

# Public Bodies a View from Austria

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# Provisions in the 2007 Maintenance Convention

“creditor” includes a public body

- acting in place of an individual to whom maintenance is owed or
  - one to which reimbursement is owed for benefits provided in place of maintenance
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- compare to 2009 EU Regulation
  - No equivalent in the 1956 New York Convention

# Public Bodies under Austrian Law (outgoing cases)

	Federal Republic	Regions
creditor	President of High Court	Administrative District Authority as Child Welfare Authority
Grounds for obligation	Reimbursement of Child Support in Advance	Full Upbringing Assistance
Starting point of right of the public body	After the end of legal representation of the Child	From the beginning Dependant on the duty of the parents
Basis for enforcement	Maintenance Order or agreement (subrogation) Document of amounts of arrears paid in advance by the President	Specific Order (or agreement) between Child Welfare authority and parent(s)

# Basics for Child Support in Advance

- Legal Source: „Unterhaltsvorschussgesetz“
- Legal concept
  - Either: Maintenance Order between Child and parent(s) + failed enforcement (Titelvorschuss)
  - Or: certain sums provided in a Law of social security (Richtsatzvorschuss)
- Only payment in advance; duty to reimburse
  - Debtor has to reimburse
  - Creditor might also get payments from debtor – those are eventually payable to the President
  - Legal representative has to care for recovery from the debtor

# Legal representation

- Before Child Support in Advance: caring parent (mostly)
- After Child Support in Advance: Child Welfare Authority
- After the end of Child Support in Advance: legal representation continues
- Under certain circumstances a Court's order might terminate the legal representation of the Child Welfare Authority
- After 18<sup>th</sup> birthday: the legal representation of the Child Welfare Authority ends automatically

# Duties of legal representative

- Recover maintenance
- Distribute incoming payments between Child and President
  - 1<sup>st</sup> Rank: current Child Support
  - 2<sup>nd</sup> Rank: arrears owed to the President
  - 3<sup>rd</sup> Rank: arrears owed to the Child
- Accountance: keeping payments and arrears updated and evident

# Orders

type	Child Support Order	Child support in Advance Order
between	Child and parent	<ul style="list-style-type: none"><li>• For granting: child and President</li><li>• For reimbursement: Child, parents, other carer, Child Welfare Authority</li></ul>
For recovery vs parent(s)	relevant	irrelevant
For evidence of subrogation	relevant	relevant

# Who is Creditor

	Before the age of 18	After 18 <sup>th</sup> birthday		
Creditor (subject to whom support is owed)	The minor Child	For current Maintenance	For arrears covered (but not yet reimbursed) by Child Support in Advance	For other arrears
		The major Child	President	The major Child
Legal representative (subject to whom support has to be paid)	The Child Welfare Authority	Self representing		



# Specific Provisions for the President

- Bear in mind: creditor is the State, represented by the President
- 4 Presidents (4 Regional High Courts):
  - Vienna: Vienna, Lower Austria and Burgenland (Eastern Austria)
  - Linz: for Upper Austria and Salzburg (Northern middle Austria)
  - Graz: for Styria and Carinthia (Southern middle Austria)
  - Innsbruck: for Tyrol and Vorarlberg (Western Austria)
- Who might act for the President
  - The president or a Judge of the High Court
  - The Recovery Unit of the Vienna High Court (for all four of the High Courts)
  - The Finance Procurator (Finanzprokurator – „Lawyer of the Republic“)
  - Any Lawyer
- Special provision regarding time limit (prescription). No prescription at all for Maintenance Obligations insofar as the President paid Support in Advance (Art 26 para 3 Child Support in Advance Act)

# Enforcement Proceedings after Subrogation

## **Outgoing cases**

- Depending on national Law of Enforcement
  - Either continuation
  - Or need for a new application

## **Incoming cases**

- Under Austrian Law:
  - Another person than the original creditor might seek for enforcement
  - With an additional authentic instrument establishing the person seeking enforcement as new creditor

# Problem: parallel creditors

	President	Child	
creditor	Arrears resulting from Child Support in Advance	Current Maintenance	Arrears resulting from
conditions	<ul style="list-style-type: none"> <li>paid for certain <b>period</b> and</li> </ul>		<ul style="list-style-type: none"> <li>other periods or</li> </ul>
	<ul style="list-style-type: none"> <li>paid in certain <b>amounts</b> and</li> </ul>		<ul style="list-style-type: none"> <li>exceeding the amount of Child Support in Advance</li> </ul>
	<ul style="list-style-type: none"> <li>not reimbursed yet</li> </ul>		

# The other Public Body: Region as Child Welfare Authority

## Full Upbringing Assistance

- for parents lacking the ability to bring the child up in their home, usually combined with the placement of the child in institutional care or with a foster family.
- Region pays for the upbringing in functionally similar way as parents.
- legal basis for the Regions: **order for reimbursement**, determined by
  - the financial burdens of the Region and
  - the (potential) maintenance obligation.
- do not have to pay more than they would have to pay as child Support.

# Legal Aid vs Special Recovery Unit

Granting legal aid	for recovering Maintenance owed to children under 21 In favour of the Child	for recovering other Maintenance In favour of the Child	for recovering Maintenance in favour of a public body
Means test	no	yes	no
appointing	a pro bono Lawyer	a pro bono Lawyer, if needed	The Recovery Unit of the Vienna High Court

Conclusion

**possible payments in advance and in lieu of the  
debtor**

**would not get lost  
in respect of debtors  
living in Austria**

Thank you for your attendance



