

# The Development of Private International Law in Albania

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## Abstract

In a world like today's one, with communication, trade and the increasing cross-border travels, the issue of the conflict of laws appears in every aspect of the private law. It is important that every member of the legal community understands the conflict of laws. This is important especially for judges, because they are the ones who should solve cross-border disputes submitted to them, which affect the personal lives of individuals and their businesses. Judges are precisely those who, with their work, should increase the confidence of the parties and the public, both within the community of their country and in other countries<sup>1</sup>. However, in a broader view, not only lawyers but all legal subjects must have general knowledge in this field in order to perform effective agreements. Thus, through this article we aim to shed light on the regulation of private legal relations that are characterized by a foreign element, presenting innovations brought by Law No. 10426 'On Private International Law' which entered into force on 02.06.2011.

**Keywords:** private international law; party autonomy; most real connection; habitual residence; conventions; applicable criteria.

## Introduction of Private International Law in Albania.

Private International Law is the body of conventions, model laws, legal guides, and other documents and instruments that regulate private relationships across national borders. Private international law has a dualistic character, balancing international consensus with domestic recognition and implementation, as well as balancing sovereign actions with those of the private sector.<sup>2</sup> The *raison d'être* of Private International Law is the existence in the world of a number of separate municipal systems of laws, a number of separate legal units-that differ greatly from each other in the rules by which they regulate the various legal relations arising in daily life. Courts in one country must frequently take account of some rule of law that exists in another<sup>3</sup>.

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<sup>1</sup> Prof. Asoc. Dr. Arta Madro Balili, Ganet Walker, Ardian Kalia, "Private International Law", Tirana 2005, Copyright: Magistrates School, pg. 7.

<sup>2</sup> ASIL Electronic Resource Guide, Private International Law by Louise Tsang.

<sup>3</sup> Cheshire, North & Fawcett, Private International Law, Fourteenth Edition, Oxford University Press, 2008, pg 4.

Private International Law may be also known as: Conflict of Laws or Conflict de Lois<sup>4</sup> the main questions to be resolved by the Private International Law includes: Jurisdiction, Choice of Law and Recognition and Enforcement of Foreign Judgments<sup>5</sup>.

In the domestic context, Private International Law is that part of Albanian Law which comes into operation whenever the court is faced with a claim that contains a foreign element. It means that Private International Law is a domestic law that governs legal relationships of private law nature featuring an international aspect, so in consequence the Private International rules are different from country to country. The foreign element can be situated in each of the component of a legal relationship, in object, subject<sup>6</sup> or the content. If the foreign element<sup>7</sup> is situated in one or more than one, of these components the legal relationship shall be characterized by the international character which means that this relation shall involve two or more states. The foreign element may appear in a lot of forms, for instance: One of the parties may be foreign by nationality or domicile, the action may concern property situated abroad or a disposition made abroad of property situated in Albania, the contract may have been made in one country to be performed in one other, the parties using the choice of law rules may resort to the court of a foreign country where the means of contracting are more convenient than in the country of their domicile<sup>8</sup> or habitual residence etc.

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<sup>4</sup> F. Mosconi, *Diritto Internazionale Privato e Processuale, Parte Generale e Contratti* seconda Edizione, UTET 2001, pg.4.

<sup>5</sup> Abia Mays, *Principles of Conflict of Laws*, Third Edition, London Sydney 1999, pg 11.

<sup>6</sup> Dr. KUCI Hajredin, Dr. BILALI Asllan, 'E Drejta Nderkombetare Private', Pjesa e Pergjithshme, Prishtine 2008, Universiteti i Prishtines, Fakulteti Juridik, pg. 162.

<sup>7</sup> Article 1/2 of Law No. 10428 date 02.06.2011 'On Private International Law, gives the definition of the foreign element which includes every legal circumstances relating to the subject, content or object of a legal relationship which become a reason to relate this legal relationship with a particular legal system.

<sup>8</sup> Kalia Ardian, 'E Drejta Nderkombetare Private' Sejko, pg.122.

Albanian Private International Law is governed by International Sources of Law as: Conventions<sup>9</sup>, Treaties or International Agreements<sup>10</sup> and Internal Sources of Law as: the Constitution, Private Codes including ( Civil Code, Family Code, Civil Procedure Code, Labor Code etc), specific laws<sup>11</sup> and regulations in force.

Until 02/06/2011, the specific law governing the legal relations characterized by the foreign element was the law No. 3920, date 21.11.1964 “On the enjoyment of civil rights by the foreigners and the foreign law enforcement’, which is now replaced by the Law No.10426 date 02.06.2011 “On Private International Law”.

The scope of Albanian Private International Law in force includes issues related to:

- Applicable Law Rules that will govern private law relations which are characterized by the foreign element and
- Jurisdiction and Procedural Rules of the Albanian Courts regarding to civil law relations which are characterized by the foreign element.

The International jurisdiction of Albanian Courts is settled in the Chapter IX of the Private International Law. It is noticed that ‘habitual residence’ as connecting criteria is widely applied in these jurisdictional provisions in order to enlarge the possibility of the Albanian courts to resolve disputes characterized by the foreign element.

The second issue governed by the Private International law is the applicable law rules.

In order to determine the applicable law in a given dispute, the Albanian seeks guidance from connecting factors.

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<sup>9</sup> The Main Conventions that Republic of Albania is part: Vienna Convention on Diplomatic Relations, Vienna 18.04.1961 (date of ratification with the decree of the Presidium of the National Assembly No.7164 date 10.10.1987; Vienna Convention on Consular Relations, Vienna, 24.04.1963 (date of ratification 04.10.1991); Convention on the Rights of the Child, New York 20.11.1989 (date of ratification 27.02.1992), Convention on the Status of Refugees, Geneva, 28.07.1951 (date of ratification 18.08.1992); Convention relating to the Status of Stateless Persons, New York, 28.09.1954 (date of ratification 23.07.2003); Convention on the Reduction of Stateless, New York, 30.08.1961 (date of entrance in force in Albania 09.07.2003); Constitution of the United Nations for Industrial Development, Vienna, 8 April 1979 (date of entrance in force in Albania 19 April 1988); Convention on the Contract for the International Carriage of Goods by Road (CMR) Geneva, 19 May 1956 (date of ratification 20.07.2006); Convention on International Maritime Organization (IMO), Geneva, 06.03.1948 (date of ratification 24.05.1993); Convention on the Nationality of the Married Women, New York 20.02.1956 (date of entrance in force in Albania 27 July 1960); Convention on the Recognition and the Enforcement of Foreign Arbitral Awards, New York 10.06.1958 (date of ratification 27.01.2001); European Convention on International Commercial Arbitration, Geneva 21.04.1961 (date of the entrance in force in Albania 27.06.2001); European Agreement on the Transmission of Applications for Legal Aid, approved by the Law No. 8705 date 01.12.2000; European Convention on Information on Foreign Law, ratified by the Albanian Parliament with the Law No.8703 date 1.12.2000; The Hague Convention of Abolishing the Requirement of Legalization for Foreign Public Documents, approved with the Law No. 9060 date 08.05.2003; United Nation Convention on Contracts for International Sale of Goods, approved with the law No. 10092 date 09.03.2009, etc.

<sup>10</sup> Article 2 of Law No. 10428 date 02.06.2011 ‘On Private International Law’, provides that : the application of the international treaties ratified by law has priority upon this law when the provision of this law affect the regulation of the relationships with an international element as established in an international treaty.

<sup>11</sup> For example: Law No. 10428 date 02.06.2011 ‘On Private International Law’, Law No.7764 date 02.11.1993 ‘On Foreign Investment’, etc.

They only provide the means to choose the appropriate law, but they cannot determine that choice. Examples of such factors are:

- *lex loci contractus*: the law of the place where the contract was made;
- *lex loci solutionis*: the law of the place where the contract is to be performed;
- *lex loci celebrationis*: the law of the place where the marriage was celebrated;
- *lex loci delicti*: the law of the place where the tort was committed;
- *lex domicilii*: the law of the place where a person is domiciled;
- *lex patriae*: the law of the nationality;
- *lex situs*: the law of the place where the property is situated;
- *lex fori*: the law of the forum, that is, the internal law of the court in which a case is tried<sup>12</sup>.

The law No.10426 date 02.06.2011 “On Private International Law”, entered in force in order to fulfill the new needs of the society which are nowadays characterized by the intensification of international transactions, of the movement of the goods, services and persons. In contrast to the law No. 3920, date 21.11.1964 “On the enjoyment of civil rights by the foreigners and the foreign law enforcement’, the Law 10426/2011 “On Private International Law” has covered a larger field of application criteria, applying new criteria or improving the existing ones.

On one hand concepts like: The habitual residence, the most real connection, the name of the natural person, representation, the prescription of actions, matrimonial property regimes, securities, goods in transit, protection of cultural heritage, intellectual property rights, consumer contracts, legal replacement, solidarity obligations, legal compensation, diplomatic immunity<sup>13</sup> etc, are an innovation by Private International Law in force because these issues characterized by the foreign element weren’t governed by the law No. 3920, date 21.11.1964 “On the enjoyment of civil rights by the foreigners and the foreign law enforcement’.

On the other hand concepts like: contractual obligations issues, non contractual obligations issues and jurisdictional issues are enriched with applicable criteria by the law ‘On Private International Law’.

In general we may say that: the Law ‘On Private International Law’ in force is characterized by the principles of:

- Party Autonomy,
- Habitual Residence,
- The Most Real Connection.

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<sup>12</sup> Abia Mays, *Principles of Conflict of Laws*, Third Edition, London Sydney 1999, pg 4.

<sup>13</sup> Article 12, 13, 19, 20, 24, 37, 39, 40, 42, 43, 44, 52, 53, 54, 55, 84 of Law No. 10428 date 02.06.2011 ‘For Private International Law.

## Party Autonomy.

The party autonomy is one of the basic principles of general legal regulation of private law relationships, is to be found in many roles in private international law procedural rules. The party autonomy gives to the parties the possibility to choose a specific law to regulate their obligation relationship, with the respect to the limitation coming from the borders of the statutes of the obligations. The Article 17 of the Law No. 3920, date 21.11.1964 'On the enjoyment of civil rights by the foreigners and the foreign law enforcement', provides that the party autonomy to choose the applicable law that will govern their contract, is the first criteria that will be applied for the contractual obligations and in its absence it may be applied the domicile law of the parties or the law where the contract will be performed<sup>14</sup>. However there are certain restrictions that the applicable law chosen by the parties shall not be applied, for example: if it comes into contradiction with the public order of the state where it will be applied<sup>15</sup>.

Since 02.06.2011 the Albanian Private International Law has been governed by the Law No. 10428. "On Private International Law" in which the party autonomy is applied in a larger field, which includes:

- The mutual will of the parties to determine the content of the contract<sup>16</sup>,
- The mutual will of the parties to choose the jurisdiction that will govern their disputes<sup>17</sup>.
- The mutual will of the parties to choose the applicable law that will govern their contract<sup>18</sup>.

The first situation is governed by the Albanian Civil Code and could be interpreted in the material context of party autonomy, while the second could be interpreted in the formal context of party autonomy. The article 73 of the Law No. 10428 date 02.06.2011 'On Private International Law provides that: 'The Albanian courts have international jurisdiction when the parties by an agreement choose with their mutual will the international jurisdiction of Albanian courts. This agreement must: a) be in a written or in oral form, but the oral form of the agreement must be proved in written. b) it has to be in accordance with the international trade customs, which are or are considered to be known by the parties. The Albanian court which is faced with a claim has international jurisdiction, if the claimant takes part in the judgment

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<sup>14</sup> Article 18 of the Law No. 3920, date 21.11.1964 'On the enjoyment of civil rights by the foreigners and the foreign law enforcement'.

<sup>15</sup> Article 26 of the Law No. 3920, date 21.11.1964 'On the enjoyment of civil rights by the foreigners and the foreign law enforcement'.

<sup>16</sup> Article 676 of Albanian Civil Code, Approved by the law No. 7850 date 29.07.1994, changed by the law No. 8536 date 18.10.1999, and No.8781 date 03.05.2001 "the contract is completed when the parties have demonstrated their mutual will, agreeing to all the essential conditions. This expression of will can be expressed or silent."

<sup>17</sup> Article 73 of Law No. 10428 date 02.06.2011 'On Private International Law.

<sup>18</sup> Article 45 of Law No. 10428 date 02.06.2011 'On Private International Law.

without raising claims for the absence of international jurisdiction, even if he is represented in the process by a lawyer or in the case that the court clarifies the latter about the possibility of opposing the jurisdiction and this clarification is recorded in the juridical proceedings. So this provision promotes the parties autonomy to choose the jurisdiction that will govern their disputes<sup>19</sup>. This is a novelty in our doctrine and legislation because in the provisions of the Law No. 3920, date 21.11.1964 "On the enjoyment of civil rights by the foreigners and the foreign law enforcement" wasn't shown such an opportunity and also the Civil Procedure Code of the Republic of Albania provides that: The jurisdiction of Albanian courts for foreign natural and juridical persons is regulated by law. The Albanian Jurisdiction cannot be delegated with an agreement to foreign jurisdiction, unless the judgment is related to an obligation with foreigners, or between a foreigner and an Albanian citizen, or a juridical person without domicile or residence in Albania, and when these exceptions are governed by international agreements ratified by the Republic of Albania<sup>20</sup>. So if the parties are from different states they may apply a choice of jurisdiction clause in their agreement in order to specify that any dispute arising under the contract shall be judged by the court jurisdiction of the state they have chosen or by an arbitral tribunal and also the parties may apply a choice of law clause in their agreement in order to specify that any dispute arising under the contract shall be determined in accordance with the law of the country that they have chosen or the parties may apply a combined choice of law and jurisdiction clause. 'Like choice of law clauses, choices of jurisdiction clauses are frequently contained within standard form contracts. The close connection between choice of jurisdiction and choice of law was marked by the presumption that a choice of jurisdiction clause, in the absence of an effective choice of law clause, could be taken as an implied choice of the legal system under which the court or arbitrator operated – *qui elegit iudicium elegit ius*'<sup>21</sup>.

In this terms the article 45 of the Law No. 10428 date 02.06.2011 'On Private International Law provides that 'A contract shall be governed by the law chosen by the parties. By their choice the parties can select the applicable law for the whole or only a part of the contract. If the parties have chosen the jurisdiction to solve the disputes arising from the contract, it is presumed that the law of that state will govern their contract. The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. Any time parties may choose a different law to govern their contract. Every subsequent change of the applicable

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<sup>19</sup> Supreme Court Decision of Republic of Albania No.337 of the decision date 26.06.2011, has decided that the issue should not be judged in an Albanian Court because the parties by the Article 7 of the agreement signed between them have chosen the jurisdiction of State Court or the Federal Court of Dallas Country, Texas Court that will govern their disputes.

<sup>20</sup> Article 37, The Code of Civil Procedure, of Republic of Albania, Approved with the Law No. 8116 date 29.03.1996, changed with the laws no. 8431 date 14.02.1998, no.8491 date 27.05.1999, no.8535 date 18.10.1999, no.8812 date 17.05.2001, no.9953 date 14.07.2008, no.10052 date 29.12.2008.

<sup>21</sup> John O'Brein, MA, LLB, LLM, Barrister, 'Conflict of Laws', Second Edition, 1999, ISBN 1 85941 285 8, Pg.321.

law, after signing the contract, will not affect the formal validity of the contract or the rights of the third parties. When there is a most real connection with a different state from that chosen by the parties, the law applicable chosen by the parties will not affect the application of the provisions of the law of the other state, which can't be avoid by the agreement. The existence and the validity of the contract or any of its condition are governed by the law applicable for the contract<sup>22</sup>.

Based on the interpretation of this article we can say that the law No. 10428/2011 'On Private International Law, gives a detailed priority to the parties autonomy and also for the first time the party autonomy may be applied even in the non contractual obligations<sup>23</sup>. But in the other hand this autonomy is not unlimited; the law contains certain restrictions that the applicable law chosen by the parties as a main applicable law shall not be applied if it comes into contradiction with the public order of the state where it will be applied<sup>24</sup>. Also we can find a limited choice of law of party autonomy that includes Contract of Carriage<sup>25</sup>, Consumer Contracts<sup>26</sup>, Insurance Contract<sup>27</sup> Matrimonial Property Regimes<sup>28</sup>, Succession<sup>29</sup> and Torts<sup>30</sup>.

### **Habitual residence seen in Albanian Private International Law.**

Private International Law rules can provide various personal factors connecting a person with a legal system. The most frequently used include: nationality, domicile and the habitual residence.

'Nationality represents a person's political status, whereby he or she owes allegiance to some particular country. Apart from cases of naturalization, it depends essentially on the place of birth of that person or on his or her parentage. Nationality as a connecting factor was first adopted in France in 1803 with the promulgation of the Code Napoleon, in preference to domicile, which had generally prevailed throughout Europe before then'<sup>31</sup>. This impact is noticed even in the Albanian Law No. 3920, date 21.11.1964 "On the enjoyment of civil rights by the foreigners and the foreign law enforcement' where the nationality connecting factor was usually used<sup>32</sup>. In the

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<sup>22</sup> Article 45 of Law No. 10428 date 02.06.2011 'On Private International Law.

<sup>23</sup> Article 57 of Law No. 10428 date 02.06.2011 'On Private International Law.

<sup>24</sup> Article 7 of Law No. 10428 date 02.06.2011 'On Private International Law.

<sup>25</sup> Article 50 of Law No. 10428 date 02.06.2011 'On Private International Law.

<sup>26</sup> Article 52 of Law No. 10428 date 02.06.2011 'On Private International Law.

<sup>27</sup> Article 51 of Law No. 10428 date 02.06.2011 'On Private International Law.

<sup>28</sup> Article 24 of Law No. 10428 date 02.06.2011 'On Private International Law.

<sup>29</sup> Article 35 of Law No. 10428 date 02.06.2011 'On Private International Law.

<sup>30</sup> Article 57 of Law No. 10428 date 02.06.2011 'On Private International Law.

<sup>31</sup> [http://www.lawreform.ie/\\_fileupload/consultation%20papers/wpHabitualResidence.htm](http://www.lawreform.ie/_fileupload/consultation%20papers/wpHabitualResidence.htm).

<sup>32</sup> Articles 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 21, 23, 27 of the Law No. 3920, date 21.11.1964 "On the enjoyment of civil rights by the foreigners and the foreign law enforcement'.



jurisdictional issues the 'domicile'<sup>33</sup> connecting factor, was used while the concept of 'habitual residence' hadn't been part of the Albanian legislation since 2011.

The Civil Code of the Republic of Albania according to this issue provides that: 'Domicile is the place where a person is related because of his work or permanent service, because of the location of his property or because of the fulfillment of his interests, where he stays usually or for the most part of the time'<sup>34</sup>. The following rules of Albanian Civil Code determine the domicile of the adults and the domicile of the infants. So the act provides that 'any person may acquire a domicile of his choice once he attains the age of majority', also the act provides that 'a person can't have at a time more than one domicile. A child's domicile who has not reached the age of fourteen years should have the domicile where his parents have their domicile, and if the child's parents are not domicile in the same country, a child's domicile who has not reached the age of fourteen years should have the domicile of the parent that he lives with'. Moreover the law provides that 'in the case of the persons who are deprived from the capacity to act and the children that are under custody should have the domicile of their legal custodian'<sup>35</sup>. The Albanian specific Law No.10129 date 11.05.2009 'On Civil Status' also in the articles 14 and 15 provides the obligation of a party to declare and register his domicile at the Civil Status Office. Also the Albanian Civil Code provides that: 'the residence of a person is the place where he resides in order to perform certain jobs or tasks, to follow a school program or a course program, to have a medical treatment, to suffer a penal sentence and other similar situations'. The residence should be proved in each case in practice; the residence is not bound with the obligation of registration at the Civil Status Office. So the domicile and the residence provided by the articles above are not synonymous even if they may be in the same place. A person can have only a domicile which is related to the fulfillment of a legal procedure of registration while he may have more than one place of residence and no registration requirements.

In the context of the free movement of the persons, capital and goods it was needed to use more flexible criteria's as the 'habitual residence' 'since it has been perceived as providing an alternative to nationality and as being free of the difficulties associated with domicile, such as those in regard to intention, origin, an dependency'<sup>36</sup>. 'The concept of habitual residence reflects the factual relationship between a person and place, not relationship in the legal sense. The interpretation of this concept cannot be bound by any predefined rules which would not be able to adapt to all situations

<sup>33</sup> Articles 7/3, 18, 24, 28/b, 29, 30 of the Law No. 3920, date 21.11.1964 "On the enjoyment of civil rights by the foreigners and the foreign law enforcement'.

<sup>34</sup> Article 12 of Albanian Civil Code, Approved by the law No. 7850 date 29.07.1994, changed by the law No. 8536 date 18.10.1999, and No.8781 date 03.05.2001

<sup>35</sup> Article 13 of Albanian Civil Code, Approved by the law No. 7850 date 29.07.1994, changed by the law No. 8536 date 18.10.1999, and No.8781 date 03.05.2001.

<sup>36</sup> [http://www.lawreform.ie/\\_fileupload/consultation%20papers/wpHabitualResidence.htm](http://www.lawreform.ie/_fileupload/consultation%20papers/wpHabitualResidence.htm).



arising in real terms and thus would create a legal fiction<sup>37</sup>. The concept of 'habitual residence' is a particular favorite of the Hague Conference on Private International Law. The expression appears in a number of international conventions but as a matter of policy the Hague Conventions do not define the notion, to avoid rigidity. However; the expression is now widely used in domestic legislation<sup>38</sup>.

'In the International field habitual residence appears in a number of private international acts and also has been used as principal or subsidiary connecting factor in EU legislation concerning conflict rules, including:

- Regulation on the law applicable to contractual obligations (Rome I);
- Regulation on the law applicable to non contractual obligations (Rome II);
- Regulation on the law applicable to divorce and separation ("Rome III");
- Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility; and
- Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations<sup>39</sup>.

However, according to current Albanian Private International Law legislation, Article 12, provides 'that the habitual residence of a natural person is the place where a person has decided to reside in the most period of time, even in absence of a registration, permit or a dispute authorization to reside. In determining the habitual residence the court should take into account the circumstances of personal a professional nature which shows a stable connection with this country or the intention of person to create such connections'. As it is viewed the 'habitual residence' is a flexible connecting factor, it should be based on a close and stable connection with a state. This of course on one hand helps to enlarge the field of jurisdictional criteria but on the other hand it can be difficult to prove. However factors to be taking into account include regularity, intention, reasons of personal or professional nature, duration while the permit to reside or an authorization is not a fundamental request in order to prove the habitual residence. The application of 'habitual residence' applicable criteria doesn't exclude the nationality connecting criteria, it is used as an alternative to domicile in respect of the jurisdiction<sup>40</sup> of the Albanian Courts to decide for example issues related with the matrimonial matters<sup>41</sup>, in respect of the law governing formal validity of wills<sup>42</sup> etc.

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<sup>37</sup> ZAVADILOVÁ, Marta, TUROŇOVÁ, Jana. Pravidla určování mezinárodní soudní příslušnosti dle nařízení Brusel II bis ve světle nejnovější judikatury Evropského soudního dvora. Právní rozhledy: časopis pro všechna právní odvětví, Praha, Beck. ISSN 1210-6410, 2010, vol. 2010, no. 7, p. 246-252.

<sup>38</sup> John O'Brein, MA, LLB, LLM, Barrister, 'Conflict of Laws', Second Edition, 1999, ISBN 1 85941 285 8, Pg.89.

<sup>39</sup> [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130427/LDM\\_BRI\(2013\)130427\\_REV1\\_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130427/LDM_BRI(2013)130427_REV1_EN.pdf).

<sup>40</sup> J.G.Collier, Conflict of Laws, Third Edition, Cambridge University Press, 2011, ISBN-13 978-0-521-78781-9, pg.55.

<sup>41</sup> Article 75/b/c of Law No. 10428 date 02.06.2011 'On Private International Law.

<sup>42</sup> Article 80 of Law No. 10428 date 02.06.2011 'On Private International Law.

### **The most real Connection applicable criteria.**

Private International Law rules also can provide practical applicable criteria as the closest connection. The most real connection/the closest connection applicable criteria, is generally governed by Law No. 10426 date 02.06.2011 "On Private International Law", it has been applied not only in the field of contracts but also to several particular issues in private international law area. Article 12 pg 2 of the Private International Law, provides that 'the court shall determine the most real connection applicable criteria, based in the factual circumstances'. So when applying the most real connection applicable criteria, Albanian Courts shall consider the connection between Albania and the dispute and the greater interest, in order to decide if the connection is close enough to conclude that Albanian has the closest connection to the legal relationship characterized by the foreign element or not.

The most real connection applicable criteria is provided by the Albanian Private International Law to governs situation such as: where a foreigner has two or more nationalities, the national law shall be the law of his habitual residence, if a foreigner doesn't have a habitual residence in each of the states of his nationality, in the terms of this law it will be applied the law of the country with which he is most closely connected (Article 8/3); If a party has no nationality or his nationality can't be determined, the habitual residence of that party shall be applied. If a party doesn't have a habitual residence or when it can't be determined it will be applied the law of the country with which he is most closely connected (Article 9/2).

Furthermore the parties in a contract involving foreign elements may choose the law applicable to their contractual disputes, if the parties to a contract involving foreign elements fail to make such a choice, the contract shall be governed by other applicable criteria provided in the article 46 of the Private International Law, and as the last opportunity shall be applied the law of the country with which it is most closely connected. The carriage contract, non contractual damage rules, product liability, unjust enrichment<sup>43</sup> etc contain similar rules. The most real connection doctrine plays a very important role in Albanian Private international Law especially in the absence of a choice of law, either express or implied where the contract shall be governed by the law of the most closely connected with the contract.

### **Conclusions**

Since 02.06.2011 the Albanian Private International Law is governed by the Law No. 10428. "On Private International Law". This law governs 89 Articles that includes all aspects of the international application of private law. It regulates not only the

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<sup>43</sup> Article 4, 8/3, 9/2, 12/2, 23/3, 46/4, 50/3, 56/4, 63/3, 68/4, 69/4 of Law No. 10428 date 02.06.2011 'For Private International Law

applicable law but also the jurisdiction of the Albanian courts. The new law partly introduced new solution, however the fundamentals have not been changed. As we mentioned above the law governs situations that weren't governed before and also has enlarged the field of applicable criteria. New elements are applied as: habitual residence or the most real connection, and existing applicable criteria have improved their regulation as: the party autonomy.

By the analysis of this law, it is observed that regarding private disputes characterized by a foreign element, courts assume jurisdiction based on:

- Party Autonomy – The will of the parties is shown either by an agreement between the parties on submitting the case before the court thus determining a jurisdiction clause, or by the appearance of the defendant in the judicial process to challenge the merits of the dispute. The autonomy of the parties under the law No. 10426 'On Private International Law' includes, beside the freedom of the parties to determine by agreement the jurisdiction that will settle the disputes between them and the parties' freedom of choice on the applicable law. However, this freedom should not be understood as unlimited, it is subject to certain restrictions, such as public order clauses, mandatory rules or the requirement of a reasonable relationship between the contract and the choice of law.
- 'The residence of the defendant - The court of the residence of the defendant serves as a base standard for general jurisdiction in connection with the lawsuits against the defendant. Based on the regulation provided by the law on private international law the concept has become more flexible using as a general rule of the international jurisdiction the criteria of the habitual residence of the defendant<sup>44</sup>. Thus, Article 71 of Private International Law provides that: Albanian courts have jurisdiction to resolve private legal disputes with foreign elements, if the party has habitual residence in the Republic of Albania, unless otherwise provided by the rules of this chapter.
- The closed connection – 'the foreign defendants who have not given consent to the jurisdiction of the court, however, may be subjected to it, when there is an essential connection between the country of the settlement of the dispute and the dispute itself. Thus, in many countries, the defendants who are not present at the country of the settlement of the dispute and have not given consent to the jurisdiction of the courts of that country, may be subjected to lawsuits in those countries where there is a real and substantial connection between the dispute and the country where the dispute is being settled'<sup>45</sup>. Thus the closed connection is provided in the new law as a very important criterion in the settlement of a

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<sup>44</sup> Prof. Asoc. Dr. Arta Madro Balili, Ganet Walker, Ardian Kalia, 'Private International Law', Tirana 2005, Copyright: Magistrates School, pg. 85.

<sup>45</sup> Prof. Asoc. Dr. Arta Madro Balili, Ganet Walker, Ardian Kalia, 'Private International Law', Tirana 2005, Copyright: Magistrates School, pg. 115.

dispute characterized by a foreign element with the country where this dispute will be settled.

At the end of this analysis we may say that the Law No. 10426, date 02/06/2011 "On Private International Law", by improving the applicable connection criteria creates a greater possibility for the Albanian courts to have jurisdiction to resolve disputes characterized by foreign elements. This law also approximates the legal system of the conflict of laws to the European Union countries, because the law itself presents as a reference, on its first page, the Regulation (EC) No. 593/2008 of the European Parliament and the Council "On the Law Applicable to Contractual Obligations" (Rome I) and Regulation (EC) No. 864/2007 of the European Parliament and the Council "On the Law Applicable to Non-Contractual Obligations" (Rome II).

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