: the domicile of the defendant and cumulatively the last domicile of the spouses and the plaintiffs domicile.

Article 80 and 81 of the 2007 PIL Act determine jurisdiction of Courts of Republic of Macedonia regarding maintenance on other bases outside the subjects of the dispute. Article 80 determines jurisdiction based on the property of the defendant (if its located in Republic of Macedonia) while Article 81 sets rules for attraction of jurisdiction in cases over protection, care and maintenance of children if the disputes are resolved together with disputes relating to legitimization or disputes

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<sup>37</sup> Article 67 (2) of the 1982 PIL Act which was referring to jurisdiction in cases of maintenance of persons other than children when the defendant does not have a domicile in SFRY if the plaintiff possess Yugoslavian nationality and has domicile in SFRY

<sup>38</sup> Article 79(1) of the 2007 PIL Act

<sup>39</sup> Article 79(2) of the 2007 PIL Act

<sup>40</sup> Article 56(4) of the 2007 PIL Act

relating to establishment and contesting of paternity and maternity (jurisdictional criteria predominantly based on the nationality of the parties).<sup>41</sup>

Articles of the 2007 PIL Act	Jurisdictional criteria			
Art.52 (General rule on international jurisdiction)	Domicile of the defendant is in RM			
Art. 79 (maintenance of children and (ex) spouses)	The child files the lawsuit and the child's domicile is in RM	Cumulatively the nationality of the plaintiff and the defendant is in RM (irrespective of the domicile)	The minor files the lawsuit and is a citizen of RM	Cumulatively the last domicile of the spouses and the plaintiffs domicile is in RM
Art.80 (maintenance based on the property from which the maintenance can be paid)	Property of the defendant is located in RM			
Art. 81 (attraction of jurisdiction)	Attraction of jurisdiction on the bases of Articles 76, 77 and 82	Articles 76, 77 and 82 base the international jurisdiction of Courts of Republic of Macedonia mostly on the nationality (RM) of the subjects of the dispute		

What is common for these rules is that the nationality or a combination of nationality and domicile as a jurisdictional criteria is predominant in these cases in the PIL Act of 2007.<sup>42</sup> This aspect was considered to be the reason why SFRY restrained itself from participating in the Hague Conventions.<sup>43</sup>

<sup>41</sup> See Article 76, 77 and 82 of the 2007 PIL Act

<sup>42</sup> For more on the predominance of the nationality as an jurisdictional criterion and a as a connecting factor in the conflict of law rules in the 1982 PIL Act see, Stanivuković, M., *Srpsko međunarodno privatno pravo u vremenu tranzicije: promenjeni značaj državljanstva i prebivališta*, in Knežević, G., Pavić, V. (eds), *Državljanstvo i međunarodno privatno pravo, Haške konvencije*, Beograd 2007, p. 45-47

<sup>43</sup> Sajko, K., *Haška Konvencija o dječjoj zaštiti od 19. Listopada 1996; Značajni segment budućeg Hrvatskog Prava, Novejše tendence razvoja otroškoga prava v evropskih držnavah - prilaganje otroškoga prava v republiki Sloveniji*, Maribor, 1997, p. 50

## 2.2. Jurisdictional rules contained in Maintenance Regulation

The jurisdictional rules in the 2007 Hague Convention and of the Maintenance Regulation differ substantially, because the rules given in the Regulation are direct jurisdictional rules<sup>44</sup> while the rules of the Convention are indirect jurisdictional rules.<sup>45</sup> Another prominent aspect given in the Maintenance Regulation is that the jurisdictional rules have universal application, meaning that they do not leave a room for national law rules and are always applicable to courts of Member States.<sup>46</sup> The general jurisdictional criteria in the Maintenance Regulation, is the defendant/creditors habitual residence.<sup>47</sup> Moreover it allows parties to agree on the competent court and with that it provides party autonomy in maintenance cases.<sup>48</sup> In order to provide for effective access to justice, the Regulation provides for subsidiary jurisdiction<sup>49</sup> and a *forum neccessitatis*.<sup>50</sup>

From such position it can be seen that the jurisdictional criteria in the 2007 PIL Act and in the Maintenance Regulation are different (the nationality and domicile on one hand and the habitual residence and party autonomy on the other) that it represents problem for the national legal systems. So in that context, amendments of the 2007 PIL act is needed so it could be in line with the new tendencies in the jurisdictional criteria in maintenance cases.

## 3. APPLICABLE LAW

### 3.1. Rules for the determination of the applicable law contained in the Private International Law Act of Republic of Macedonia from 2007 regarding maintenance obligations

The 2007 PIL Act concerning determination of applicable law in maintenance cases provides for different rules regarding the maintenance of marital or extra

<sup>44</sup> Walker, S., *op. cit.* note 32, p. 52

<sup>45</sup> Explanatory Report on the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance; Alegria Borrás & Jennifer Degeling, 2013 (Borrás/ Degeling Report), p. 59-63

<sup>46</sup> Ferrand, *op. cit.* note 33, p. 91

<sup>47</sup> Article 3 of the Maintenance Regulation. More on habitual residence see, Bouček, V., *Uobičajeno boravište u hrvatskom međunarodnom privatnom pravu*, Zbornik pravnog fakulteta u Zagrebu, Zagreb, 2015, p. 885-915; Rumenov, I., *Determination of the Child's Habitual Residence According to the Brussels II bis Regulation*, Pravni Letopis, Ljubljana 2013, p. 57-81

<sup>48</sup> Hess B., Spancken S., *Setting the Scene – The EU Maintenance Regulation*, The Recovery of Maintenance in the EU and Worldwide (Beaumont P., eds.), Oxford and Portland, Oregon, 2014, p. 333

<sup>49</sup> Article 6 of the Maintenance Regulation

<sup>50</sup> Article 7 of the Maintenance Regulation

marital partners, parents and children, adoptive parent and adopted children, and maintenance of other persons. The approach taken was not to have a single rule that covers all of the maintenance cases, but to have the rules divided on the basis of the legal relationship between the creditor and the debtor. So the rules for the determination of the applicable law regarding maintenance are given regarding:

- Marital partners – Articles 42,43 and 44 of the 2007 PIL Act
- Extra-marital partners – Article 45 of the 2007 PIL Act
- Parents and children – Article 46 of the 2007 PIL Act
- Adoptive parent and adopted children – Article 51 of the 2007 PIL Act
- Other persons – Article 48 of the 2007 PIL Act

Articles of the 2007 PIL Act	Connecting factors			
Art.42 (Personal relations and statutory property relations of spouses)	Common nationality of both spouses	Common domicile	Last common domicile	The Law of Republic of Macedonia
Article 43 (Contractual property relation of spouses)	Limited Party autonomy - law of the nationality of one of the spouses - law of the domicile of one of the spouses - for immovables, place where the immovable is situated	Otherwise, the rules provided in Article 42 apply		
Article 44 (relations of spouses in cases of annulment or dissolution of the marriage)	Same rules as those in Article 42 and 43 of the 2007 PIL Act			
Article 45 (Property relations between persons living in extra-marital cohabitation)	Common nationality of both persons	Common domicile		
Article 46 (Relations between parents and children)	Common nationality of the parent and the child	Common domicile	Childs nationality	
Article 51 (Legal effect of adoption)	Common nationality of the adoptive parent and adopted child	Common domicile	Childs nationality	
Article 48 (Maintenance obligations)	Nationality of the relative who is claimed to be liable for the maintenance			

It can be seen that most of the rules in the 2007 PIL Act predominantly relay on the nationality as a connecting factor or the common domicile as a secondary connecting factor.

### **3.2. Rules for the determination of the applicable law contained in the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations**

The applicable law in the EU regarding maintenance obligations is not regulated with the Maintenance Regulation, but with the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations.<sup>51</sup> This Protocol is with universal application meaning its provisions are applicable with respect to all situations concerning the relevant subject matter.<sup>52</sup> In this Protocol, Article 3 provides for general rule, while Articles 4, 5, 6, 7 or 8 provide for other connecting factors. The main connecting factor determined in article 3 is the habitual residence of the creditor. Moreover, the Hague 2007 Protocol provides for a dual cascade system of subsidiary reference.<sup>53</sup> Article 4 of the Protocol contains special rules that favour certain types of creditors upon which the law of their habitual residence is found to be contrary to their interest.<sup>54</sup> This rule provides for several alternatives to the creditors habitual residence as a connecting factor such as the law of the forum (*lex fori*) or the common nationality as a final option.<sup>55</sup> Articles 5 and 6 include for special rules with respect to spouses and ex-spouses and special rule on defence. With respect to article 5 the connecting factor is the last common habitual residence (together with the closer connection principle). A genuine novelty in the 2007 Hague Maintenance Protocol is the possibility of the parties to choose the applicable law. Such position deviates from the traditional approach in family law relations where the parties were not allowed to dispose of their rights and obligations, even in international situations.<sup>56</sup> The new trend in family law (also in maintenance obligations) is that there is encouragement of the persons which are subjects of family law relations to think about their needs and to organize their family law relations amicably.<sup>57</sup> In that context, articles 7 and 8 both allow the

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<sup>51</sup> On the difference between the Hague 1973 Convention on the Law Applicable to Maintenance Obligations and the Hague 2007 Protocol see, Župan, *op. cit.* note 34, p. 318

<sup>52</sup> Article 2 of the 2007 Hague Protocol. More on the issue see, Bonomi Report, para 34-35; Župan, *op. cit.* note 34, p. 316

<sup>53</sup> Župan, *op. cit.* note 34, p. 320

<sup>54</sup> Explanatory Report on the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations prepared by Andrea Bonomi, 2013, para 45

<sup>55</sup> For more on these connecting factors see Walker, *op. cit.* note 32, p. 78-83

<sup>56</sup> Župan, *op. cit.* note 34, p. 320

<sup>57</sup> *ibid.*

parties to designate an applicable law (limited *optio iuris*), subject to a variety of restrictions.<sup>58</sup>

The connecting factors criteria in the 2007 PIL Act and in the 2007 Hague Protocol are different (the nationality and common domicile on one hand and the habitual residence and party autonomy on the other) that it represents problem for the national legal systems. In near future Republic of Macedonia should adjust its rules to these new tendencies.

#### 4. CONCLUSION

Republic of Macedonia should take serious systematic measures for updating its legal system with the ratification of the Conventions that are referring to the maintenance obligations especially the 2007 Hague Maintenance Convention or/ and adapt its national rules with the main conflict of law rules provided in the 2007 Hague Protocol. It could be stated that such action could be done earlier, however, the 2007 PIL act was enacted in July while the 2007 Hague Convention and the Protocol were enacted in November. It was understandable that the Macedonian legislator waited for the development inside the Hague Conference before it amended its national legislation.<sup>59</sup>

On the other hand, the European legislator took into consideration the legal evolution on the global, worldwide level of cross border maintenance relations (in order to avoid incompatibility between the European instruments and the Conventions applicable with third states) when the new Regulation 4/2009 was enacted and in that aspect Republic of Macedonia should adapt to these new tendencies. There are two possible approaches. First, Republic of Macedonia could restrain itself from amendments of the national legislation and rely on the universal application of the Maintenance Regulation and the 2007 Hague Protocol (regarding direct jurisdiction and the determination of the applicable law). However, such approach is hazardous because the EU passes through re-evaluation of its structure and the period for full membership of Republic of Macedonia is uncertain. The second approach, could mean introducing the European jurisdictional criteria and conflict of law rules as national and with that provide for adaptation period of the persons which are implementing these rules with these European standards. Such approach, together with the accession to the 2007 Hague Convention could provide for comprehensive standardization of the PIL rules (direct jurisdiction, con-

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<sup>58</sup> Walker, *op. cit.* note 32, p. 87-91

<sup>59</sup> The 2011 amendment of the Macedonian 2007 PIL act was referring only to non-contractual obligations and the rules derived from the Rome II Regulation

flict of law rules and *exequatur*) of the maintenance obligation system in Republic of Macedonia with the modern tendencies.

Moreover this adaptation to the new tendencies in the area of private international law for maintenance obligations in the form of introduction of habitual residence as a new jurisdictional criteria and as a criteria for determining the applicable law will be in line with the trend that was introduced in 2011 when habitual residence was introduced for the first time in PIL act of Republic of Macedonia, but only regarding non-contractual obligations. There is obvious fact that the court of the habitual residence of the creditor is most appropriate to hear the case because of the proximity with the case. The new tendencies of enlarged number of cross border marriages and people living outside their Country of their nationality diminishes the absolute supremacy of nationality as a criterion in PIL Act of Republic of Macedonia and gives ground for the adaptation to the more liberal understanding that there might be situations where the law of the creditors habitual residence can apply. In conjunction, the jurisdictional criteria in the Maintenance Regulation and the rules in the 2007 Hague Protocol position the habitual residence of the maintenance creditor (ultimately this will represent applying the *lex fori*) as the most favorable forum for the maintenance dispute resolution in terms that such position will provide for guarantee of the fair and efficient procedures and easier understanding of the social background of the case.<sup>60</sup> Lastly, the idea that the parties can determine the applicable law is also a welcomed solution. The modern understanding of the relations within the family, especially the encouragement of the persons which are subjects of family law relations to think about their needs and to organize their family law relations amicably provides space to depart from the traditional approach in family law relations where the parties were not allowed to dispose of their rights and obligations, even in international situations.

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<sup>60</sup> Župan, M, *op. cit.* note 34, p. 327

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