

Prof. (em.)Dr. Dieter

Martiny

Frankfurt (Oder)/Hamburg

Recovery of Maintenance in the
European Union and Worldwide
Heidelberg Conference 5 – 8 March 2013

Jurisdiction, recognition and enforcement in cases of reimbursement claims by public bodies

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A. Cross-border recovery of maintenance by public bodies

- Art. 64 European Maintenance Regulation of 2009
- Art. 36 Hague Maintenance Convention of 2007
- Art. 10 Hague Maintenance Protocol of 2007

B. Involvement of public bodies

Public authority or other organisation

- Acts in place of creditor
 - e.g. Dutch *Landelijk Bureau Inning Onderhoudsbijdragen (LBIO)*
- Provides benefits in place of maintenance
 - Social security benefits (social authorities),
advance maintenance payments (maintenance advance
payment office, guarantee fund)

C. Recovery of maintenance by public bodies

I. Applicability of Maintenance Regulation and Maintenance Convention 2007 to maintenance claims

II. Support of creditor

- Public body acts in place of a maintenance creditor
- Public body provides benefits in place of maintenance

III. Different kinds of reimbursement

1. Legal subrogation (*cessio legis*)

Maintenance claim passes to the public body.

E.g. basic security benefits (§ 33(1) Social Security Act II), social assistance (§ 94(1) Social Security Act XII), advance maintenance payments (§ 7(1) Maintenance Advancements Act), scholarship (§ 37(1) Federal Training Assistance Act)

2. Separate reimbursement claims

Separate claim for reimbursement of benefits paid in place of maintenance

IV. Separate claims for reimbursement of costs

- Separate claim (e.g. for institutional care)
- Is not a maintenance claim

V. Retransferred maintenance claims

- Voluntary assignment of the transferred claim to the creditor.
- E.g. possible under § 94(5)(1) Social Security Act XII, § 7(4)(2) Maintenance Advancements Act
- Privileged like the original maintenance claim.
Differing opinion: Reimbursement claim.

D. Jurisdiction

I. Grounds for jurisdiction under European Maintenance Regulation

- General jurisdiction
- Ancillary jurisdiction
- Choice of court
- Special jurisdiction

II. General jurisdiction

1. Habitual residence of the debtor (Art. 3(a) Maintenance Reg.)
2. Habitual residence of the creditor (Art. 3(b) Maintenance Reg.)? Dominant view: not for public bodies.

III. Andere Zuständigkeiten

Kommt die Auffangzuständigkeit (Art. 6) in Betracht?

Auch die Nutzung des Art. 7 (Notzuständigkeit)

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3. No ancillary jurisdiction (Art. 3(c)(d) Maintenance Reg.)

III. Other grounds for jurisdiction

- Choice of court (Art. 4)?
- Subsidiary jurisdiction (Art. 6)?
- *Forum necessitatis* (Art. 7)?

E. Recognition, declaration of enforceability and enforcement

I. Different situations

- Recognition and enforcement of foreign decisions between Contracting States of the Hague Convention 2007
- Recognition and enforcement of foreign decisions without exequatur between EU Contracting States of the Hague Protocol (Art. 17 ff. Maintenance Reg.)
- Exequatur procedure between EU non-Contracting States (Art. 23 ff. Maintenance Reg.)
- National procedural law

II. Recognition and enforcement

- For the purposes of an **application for recognition and declaration of enforceability of decisions** or for the purposes of **enforcement of decisions**, the term ‘creditor’ shall include a public body.
(Art. 64(1) Maintenance Reg., Art. 36(1) Maintenance Convention 2007)

III. Decision for the public body

Recognition and declaration of enforceability or claim enforcement of a **decision given against a debtor on the application of a public body** which claims payment of benefits provided in place of maintenance.

(Art. 64(3)(a) Maintenance Reg., Art. 36(3)(a) Maintenance Convention 2007)

IV. Decision for the original maintenance creditor

Recognition and declaration of enforceability or claim enforcement of a decision given **between a creditor and a debtor** to the extent of the benefits provided to the creditor in place of maintenance.

(Art. 64(3)(b) Maintenance Reg., Art. 36 Abs. (3)(b) Maintenance Convention 2007)

1. Position of the maintenance creditor after a transfer of the claim

Objections based on substantive law against the
claim to enforced

2. Position of the public body after a transfer of the claim

Decision in favour of the public body

F. Conclusion

- Improvement of maintenance enforcement
- Equality between creditor and public body only for recognition and enforcement
- Jurisdiction restricted
- National procedural law