



ONLINE MEETING

International Maintenance Recovery by Public Bodies

15 May 2024

The Child Support Forum open online conference was held on 15 May 2024 with about 80 participants in attendance. The different contributions explored in depth the topic of cross-border maintenance recovery by Public Bodies under socio-political and legal aspects. They emphasised in particular how important state support for families in the event of non-payment of maintenance is, but also how central it is to provide public bodies with effective legal instruments so that they can enforce maintenance claims against maintenance debtors and that the financial burden is not completely placed on society.

All presentations can be downloaded under <https://childsupport-worldwide.org/child-support-forum.html>

Here are the key contents and findings of the conference.

I. Summary, Conclusions and Recommendations

1. VARIETY OF MAINTENANCE SUPPORT SYSTEMS

a. A certain number of states have opted for the payment of advances on maintenance payments. Concerning this kind of maintenance support, the reports of the last meetings had already given a detailed overview of the national systems of Belgium, Czech Republic, Denmark, Finland, France, Germany, Latvia, Lithuania, Sweden and Norway (available under: <https://childsupport-worldwide.org/child-support-forum.html>.) The presentation made by *Robert Fucik* from the Austrian Federal Ministry of Justice completed these reports with regard to the Austrian system. All of these maintenance support systems are based on the payment of benefits to the maintenance creditor and are partly financed through the reimbursement of the benefits by the maintenance debtor.

b. A comparison of the various maintenance advance payments' laws allows a classification into three broad systems concerning the conditions of granting maintenance support payments:

- (1) Payment of maintenance support takes place on the condition that a maintenance order already exists for the child. Very often, the maintenance support amounts to the amount mentioned in the child's maintenance order. In those states the amounts paid out harmonise with the enforceable amounts mentioned in the order.
- (2) Payment of maintenance support while the maintenance proceedings conducted by the child are still pending.
- (3) Granting of maintenance support, independently of whether the child maintenance amount has been legally recognised in a deed or set by a court decision: only four EU countries (Germany, Latvia, Sweden and Spain). (*Isabelle Jäger-Maillet*, p. 4)

c. *Catherine Collombet's* presentation gave an overview of further support systems including among others the United Kingdom, Québec and Australia, which rules are based on providing support services and assistance with the enforcement of maintenance, but not the payment of maintenance advances. A detailed presentation of the services offered in the UK by CMS (Child Maintenance Services) was also given by *Neil Mc Fadden's* and *Lorraine Alexander's* contribution.

d. Maintenance agencies are usually based within the social security system, within the tax system, represent a dedicated agency or be under the responsibility of local players/authorities (*Catherine Collombet*, p. 5).

2. PUBLIC SUPPORT IN THE FIELD OF CHILD MAINTENANCE RECOVERY: AN EFFECTIVE TOOL IN THE FIGHT AGAINST CHILD POVERTY

Jozep Pacolet and *Catherine Collombet* showed in their presentations, that maintenance plays an important role in poverty reduction (see *Jozep Pacolet's* presentation on p. 20). In Belgium the significant increase in cases at SECAL (Belgian Maintenance Agency) since the abolition of the operating costs for the creditors and of the income ceiling shows the great need for state support in the event of non-payment of maintenance. (*Jozep Pacolet*, p. 6, 7). In France the success of the ARIPA shows the importance of a comprehensive support policy in the area of maintenance recovery. (*Catherine Collombet*, p. 7, 12)

According to *Catherine Collombet* the need for effective tools in the fight against child poverty originates from:

- An increase in single-parent families
- The high prevalence of poverty among these families (see also on this point: *Jozep Pacolet's* presentation on p. 16 and 19)
- The cost of public spending on assistance for these families
- Judicial procedures deemed ineffective

Proposals to make the tools in Belgium even more effective by *Josep Pacolet* (p. 23, 24) were:

- Creation of a universal system of advance payments including:
- Increase of maximum advance amount from € 175 per month per child to € 350

- Extension of advance system to maintenance between ex-partners as well: the poverty risk of singles (without children) entitled to maintenance is 43,6%
- Introduction of intermediation like in France (ARIPA) or Québec
- Effects: Possible improvements for stakeholders: accessibility, conflict situation and poverty reduction

3. RELEVANCE OF MAINTENANCE RECOVERY BY PUBLIC BODIES IN THE INTERNATIONAL CONTEXT

Maintenance support in the sense of payment of maintenance advance exists in 20 EU countries, but also, for example, in Switzerland or in Norway. The sums spent to finance these measures are considerable. For more details, see the report published after the June 2022 Child Support Forum meeting. This makes the states' need for effective refinancing of the measures through the recovery of maintenance claims against defaulting debtors all the greater. The trend of declining maintenance payment obligations due to joint care of the children (*Jozep Pacolet*, p. 13) will probably not be confirmed in cross-border cases due to the geographical distance between the parents. Thus, the recovery of maintenance by public bodies will remain a central topic of family policies. Effective legal tools in the field of maintenance recovery can encourage policy makers to take more generous measures, closely tailored to the children's current needs at their place of residence. See for the connection between granting conditions, covering childrens' needs and recovery activities by public bodies *Isabelle Jäger-Maillet's* presentation on p. 5, 6.

4. EXISTING LEGAL FRAMWORK

a. Existing special provisions

Art. 64 of the EU Maintenance Regulation (EG n°4/2009) and Art. 36 of the 2007 Hague Convention contain special provisions concerning the recovery of maintenance by public bodies for the purposes of an application for recognition and declaration of enforceability of decisions or for the purposes of enforcement of decisions.

These provisions put public bodies on an equal footing with natural persons for the purposes of applications for a declaration of enforceability and enforcement. They allow among others the enforcement of a maintenance order made for the child under the condition that an additional document establishing the person seeking enforcement as new creditor is provided (*Robert Fucik*, p. 10).

They also include the possibility to make use of the assistance of central authorities for the purposes of an application for recognition and declaration of enforceability of decisions or for the purposes of enforcement of decisions while this kind of assistance cannot be provided under the 1956 UN-Convention (*Robert Fucik*, p. 2).

b. Variety of recovery activities

The recovery activities of the Public Bodies in countries granting maintenance support independently of the existence of a maintenance order of the child are larger than in countries

where amounts are paid out in accordance with an existing enforceable order and then recovered by way of enforcement (*Isabelle Jäger-Maillet*, p. 6). While the activity in the second category is limited to the enforcement of an existing maintenance order, in the first category the reimbursement amount must be calculated and an order must be established before it can be enforced.

5. DIFFICULTIES IN THE FIELD OF ESTABLISHMENT OF MAINTENANCE ORDERS

The question of difficulties in the field of the establishment of maintenance orders for Public Bodies was raised by *Isabelle Jäger-Maillet's* presentation. She particularly highlighted:

- The difficult calculation of the amount to be reimbursed because of debtor protection provisions like e.g. reference to the law applicable to the maintenance obligation in Art. 11 f) of the Hague Protocol that can lead to the applicability of foreign maintenance law or data protection provisions as in Art. 62 Reg. (EC) No.° 4/2009.
- The limited possibilities to obtain a maintenance order in the state where the public body is based in terms of international jurisdiction.
- The failure of assistance by central authorities for applications for establishment of a maintenance order filed by public bodies and related special measures (debtor's location/determination of financial circumstances).
- The high costs of cross-border proceedings

The possibility to file applications under Art. 20(4) of the 2007 Hague Convention was discussed controversially. *Isabelle Jäger-Maillet* pointed out that this way seems to be hardly a solution in practice because it presupposes that a decision is obtained in the state of origin knowing that it will not be recognisable in the state of enforcement due to the declared reservation under Art. 62, Art. 20 subpara. 1(c). An application must then be made for a declaration of enforceability and enforcement and wait for it to be rejected as expected, so that Art. 20(4) applies and the application is interpreted as an application to establish a new decision. When the courts of the country of enforcement are then seized with the determination of the maintenance amount, they apply their own law. This leads to the consequence that the reimbursement amounts usually do not correspond to the benefits and that arrears are often only determined for a limited period (from the date of the application or service of the application for a new decision) due to national provisions. This means that it is rarely possible for the public body to fully get the reimbursement of the advance maintenance payments.

Philippe Lortie pointed out that it would be difficult to obtain significant changes of the 2007 Hague Convention, now that 51 States have ratified it. He therefore suggested that national legislators should better adapt their recovery systems to international law, e.g. through greater duties to cooperate on the part of the child or the custodial parent. *Sintija Lavska* from Latvia mentioned that Latvia was considering having the child authorise/empower the public body to assert claims on behalf of the child rather than in its own behalf, so that it can make better use of the possibilities offered by the Regulation and the Convention to individuals. It was agreed that this might be a good alternative, as far as national law allows.

6. DIFFICULTIES IN FIELD OF RECOGNITION AND ENFORCEMENT

The question of difficulties in the field of recognition and enforcement of maintenance orders by Public Bodies was raised by *Robert Fucik's* and *Niels Mc Fadden's* presentations. The REMO Unit does not send applications from Public Bodies in the sense of Art. 36 of the 2007 Hague Conventions but incoming applications from foreign Public Bodies are forwarded to MEBC in the usual way. Both *Robert Fucik* and *Neil Mc Fadden* highlighted the risk of double recovery when two creditors are involved and file applications separately. See for examples of multicreditor situations: *Robert Fucik*, p. 11.

Neil Mc Fadden also pointed out that arrears statements do not always make clear if it is the Public Body or the individual who is owed the arrears and whether there is an ongoing liability or only arrears. (*Neil Mc Fadden*, p. 14)

7. OUTLOOK

The outlook was presented by *Philippe Lortie*. It was agreed that the intervention of Public Bodies plays an important role in the fight against child poverty. It was also agreed that the situation of Public Bodies could be improved by the following measures:

- Better information of stakeholders on the variety of maintenance support systems and the particularities of the maintenance recovery by public bodies
- More states ratifying the 2007 Hague Convention
- Creation of a domestic place of jurisdiction for Public Bodies in the EU-Maintenance Regulation
- Increased support by central authorities regarding applications for establishment of a maintenance order and related special measures or increased cooperation between the public body and the child in order to better use the possibilities offered by the 2007 Convention or the Maintenance Regulation.
- Relaxation of data protection regulations to enable appropriate maintenance calculations at the stage of out of court recovery and order establishment (also in the interest of the debtor!)
- Access to low-cost procedures or exemption from costs for public bodies in cross border proceedings
- Especially for cases of enforcement through two creditors (the child and the public body): Creation of a multilingual form indicating the legal base for the subrogation and the repartition of the amounts due.

The Child Support Forum is pleased to have provided during the last four meetings an opportunity to raise awareness of the special aspects and to discuss current difficulties of the cross-border recovery of maintenance by public bodies. We see these first steps as the beginning of a dialogue between the relevant stakeholders. Participants, speakers and other interested stakeholders are welcome to use the e-mail address **childsupport@dijuf.de** to pursue this constructive exchange or rise further questions and suggestions that would further enhance the debate. In particular, it would be appreciated if other countries that have not yet participated in the Forum could submit a description of their national systems in

English so that the information is more easily accessible for research, practice and policy. The possibility of further meetings will be reviewed on a regular basis.

II. Contents of the Conference and Biographies

Special thanks go to our two moderators and speakers.

Moderation

Cinzia Peraro – University of Bergamo, Italy

Cinzia Peraro, PhD, is Associate Professor of European Union Law at the Department of Law of the University of Bergamo. Her main research areas cover EU law, institutional and policy matters, fundamental rights and EU private international law. She published articles on EU family law, covering children's rights and EU private international law instruments. She is a member of research teams in various European projects concerning civil judicial cooperation in family matters.

Diletta Danieli – University of Verona, Italy

Diletta Danieli holds a Ph.D. in European and International Legal Studies and is currently Associate Professor of European Union Law at the Law Department of the University of Verona. She conducts research in various areas of EU law, including the area of freedom, security and justice with particular regard to judicial cooperation in civil and family matters. She has authored publications in her fields of research, and has developed experience as a team member of research projects, many of them devoted to EU judicial cooperation in family matters.

Speakers

Isabelle Jäger-Maillet – German Institute for Youth Services and Family Law (DIJuF), Germany

“Tensions between public maintenance support, refinancing needs and debtor protection”

Isabelle Jäger-Maillet is coordinator of the Network “Child Support Worldwide” at the German Institute for Youth Human Services and Family Law (DIJuF). She has studied law in Bordeaux, France, where she comes from, and also holds a German law degree from the LMU Munich. Isabelle has been working for many years for German public bodies in the field of cross border maintenance recovery and is currently completing a PhD thesis on this topic.

Jozef Pacolet – Catholic University of Leuven, Belgium

“Maintenance support payments: An effective tool in the fight against child poverty in Belgium?”

Prof. Dr. Jozep Pacolet is Emeritus Professor with formal duties in the ‘Social and economic policy & social inclusion’ unit of the Research Institute for Work and Society (HIVA). He is Associate Professor of the Catholic University of Leuven. From 1983 until September 2017 he was head of the ‘Social and economic policy & social

inclusion' unit as well as research manager for the research team 'Economy and the welfare state'. At HIVA he has been conducting research on the relation between the economy and the welfare state, focusing on the relation between economy, ageing and social protection and the financing of the social security in Belgium and at European level.

Catherine Collombet – French Caisse Nationale d'Allocations Familiales, France

“The maintenance collection agencies, instruments of a policy to support single-parent families”

Catherine Collombet is Deputy Director of the French Caisse Nationale Française d'Allocations Familiales. She holds a master's degree in Economics of Social Policies and Human Resources and is a graduate of the French Nation Social Security School (Ecole Nationale de Sécurité Sociale). In May 2022, she published a study on alimony collection agencies, instruments of a policy to support single-parent families.

Robert Fucik – Federal Ministry of Justice, Austria

“The uncomfortable position of public bodies in the international legal framework”

Dr. Robert Fucik is head of the department dealing in particular with cross-border child abduction, maintenance, adoption, service of documents and taking of evidence at the Austrian Federal Ministry of Justice since 2005. Robert studied law in Vienna and was appointed as a judge before he was adjourned to the Federal Ministry of Justice. He takes part in the post-graduate education of magistrates, judges, lawyers and gives lectures at the University of Vienna's Law Faculty. He is a member of the editor's board of the Austrian legal journals ÖJZ and iFamZ.

Lorraine Alexander – Department for Work and Pensions, UK

“Recognition and enforcement of child maintenance decisions made by the Child Maintenance Service in England and Wales”

Lorraine Alexander works for the Child Maintenance Policy Team within the Department of Work and Pensions. Her current role is to provide government ministers, operational teams and external stakeholders with information and explanation of child maintenance legislation and policy intent which supports the delivery of child maintenance service across England, Wales and Scotland.

Neil Mc Fadden – Senior Team Leader (REMO), UK

“Recovery of Public Body applications received by REMO”

Neil McFadden is one of two Senior Team Leaders for the Reciprocal Enforcement of Maintenance Orders Unit (REMO), UK, since 2023. He holds a master's degree in Public Services Management from York University. After some short-term posts at

the Private Office in Whitehall, London, he joined the office of the Official Solicitor and Public Trustee (OSPT) to work in divorce litigation. Neil joined the REMO as Team Leader in 2013 and regularly attends international conferences to provide presentations or meet international colleagues at bilateral meetings. Neil has additional corporate roles including chairing recruitment panels and being an anti-bullying adviser for the Ministry of Justice.

Philippe Lortie – Permanent Bureau of the Hague Conference on Private International Law (HCCH), The Netherlands

“Maintenance recovery by public bodies: Room for improvement?”

Philippe Lortie joined the HCCH in 2001 as First Secretary. He is co-responsible for the International Family & Child Protection Law Division which includes the 1980 Child Abduction, 1996 Child Protection, 2000 Protection of Adults and 2007 Child Support Conventions and the 2007 Protocol on the Law Applicable to Maintenance Obligations. He is responsible for the International Hague Network of Judges, the Judges' Newsletter and e-Justice tools supporting HCCH Conventions such as e-Country Profiles, INCADAT and iSupport. Before joining the HCCH, from 1991 to 2001, Philippe was Legal Counsel at the Department of Justice of Canada, acting as Head of Canadian delegations to the HCCH, Unidroit and UNCITRAL. He is a member of the Québec Bar and holds degrees in Civil Law (LL.L.), Common Law (LL.B.) and International law (LL.M.).