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VALIDITY OF THE HAGUE CONVENTIONS IN THE FIELD OF INTERNATIONAL PRIVATE LAW IN THE LEGAL SYSTEM OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AFTER THE DISSOLUTION OF THE SOCIALIST FEDERATIVE REPUBLIC OF YUGOSLAVIA

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Abstract. *The paper discusses a legally and politically complex question whether the Hague Conventions in the field of international private law are valid in the law of FR Yugoslavia after the cessation of the Socialist Federal Republic of Yugoslavia in 1992, which was a member of those Conventions. The complexity of that question resulted from the fact that FR Yugoslavia aspired to extend the continuity of SFRY, while some member states the Hague Conventions deemed that pretension ungrounded, because of which Yugoslavia may be only one of the successor states of that state. The consequence of that contradicting legal opinions was that the state organs of FR Yugoslavia thought that the subject conventions were still valid for her, while the states that did not get along with that refused to recognize that state as the member of the subject Conventions.*

Key words: *the Hague Conventions in the field of international private law, FR Yugoslavia as a subject of international law, continuity and succession of states*

1. The international conventions concluded within the Hague Convention for international private law are an important source of this branch of law in a great number of today's states.[1] Namely, over the period from 1951, when this Organization renewed its operation (after not too successful operation by the end of the 19th century and the

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[1] On the work of the Hague Conference and all relevant questions (conventions texts, member states, reservations, central powers determination, preparing works to certain conventions, references to each of them, etc.). See Internet site http://www.hcch.net.

beginning od the 20th century), to 1966, when the last 18th session of the Conference was held, under the auspices of this important international body, 32 conventions have been made and submitted to adoption. Out of that number, 24 conventions came into force, some of them becoming real "charters" in the matter they regulate, sometimes with more than 60 member states of the convention (such, for example, is the case with the Convention Abolishing the Requirements of Legalisation for Foreign Public Documents of 1961) or of the recent ones, with a lesser number of member states with the Convention on the Civil Aspects of International Child Abduction (1980) or the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (1993). Out of eight conventions that did not came into force, two are from 1958 and one each from 1955, 1956, 1965, 1986 and 1996.[2] With regard to a number of already effected ratifications, certain of them stand a real change to come into force (missing is one or two ratifications, that is, joining – for example, conventions from 1986, 1989, 1996), while others, particularly those from the 1955-1965 period, point to great efforts of law experts which for different reasons have not reached (and ceratinly will not) the rank of positive norms of international private law.

But, in spite of that, the starting conclusion remains completely the same: the Hague Conventions are an important source of international private law in domestic systems of many states. Indirectly witnessing on that importance are some more recent legal texts in this sphere, which expressely point to the application of certain of the Hague Conventions being no more satisfied with the classical formulation on the precedence of international sources with reference to those domestic: thus, for example, are Article 85, paragraph 1, Artcile 93, paragraph 1, and Article 134 of the Swiss Statute on International Private Law (1987) or Aticles 42 and 45 of the Italian Statute on the Reform of International Private Law of 1995.[3] Thus, these conventions also expand the sphere of their application: they are applied with reference to the non-member states and without the reciprocity conditions.

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[2] Since they did not come into force and become a part of international private law of certain states, these Hague Conventions are rarely mentioned side by side. That is why we will list them here: Convention relating to the settlement of the conflicts between the law of nationality and the law of domicile (1955); Convention concerning the recognition of the legal personality of foreign companies, associations and institutions (1956); Convention on the law governing transfer of title in international sales of goods (1958); Convention on the jurisdiction of the selected forum in the case of international sales of goods (1958); Convention on the Choice of Court (1965); Convention on the Law Applicable to Contracts for the International Sale of Goods (1986); Convention on the Law Applicable to Succession to the Estates of Deceased Persons (1989); Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for Protection of Children (1996).

[3] Thus, for example, Article 42, paragraph 1, of the Italian Law reads: "For the protection of out of age persons the Hague Convention of 5 October, 1961, on the competent power and authoritative law in the matter of protection of out of age persons, ratified under the Statute No. 745 of 24 October, 1989 shall be applied in all cases"; or in Article 45: "To the obligations of maintaining a family the Hague Convention of 2 October, 1973, on the authoritative law for obligations of maintenance, ratified under the Law No. 745 of 24 October, 1989 shall be applied in all cases". Similar formulations are contained in the aforementioned articles of the Swiss Law of 1987: Article 85, paragraph 1, with regard to the already mentioned Convention of 1961 on the protection of out of age persons; Article 93, paragraph 1, with regard to the Hague Convention on Conflicts Regarding the Forms of Testamentary Disposition of 1961; and Article 143 with regard to the Hague Convention on Conflicts of Laws in the Matter of Road Traffic Accidents of 1973.

2. The Federal People's Republic of Yugoslavia (later the Federal Republic of Yugoslavia) was one of the member states of the Hague Conference for International Private Law[4] and ratified a certain number of conventions passed within this Orgnaization. To put it more precisely, immediately prior to its cessation, the following Hague Conventions were in effect in the territory of the former Socialist Federative Republic of Yugoslavia:

1. Convention relating to civil procedure of 1905;[5]
2. Convention relating to civil procedure of 1954; [6]
3. Convention Abolishing the Requirements of Legalisation for Foreign Public Documents of 1961; [7]
4. Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions of 1961; [8]
5. Convention on the Law Applicable to Traffic Accidents of 1970;[9]
6. Convention on the Law Applicable to Products Liability of 1973; [10]
7. Convention on International Access to Justice of 1980; [11]
8. Convention on Civili Aspects of International Child Abduction of 1980; [12]

Upon the tragic events and dissolution of the Socialist Federative Republic of Yugoslavia, new states were established: ex republics, members of SFRY, became independent states, while Serbia and Montenegro remained in the joint state – the Federal Republic of Yugoslavia the Constitution of which was passed on 27 April, 1992.

As for the Hague Conventions, the ex-Yugoslav republics proceeded as follows: Slovenia, Croatia and Macedonia became the members of the Hague Conference for International Private Law (delivering statement on the acceptance of the Statute of the Conference of 1955), while Bosnia and Herzegovina did not do that and she is in the group of the so-called "other states" , that is, states that are not the members of the Conference, but are the members of certain Hague Conventions. All of these ex-Yugoslav republics, as the states successors of the former SFRY have provided the so-called notification on the succession and became the members of those conventions the member state of which was ex-SFRY[13] with ratification dates (that is, joining) and coming into force which were valid for SFRY.

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[4] A state becomes a member state of the Hague Conference for International Private Law in keeping with one out of two procedures provided for under Article 2 of the Statute of the Conference (the Statute came into force on 15 July, 1955). At the moment being 45 states are members of this Conference. For more details see Internet site http:/www.hcch.net.

[5] With reference to Yugoslavia, the Convention is in effect from 1930.

[6] With reference to Yugoslavia, the Convention is in effect from 1954.

[7] With reference to Yugoslavia, the Convention is in effect from 1965.

[8] With reference to Yugoslavia, the Convention is in effect from 1964.

[9] With reference to Yugoslavia, the Convention is in effect from 1975.

[10] With reference to Yugoslavia, the Convention is in effect from 1977

[11] With reference to Yugoslavia, the Convention is in effect from 1988.

[12] With reference to Yugoslavia, the Convention is in effect from 1991.

[13] On which occasion each of them, for really unknown reasons (deliberately?) failed to provide the notification on succession for one of each of the conventions being earlier binding on SFRY (different conventions are in question). Such treatment may be viewed as a way of manifesting sovereignty, but it is obvious that the process should have been vice versa and that such manifestation should be directed so as to increase the so far modest

As for this country, this actually being the subject of this paper, the situation regarding the terms of the Hague Conventions is rather unclear and creates certain problems in the judicial practice. What actually is the matter?

In short, this country is considered a member of the aforementioned Hague Conventions, that is, she is considered to have preserved the international contractual continuity with reference to the former SFRY, while, on the other hand, the Ministry of Foreign Affairs of Holland (as a despositor of the Hague Conventions) and the Bureau of the Hague Conference for International Private Law do not recognize her (so that the name of the Federal Republic of Yugoslavia is not mentioned there at all).[14] The opinion of the third states is quite different – some of them deem that she is a member state of certain conventions and proceed accordingly, while the others, on the contrary, share the standpoint of the Ministry for Foreign Affairs of Holland and deny that to her. The problem is not without any political conotations and is connected with the main dilemma about the (non)recognition of the capacity of the Federal Republic of Yugoslavia as the state predecessor (other ex-Yugoslav republics are states successors of the former SFRY), her membership in the United Nations (which has de facto been frozen at the moment being) and the like. Therefore, unavoidable is the question whether this problem can be resolved in the judicial field and normal functioning of the national system of the international private law enabled, that is, whether a judicially-grounded solution could be accomplished that only in a necessary measure would be subject to the political factors impact (since it is, in such cases, obvious that no party wants to ignore them). Our opinion is that such outcome is possible to attain and that even, for the purpose of protecting safety of international private law traffic, it should necessarily be recoursed to.

3. After the Federal Republic of Yugoslavia has been created, the official standpoint of this country and that of the prevailing part of the doctrine regarding the validity of international sources[15] is based upon the below premises:

– After the crisis in the territory of the former SFRY, caused by the secession of four former Yugoslav republics and their international recognition, two constitutive republics – Serbia and Montenegro – decided to remain in the common state and thus, among other things, preserve the continuity with reference to the former SFRY.

– The constitutional and legal grounds of this determination can be ascertained in the

number of the adopted Hague Conventions. For details on the dates of notifications on succession provided by the present states – former Yugoslav republics, see RC, 1999, 166. See also Internet site http://www/hcch.net.

[14] Ibid.

[15] As for the domestic sources (in the part regarding the international private law norms), the following solution has been provided: under Article 12 of the Constitutional Law for Performance of the Constitution of FRY it has been prescribed that federal laws and other federal regulations of the former Yugoslavia shall remain effective until their harmonizing with the Constitution (within the deadlines provided for under that Law) inasmuch as the same Law stipulates that they cease to be effective. Article 13 lists the laws of SFRY no more effective, but there is no one among them that even partially concerns the matter of international private law. Articles 15 and 16 lay down which laws will be harmonized with the Constitution prior to 31 December, 1992, that is, 1994. These deadlines, unfortunately, have not been respected, but were extended and extended several times. Certain laws that contain the international private law norms have been harmonized with the Constitution later than provided for (e.g. the Law on Maritime and Inland Navigation), while the most important source – the Law on Settlement of Conflicts of Laws and Competence with Regulations of Other States (now without the supplement "...in certain relations") was harmonized with the new Constitution only in October 1996 (see Yugoslav Official Register No. 46/96).

Declaration on the Proclamation of the Constitution of the Federal Republic of Yugoslavia of 27 April, 1992, according to which the Federal Republic of Yugoslavia continues international and legal subjectivity of the ex-Yugoslavia and strictly respects all international obligations she has taken over. On the grounds of that Declaration, FRY has accepted the contractual continuty with reference to the ex-Yugoslavia, so that the agreements concluded by the ex-Yugoslavia has remained in effect for the Federal Republic of Yugoslavia.

– Such standpoint is based upon the Vienna Convention on Succession of States with reference to international agreements (1978), which came into effect on 6 November, 1996. According to the rules codified under the Convention, the difference between the seccession of parts of a state (Article 34) and the case when, after the seccession, the predecessor state still exists is stipulated (Article 35). In the latter case, each agreement in effect during the predecessor state shall remain in effect with reference to the rest of its territory. There is an exception to this rule when different agreement is reached on that matter, if the agreement refers only to the territory which has seceded or if its application to the predecessor state cannot be connected with the subject, purpose, that is, fundamentally changes the conditions of its performance (Article 35 paragraph a), b) and v) of the Convention).[16]

Therefore, according to this standpoint, the Federal Republic of Yugoslavia has automatically taken over international agreements of the former Yugoslavia, that is, she has become *ipso iure* the contracting party to the here duscussed Hague Conventions.[17]

This opinion of ours has been implicitely accepted in the practice of the courts of certain states. Namely, after the analysis of decisions of foreign courts the recognition of which was asked for (and obtained) before the District Court in Niš, we have found several judgements in which these courts, deciding on meritum, have referred to the Hague Conventions the contracting party to which was the former SFRY and applied them to the Federal Republic of Yugoslavia. Thus, for example, in certain divorce judgements of courts in Germany and Greece we find that these courts have applied the Hague Convention on Repealing Requests for Legalization of 1961 (concretely, judgements pronounced

[16] Z. Radivojević, Medjunarodni ugovori SR Jugoslavije (1992-1996), Jugoslovenski pregled, 1997, No. 1, 150.

[17] Without closer arguments, the attitude that the Hague Conventions are valid for FRY is also supported by S. Popović, Medjunarodna pravna pomoć u gradjanskim pravima, Bilten sudske prakse Vrhovnog suda Srbije, 1999, No. 1, p. 94 et seq. Somewaht different opinion, but which does not contradict the basic idea on the automatic effectiveness of multilateral conventions, can be found with V. Rakić-Vodinelić, Prestanak SFRJ, Pravne posledice, Beograd, 1995, p. 31. As for the multilateral conventions, the author approves automatic effectiveness, while, when bilateral agreements are in question, he thinks, referring to Article 24 of the Vienna Convention of 1978, that, generally, the discontinuity principle is valid. Yet, such interpretation could hardly be accepted because Article 24 of the Convention refers to states that have come out of the colonial status (in that sense A. Boss says: "The Convention of 1978 takes a stance that agreements remain effective regadless if they were bilateral or multilateral" A. Boss, Quelque cas récents de succession d'Etats en matière de traités conclus dans le cadre de la Conférence de la Haye de droit international privé, p.25; G. Droz, La succession à la Conférence de la Haye de droit international privé, p.176, in Dissolution, continuation et succession en Europe de l'Est, Montchrestien édit., 1996). V. Rakić-Vodinelić makes later the starting standpoint relative by the thesis that "...rights and obligations from a bilateral agreement are not automatically transferred to the successor state, but this does not mean that succession itself nullifies the contractual rights and obligations. As it can be seen, the parties can conclusively ? extend the existence and application of the earlier concluded agreement".

over the period after 1992, that is, after the creation of the Federal Republic of Yugoslavia are in question).[18] Indeed, these courts have not explicitly come out for the status of the Federal Republic of Yugoslavia with reference to this Convention, but have implicitly recognized the capacity of contracting party since its Article 1, paragraph 1, provides for that "This Convention is applied to public identity papers created i*n the territory of one contracting party* and should be used *in the territory of another contracting party*".

The attitude of the Dutch Ministry of Foreign Affairs is based upon the report of Badinter Commission, according to which the former Yugoslavia has dissolved and all former Yugoslav republics, as well as the Federal Republic of Yugoslavia, are successor states; it means that this country has not been recognized the status of the predecessor state, but to have been equalized with other ex-Yugoslav republics, now independent states. The consequence of such attitude, according to the Dutch Ministry of Foreign Affairs, as a depositor of the Hague Conventions, is that all newly-created states must provide a notification on succession, that is, a notice on that whether they consider themselves bound by the Hague Conventions which were in effect in the former SFRY and attached to the statement on acceptance to provide their list.[19] This standpoint has been accepted in the judicial practice of certain states. Thus, for example, the District Court in Hernals (Austria), in its decision of 25 March, 1997[20], in the case of a child taken from Austria to Yugoslavia, by his father, a citizen of Yugoslavia, refused to refer to the Hague Convention on civilian legal aspects of internationally taken children (1980) and requested the child to be brought back to Austria providing the following explanation:

"The Convention ratified by Austria in 1988 and which was at one time ratified by Yugoslavia is not effective with regard to the so-called Yugoslavia (Serbia and Montenegro) due to the lack of notification on succession. This interpretation is based upon the attitude of the Dutch Ministry of Foreign Affairs, as a depository of the Hague Convention, and is shared by the Federal Ministry of Foreign Affairs and the Federal Ministry of Justice" (Austria).

4. In the presence of such contradictory attitudes, a question is posed how to come to a compromise solution for this country, on the one hand, and for the Bureau of the Hague Conference for International Private Law and the Duch Ministry of Foreign Affairs, on the other hand. Our opinion is that, in search for such solution one should, first of all, start from Articles 34 and 35 of the Convention on Succession of States with reference to the international agreements from 1978.

4.1 According to Article 34, paragraph 1, which regulates the question of "Succession of states in case of a secession of parts of a state":

"When one or more parts of the territory of a state secede from it to form one or more states, regardless of the fact whether the predecessor state still exists or not:

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[18] The following judgements are in question: judgement Amtsgericht, München. Nr. 910E-26/97 of 19 September, 1994, apostille on 28 February, 1997, and recognized under the decision of the District Court in Niš P.No.75/97 of 4 April, 1997; judgement Langericht Mönchengladbach of 15 April, 1991, apostille on 1 April, 1998, recognized under the decision of the District Court in Niš P.No.15/98 of 15 May, 1998; judgement of the court of first degree in Kalkis, No. 981/TP/133/26101998, October 1998, apostille on 22 March, 1999, recognized by the decision of the District Court in Niš P.No. 7/99 of 10 June, 1999.

[19] A. Boss, op. cit., p. 37.

[20] Judgement BP2273/95b, Department 8, of 23 March, 1997 (not published).

a) each agreement which was effective on the date of succession of states as regards the complete territory of the predecessor state remains in effect with regards to each such created successor state ..."

According to Article 35 of the Convention regulating "The case of a state that remains after the secession a part of its territory",

"If, after the secession of any part of the territory of a state, the predecessor state still exists, each agreement that, on the date of succession of states, was effective with regard to the predecessor state, shall remain effective with regard to the rest of its territory..."

From the basic solutions of these provisions, it clearly results that, as regards the international agreements (both bilateral and multilateral), an identical legal regime is predicted both for the succession and the continuity – for transition of rights and obligations from international agreements it is irrelevant whether there is a continuity or discontinuity (succession) between the Federal Republic of Yugoslavia and SFRY;[21] in both cases, the rights and obligations from an international agreement commence, that is, continue to bind from the moment of succession, that is, continuity. According to these solutions, no statement either of the predecessor or the successor states is required for validity of the rights and obligations from international agreements. These rights and obligations are effective automatically, ipso iure. Consequently, considering the solutions contained in Articles 34 and 35 of the Convention, we realize that they fully confirm the attitudes of this country as regards the effectiveness of international agreements of the former SFRY.

4.2 However, when the Hague Conventions are in question (as well as when other agreements passed within the international organization are in question), it not enough to rely only upon these two articles of the Vienna Convention of 1978. In that case, it is also necessary to take into account its Article 4 ("Agreements on establishing international organizations and agreements adopted by an international organization") the paragraph, 1 point b) of which reads:

"This Convention shall be applied to the effect of succession of states as regards: ...

b) each agreement adopted by an international organization subject to any other rule of the organization".

Consequently, when agreements adopted within a certain international organization are in question, then the convention solutions retreat before the rules provided for by that organization. Concretely, it means that the rules of the Hague Conference for international private law as well as the provisions of certain Hague Conventions regulating those questions have prirority over the Convention solutions from Aticles 34 and 35.

4.3 Those "rules of the organization" in the former practice of the Dutch Ministry of Foreign Affairs and the Hague Conference for International Private Law (on the occasion of territorial changes in East Europe) have mainly been demonstrated in the following way.

First of all, a stance has been taken that the Hague Conference, either the Secretary-General or the Dutch Ministry of Foreign Affairs as a depository of the Hague Conventions are in question, "...has a particular responsibility to contribute to the clearing up of the effects of seccession of states",[22] and then, that "all legal rights regarding the succession of states start from the prinicple that an international organization itself makes a de-

[21] V. Rakić-Vodinelić, loc.cit.
[22] A. Boss, op. cit., p. 31.

cision on admission of new members understanding here the case of succession of states as well".[23]

In practice, this attitude has been made concrete so that the depository sent a questionnaire to the states created in the ex-Soviet and ex-Yugoslav territory, as well as to Czech Republic and Slovakia, whether they deem them bound to the Hague Conventions that were in effect in the former state. Providing (their) postivie answer, with a list of conventions the validity of which they retain on their territories, these states have actually provided notification on succession; namely, accordiing to Article 2, paragraph 1, point g) of the Vienna Convention of 1978 the "expression "notification on succession" denotes notification regardless of the fact how it is worded or how it is named, which is, regarding to a multilater agreement, sent by the successor state in which that state provides the assent to be considered bound under the agreement". It was the case with Russia, which, based on the agreement in Alma-Ata (1991), has unambiguously been indicated as the predecessor state, that is, the state which continues the contractual continuity of the Soviet Union – so that the Dutch Ministry of Foreign Affairs, in the capacity of a depository, has sent a letter to her with the question: ... if the Declaration of 13 January, 1992, under which Russia has taken over all international obligations of the former Soviet Union, shall also be applied to the Convention on repealing the request of legalization of foreign identity papers of 1961[24] (the only Hague Convention adopted so far). Russia has answered that she was the contracting party to the Convention and pursuant to Articles 1, 6, 9 and 15 has provided the corresponding statement with regard to the procedure of issuing these papers in her territory. It is interesting to note that considerable attention is not being paid in the Russian doctrine to the matter that providing an answer to the questionnaire of the Dutch Ministry of Foreign Affairs the notification on succession has practically been given (pursuant to Article 2 of the Vienna Convention of 1978), but it is simply stated that "Russia as a successor to the Soviet Union has taken over all obligations resulting from the international agreements the signatory to which was the Soviet Union" and that "that rule corresponds to the customs of international law with regard to the succession of states (Article 34 of the Vienna Convention on succession of states with reference to the international agreements of 23 August, 1978").[25]

5. We do not know whether a letter of the same contents has been sent to the Ministry of Foreign Affairs of the Federal Republic of Yugoslavia.[26] It is because of that that the author of this paper has sent a letter to Mr. J.N.A van Loon, Secretary-General of the Hague Academy, bearing on all these questions and has received an answer in which he, first of all, points out the following: "As for the legal status of the Federal Republic of Yugoslavia, the situation has not changed: the international community does not recognize the request of the Federal Republic of Yugoslavia to continue the legal subjectivity

[23] Ibid.
[24] A. Boss, op. cit., p. 32.
[25] N. Bogdanova, Russie – Droit international privé. L'état actuel de la legislation russe en matière de droit international privé, Revue critique, 1977, 143.
[26] Having in mind the pronounced zeal of the Dutch Ministry of Foreign Affairs, the question whether its actions were always in keeping with Articles 76 and 77 of the Vienna Convention on Contractual Law (1968) dealing with a depository and its duties seems to be appropriate.

of the former SFRY, so that she would have, like other republics, which has become independent, to inform the depository ... that she accepts the obligations from the Statute of the Hague Conference". Further in the letter, quite appropriately are separated two questions: membership of the Federal Republic of Yugoslavia in the Hague Conference for International Law, on the one hand, and the status of this country as a member state of the Hague Conventions which were in effect in the former SFRY, on the other hand. As for the first question, a suggestion has been offered that this country could became a member of the Hague Conference under the conditions from Article 2, paragraph 1, of the Statute (in case she would provide a statement to accept the Statute), and when it comes to the second question, the following procedure has been underlined: the Federal Republic of Yugoslavia may get the depository acquainted with her wish to remain ("rester" – the communication was in French) the member state of the subject conventions – the depository will inform other member states on that; - if these do not make an objection within the specificed time period, it will be deemd that the contractual relations with the member states of the conventions shall be deemed continued from the moment of the dissolution of SFRY.

6. Both of these suggestions are of considerable importance for understanding the attitude of the Bureau of the Hague Conference and that of the Dutch Ministry of Foreign Affairs on the question of succession of states in the territories of ex-USSR and ex-Yugoslavia as well as Czechoslovakia. One cannot help feeling that these bodies wanted to have recourse to an intermediate solution that would put all states into an equal position (independently of the fact whether a predecessor or successor state is in question)[27], then to offer a privileged regime of acquiring the membership in the Hague Conference and the capacity of a contracting party to the Hague Conventions which were in effect in the former state.

7. That privileged regime (when it comes to the membership in the Hague Conference for International Private Law) is reflected in that that the offered suggestion understands membership under very facilitated conditions, in keeping with Article 2, paragraph 1, of the Statute. Namely, according to Article 2 of the Statute of the Hague Conference two ways have been provided for to acquire the capacity of a member state – one according to paragraph 1 which reads: "The members of the Hague Conference for International Private Law are the states which have already participated in one or more sessions of the Conference and which have adopted the Statute." And the other in keeping with Article 2, paragrpah 2, of the Statute which provides for as follows: "All other states the participation of which points to the interest of legal character for the work of the Conference may become the members. On the admission of new members, the decision shall be made by the governments of the member states, upon the proposal of one or more of them, by the majority vote within six months from the date when such proposal has been made to the governments. The admission shall become final by the fact of acceptance of this Statute by the interested state."

[27] Which only at first glance may be a fair solution – sure, to treat equally the unequal is not in harmony with the fairness postulates.

8. Based upon the mere reading of these provisions, it is clear that these two ways of acquiring the capacity of a member state of the Hague Conference are mutually very different: paragraph 1 lays down which states are the members of the Conference, paragraph 2 speaks of that which states may become member states; paragraph 1 understands participation in one or more sessions of the Conference and acceptance of the Statute, while paragraph 2 sets more difficult conditions and points to the fact that the state has not participated in the former sessions of the Conference. In spite of that, the Bureau of the Hague Conference and the Dutch Ministry of Foreign Affairs[28] have decided for an extremely original solution: the states they name and consider as newly-created are recognized to have participated "in one or more sessions of the Conference", so that to acquire the capacity of a member state, it shall be enought to provide their statement on the acceptance of the Statute of the Conference.[29] The same solution, in the form of a suggestion, was also offered in the aforementioned letter of the said Secretary-General of the Hague Conference for International Private Law to this country.

9. When the Hague Conventions are in question, the offered privileged regime would consist in that the express provisions on acquiring the capacity of the member state con-

[28] Although it is obvious that the competence of the Dutch Ministry of Foreign Affairs as a depository of the Hague Conventions and of the Bureau of the Hague Conference for International Private Law should have been distinctly divided in the sense that the Ministry shall decide upon the status of the (non)member states when certain Hague Conventions are in question, while the Bureau should decide upon the membership of a concrete state on the Hague Conference, it seems that it is not always the case and that Bureau is under the significant impact of the Ministry of Foreign Affairs. See, for example, the next note from which it can be seen that the candidacy of Macedonia for membership on the Hague Conference (such as it was the case of Slovenia, Czech Republic and Slovakia) was submitted to the Dutch Ministry of Foreign Affairs instead of to the Bureau of the Hague Conference for International Private Law.

[29] Nevertheless, it must be admitted that this attitude has resulted only after a successful acquiring of starting experiences in this business – namely, the letter of Georges A.L. Droz, earlier Secretary-General of the Hague Conference for International Private Law, dated 25 October, 1993, and sent to the ambassadors of the member states of the Hague Conference on the occasion of the application of Macedonia for membership on the Conference, reads: "Instead of the consultations I have recoursed to in view of Slovenia (See my circular letters A No. 38(92) of 23 September, 1992 and A No. 45 (92) of 15 December, 1992), Czech Republic, ... and Republic of Slovakia, I think it may be considered that the former Yugoslav Republic of Macedonia have participated in the earlier sessions of the Conference within the Socialist Federative Republic of Yugoslavia and that the letter of 20 September, 1993, may be considered a statement on the acceptance of the Statute in keeping with Article 2, paragraph 1, of the Statute. However, as the consultations in view of Slovenia, Czech Republic and the Republic of Slovakia have shown, it is possible that member states do not share that attitude and deem that the former Yugoslav Republic of Macedonia falls under the provision of Article 2, paragraph 2, of the Statute and that the admission procedure on the initiative of member states should be applied in that case. Therefore, if your government deems that the admission procedure should be applied to the former Yugoslav Republic of Macedonia, I would appreciate much if you informed me on that by 1 December, 1993, and at the same time you are kindly asked to indicate whether on that occasion your government will vote for or against the admission of the former Yugoslav Republic of Macedonia, the candidacy of which has been submitted to the Dutch Government, as it was in the case of Slovenia, Czech Republic and the Republic of Slovakia". The contents of this letter is very indicative: if a state shall be admitted in keeping with Article 2, paragraph 1, of the Statute, the opinion of the member states is not necessary – it is enough the statement on the acceptance of the Statute to be provided along with the earlier participation in the session of the Conference: if, however, a state is being admitted on the grounds of Article 2, paragraph 2, then according to the text of the provision, legal interest for participation of the subject state in the work of the Conference should be estimated. Our impression is that the legal criterion was not in the forefront of this letter.

tained in certain Hague Conventions[30] would be neglected, but instead of them somewhat simplified *via media* procedure would be apllied. The idea is that an explicit agreement of the member states for admission to membership of a new member state, although provided for under the Convention itself, should be replaced by the absence of objection on their side. For example, Article 18, paragraph 4, of the Convention on the Law Applicable to Traffic Accidents provides for that "Joining is effective only in relations among the state which has joined and the contracting states which would state that they accept this joining" or Article 38, paragrpah 4, of the Convention on Civil and Legal Aspects of International Kidnapping of Children (1980) which reads "Joining will be valid only for relations between the joining state and that contracting state which has declared its acceptance of the joining". However, although these provisions are very clear and do not leave any room for different interpretation, the attitude of the Dutch Ministry of Foreign Affairs is that instead of the formal agreement of the member states for establishment or continuation of the contractual regime it is enough to have the absence of objections on their side. Sure, in addition to this suitableness, the states which aspire to the membership in certain conventions would have to provide a notificationon on the succession, that is, to submit statements that they want to be members of certain Hague conventions and, in addition to this, to present a list of those conventions as well.

10. How to estimate the proposed regime and facilities pointed to in the letter of the Secretary-General of the Hague Conference for International Private Law? To which measure the attitude of the member states of the Hague Conference and the attitude of the member state of certain Hague Conventions can impact the continuation of the membership of this country in one and in the other case and is it determined only by the legal arguments? Finally, would the acceptance of the suggestion and proceeding in keeping with it endanger the attitude of this country on the existence of the contractual continuity with reference to the ex-Yugoslavia?

11. In response to these questions, first of all, a conclusion should be made that, according to this regime, this country could become the member of the Conference by simply providing a statement on the acceptance of the Statute, pursuant to its Article 2, paragraph 1, and also it could continue the contractual regime with the member states of the Hague Conventions that ex-Yugoslavia was bound to by providing a notification on the succession and the absence of obejctions by those states within the specified term. That, surely, is not a solution from Articles 34 and 35 of the Vienna Conventions of 1978 on the automatic validity of multilateral agreements, but is a solution that can be harmonized with Article 4, paragraph 1, point b) of the same Convention. After the experiences gained with the states that have already become members of the Hague Conference and the Hague Conventions and the already established practice, it seems that a possibly dif-

[30] If the provisions of certain conventions that refer to joining would be interpreted, it would be easy to conclude that the foreseen regimes are not uniform. Some of them for establishment of the contractual regime with a new state require explicit formal assent of the contracting parties, while the other are satisfied with their tacit agreement which is being derived from the absence of objections. See, for example, Article 18 of the Convention on the ..... Law in the Matter of Accidents in Road Traffic (1971), Article 31 of the Convention on the Civilian Judicial Proceedings (1954). Article 38, paragraph 4, of the Convention on Civil and Legal Aspects of International Kidnapping of Children (1980).

ferent attitude with regard to this country would only point to the preponderance of political arguments over those legal and would expose the Bureau of the Hague Conference and the Dutch Ministry of Foreign Affairs and the third members states to run a risk of seriously compromising themselves. Therefore, our opinion is that the suggestion made should be followed – in the situation when Articles 34 and 35 of the Vienna Convention of 1978 provided for an identical legal regime for continuity and succession, and the Dutch Ministry of Foreign Affairs requests a notification on the succession from the predecessor states as well – the case of Russia – (in addition, in the former practice of both institutions no case of automatic continuity of the membership of any state has not been experienced), their attitude only points to a considerable benevolence towards the successor, the attitude which is hard to defend. From such attitude, in other words, serious legal reasons cannot be deduced that would call into question the general attitude of this state on that that it is a predecessor state. Thus, not running too much risk when the official thesis is in question on the continuity with reference to SFRY, this country would do much for the security of the international private and legal traffic in its territory, it would, also, contribute to further development of the national system of the interntional private law and its better functioning.

VAŽENJE HAŠKIH KONVENCIJA IZ OBLASTI MEDJUNARODNOG PRIVATNOG PRAVA U PRAVNOM SISTEMU SR JUGOSLAVIJE NAKON PRESTANKA SFR JUGOSLAVIJE

Mirko Živković

Članak raspravlja pravno i politički složeno pitanje da li važe Haške konvencije iz oblasti medjunarodnog privatnog prava u pravu SR Jugoslavije nakon prestanka, 1992. godine, SFR Jugoslavije koja je bila članica tih konvencija. Složenost tog pitanja proizilazalila je odatle, što je SR Jugoslavija pretendovala da produžuje kontinuitet SFRJ, dok su neke države članice Haških konvencija smatrale da je ta pretenzija neosnovana, usled čega SR Jugoslavija može da bude samo jedna od država sukcesora te bivše države. Posledica tih suprotstavljenih pravnih shvatanja bila je da su državni organi SR Jugoslavije smatrali da dotične konvencije za nju važe i dalje, dok su države koje se s tim nisu slagale odbijale da priznaju tu zemlju za članicu konvencija u pitanju.

Ključne reči: *Haške konvencije iz oblasti medjunarodnog privatnog prava,*
SR Jugoslavija kao subjekt medjunarodnog prava, kontinuitet i sukcesija država