

ORGANIZATION OF THE HAGUE CONFERENCE FOR THE PROGRESSIVE UNIFICATION OF THE RULES OF PRIVATE INTERNATIONAL LAW AND ITS SIGNIFICANCE FOR SERBIA'S LEGISLATION

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Abstract: The Hague Conference on Private International Law is an intergovernmental organization that was founded in 1893. It operates under the auspices of the Government of the Kingdom of the Netherlands. The goal of the Hague Conference is to develop and unify the rules of Private International Law. The Hague Conference is a forum for member states where common rules of private international law are developed and incorporated into legislation. In addition, the Hague Conference aims to promote international judicial and administrative cooperation in the fields of protection of the family, children, civil proceedings, and trade law. The paper also explains the technique of conventions' adoption through precisely defined phases. We also link the influence of the countries of Anglo-Saxon law to the development of the Hague Conference. Serbia is a member of the Hague Conference and a signatory to several conventions. Regarding the membership of our country in this organization, after the dissolution of the State Union of Serbia and Montenegro in 2006, the Republic of Serbia (Serbia) continued its membership in the Hague Conference. All the conventions signed by Serbia have influenced, in general, the regulation of this area in our country.

Keywords: Hague Conference, Private International Law, Conventions, membership, Serbia.

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INTRODUCTION

The Hague Conference on Private International Law (the Hague Conference) has made a great contribution to the development of legislation governing this area, as well as other areas in which the rules apply, which include the foreign element in civil law relations. Private international law would certainly have been regulated completely differently if the Hague Conference had not influenced the development of this scientific discipline, i.e., if it had not influenced the legislation regulating this matter, either in special laws governing only this area or in the laws that also regulate issues related to the existence of the foreign element in civil law relations. The legislation of Serbia is developing in parallel with the development of legislation of countries belonging to the continental legal system, but the fact is that the development of legislation of the Anglo-Saxon legal system affects the development of law and legislation in Serbia. The development of private international law cannot be excluded from the above. The Hague Conference also influenced the development of legislation in our country. In Serbia, the Act on Resolving Conflicts of Laws with the Rules of Other Countries (ARCL, Off. Gazette of the SFRY, 43/82; 72/82-correct.; Off. Gazette of the SRY, 46/96; Off. Gazette of the Republic of Serbia, 46/2006-another Act), which was passed in 1982 in the former Yugoslavia, is still in force. That Act took over a lot of rules from previous laws that regulated this matter, but the conventions passed by the Hague Conference also had a great influence on the development of the ARCL. By the way, the ARCL regulates the matter of general issues of private international law, which is a special part of the conflict of laws, i.e., the determination of applicable law, as well as the international procedural law within which it regulates civil court proceedings with foreign elements and international commercial arbitration. However, the area of arbitration was regulated in the ARCL until 2006, when the Act on Arbitration was passed (Off. Gazzete of the Republic of Serbia, 46/2006). In this paper, we will examine the emergence and development of the Hague Conference as well as the impact of the Hague Conference on the development of private international law. We will also pay attention to connecting the Hague Conference with regional organizations and, above all, with the European Union. Finally, as we said, the influence of the Hague Conference on the development of private international law in Serbia is great.

DEVELOPMENT OF PRIVATE INTERNATIONAL LAW

When we talk about the modern development of private international law, we are talking about the period in which the Hague Conference was founded and developed. But also, for the development of the mentioned scientific discipline, it is very important to mention the specificity of continental, and above all, European private international law in relation to the Anglo-Saxon system. Namely, the current private international law of European states is characterized by the following: 1) regulation of private international law by the acts; 2) the great importance of case law in the development of this scientific discipline; and 3) the development of private international law is impossible without theory, that is, a doctrine (Čolović, 2012, p. 36). We are still starting from the teachings developed by Savigny, which refer to resolving the legal relation with foreign elements by referring to the legal order which has the closest connection with that legal relation. In addition, the current European private international law is characterized by the following: a) protection of the weaker party in the procedure, i.e., legal relations (this applies particularly to consumers and workers), which are defined by certain specifics in the collision rules; b) expanding the field of application of the autonomy of will of the parties not only within the framework of contractual relations but, to a certain extent, also within the framework of matters related to civil offenses and inheritance; c) the application of more favorable law and, in this connection, alternative points of attachment; d) frequent application of the rules of direct application; and e) the application of avoidance clauses, which prevent the application of the applicable law, if that law is not, in the specific case, closest to the legal relation (Čolović, 2000; 2012, p. 36-37). The question of which applicable foreign law will apply depends on the different circumstances for each type of legal relationship. Thus, for the legal capacity of a person, there is not only one type of reference to the applicable law, but the reference depends on the following: a) whether it is a matter of commercial contracts; or b) whether it is the conclusion of a marriage; or c) whether it is a contract of property transfer (Čolović, 2012, p. 37). The problem with private international law is that different solutions of different legal orders as to which law is applicable can lead to different meritorious solutions. In order to prevent this as much as possible, efforts are being made at the international level to draft multilateral conventions that would harmonize the collision rules. The unification of private international law is a task set by many international organizations.

ESTABLISHMENT AND DEVELOPMENT OF THE HAGUE CONFERENCE

The Hague Conference was founded in 1893 and since then, with minor interruptions, it has been performing its activities. The Hague Conference operates under the auspices of the Government of the Kingdom of the Netherlands (Varadi, Bordaš, Knežević, Pavić, 2007, p. 52). Pasquale Stanislao Mancini and Tobias M.C. Asser had the greatest influence on the establishment of the Hague Conference. Mancini and Asser pointed out the great importance of concluding multilateral conventions and took the initiative to hold a conference dedicated to various issues of private international law (van Loon, 2007, p.4). The Hague Conference on Private International Law (fr. Conférence de La Haye de droit international privé) was established at the first (Founding) conference at the initiative of Tobias Asser, to resolve issues relating to civil procedure and jurisdiction. The first conference was organized by the Government of the Kingdom of the Netherlands. The first Hague Conference was so successful that it was immediately followed in 1894 by the second diplomatic conference. Once again, Asser presided over the conference. Asser went on to lead the third conference in 1900 and the fourth in 1904, each one organized on an ad hoc basis without the support of any permanent secretariat. From 1893 to 1904, the Hague Conference adopted seven international conventions:

1. The Convention of 1896 relating to civil procedure (later replaced by that of 1905);
2. The Convention of June 12, 1902, related to the settlement of the conflict of the laws concerning marriage (replaced by the Marriage Convention of 1978);
3. The Convention of June 12, 1902, related to the settlement of the conflict of laws and jurisdictions concerning divorce and separation (replaced by the Divorce Convention of 1970);
4. The Convention of June 12, 1902, related to the settlement of guardianship of minors (replaced by the Protection of Minors Convention of 1961 and now by the Convention on the Protection of Children of 1996);
5. The Convention of July 17, 1905, related to conflicts of laws with regard to the effects of marriage on the rights and duties of the spouses in their personal relationship and *with regard to their estates* (replaced by the Matrimonial Property Regimes Convention of 1978);

6. The Convention of July 17, 1905, related to the deprivation of civil rights and similar measures of protection (replaced by the Protection of Adults Convention of 2000).
7. The Convention of July 17, 1905, related to civil procedure (replaced by the Convention on Civil Procedure of 1954, the Service Convention of 1965, the Evidence Convention of 1970, and the Access to Justice Convention of 2000) (van Loon, p. 5).

In 1951, the seventh Hague Conference took place, whose participants institutionalized the work by creating a permanent organization: the Hague Conference on Private International Law. The implementing statute, which came into force in 1955 and was originally signed by 16 states, provided that diplomatic conferences should take place in principle every four years and created a small permanent secretariat to organize and prepare these conferences for the development of new conventions. Meetings were to take place, as they do to this day, at the Peace Palace in The Hague. In the beginning, the sole official language was French, but when the United States, Canada, and other common-law countries joined the Hague Conference in the 1960s, English became its second official language (van Loon, p.5). After the Second World War, more precisely from 1951 to 2008, 38 international conventions were adopted (Dyer, 1981, p. 158). With the growth in its membership, bridging the gap between common law and civil law systems has become an important challenge for the Hague Conference. The concept of "habitual residence" became prominent as a connecting factor in international situations, both in order to determine which law to apply and which court should have jurisdiction. Over the years, the Conference has generally been most successful when it has attempted to establish channels for cooperation and communication between courts and authorities in different countries (van Loon, p.5). In 1993, on the occasion of the hundredth anniversary of the Hague Conference, a resolution was adopted defining the goal of that institution. This goal consists of the progressive unification of the rules of private international law. In addition, the Resolution defines the role of the Hague Conference as a world center for the development and service of international judicial and administrative cooperation in the field of private law. The area related to child protection must be singled out. If we look at the development of the Hague Conference, it must be said that the Conventions in the field of family law were initially adopted. Then, for the development of the Hague Conference, we link the influence of the countries of Anglo-Saxon law and the adoption of the Convention on Conflict of Laws regarding the form of testamentary provisions. After that,

the beginning of the eighties of the last century marked the adoption of a very important Convention on the Civil Aspects of International Child Abduction. Finally, the last adopted conventions refer to judicial cooperation between states, but some of them also refer to the matter of conflict of laws (Varadi, Bordaš, Knežević, Pavić, pp. 53-54).

The Procedure for adopting conventions

As for the technique of adopting the conventions within the Hague Conference, it consists of several phases. The first phase refers to the consideration of the issue of a certain area in which the convention should be adopted by the Secretariat of the Hague Conference. Then, sessions of a special commission are held, in which experts from the Permanent Bureau participate, as well as experts from the member countries and international organizations (if they are interested in adopting that convention). A chief reporter is then appointed, and when the text of the convention has been finally prepared and agreed upon by the experts of the member states, a diplomatic conference is convened which accepts the final text of the convention. After accepting the convention, it is ready to be signed. Of course, the diplomatic conference does not have to accept every text of the draft convention. The convention enters into force upon ratification by the member states (Sajko, 2005, p.63-64).

The Institutional structure of the Hague Conference

As a rule, plenary sessions of the Hague Conference are held every four years. The draft conventions prepared by the Special Commissions are adopted in plenary sessions. According to the rules of procedure at the plenary session, each delegation has one vote. Decisions shall be taken by a majority of the delegations of the member states. According to the tradition from the first session, the president elected at the plenary session is also the president of the Dutch Standing Government Committee for Private International Law. The activities of the Hague Conference are organized by the Secretariat – the Permanent Bureau, based in The Hague, whose employees must be of different nationalities. The Secretary-General is assisted by five lawyers: the Deputy Secretary General, two First Secretaries, and two Secretaries. The main task of the Permanent Bureau is to prepare for plenary sessions and special commissions. The Permanent Bureau also maintains and develops contacts with state bodies, experts, and delegates

of the member states, as well as with the central authorized bodies of the member states, which are signatories to the Hague Conventions (Hague Conference, 2008, p. 3). The Secretariat of the Hague Conference maintains close contact with the governments of its member states through national organs designated by each government. For the purpose of monitoring the operation of certain treaties involving judicial or administrative cooperation, the Permanent Bureau enters into direct contact from time to time with the central authorities designated by the states parties to such treaties. The activities of the Conference are organized by a secretariat – the Permanent Bureau – which has its seat at The Hague and whose officials must be of different nationalities. The Permanent Bureau's main task is the preparation and organization of the Plenary Sessions and Special Commissions. Its members carry out the basic research required for any subject that the conference takes up. They also maintain and develop contacts with the national organs, experts, and delegates of the member states and the central authorities designated by the states parties to the Hague Conventions on judicial and administrative cooperation, as well as with international organizations, and increasingly respond to requests for information from users of the conventions (Čolović, 2012, pp. 44-45).

The Goal of the Hague Conference

If we talk about the reason for the establishment and existence of the Hague Conference, then it is the development and unification of the rules of private international law. But we can explain this general reason with a few facts that explain the activities of the Hague Conference. These are: 1) the Hague Conference is a forum for the member states where common rules of private international law are developed and incorporated into legislation, as well as the coordination of relations between different private legal systems; 2) promotion of international judicial and administrative cooperation in the fields of protection of families and children, civil court proceedings, and tribunal law; 3) introduction of high-standard legal services and technical assistance between the member states and signatories to the Hague Conventions; 4) introduction of high quality and accessible information for member states and signatories to the Hague Conventions (Čolović, 2012, p.45).

CONNECTING THE HAGUE CONFERENCE WITH REGIONAL ORGANIZATIONS

The Hague Conference has substantial cooperation with other institutions based in The Hague as well as with other international organizations. The various Hague institutions are interconnected in several ways. Occasionally, the International Court of Justice may deal with a dispute between states concerning a question of private international law or even the Hague Convention. The arbitration bodies at The Hague sometimes draw inspiration from the Hague Conventions. The Conference works closely with a large number of international and regional, intergovernmental and non-governmental organizations to avoid duplicated work. The development of the Hague Conference gained a new dimension at the beginning of the 21st century by defining the possibility of connecting this organization with regional organizations. This possibility was given its place in the amendments to the Statute of the Hague Conference, which entered into force on January 1, 2007. The most important change is defined in Article 2a, which, as it was said, enables regional organizations to become members of the Hague Conference. The EU joined the Hague Conference with a declaration of acceptance of the Statute, then a declaration of EU competence with attached certain areas in which the member states transfer their competence to the Community, as well as a statement of the EU on certain cases related to the Hague Conventions. Namely, on October 5, 2006, the Council Decision on the Accession of the Community to the Hague Conference was adopted (Official Journal of the European Communities, 2006, pp. 1-10). For the mentioned organization to be able to join the Hague Conference, it must be constituted by sovereign states and they must transfer to it their competencies in the areas covered by the Hague Conference, including decision-making powers in those areas. In this regard, any regional economic or other similar organization applying for membership in The Hague Conference must provide a declaration of competence, which the community has done. The Act of Accession to the Hague Conference is an integral part of the Decision, as are the two statements that are necessary for the accession to take place. Pursuant to Article 2a of the Statute of the Hague Conference, the Community has issued a declaration relating to the areas in which competence has been transferred to the Community, namely the ability to make decisions by the member states. The EU has internal competence to adopt general and specific measures relating to private international law. Accordingly, the EU is competent to adopt measures in the field of judicial cooperation in civil

matters with cross-border implications as necessary for the functioning of the internal market. These measures include a) improvement and simplification of the system for cross-border service of judicial and extrajudicial documents, and cooperation in the taking of evidence, recognition and enforcement of decisions in civil and commercial matters, including decisions in extrajudicial cases; b) improvement in the harmonization of the rules applicable in the member states concerning conflicts of law and jurisdiction; and c) elimination of obstacles to the smooth functioning of civil proceedings, if necessary by improving the harmonization of the rules on civil procedure in the member states. Otherwise, within the EU, it was adopted through instruments, which made it similar to the competence in this area. Some of these instruments relate to insolvency proceedings, service of judicial and extrajudicial acts of the member states, jurisdiction and recognition and enforcement in civil and commercial matters, cooperation of courts of the member states on the taking of evidence in civil and commercial matters, the introduction of a European Enforcement Order, consumer protection, insurance, intellectual property, etc. Within the EU, it will be decided whether there is an interest in joining the existing Hague Conventions in the areas of its competence. In that sense, within the EU, it will be possible for the representatives of the Permanent Bureau of the Hague Conference to participate in the meetings of experts, which will be organized by the EU Commission on matters of interest to the Hague Conference. We will mention that the private international law of the EU is based on the adjusted reception of certain conventions adopted by the Hague Conference. These are, above all, related to the field of private international procedural law. However, the impact of the Hague Conference conventions on EU legislation in the field of child protection is more significant. This influence is manifested in two ways. The first refers to the direct impact of the Hague Conventions, so that the EU takes over in unchanged forms the solutions from the Hague Conventions, as far as, first of all, matters of subsistence are concerned, but also the mentioned solutions are adjusted for the needs of EU legislation (Marjanović, 2014, p. 876). Second, the indirect impact is based on encouraging the member states to ratify those Hague Conventions to which the EU cannot be directly bound. Here we mean the conventions that regulate the area of parental responsibility. In any case, these influences represent a partial unification, i.e., harmonization of EU private international law with private international law, which is shaped by the Hague Conventions (Marjanović, p. 877). Of course, the impact of the Hague Conventions is visible in other areas regulated by private international law,

but it is greatest in the above. There is also a goal in the EU regarding unification in the field of judicial cooperation. But it is a matter of regional unification (Župan, 2019, pp. 471-472).

SOME CHARACTERISTICS OF THE CONVENTIONS ADOPTED WITHIN THE HAGUE CONFERENCE

Conventions governing the narrow areas of private international law have often been adopted within the framework of the Hague Conference. These conventions represent significant steps towards the unification of this area. The Hague Conference initially adopted conventions in the field of family law. Later, under the influence of the common law system, these acts are more often passed in the areas of international legal assistance and procedural issues in this area. The next phase is marked by conventions that bring some of the original solutions. Here, first of all, we mean the Convention on the Civil Aspects of International Child Abduction of 1980. The main purpose of the adoption of this Convention is to establish a mechanism of cooperation between the competent authorities of the contracting states in order to return the child to the country of his or her regular residence as soon as possible. We also single out the legal instrument that was adopted relatively recently (Duraković, 2019, pp. 19-20). These are the Principles on the Choice of Applicable Law in International Trade Agreements from 2015. This act serves as a model law for the contracting states in drafting their own conflict-of-law rules. Apart from the mentioned acts and the efforts of the Hague Conference to influence the development of legislation in the member states, one of the tasks of this organization is to work on the wider application of existing conventions, as well as work on spreading knowledge about conflict of laws. The conflict of laws is a complex relationship, so it is necessary not only to know the rules for resolving it but also the causes that lead to the conflict of laws. In a large number of countries, there are legislations that regulate the matter of private international law. However, the problem is the willingness to consistently apply the rules defined in these legislations. This refers not only to the manner of learning and applying foreign applicable law but also to the readiness of courts and other bodies to consistently apply other rules in this area, such as those governing retaliation and referral, violation of public order, etc. The problem is the lack of understanding of the real meaning of the laws that regulate this matter, and, therefore, there is an incorrect application of the provisions of these laws. This is exactly one of the goals of the Hague Conference, as well as the member states that are trying to

change that situation. In that sense, the cooperation of the competent authorities of the member states is very important, which would refer to the wider application of the conventions (Duraković, p.20).

SIGNIFICANCE OF THE HAGUE CONFERENCE FOR THE SERBIA

The Hague Conference is of great significance for Serbia. Serbia is a member of the Hague Conference as well as a signatory of several Hague Conventions. At this point, we will present the facts related to Serbia's current membership in the Hague Conference. After the break-up of the State Union of Serbia and Montenegro, Serbia continued its membership in the Hague Conference. Namely, the Ministry of Foreign Affairs of the Netherlands, which is the depositary of the Hague Conventions, stated on July 5, 2006, that the Declaration of Independence of the Republic of Montenegro was adopted, as well as the right of Serbia to continue its membership in the Hague Conference (Čolović, 2009, p. 44). The National Assembly of Serbia on June 5, 2006, passed the decision that Serbia is a signatory of the following acts adopted within the Hague Conference:

1. The Statute of the Hague Conference of Private International Law from 1955;
2. The Convention of 1 March 1954 on Civil Procedure (Off. Gazette of the FPR Yugoslavia - International Agreements No. 6/62);
3. The Convention of October 5, 1961, on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (Off. Gazette of the FPR Yugoslavia - International Agreements No. 10/62);
4. The Convention of October 5, 1961, on Abolishing the Requirement of Legalisation for Foreign Public Documents (Off. Gazette of the FPR Yugoslavia - International Agreements No. 10/62);
5. The Convention of November 15, 1965, on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Off. Gazette of the Republic of Serbia - International Agreements No. 1/2010; 13/2013);
6. The Convention of March 18, 1970, on the Taking of Evidence Abroad in Civil or Commercial Matters (Off. Gazette of the Republic of Serbia - International Agreements No. 1/2010; 13/2013);

7. The Convention of May 4, 1971, on the Law Applicable to Traffic Accidents (Off. Gazette of the SFR Yugoslavia - International Agreements No. 26/76);
8. The Convention of October 2, 1973, on the Law Applicable to Products Liability (Off. Gazette of the SFR Yugoslavia - International Agreements No. 8/77);
9. The Convention of October 25, 1980, on the Civil Aspects of International Child Abduction (Off. Gazette of the SFR Yugoslavia - International Agreements No. 7/91);
10. The Convention of October 25, 1980, on International Access to Justice (Off. Gazette of the SFR Yugoslavia - International Agreements No. 4/8);
11. The Convention of May 29, 1993, on Protection of Children and Co-operation in Respect of Intercountry Adoption (Off. Gazette of the Republic of Serbia - International Agreements No. 12/2013);
12. The Convention of October 19, 1996, on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (Off. Gazette of the Republic of Serbia - International Agreements No. 20/2015);
13. The Convention of November 23, 2007, on the International Recovery of Child Support and Other Forms of Family Maintenance (Off. Gazette of the Republic of Serbia - International Agreements No. 4/2020);
14. The Protocol of November 23, 2007, on the Law Applicable to Maintenance Obligations (Off. Gazette of the Republic of Serbia - International Agreements No. 1/2013).

All the mentioned conventions were signed and ratified by the former FPR Yugoslavia, that is, the SFR Yugoslavia, as well as the Republic of Serbia. As for the conventions signed by the former Yugoslavia based on the rules that apply in the conditions of succession, Serbia is a signatory to those conventions. When it comes to international agreements, in the case of the FR Yugoslavia, there was a double regime (Čolović, 2009, p. 45). Namely, only when it came to international agreements concluded under the auspices of the United Nations, it was considered that the FR Yugoslavia was a predecessor of the SFRY, i.e., that it had continuity with it. On the other hand, when it came to other international agreements, it was considered that the FR Yugoslavia was not their member or signatory, although they were signed and ratified by the SFRY. These were also the Hague Conventions (Stanivuković, Živković, 2004, p. 83).

CONCLUSIONS

The Hague Conference has had an immense impact on the advancement of the law in general. It is certain that the Hague Conference had the greatest impact on the development of private international law. Most countries have accepted the solutions from the Hague Conventions, regardless of whether they are members of this organization or not. The Republic of Serbia has ratified "only" 12 conventions, mainly in the fields of international legal assistance and judicial cooperation. We can ask why the acts of the Hague Conference in the fields of regulation of marriage and marital property have not been ratified. However, the fact is that the Hague Conventions have played a key role in the formation of legislation that regulates the element of foreignness in civil law relations in the Republic of Serbia. Unification is one of the goals of the Hague Conference. It has been achieved in the areas regulated by the Hague Conventions, at least in those countries that have ratified them. It must be said that the Hague Conference has contributed to universal unification not only in the field of private international law but also in the field of judicial cooperation. This has facilitated international legal transactions. However, the Hague Conference has also influenced the development of legislation in other international organizations. Here, first of all, we mean the EU, which, as we have seen, is one of the members of the Hague Conference. The EU also has a goal regarding unification, which, as we already noted, also entails judicial cooperation, mostly in civil cases.

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