

# **Diversity in a united world of child support**

## **Regulation of child support under the Bulgarian Family, Procedural and Private International Law**

### **Country Report**

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The subject of this report is the regulation of child support payable under Bulgarian family, procedural and private international law. Because of that, the characteristics of this type of support will be clarified by analyzing the substantive, procedural and private international law legal framework.

#### **I. Child support under the Bulgarian Family Law**

From a substantive point of view, it is necessary to clarify the main features of the regime of child support under the law of the Republic of Bulgaria. The first issue of importance for effective explanation of this problem consists in determining the terms "maintenance" and "maintenance obligation".

#### **§1. Definition and main characteristics of "maintenance" and "maintenance obligations"**

Maintenance under Bulgarian law is legally fixed in the Family Code<sup>1</sup> (FC) of the Republic of Bulgaria, in the third edition from 2009. It is in force since 01 October 2009 and has as its subject the provision of a regulation of "relations based on marriage, adoption, and guardianship." Bulgaria's Family Code regulates the principles and system of family law by giving a detailed legislation of the institutes in a particular sequence. First, are considered marital relations and in particular issues related to marriage, personal and property relations between spouses, marriage annulment and divorce. Then follow legal texts dedicated to family relationships in the narrow sense - origins, adoption, relationships between parents and children, maintenance, guardianship and custody. Texts devoted to the institute of maintenance are located in Chapter X of the Code entitled "Maintenance", Articles - from 139 to 152<sup>2</sup>.

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<sup>1</sup> Promulgated in Official Journal of Bulgaria (OJ), No. 47 of June 23<sup>rd</sup> 2009.

<sup>2</sup> The regulation of maintenance under the Bulgarian family law in our legal literature is examined in details in: the course of Prof. Nenova, L, Family Law of the Republic of Bulgaria, Nauka i izkustvo publishers, Sofia, 1977; Reprinted as Family Law of the Republic of Bulgaria, the second major revision, Sofi publishers P-1994, 1994, p.457-508.; and the third edition new version Prof. Markov M. As per the new Family Code of 2009, p 478-560; the course of Prof. Ekaterina Mateeva, Family Law of the Republic of Bulgaria-extended lecture course on the new Family Code 2009, VSU "Chernorizets Hrabar", 2010, p.476-529, as well as in the comments of the

The term "maintenance obligation" in the substantive law of the Republic of Bulgaria is not fixed by law, but is formulated by the doctrine by extracting the main characteristics of maintenance. Currently, the doctrine based on the basic features of the institute in the Family Code 2009 has developed and uses the following definition: "Maintenance obligations are established by law based on a family relationship strictly personal and grant obligations of certain family members to provide livelihood to other needy members of the same family<sup>3</sup>." So the main characteristics of maintenance obligations are: family, legal, personal, and grant obligations. Maintenance obligations are family law matters, since they are based on a family relationship; legal because of the law that established them; personal as expressing the relationship between specific individuals - creditor and debtor, and they cannot be transferred through a legal transaction or pass into heritage; grants – the debtor has no obligation to return the given, no right of cross-support.

In the contents of the institute of maintenance are demarcated two sets of questions, two logically distinct groups of legal norms, which are integrated into the framework of maintenance. The first is devoted to the general rules applicable to the institute concerning the conditions of entitlement and maintenance obligation, circle and row of obligated and entitled persons, amount and method of delivery of maintenance, grounds for modification, loss, extinction or termination of alimony. The second group of rules governing specific types of family support, namely the obligation of maintenance to minor children by their parents, to dependent adult children, support from parents to their adult children who are still studying and alimony of ex-spouse. Special case of maintenance, though not based on family relationship connection, is when the maintenance is paid by the state.

It is important to point out that the Family Code of the Republic of Bulgaria puts the regulation of maintenance under the principle of protection of interests of the weaker party, the person in need. This protection is achieved: by using the mandatory provisions (some of them - direct prohibitions) in settling many of the issues relating to maintenance obligations; by creating rules dealing with specific cases of family support and by introducing several types of legal guarantees, ensuring its efficient obtaining. Such guarantees are: inadmissibility waiver of maintenance for future time (Art.147 FC); explicit legal prohibition on compensation with a maintenance obligation (Article 148 FC); examining claims for alimony under an expedited procedure ( Chapter 25 of the Civil Procedure Code of the Republic of Bulgaria-CPC<sup>4</sup>- ( Art.310-317); simplified rules for security admission under the maintenance claims (Art.392 CPC);

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new Family Code, Corresponding Member .Prof.dr.of juridical science Tsankova, Ts., Prof. Dr. Staneva A, senior Assoc Prof. Todorova B, Prof. Dr. Markov, M., Trud i pravo publishers, Sofia 2009, p.411-428 and etc.

<sup>3</sup> Nenova,L, op.cit., Family Law of the Republic of Bulgaria (New revision...), page.481.

<sup>4</sup> Promulgated OJ No 59 of 20 July 2007, effective since 01.03.2008.

privileged nature of the maintenance claim (Art.136, Item 5 of the Law on Obligations and Contracts<sup>5</sup>); with the enforcement of the obligation to pay maintenance drops the inaccessibility of the only home of the debtor, and the debtor's land, and the enforcement and collection of maintenance obligation may be on inaccessible income (Art. 4 paragraph 3 of the CPC); maintenance claim itself is declared inaccessible (Art.446, paragraph 4 sentence 1, CPC); if the debtor fails to pay maintenance of minor Bulgarian citizen, it is paid by the state but at the expense of the debtor (FC, Art.152); intentional failure to support was declared as a crime against marriage and family in Art.183 of the Criminal Code of the Republic of Bulgaria<sup>6</sup>.

It can be argued that Bulgaria has a regulation of the institute of maintenance which best pursues the goal of society, morality, law and practice - protect the interests of the weaker party. These interests are not only raised in the highest value, but through mutual assistance which underlies the institution of alimony, aims to strengthen family ties and thus promote the important function of the family in contemporary society.

## §2. Principle of special protection of children

Undoubtedly the greatest need of protection in the modern world have the children, the protection of their rights is raised to the supreme principle in various international instruments and in the majority of domestic laws. Child support is a means to ensure its welfare and exercising many other rights. Here should be noted also the Acts of Hague Conference on Private International Law, which is the first international organization that adopted acts in the matter of child support: Convention on the law applicable to maintenance obligations towards children (since 24.10.1956<sup>7</sup>), Convention concerning the recognition and enforcement of decisions relating to of maintenance obligations towards children (since 15.04.1958<sup>8</sup>), Convention on the law applicable to maintenance obligations (since 02.10.1973<sup>9</sup>), Convention on the recognition and enforcement of decisions relating to maintenance obligations (since 02.10.1973<sup>10</sup>); Convention on the international recovery of child support and other forms of family maintenance (since 23.11.2007<sup>11</sup>). One of the international instruments of relevance in the matter is the United Nations Convention on the Rights of the Child<sup>12</sup>. It applies to regulate the welfare of the child as the paramount obligation of Member States to the Convention. Article 27 of this Convention

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<sup>5</sup> Promulgated OJ No.275, of 22 November 1950.

<sup>6</sup> Promulgated OJ No 26, of 2 April 1968, effective since 01.05.1968.

<sup>7</sup> [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=37](http://www.hcch.net/index_en.php?act=conventions.text&cid=37)

<sup>8</sup> [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=38](http://www.hcch.net/index_en.php?act=conventions.text&cid=38)

<sup>9</sup> [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=86](http://www.hcch.net/index_en.php?act=conventions.text&cid=86)

<sup>10</sup> [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=85](http://www.hcch.net/index_en.php?act=conventions.text&cid=85)

<sup>11</sup> [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=131](http://www.hcch.net/index_en.php?act=conventions.text&cid=131)

<sup>12</sup> Adopted by the general Assembly of the United nations on 20.11.1989. Ratified with a decision of the Superior National Assembly of 11.04.1991 - SG No..32 of 23.04.1991. Effective since 3.07.1991.

recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Parents or others responsible for the child, have the primary responsibility to provide, within their abilities and financial capacities, the conditions of living necessary for the child's development. Member States shall take all necessary steps to provide the child support from the parents or other persons having financial responsibility for it within their territory and abroad. Constitution of the Republic of Bulgaria<sup>13</sup> also follows the principle of protection of child's rights and sets maternity and children under the protection of the state and society. Bulgaria has a Law on Child Protection<sup>14</sup>. Its Article 10, paragraph 1 includes normal physical, mental, moral and social development and the protection of child's rights and interests. Principle of special protection of children was introduced also in Article 2, item 4 of the Family Code of the Republic of Bulgaria. Based on it, along with all other measures to protect the rights of children is taken into account the particular importance of maintenance obligations owed to children by their parents. The main legal basis of these obligations is in Article 139- article 152 of the Family Code of us. These texts fix the requirements that need to be met to seek child support. It is the nature and specifics of these requirements that will be examined in order to clarify the main features of the regime of child support under the law of the Republic of Bulgaria.

### §3. Child support

In the Family Code of the Republic of Bulgaria, the legislator has set three hypotheses of child support: maintenance of the incapacitated adult children in need; support of minor children from their parents and support from parents to their adult children who are still studying. The first hypothesis does not belong to specific types of family support and the general regime of maintenance between relatives is applicable to it. The other hypotheses by contrast, are both special kind of maintenance paid by the parents of a child. Three cases in which a parent owes a child support are going to be examined sequentially, and for each one will be clarified the following issues: prerequisites, subjects of right and obligation, and main features of the type of maintenance.

#### §3.1. General case

The first hypothesis to be considered is - dependent adult incapacitated children in need. Based on Article 139 of the FC the common prerequisites for entitlement to maintenance are: the person seeking support to be unable to work, and can't support oneself of one's property. These conditions are given cumulatively and must exist objectively, they determine the need for

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<sup>13</sup> Promulgated OJ No. 56 of 13.07.1999, effective since 13.07.1991.

<sup>14</sup> Promulgated OJ No.48 of 13 June 2000.

maintenance. Disability is objective state of the person, resulting in the inability of employment through which to gain a livelihood and existence in general<sup>15</sup>. It is due to various reasons, be temporary or permanent, partial or complete, but it is necessary to be determined by the manner prescribed by law. Failure to support of one's property is necessary to assess specifically by the court in each case. Maintenance obligation is based on entering the circle of persons liable under Article 140, paragraph 1 of the FC and the ability of the debtor to provide support, which is also considered by the court in each case.

When maintenance is due to an adult child in need, subject to the right is person who has the quality of "minor child". Legal age of adulthood by Bulgarian law is governed by Article 2 of the Law of Persons and the Family<sup>16</sup>, which states: "At the age of 18 years the persons become adults and fully capable of acquiring rights and obligations through their actions"<sup>17</sup>. And under Bulgarian law, a child is any person less than 18 years of age<sup>18</sup>. In this sense, the children may be infants and minors. The term "child" is used in this case not to define the age criterion (already defined - adults 18 years of age) but to focus on the subjects of right and obligation - the child and the parent, and the reason for this family - dependent relationship- kinship of the first degree. The presence of kinship in a straight line in the first degree is considered the relationship between two persons, one of which directly or indirectly derived from the other (Article 74, paragraph 1 FC) by specifying their proximity indicates that the number of connected generations is one (Article 75, paragraph 1 FC) i.e. it comes down to parents and child. Kinship can be based on blood ties or complete or incomplete adoption. In Article 101 paragraph 1 FC "In the complete adoption between the adoptee and his descendants on the one hand, and the adoptive parent and his/her relatives – on the other, give rise to rights and obligations as between family of origin ".The complete adoption terminates the relationships with families of origin and the biological parents are not subjects to the maintenance. Spouse of the adopter and every second father or mother, guardian or custodian, also doesn't owe maintenance.

This hypothesis as already mentioned is relevant to the general framework of support between relatives, and for it are applicable the following general rules:

1. The circle of obligations and entitled persons in this general case of maintenance is widely defined and includes spouses (current and former),

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<sup>15</sup> Item I of Decrees of the Plenum of the Supreme Court., № 5 of 16.11.1970.

<sup>16</sup> Promulgated OJ No. 182 of 9 August 1949, effective since 10.09.1949.

<sup>17</sup> Individuals become adults at the age of 18 in Bulgaria and acquire full legal capacity recognized by law, ability of the individual with his/her personal actions to acquire rights and assume obligations. Persons aged between 14 and 18 years are minors and have limited capacity, they can enter into legal transactions, but the parents should give their consent in order to validate it. If there are no parents, guardians have to be appointed. The minors can conclude only minor deals for current needs. From birth until the age of 14, the individuals are minors and incapacitated, unable to conclude any contracts. For them and on their behalf and for their account their parents perform legal actions, but if there are no parents, to minors are being appointed guardians.

<sup>18</sup> Article 2- Law on Child Protection. Promulgated OJ No. 48 of 13 June 2000.

ascendants, descendants, brothers and sisters. This circle also applies to adult incapacitated child in need.

2. The terms and conditions of the obligations and rights, although governed by two different texts (respectively Article 140 and 141) are fully covered. From these two passages it is clear that an adult - child in need can seek support not only from their parents, but also from people in the following order: children and spouses, parents, former husband, grandchildren and great-grandchildren, siblings, ancestors of second and higher degree. Spouse and children comes first in the order of the responsible persons to the person in need, and only failing on their part to provide support to the person in need shall obliged parents and those of the next rows. In this sense, disabled, needy, adult or child has the opportunity to seek support on all rows by the law. Person from each row owes maintenance if the obliged from previous row can not deliver it, and if it can provide only part of it, the obliged from the next row provides the rest. If several persons from the same row are bound, duties are divided between them according to their capabilities. If one person is obliged to relatives in different rows, support is provided through gradation until the opportunities are exhausted.

3. The amount of the allowance is set out in Article 142, paragraph 1 FC and is equal to the ratio between the needs (according to the way of life) of the person entitled and opportunities of the debtor (after meeting their required maintenance). This maintenance is conditional - the debtor (whether a parent or other person obligated in the row) must be able to deliver it.

4. The support is in form of money but is not excluded to be in kind, though not explicitly covered by the law. If it is in form of money Article 146, paragraph 1 FC prescribes her monthly payment to create regularity and thus ensure the subsistence and cover the daily needs of the person entitled.

5. The court does not follow ex officio for maintenance due from parent to adult disabled needy child, and for any maintenance payable under the general procedure.

6. Awarded maintenance can be amended by a decision of the court if there is a permanent and substantial change in circumstances that were the basis of its adoption (Article 150 FC). In this sense it is possible to change the need of maintenance and the possibility of the person providing the support. The submission of the claim is the starting point to which the change is accepted. At the same time by the court can be ordered termination of alimony, if there is a failure of any of the conditions under which it was awarded as - recovery of working capacity of the person needing a support, or his/her acquisition of opportunities for subsist of their own property, or loss of the debtor's ability to provide support. The possibility of a new adjudication remains open. However, if it is found that there is no change at the circumstances which are the basis of adjudication but at other legal facts, we speak for extinction of the right of maintenance, it is done without the need for judgment to the occurrence of the

relevant facts and the right to subsistence is finally extinct. These are circumstance such as death of a party, or termination of adoption. Under Bulgarian law is settled also the loss of the right of support because of serious misconduct, sanctioning illegal behavior of the person needing a support. Gravest offence is governed by Article 151, paragraph 1 of the Family Code<sup>19</sup>, and the loss of maintenance due to serious misconduct must be held by a court decision.

### §3.2. Maintenance of minor children by their parents

The second case of child support under Bulgarian law is the maintenance of minor children by their parents. The provision is contained in Article 143 of the Family Code. This support is a moral obligation of parents and generally is performed voluntarily with care and responsibility from them. As a legal case problem for the maintenance of children occurs only deviations from normal family relationships that can be expressed in a conflict between the child and parents (one parent), in a parenting failure, or divorce (legal separation of the spouses). The maintenance of the minor child can be : "permanent" – adjudicated in a claim on general grounds, "momentary" - adjudicate by the divorce court, with a meaning only in divorce process, "officialy" - in which the court ruled automatically without any action brought by the person in need, valid for the period after termination of the parents' marriage, in proceedings concerning parental rights, upholding the claims to establish the origin of the mother and father under Articles 68 and 69 of the Family Code. Special mode is applicable for all three cases of child maintenance.

Preconditions for the right and the obligation for maintenance of minor children by their parents are the need of child support and the ability of the parent to pay it. In this situation, the need and ability are assumed until it is proven otherwise.

The subject of the obligation has the quality "parent" and the subject of the right - quality, "minor child", and between them is available family relationship in a straight line in the first degree. Parent, subject to the obligation to support is a biological parent, established as required by law, (it is irrelevant whether the child was born in wedlock or out of it) and the adopter for complete or incomplete adoption. The obligation have the parents or adoptive parents according to individual opportunities considered separately for each of them. Deprived of parental rights parent is not exempt from maintenance, unlike biological parents for complete adoption, the second father (mother), guardian

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<sup>19</sup> „ A person who has committed a gravest offense against the person who owes him/her support, against one's spouse, one's ascendants or descendants, can not claim a support." The gravest offense results in failure to receive support as a sanction, following a behavior of the person in need and that behavior is contrary to public and family morality. Specific acts and criteria for defining "gravest offense " are not given in the law, but murder, defamation and other offenses committed in family circle may be indicated .The gravest offense may be brought in the form of objection to the claim for maintenance or revocation of previously awarded alimony.

(custodian) entity in which a child is temporarily placed under the Law on Child Protection. Subject to the right is a child under the age of his/her eighteenth year. The law permits to be any child, with a legally established origin (whether in marriage or unmarried) and adopted one (if the adoption is incomplete the child reserves the right to maintenance to its biological parents, whose duty shall be treated as subsidiary to that of the adoptive parents). Stepchild and adult child are not subject to the law of this kind of support.

The obligation of support to a minor child from his/her parents has a special character. It is characterized by the following features:

1. According to Article 141, item 1 children along with wife are first in row of the relatives, to whom the person is obligated to provide maintenance. They replace parents, former spouse, grandchildren, siblings, grandparents, etc. Opportunities of debtor to support the remaining rows will be assessed in the light of other available funds after spending the necessary funds for the maintenance of his/her children and wife.

2. The obligation is unconditional in terms of prerequisites based on which the support is being receiving. Even if the child is capable of work (accomplished 16 years) its parents owe maintenance, because the child should aim to acquire education, rather than to work for its livelihood. The same applies to property owned by the child, it should not be spent on maintenance of the child, but to be preserved. The opposite would help parent and would be detrimental to the child. The parents can not refuse to provide maintenance of the minor children only because they can not deliver it.

3. If the parent after all can't provide the maintenance in terms of his/her property, income and financial situation as a whole, the obligation falls on the next row under Article 140, paragraph 1.

4. As a condition of impossibility have been established the following cases: unemployed parents in circumstances beyond his/her control; mother on unpaid maternity leave; the parent serving a sentence of imprisonment. Not exempt from the maintenance of children capable, working parents who are supported by scholarship, pension or allowance paid by their parents<sup>20</sup>.

5. Maintenance is due in cash or in care - when the parent and child live together. Natural form of subsistence is attached in Article 143, paragraph 1: "Every parent is required according to their abilities to provide material conditions of living necessary for the child's development." Upon placement of the child outside the family, parents continue to owe maintenance.

6. The child is entitled to support in addition if it has "exceptional needs" (disease, talent, etc.), and if the parent has the ability to give it. This supplement is given at the request of a parent or a person who carries replacement care in Art. 137 - Family Code.

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<sup>20</sup> This has been stated in item IV of the motives Decrees of the Plenum of the Supreme Court № 5 of 16.11.1970.



7. In the marriage of the minor, until the age of majority it is entitled to receive maintenance from the parent, but only if the first obliged - the husband is unable to give.

8. " Gravest offense" from child to parent is not a reason to lose the right of maintenance, Article 151, paragraph 2 of the Family Code. It is presumed that the child's behavior is the result of a parent's education and the gravest offence of the child to the parent, his/her spouse, ascendants and descendants could not relieve the parent of a principal obligation, to provide child support. This restriction is introduced to 16 year old child, then for the child arise the capacity for work under Art.301, paragraph 1 of the Labor Code of the Republic of Bulgaria<sup>21</sup> and the opportunity to acquire through his/her labor livelihood.

9. Extinction of the right to receive maintenance by the parents of minor children is available when the following grounds exist:

- Attaining majority of the child;
- Marriage of the child;
- Complete adoption of the child;
- Termination of adoption.

### §3.3. Support from parents to their adult children who are still studying

The third hypothesis of child support covered in Article 144 of the Family Code is - support from parents to their adult children who are still studying.

It is particularly important to point out that with coming attaining majority of the child, the support governed by Article 143 FC is automatically extinct and for the child arises a new opportunity under Article 144 FC to claim maintenance against the parents on a separate plea.

Prerequisites to qualify for support are: the child is an adult, but is less than 20 years if studying in secondary school, and 25 years if they are in college, the child needs to study in regular school or university, and the child can not be dependent on his/her income or use of property. Prerequisite for the maintenance obligation is the parent from whom support is sought, to have the opportunity to give it without particular material difficulties.

Subject of the right of this kind of maintenance is a child - both born and adopted child (stepchildren or minor children are not subjects of right) and subject of obligation is the parent or adoptive parent (guardian, custodian, a second father, mother, are not subject of obligation).

Typical for this kind of maintenance is:

1. Maintenance under Article 144 is not awarded by the court ex officio, but only if there is a claim brought by the child against his/ her parents.

2. In the marriage of adult child who is still studying, support under Family Code Article 144 is not extinguished, because husband owes general

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<sup>21</sup> Promulgated OJ No.26 of 01 April 1986, effective since 01.01.1987.

support under the general terms and conditions, so support by Art.144 FC is still required.

3. Among the reasons for its extinction are:

- Expiry of training provided for the degree;
- Graduation or expulsion from school;
- Completing the years prescribed by the law - 20 years if studying in secondary school, and 25 years if they are in university.

#### §4. Age, up to which a child can benefit from support

The answer of the question about the age up to which a child can benefit from support is the third defining characteristic of the regime of child support under the law of the Republic of Bulgaria.

Considered three cases of maintenance owed to child, clearly settled the criteria governing the age at which children must meet in order to apply the appropriate regulations to them. As already mentioned under Bulgarian law, "child" means any individual who is completing his/her 18th year. From birth to 18 years of age the child is entitled to maintenance from their parents, which is fixed in Article 143 of the Family Code of the Republic of Bulgaria. Responsibility of the parents for the support of minor children is unconditional and is due in order to ensure conditions of living necessary for the child's development. This is parent's moral duty, but to protect the rights of the children to the maximum extent it is regulated legally and the children may search them by claim. After the age of 18 years, the Bulgarian child becomes an adult individual and acquires the right to claim maintenance on other grounds. If the child continues his/her studies, he/she is a subject to the right of subsistence under Article 144 of the Family Code, where the parents are subject to the obligation. This maintenance can be claimed to the age of 20 - for child studying in secondary school, and 25 - for a child studying at a university. As an adult individual child is entitled also to maintenance based on the principle fixed in Article 139 of the Family Code - disability and inability to resist from their own property. Subjects to obligation are not only parents, but also those listed in Article 140, paragraph 1, "Row of individuals who owe support" in the order listed in law. For this type of maintenance there are no age restrictions.

#### §5. Securing funds for maintenance of the debtor

Securing funds for maintenance of the debtor is another major maintenance problem that will be addressed. Article 142, paragraph 1 of the Family Code requires that "The amount of support is determined by the needs of the person entitled to maintenance and abilities of the person who owes." As from one side first in order of persons obliged under Article 140, paragraph 1, item 2 are the parents, and from other side persons entitled under Article 141,

item 1 are the children, so the text of Art. 142, paragraph 2 includes on a general basis the parents and is applicable also in the general case and in three cases of child support. Owes maintenance only person who is able to deliver it. This capability is the main ground for granting alimony. This provides in an initial stage the own maintenance of the debtor. Failing to give support, the opponent must establish reasons outside his/her control. It must be established for each individual case and only during the time for which exists it frustrates the right of maintenance.

If there is an opportunity to deliver maintenance, the Bulgarian legal doctrine has settled understanding that the ability to give support shall be determined by the funds remaining available after satisfying the debtor's required maintenance. So once again, the debtor receives security of the funds necessary for his/her own maintenance. They can not be provided for the support of another person, because reaching for these funds is distorted the normal existence of debtor and he/she would become from subject of a maintenance obligation - subject of the right of subsistence.

From the funds remaining to the debtor after meeting their required needs shall be determined the maintenance of others, it is always concrete for every case and according to the personal financial situation of obligated person. Take into account income, property status, qualifications and other liabilities. Compliance with these factors again provides the support of the debtor, exactly before the determination of the sum due for maintenance.

Opportunities for modification, extinction, termination, loss of maintenance also support the debtor. For example, with loss of income and subsequent complete or partial failure to provide support, the debtor may require modification or termination of the due maintenance and thus secure his/her own one.

## §6. Calculation of child support

After outlining the main features of child support, is necessary to give a way to calculate the amount of such allowance. As I mentioned the amount of alimony under Bulgarian law in the common case, and for maintenance from parents of adult children who are still studying is determined by Article 142, paragraph 1, FC - according to the needs of the person entitled to maintenance and ability of the person who owes it. There is no fixed amount, threshold, base or way to determine the size. The size is assessed by the court for each case depending on the circumstances. The second paragraph of the same article, however, in addition of ratio of "needs of the creditor- abilities of the debtor," establishes by a peremptory norm minimum amount of maintenance which have to be paid by the parents to their minor children. Again, are taken into account the needs and abilities, but the amount of support of the child can not be determined under the statutory minimum size. This size is equal to one quarter

of the minimum wage. In November 2012, the minimum wage in Bulgaria, given by Council of Ministers Decree № 300 of 10.11.2011<sup>22</sup> is 145 EUR. One quarter of this equals 31.25 EUR, and this is considered a mandatory minimum, to ensure a child's development. Upper limit is not fixed, it is determined by the court according to the individual needs of the child and personal physical capabilities of the debtor. In order to meet the actual needs of the child, the court takes into account its individual characteristics, health, talents, social environment, etc. In Article 143, paragraph 4 FC is regulated the possibility for parent or person performing substitute care to ask the court to determine the additive awarded maintenance to the extent of which a parent can give it without difficulty. In the approach of the legislature on the amount of maintenance payable to minor children by their parents is a manifestation principle of child protection.

#### §7. Child support paid by the state

How this principle covers and applies when the state provides financial support in the case of child support is another very important issue of the substantive law of the Republic of Bulgaria.

The state provides financial support in relation to the obligation for maintenance of minor Bulgarian nationals under Article 152 of the Family Code of the Republic of Bulgaria that regulates the case in which the state pays awarded child support, but at the expense of the defaulting debtor. The state is not subject to obligation to maintain family and the child has no personal right towards it to receive support. The state shall pay awarded maintenance in place of the debtor at his/her expense, including charges and interest of the payment. The obligation is not extinguished, but rather, passes to the state. Thus the state is subrogated to the rights of the satisfied creditor, in this case the child. This is done to protect the child and his/her interests.

Preconditions for payment of maintenance awarded by the state are: an enforcement action against defaulting debtor (parent) under a maintenance obligation and in the course of the case establishing lack of incomes and assets in the debtor upon which could be targeted enforcement. If the above conditions exist, the bailiff before which enforcement proceedings are instituted draw up statements and requests in writing by the creditor towards the municipality of domicile of the creditor.

Characteristics of this type of maintenance are regulated by Ordinance laying down the procedure for payment of maintenance<sup>23</sup> awarded to the state and can be summarized as follows:

1. The state paid only support to children.

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<sup>22</sup> Promulgated OJ No. 91 of 18.11.2011, effective since 1.05.2012.

<sup>23</sup> Effective since 24.06.2011. Approved with Ministry Council Decree № 167 of 17.06.2011. Promulgated OJ No.48 of June 24<sup>th</sup> 2011, amended and supplemented OJ No.22 of March 16<sup>th</sup> 2012.

2. The cost is paid by the municipality of domicile of the creditor.

3. The cost is paid at the rate specified in the judgment, but not more than the maximum amount awarded for maintenance determined annually by the state budget of Republic of Bulgaria. According to its art.11, maximum amount awarded by the state upon Art. 152, paragraph 1 of the Family Code for 2012, is 30 euro.

4. Maintenance is paid from the first day of the month following the month in which the conditions for the payment of maintenance by the state exist.

5. The state does not pay interest on overdue installments maintenance, and costs (fees and expenses) for claims and enforcement process.

6. Before any payment of maintenance creditor shall make a declaration that a particular period of time is not received maintenance from the debtor.

7. Every six months the bailiff presents a certificate from the municipality that he/she requested verification of prerequisites that need to be available in order to receive maintenance by the state. The municipality stops paying alimony for failure to present this certificate.

In the examined hypothesis the state pays awarded maintenance, instead of the debtor, and thus financially secured children who are subject to the right of maintenance. This legislation is appropriate according to the need of the child from funds for development. The child gets a monthly income to meet its needs, even if the responsible parent has no income and assets on which to repay the debt. However, the question why once in Article 142, paragraph 2 stipulates minimum child support amount to a quarter of the minimum wage, the maximum amount of support which the state pays is less than prescribed, remains open.

Comparing the legislation of support paid by the state in the Family Code of the Republic of Bulgaria in the previous edition of 1985<sup>24</sup> is reported disappearance of the text of Article 93 - "Taking support from the state". It stipulates that "the state under the Public Assistance takes care of persons in need when there are no obligated persons ... or they are not able to provide support." The text refers to all persons subjects to the right of maintenance and answers the question of support to those in need of it after exhausting the possibilities of the family circle. Maintenance of the state is not based on family responsibility and the principles of public support and because of that in the Family Code of 2009 this system was abandoned, arguing that essentially belongs to family law. This way, subjects of the right of support are deprived of an additional opportunity to obtain a livelihood. The question of what happens to people / children in need of support after exhausting the possibilities of the family circle remains unanswered.

It is clear that the financial support that ensures Bulgarian state to children exists, but the system is not full and effective enough so therefore need to be

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<sup>24</sup> Promulgated OJ No.41 of 28.05.1985 and effective since 1.07 1985.

taken into account the need of revision and implementation in the greater level of the principle of protecting the rights of the children.

## II. Child support under the Bulgarian Civil Procedural Law

After examining the substantive regulation of child support payable under Bulgarian family law it is also necessary a clarification of some procedural issues related to this type of support. It is essential to explain who possess the jurisdiction to consider the claim for child support, and the jurisdiction to recognize and enforce the judgment.

### §1. Jurisdiction in child support cases

#### §1.1. Authority competent to consider child support claims

Civil Procedure Code of Bulgaria defines the rules of jurisdiction and the jurisdiction which apply to claims for child support. The legislator regulate the jurisdiction of the court in all civil matters (Article 14, paragraph 1 of the Civil Procedure Code). The scope of civil relationships includes family relationships, and certainly, part of which are the relations arising in connection with the institution of maintenance. It can be concluded that the courts possess jurisdiction to hear a case for maintenance, regardless of type, size and quality of the support, of people who want and from whom maintenance is sought. Tribal jurisdiction belongs to the District court, and territorial jurisdiction for maintenance claims is optional, commonly - by the permanent address of the defendant<sup>25</sup> (Article 105 CPC) or specific (Article 112 CPC) - by the permanent address of the plaintiff. The right of choice belongs to the plaintiff.

#### §1.2. Authority competent to enforce a child support decision

After the decree of judgment of maintenance follows its enforcement which is the purpose of a judgment. Maintenance in form of money is paid monthly, in case of delay due to statutory interest. The support is paid to person entitled to receive it. Minors, aged 14 to 18 years, receive the money in person, but with the knowledge and consent of the parent who has been granted custody of the child. Persons placed under limited guardianship - again receive the money personally, with the knowledge and consent the custodian. The support of a minor under the age of 14 years shall be paid to the parent who has been granted custody, and persons under judicial disability - to the guardian.

If there is a default of a final decisions of the court, they are enforceable under the terms and provisions of the Civil Procedure Code. Judgment stating

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<sup>25</sup> "Permanent address" is defined in Article 93 of the Civil Registration Act (OJ No 67 of 27 July 1999) and as such is considered "address in the place where the person chooses to be entered in the population register."

enforceable law is under Bulgarian law (Para.1 Art.404 CPC) is a basis, on which to issue a writ of execution, and then by the request of the interested party, to initiate and conduct executive process. Jurisdiction of recognition of the judgment of maintenance and for the issuance of writ of execution has the trial court which heard the case (Art.405, Para.2 CPC). In this sense the body that has competence in recognizing the court's decision is the court itself. The writ of execution is absolute admissibility prerequisite of the executive process. It secured the right to enforce, and obliges the executive body at the request of the creditor to proceed with the enforcement of the claim. Civil enforcement proceedings passes under the CPC overall framework which is set out in Part V "Executive production", Art.404-art.529 of Civil Procedure Code. Enforcement authority is public (state) bailiff or private bailiff at the option of the creditor, the powers of both are equal. The status of the private bailiff is regulated in the Law of Private Enforcement<sup>26</sup>, where it is stated that he/she is a person to whom the state entrusts enforcement of private claims, and public debts. Range of action coincides with that of the District Court. The public bailiff has a public function to satisfy the civil rights and public claims. Its status is fixed in the Law on the Judiciary<sup>27</sup> - Art.264 - 278.

Debated issue is that of affiliation of private and public bailiff to the judicial or administrative authorities. In practice the courts have the opinion that they are not judicial authority, as the judiciary is exercising state power justice, and they do not perform judicial activities in the working performance of rulings by the court or acts of prosecution, inquest or inquiry<sup>28</sup>. In the continuous practice is the understanding that the bailiff is not part of the organizational structure of the public administration<sup>29</sup>. Furthermore, his/her actions in connection with proceedings in the implementation of enforcement can not be regarded as an exercise of administrative action under Act of State liability and Municipalities for Damages<sup>30</sup>. Argument in favour of this is the fact that enforcement proceedings carried out by the bailiff shall be governed by the provisions of the CPC. But their duties bailiffs carried out in compliance with the provisions of the enforcement proceedings, both in the CPC and in the Administrative Procedure Code<sup>31</sup>. It can therefore be concluded that the implementation of a judgment awarded child support is performed by the authority that does not belong to the judicial system, nor to that of the administrative authorities.

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<sup>26</sup> Promulgated OJ, No. 43 of 20.05.2005.

<sup>27</sup> Promulgated, OJ, No. 64 of August 7<sup>th</sup> 2007.

<sup>28</sup> DEFINITION №162 by the Court of Appeal, Gabrovo, 22.08.2011 under civil case № 8 as per the description of the year 2011.

<sup>29</sup> DEFINITION №31/17.01.2012 by the Administrative Court, Pazardjic, 17.01.2012 under civil case №35 as per the description of the year 2012.

<sup>30</sup> Act of State and municipalities' liability for damages - Promulgated, OJ, No. 60 of August 5<sup>th</sup> 1988.

<sup>31</sup> Promulgated, OJ, No. 30 of April 11<sup>th</sup> 2006., effective since 12.07.2006.

## §2. Provisions applied to creditors for effective access to child support cases

Another very important procedural question is - how in Bulgaria is provided the effective participation of the creditor in the case of child support. In fact, the methods set out in the law to help you find dependents are several. The first is to release under Art. 5 g) of the State Fees Act<sup>32</sup> from the state fee to the applicants in support cases. In the judgment, which granted the request for support, the court ordered the defendant to pay a fee, and the applicant's costs of the proceedings. The second facility is the fact that there is no need for any further legal action prior to filing the claim in court, including information or an application to a specific organization or government department. Also in claims relating to maintenance the procedural representation by a lawyer is not made mandatory. If necessary, however, the parties may obtain legal assistance in general terms regulated in the Civil Code, Chapter Ten 'Legal Aid' - Art. 94-99, and in the Law on Legal Aid<sup>33</sup>. Guaranteed by Art. 56 of the Constitution of Bulgaria right of protection include as essential part of it - the right of citizens to use the assistance of a lawyer. Sometimes it is necessary to ensure effective and complete protection. In such cases, the provision of free legal aid in proceedings of civil nature is also a requirement of the European Convention on Human Rights and Fundamental Freedoms<sup>34</sup> to guarantee a fair trial<sup>35</sup>.

## §3. Burden of proof in determining the income of the debtor in child support cases

Another facility for creditor is the opportunity given to him/her to obtain information about the income of the debtor. The general rule for allocating the burden of proof between the parties consists in the obligation of each party to alimony (child or other relative) to establish the facts on which it based its claims or objections (Article 154, paragraph 1 of the Civil Procedure Code). In this sense, the plaintiff is required to prove the child's needs (through receipts, invoices for costs incurred during the raising of a child) and the debtor's abilities of alimony by reference for the income to the National Insurance Institute and the National Revenue Agency. The official nature of these documents is ground

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<sup>32</sup> Promulgated, OJ, No. 104 of December 28<sup>th</sup> 1951, effective since 01.01.1952.

<sup>33</sup> Promulgated, OJ, No. 79 of 4.10.2005., effective since 1.01.2006.

Persons who are eligible for receiving monthly social assistance under the Regulations to the Social Assistance Act (Promulgated, OJ, No. 56 of May 19<sup>th</sup> 1998) are entitled to get consultation and preparation of documents for case filing, as well as the ones who are accommodated in institutions for provision of social services, and the host families or families with relatives, where the child is accommodated under the Law on Child Protection (Promulgated, OJ, No.48 of June 13<sup>th</sup> 2000.) . Support for litigation covers cases where this is required by law or where the party has no means to pay a lawyer, wants to have one and the interests of justice require so.

<sup>34</sup> European Convention on Human Rights and Fundamental Freedoms, adopted on 4.11.1950, Promulgated OJ, No.80, since 2.10.1992.

<sup>35</sup> Article 6, §3 c) from European Convention on Human Rights and Fundamental Freedoms.



for the creditor to request their collection based on Art.186 of CPC: "Official documents", "Official documents and evidence are presented by the parties. The court may request them from the corresponding office or to supply to the party a court certificate based on which it can obtain them. The institution is obliged to issue the documents or to explain the reasons for the failure to issue them.". Terms in summary proceedings are as follows: on the day of filing the statement of claim with the applications, court must send the defendant a full copy of the documents. Within 7 days the defendant must respond in writing and to indicate and present all the evidence. In five days after the deadline for responding, the court in closed session decides on the admission of evidence, and set the case after fifteen days. The Court should announce its decision and reasons in 7 days after the meeting, which concludes the hearing.

### III. Child support under the Bulgarian Private International Law

Given the subject of this report it is necessary to clarify the regulation and maintenance of children according to the Bulgarian private international law.

#### §1. General notes

First, it is necessary to note that the institution of maintenance of the Bulgarian private international law systematically belongs to the special part of the science of private international law, in particular the international family relationships in a narrow sense. Second, the hallmark of international support is the international element determined by the connection of relationship with the legal systems of two or more countries. Third, the issues subject to regulation of private international law are substantive and procedural questions about which is the competent court, which is the applicable law and what is the order of the recognition and the enforcement of judgments in relation to this kind of relationship. Fourth, the Bulgarian private international law does not define the term "maintenance obligation" nor differentiates it by species<sup>36</sup>. In the classification<sup>37</sup> rules laid down in Article 39 of the Bulgarian Code of Private

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<sup>36</sup> Support in the Bulgarian International Private Law is studied in details by Prof. Kutikov's course, Private International Law of the National Republic of Bulgaria, third thoroughly revised and supplemented edition, Nauka i izkustvo publishers, Sofia 1976.p.491; and in the works of: Dr. Damjanov, TS., Conflict family law norms of the National Republic of Bulgaria, Sofia, 1979., Nauka i izkustvo publishers, p.155 -165; Todorov, T., International family and hereditary relations, University Publishers St. Kliment Ohridski, Sofia, 1994., p.277-293, Todorov, T., International Private law. The European Union and the Republic of Bulgaria, Sibi publishers, Sofia, 2010, p.257-278 and etc.

<sup>37</sup> The institute of classification in Bulgarian private international law is examined in details by: Prof. Kutikov's course, Op.cit., Private International Law...p.261-267; . Damjanov, TS., Op.cit., Conflict family law norms ...p.14-17; Todorov, T., Op.cit., International Private law ...2010 p.132-135; Todorov, T., The law of the forum in Bulgarian private international law, Nuka i Izkustvo publishers, 1988; Natov, N., Comment on the Code of private international law; Siela publishers, 2006, p.296-309; Mincheva, V.S., in Comment on the Code of private international law. Comparison with acts of the European law, Sibi publishers, 2010., p.44-54.

International Law<sup>38</sup>, Bulgarian court if they are seised with an international maintenance claim have to classify the term "maintenance obligation" firstly under the criteria of their own private international law. Only if it is determined that there are no international rules, the classification should be made under the internal norms of the institute. Regulation of maintenance in the Bulgarian Private International Law is contained in some bilateral sources, such as Legal Assistance Treaties concluded between Bulgaria and other countries, as well as a common source, such as - Code of private international law (CPIL). It is appropriate to mention that the system in Bulgarian sources of private international law is fully focused on questions which are part of the subject of private international law, such as jurisdiction, applicable law, recognition and enforcement of foreign judgements, and the legal definition of "maintenance obligation" is not given. Following the above we can conclude that the lack of legislation in the sources of the concept of private international law, the court makes classification *lege fori*, based on criteria *ex lege*<sup>39</sup> by using our internal norms of family law and the definition given by the doctrine that was already mentioned.

## §2. Sources of legal provisions of international child support

An important note, which should be done, is that Bulgaria is not a party of any of the international conventions governing maintenance obligations. In the Bulgarian private international legal system the institute of an international support in the second half of the XX century, has been settled in another widespread source of law, such as the bilateral treaties, in particular - Mutual Legal Assistance Treaties concluded between Bulgaria and other countries<sup>40</sup>. System of maintenance include: agreements with Poland, Czechoslovakia, Hungary, Mongolia<sup>41</sup> and many other countries. Typical for some of the agreements is the differentiation of hypotheses of maintenance and

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<sup>38</sup> Promulgated, OJ, No.42 of May 17<sup>th</sup> 2005.

<sup>39</sup> The criteria *ex lege* and *ex conventionae* in Bulgarian private international law are analysed by Natov, N, Op.cit., p.108-109

<sup>40</sup> Legal Assistance Treaties are designed to support the cooperation between judicial and administrative authorities of the Contracting States and to facilitate the protection of rights and legitimate interests of citizens and legal entities of the Contracting States in civil, family and criminal cases. They include rules on legal service, especially provisions regarding collection of evidence, handing of documents, testimony by court order. Many contracts contain also rules for determination of international jurisdiction, choice of law rules for determining the applicable law and regulations concerning the recognition and enforcement of judgments and arbitral awards of the opposite Contracting State.

<sup>41</sup> Regulation of maintenance in Mutual Legal Assistance Treaties in Bulgarian literature has been studied by: Prof. Kutikov's course, Op.cit., Private International Law...p.502-505; Prof. dr. Zidarova, J, The personal and property relations between the spouses according to the conflict rules in legal service agreements, concluded by the National Republic of Bulgaria, Pravna misal journal 1968. № 4, 34 - 45 P., Prof. dr. Zidarova, J, New contract between the USSR and the National Republic of Bulgaria on Legal service in Civil, family and Criminal Matters, God.SU, Juridical faculty, 62, 1977, № 1, 151-175; Dr. Damjanov, TS., Op.cit., Conflict family law norms ...p.158-160; Prof. Kutikov, VI. Problems of private international law in the new legal assistance treaties concluded by NR Bulgaria, Yearbook of Sofian University, Law Department, volume 75, 1985, №1, p.117-171; Todorov, T., International family...p.289-292.

implementation of the criteria for determining the law applicable to maintenance owed by parents to children under the principle for maximum protection of children's rights. For example, Article 23a of the Treaty on Legal Assistance with Hungary, which introduces a country of residence of the child, alternative to the country of residence of the creditor (plaintiff) if is "favorable" to the child. If in the treaty there are no explicit provisions of child support, are applied the provisions for relations between children and parents. For countries that are not parties in Mutual Legal Assistance Treaties or in case that the treaty concluded by them contains only provisions of legal assistance in narrow sense, is applied a regulation of international support in domestic sources - Family Code, first edition since 1968<sup>42</sup> - repealed , second edition since 1985<sup>43</sup> - repealed, and Civil Procedure Code. After adoption of the basic legal act in the Bulgarian Private International Law, Code of Private International Law, in force from 20 May 2005, we refer to its texts on maintenance<sup>44</sup>. In its Article 3, paragraph 1 the Code governs the subsidiary character of its regulations, and therefore the advantage of the provisions of international treaties to its. As a result of subsidiarity, can be said that in the countries with which we have treaties for Legal Assistance continue to apply their provisions relevant to maintenance and to other countries - the texts of the Code. The Code has subject to regulate the following issues: international jurisdiction of the Bulgarian courts and other authorities and procedure on international civil cases; the law applicable to private relationship with an international element, the recognition and enforcement of foreign judgments and other acts in Bulgaria.

### §3. Jurisdiction in international child support cases under the Bulgarian Code of Private International Law

The international jurisdiction of Bulgarian judicial authorities is governed by Articles 4 – 28 of CPIL. There are several points in connection with the determination of jurisdiction for claims with an international element. Establishing jurisdiction in international cases is the first and most important task of the court. The jurisdiction of the Bulgarian courts under Article 28 of the CPIL in all cases should be checked officially, because it is a procedural requirement for the admissibility of the claim. The court shall check ex officio an exclusive international jurisdiction, but checking other grounds of jurisdiction

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<sup>42</sup> Promulgated, OJ, No.23 of March 22<sup>nd</sup> 1968, the regulation of maintenance is in Article 100.

<sup>43</sup> The regulation of maintenance is in Article 139.

<sup>44</sup> The regulation concerning the support under the Bulgarian Code of private international law has been reviewed in details by: Zidarova, J.; Vessela Stanceva-Minceva, Gesetzbuch uber das Internationale Privatrecht der Republik Bulgarien, Rabels Zeitschrift fur auslandisches und internationales Privatrecht, Band 71 (2007), Heft 2 (April), Tubingen, 2007, S.438-440; Christa Jessel – Holst, The Bulgarian Private International Law Code of 2005, Yearbook of Private International Law, vol.9 ( 2007 ) p.375-385; Todorov, T., Op.cit., International Private law ...2010 p.260-262; Mincheva, V.S., Op.cit, Comment on the Code....p.276-280; Natov, N., Op.cit , Comment on the Code ....p.171-172; Museva, B., Through the labyrinth of international jurisdiction in civil and commercial matters, Legal World, journal, 2006, №2, p. 71-72.

only after the opposition to the defendant in connection with the tacit establishment of competence or ex officio when it does not appeared in the case. Bulgarian court checks on the rules of their own law and checks only its own jurisdiction. The local jurisdiction shall be determined by the Bulgarian Civil Procedure Code. The definition of the presence or absence of international jurisdiction is subject to appeal and cassation appeal, as is clear from the second sentence of Article 28 of the Code. If there is no jurisdiction, the claim is inadmissible and judgment given in such proceedings, void.

Competence arranged in the Code is exclusive, agreed by agreement - express or implied, general and special. Any reason for international competence by CPIL apply if certain prerequisites exist, if they are missing the court examine the next one<sup>45</sup>. Article 22 of the Code requires that the international jurisdiction of the Bulgarian courts and other authorities is exclusive. Since maintenance is not among them, then the jurisdiction in such cases is not exclusive. Article 23 of CPIL provides for the possibility of agreement between the parties to submit the case to the judiciary authority of the nationality selected by the parties - prorogation of jurisdiction (FORUM PROROGATIO). The requirements established in article 23 CPIL are clear and there is a negative condition to the subject of the case, not to include maintenance, which is why article 23 is not applicable in cases of international support. This prohibition performs a protective function by creating a security for the person who needs maintenance, which is the weaker party in the relationship. About tacit agreement (FORUM SILENCIO) stipulated in article 24 CPIL, part of the conditions for its application are already listed in Article 23. Thus, by analogy, Article 24 is not applicable in maintenance claims with an international element.

Jurisdiction in actions for maintenance of international element is governed by Article 11 of the Code. Through it introduced the first general jurisdiction in matters of maintenance, which is legally fixed in Article 4, paragraph 1 of CPIL. General jurisdiction is permissible only in cases in which there is no exclusive jurisdiction. It is a parallel jurisdiction, the case may be brought before the Bulgarian and foreign courts and other authorities. By the provisions of Article 4, paragraph 1 makes it clear that international jurisdiction of the Bulgarian courts and other authorities exists when there is the habitual residence of the defendant/debtor in Bulgaria (FORUM HABITATIONIS DEBITORIS) or where the plaintiff is a Bulgarian citizen (FORUM PATRIAE CREDITORIS). Defendant must be located in a territorial connection, and the plaintiff in a personal with Bulgaria. Habitual residence is determined under article 48, paragraph 7 of the Code<sup>46</sup>, and citizenship is determined by the Law

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<sup>45</sup> Lex specialis derogate legi generali.

<sup>46</sup> "As per the meaning of this Code, the habitual residence of a physical entity is the place in which he is established primarily to live without the necessity of registration or residence permit or establishment. In order to determine this place, circumstances of private and professional nature have to be taken into consideration, and they should arise from the person's lasting relationships with this place or his/ her intention to establish such relations."

on Bulgarian Citizenship<sup>47</sup>. The first common ground for international competence criterion is the habitual residence of the defendant, a natural person in Bulgaria. Therefore its citizenship or lack of it is irrelevant. The other ground under Article 4, paragraph 1, item 2, is expressed in a personal relationship of the plaintiff with Bulgaria. This personal connection is designed to provide Bulgarian citizens with protection by Bulgarian courts and other authorities, no matter where they are. Many have criticized this general jurisdiction which Regulation 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>48</sup>, included in the "black list" of the reasons for international jurisdiction established by the domestic law of the Member States as excessive. After Bulgaria's accession in the European Union and the entry into force of Regulation № 44/01 in our country under its Article 4, paragraph 2 from the general jurisdiction of the Bulgarian courts benefit not only Bulgarian, but every person domiciled in a Member State, irrespective of nationality. Residence under Regulation № 44/01 and its Article 59, item 1 is determined by the internal law of the forum.

Article 11 of the Code introduced after the general jurisdiction and special one. Additional grounds of the court, in matters relating to maintenance, consists of habitual residence in the country of the plaintiff (FORUM HABITATIONIS CREDITORIS). As the most important principle is to protect his/her interests, it inevitably takes into account the territorial connection which is important. Is therefore irrelevant citizenship or lack thereof, as well as citizenship and permanent residence of the defendant. Habitual residence is determined again under Article 48, paragraph 7 of CPIL. This ground has been introduced in all claims for maintenance - when searching support, for the right to challenge the amount of maintenance or to reduce its size, for her termination.

#### §4. Law applicable to international child support obligations under the Bulgarian Code of Private International Law

In matters of the law applicable to maintenance obligations regulations contained in Articles 87 and 88 of the Code.

In Article 87, paragraph 1 is defined as applicable to such claims - law of the state of the habitual residence of the plaintiff (LEX HABITATIONIS CREDITORIS). Alternatively, is allowed the application of the native law of the plaintiff, but only if it is more favorable to him/her (LEX PATRIAE CREDITORIS). This regulation reiterates the principle of protection of the weaker party in the relationship, too. The application of the the law of the habitual residence of the plaintiff, the legislature placed first because of the

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<sup>47</sup> Promulgated in OJ, No.136 of November 18<sup>th</sup> 1998, effective since 20.02.1999.

<sup>48</sup> First publication: Official journal n° L 012 , 16/01/2001 pages 0001 – 0023, Publication in Bulgarian: Official journal of the European Council, special edition in Bulgarian language, 2007, chapter 19, volume 3.

presumption that this territorial criteria shows the place, where the plaintiff really is and this suggests that he/she knows the law of that country. This meets the legitimate expectations of the weaker party. It became clear that the jurisdiction can also be determined by these criteria - territorial or personal relationship of the plaintiff to a particular country. So LEX HABITATIONIS CREDITORIS and LEX PATRIAE CREDITORIS lead to the implementation of LEX FORI. This way is achieved unity of "forum and ius". This facilitates the court, as it saves time and money to establish the content of foreign law and avoids uncertainty about the outcome of the dispute which at the application of foreign law undoubtedly exists.

The second paragraph of Article 87, points out that " if the claiming and debtor are citizens of the same country and the debtor is habitually resident in that state - it is applied their common native law." (LEX PATRIAE COMMUNIS ). It is applied the principle of the closest connection between the relationships and applicable law. This principle determines the law that is most suitable and most appropriate to the relationships and its features. In this case it is found that the common native law of the parties together with the usual residence of debtor in the same state are the criteria which justify the application of the general native law as the most closely related to the relationships and as such is more favorable to plaintiff. In the two paragraphs of the article lacks temporal connecting, an indication of the time at which individuals must be citizens or have their habitual residence in a Member State in order to apply their right. On this issue shall prevail moment when the plaintiffs brought their maintenance claim.

Paragraph three of Article 87, in turn, complements the regulation of the law applicable to maintenance obligations through a positive function of the public policy<sup>49</sup>. The lack of a provision governing maintenance by foreign law designated as applicable, is the basis for the entry into force of the positive function of public policy clause. Through the implementation of this feature is allowed the behavior, forbidden by foreign legal rule, or are created rights which are forbidden by foreign legal rule. So when maintenance is not permitted under applicable foreign law Bulgarian court on the ground of public policy apply the Bulgarian law on which a maintenance presents from one hand- an obligation and from other hand, right of certain persons. However, unlike Article 45, Paragraph 3 of the CPIL, where the court in establishing the incompatibility must first seek appropriate provision of the same law, and only in the event that no such, to apply the Bulgarian, in regulating maintenance explicitly states that whenever maintenance is not permitted under applicable foreign law, the Bulgarian court is bound to apply the Bulgarian law. In

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<sup>49</sup> The institute of public policy in Bulgarian private international law is examined in details by: Prof.Zidarova, J., Public policy and private international law, Sofiq, 1975; Prof. Kutikov's course, Op.cit., Private International Law...p.267- 278; Dr. Damjanov, TS., Op.cit., Conflict family law norms ...p.23-26; Todorov, T., Op.cit., International Private law ...2010 p.144-147; Natov, N., Op.cit , Comment on the Code ...p.362- 386; Mincheva, V.S., Op.cit, Comment on the Code... p.86-94.

Bulgarian law maintenance is allowed and this way it blocks the obstacle of obtaining support from needy persons established in a foreign legal system. The Bulgarian law will be applied, alimony will be awarded and this will realize a positive function of public order. Simultaneously, this third paragraph extends the principle of the applicability of the favorable for the plaintiff law by application the law of the forum.

Paragraph 4 of Article 87 containing conflict rules that define the law applicable to maintenance obligations between former spouses, which refers to the law applicable to the annulment of the marriage or divorce, as the case.

Article 88, paragraph 1 introduced the text, setting out the issues that are classified under *lege cause* law and which are covered by the law applicable to the relationship of maintenance. These are the questions: whether it is owed, how much, by whom, the range of liable persons who may seek support and in what time, what are the reasons for extinguish it, and the relationship between the debtor and the authority paid the alimony instead. In each issue when defined as applicable Bulgarian law, the provisions of FC 2009 governed the maintenance. These are Art. of 139 to 152.

In the substantive provisions of Article 88, paragraph 2, there is a rule that governs the principle fixed in our Family Code, while this is a text that is internationally accepted in the Acts of the Hague Conference, and in Regulation (EC) № 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations<sup>50</sup>. This provision makes clear that in determining the amount of support have to be taken into account physical features of the debtor and the actual needs of the creditor. With this imperative norm court is obliged to apply this principle, even if the foreign law determines otherwise. The norm has a special, protective function. It is important to note that the *renvoi*<sup>51</sup> is absolutely unconditionally precluded - both in the first and second degree, under Article 40, Paragraph 2, Item 4 CPIL. This means that the connecting factors which define the applicable law under Article 87 of the Code should be construed as indicating always substantive law, domestic or international one and excluded the conflict of laws. This legislative solution aims again to protect the interests of the creditor. He should have security as one *renvoi* does not provide.

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<sup>50</sup> The regulation has been published in Bulgarian language in the Official journal of the European Union (OB) L 7/1 of 10.01.2009.

<sup>51</sup> The institute of *renvoi* in Bulgarian private international law is examined in details by: Prof. Kutikov's course, Op.cit., Private International Law...p.243-250; Dr. Damjanov, TS., Op.cit., Conflict family law norms ...p.22; Todorov, T., Op.cit., International Private law ...2010 p.135-140; Natov, N., Op.cit, Comment on the Code ....310- 322; Mincheva, V.S., Op.cit, Comment on the Code... p.54-66.

## §5. Recognition and enforcement of international child support decisions

Recognition and enforcement of foreign judgments and other acts are governed by Chapter XII CPIL entitled "Terms and Conditions for recognition and enforcement of foreign judgments and other acts"- Art.117 - 124. The framework for recognition and enforcement is united into a single text and is relevant to decisions and acts of foreign courts (court settlements and official documents are included if they meet the conditions specified in the Code, but recognizing effects of foreign enforcement and security instruments is created a separate text - CPIL Article 124). Recognition of foreign judgments may be accidental (in Article 118 CPIL - in this case, it takes effect only between the parties to the case) or by deliberately proceedings in which the recognition applies to all. In both cases it is necessary to examine five positive conditions laid down in Article 117 item 1, 5, and if only one of them is not available, the Bulgarian authorities have to refuse recognition and enforcement of a foreign act. These conditions are: the existence of jurisdiction of a foreign authority decreed the act; respect the rights of defense of the defendant; the absence of a final decision of the Bulgarian court; no existence of "Lis pendens" of a Bulgarian court started before the foreign proceedings; lack of contradiction with a Bulgarian public order. When the recognition and admission is made in deliberately proceedings, the competent court is the Sofia City Court, the proceedings shall be instituted upon a claim accompanied by a copy of the decision certified by the court decreed it, and certified by the same court that the decision is final. Both documents must be certified by the Bulgarian Ministry of Foreign Affairs, and have to be translated into Bulgarian. Regarding the scope of the inspection is necessary to say that the court did not dispute the substance of the act and for this reason objections to the correctness of that decision are inadmissible. In Article 121, paragraph 2, the debtor may object only that repay the debt or part of it after the entry into force of the foreign judgment and as the end point of this objection is the entry into force of the decision on admission of execution. The Bulgarian procedural law is applicable, and the act by which the Sofia City Court is pronounced, is decision.

It can be concluded that the rules on jurisdiction and applicable law to claims for subsistence in Bulgarian Code of private international law strictly follow the principle of protecting the interests of the weaker party. Proof for this is the criteria for determining the competent court and applicable law who materialised the aim - competent court and applicable law to be most favorable to the plaintiff in the case (in cases about child support the applicant is a minor child, regardless of who is his/ her legal representative). If the judgment for the maintenance is given by the foreign authority, rules on the recognition and enforcement in Bulgaria are provided as clearly and comprehensively, so that at this stage creates legal certainty for the applicant.



## §6. Legislation of international child support after the accession of Bulgaria to European Union

As a Member State of the European Union from 01.01.2007, based on Articles 2 and 3 of the Act of Accession of Bulgaria and Romania<sup>52</sup>, primary and secondary legislation of the European Union for Bulgaria is mandatory and applies in their own grounds. Accession Treaty concluded by Bulgaria with each of the Member States, is an international treaty on the basis of Article 5, paragraph 4 of the Constitution of the Republic of Bulgaria<sup>53</sup>, EU law is applied in priority to all other Bulgarian legislation Article 288 Treaty on the Functioning of the European Union<sup>54</sup> states that: "To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States". Regulation is characterized by direct action, direct effect and its immediate applicability. In this connection it is important to point out that legislation on the jurisdiction and the recognition and enforcement of judgments in support cases is contained in Regulation № 44/2001<sup>55</sup>. So after the accession of Bulgaria to the EU on these issues began to apply the relevant provisions of Regulation № 44/01. The system of the Regulation № 44/01 takes precedence over that of the bilateral agreements concluded between Member States (Article 69 Regulation № 44/01). They continue to be applied in cases not covered by the Regulation (Article 70 Regulation № 44/01). In the absence of regulation in these matters to determine the international jurisdiction, recognition and enforcement of judgments, and on applicable law in matters of subsistence apply CPIL.

Since 18 June 2011 the relations about maintenance obligations in the European Union are governed by Regulation (EC) № 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. Due to the universal character the regulation not only derogate CPIL but Regulation

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<sup>52</sup> Ratified by a law approved by the 39th National Assembly on 11 May 2005. - OJ, No.40 of 2005., Promulgated, SG No. 104 of December 20<sup>th</sup> 2006. Effective since January 1<sup>st</sup> 2007 under the conditions of Art. 2 of the Treaty.

<sup>53</sup> "International treaties ratified by the constitutionally established procedure, promulgated and effective for the Republic of Bulgaria, are part of the national law. They take precedence over the provisions of national law which conflict with them".

<sup>54</sup> Official Journal of the European Union, C 115/47, 9.5.2008

<sup>55</sup> Its regulation has been analysed in the Bulgarian legal literature by: Todorov, T., Op.cit., International Private law ... 2010 p.83-118; 434-469; Museva, B., Through the labyrinth of international jurisdiction in civil and commercial matters. , Legal World, journal, 2006, № 2, p.41-92; Natov, N; Museva, B, Andreeva, Q,etc, Regulation "Brussels I", Comment, Siela publishers, 2012; Sarbinova, D., Allowance of enforcement of judgments in civil and commercial matters in Bulgaria under Regulation 44/2001. concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in Private international law and certain provisions of Part Seven of the CPC in the light of sources of the Community, edited by Natov, N, Siela publishers , 2008.

№ 44/01, but also with it the Community creates an instrument regulating relationship of maintenance that combines provisions on jurisdiction, conflict of laws, recognition and enforceability, the implementation of decisions on legal aid and cooperation between central authorities. As a Member State of the Community the Regulation № 4/09 from 18.06.2011 applies also in our country. This Regulation governs the applicable law in an original way, it is determined in accordance with the Hague Protocol from 23.11.2007 of law applicable to maintenance obligations in the Member States bound by it. Bulgaria is a Member State bound by it<sup>56</sup>. Thus, the regulation of international support is based on: the rules for determining jurisdiction under Title II of the Regulation, Article 3-15, the applicable law is governed by Chapter III of the Regulation, Article 15, which refers to the Protocol and on exequatur apply Chapter IV of the Regulation, Art.16-43. Bulgarian courts also used the autonomous European concept of maintenance. The obligation of each Member State to notify the competent authorities, procedures and languages in connection with certain articles of the Regulation is set out in its Article 71, § 1. In connection with this obligation are established and national provisions which designate the competent authority and the procedure of art. 71, § 1 A) .B) C) .E). They are settled in chapter fifty-eighth "A" Code of Civil Procedure, Art.627a, 627b, 627c

It should be noted that Bulgaria is a member of the Hague Conference since 1999. But after the country's accession to the EU, and the EU's to the Hague Conference, the exclusive competence of the Community to conclude international conventions on private international law determines the further participation of Bulgaria in the Hague Conventions only through agreements concluded by the EU. Thus the conclusion of the Hague Convention 2007 from EU and its entry into force binds and Bulgaria without requiring further acts on our part.

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<sup>56</sup> This regulation has been analysed in the Bulgarian legal literature by: Todorov, T., *Op.cit.*, *International Private law ...*2010 p.257-273; Zidarova, J. "Applicable law to the maintenance obligations under Regulation (EO) № 4/2009 of the Council", *Legal World, journal*, 2010, №1,p. 1-55; Mincheva, V.S., *Op.cit*, *Comment on the Code...* p.280- 288.