



Newsletter 2022, No. 51

Newsletter of the Global Network: “Child Support Worldwide”

Dear network members and child support experts all over the world,

First Child Support Forum

The first Child Support Forum took place on June 1, 2022. On the initiative of the German Institute for Youth Services and Family Law (DIJuF, Germany), an online meeting was held, with representatives of Child Support Agencies from nine different EU countries (Belgium, Czech Republic, Denmark, Finland, France, Germany, Latvia, Lithuania and Sweden) in attendance. The representatives made presentations on their different national support and recovery systems in case of non-payment of maintenance. Representatives of the Hague Conference on Private International Law (HCCH), the German Federal Office of Justice, the National Child Support Enforcement Association (NCSEA) and the Universities of Verona and Bergamo also attended the session.

The Child Support Forum aims to strengthen the exchange between the various actors in cross-border maintenance recovery within the Child Support Worldwide Network. The inaugural meeting was as a first step towards identifying common ground and interests between the public bodies in attendance. A detailed report will be published on the CSW-Website in the coming weeks.

Special Commission on the Practical Operation of the 2007 Child Support Convention and 2007 Maintenance Obligations Protocol

From May 17 to May 19, 2022, the First Meeting of the Special Commission (SC) on the 2007 Child Support Convention and its Protocol was held in The Hague. The meeting was attended by more than 200 representatives of Contracting Parties and observers.

It was noted that the Convention as well as the Protocol are helpful instruments and that they are fit for their respective purpose. The importance of a uniform interpretation of the rules was stressed, especially in the interest of ensuring effective access to justice for persons seeking to recover maintenance. To that effect, it was underlined that the Explanatory Reports for both the 2007 Child Support Convention and its Protocol, the Practical Handbook for Caseworkers under the 2007 Child Support Convention, the Recommended Forms, the Guidance to complete the Mandatory and Recommended Forms under the 2007 Child Support Convention, the Implementation Checklist as well as the Country Profile, all serve as valuable tools for interpretation and implementation.



In addition, the following main Conclusions and Recommendations were adopted by the meeting of the SC:

- The SC encouraged requested States to provide legal assistance to public bodies.
- The SC recalled Article 2(1)(a), which provides that the 2007 Child Support Convention applies to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years without regard to the age of the applicant creditor at the time of the application.
- The SC reminded Contracting Parties that, at the stage of any proceedings for recognition and enforcement, the applicant (i.e., the creditor or the debtor) who, in the State of origin, has benefitted from free legal assistance shall be entitled to benefit, at least to the same extent, from free legal assistance as provided for by the law of the State addressed under the same circumstances (Art. 17(b)).
- The SC reminded States to take all appropriate measures in locating the respondent (particularly debtors) and obtaining information regarding the financial circumstances of debtors or creditors.
- The SC strongly encouraged Contracting Parties to remove, insofar as possible, any barriers to the use of abstracts or extracts of decisions in order to simplify the procedure for recognition and enforcement and make it more cost-effective.
- The SC encouraged Contracting Parties to accept, where possible, Recommended Forms under the 2007 Convention in their domestic procedures, also for the purpose of direct requests under Article 37.
- The SC encouraged more States to consider using iSupport and invited the Permanent Bureau to renew its efforts to ensure participants receive appropriate support in this regard.

Finally, reports were made by the experts and Working Groups. The full Conclusions and Recommendations are now available [here](#).

CJEU on habitual residence in case of wrongful removal (W.J., C-644/20)

According to Art. 3 of the 2007 Hague Protocol, maintenance obligations are governed by the law of the State in which the maintenance creditor habitually resides, unless the Protocol itself provides otherwise. According to Article 3(2) of the Protocol, the law applicable to maintenance obligations can be changed to the law of the new habitual residence of the creditor.

In the decision of May 13, 2022 the CJEU clarifies that the mere fact that a court of the Member State to which the child has been removed has ordered the return of the child to their State of habitual residence immediately before their wrongful removal does not preclude the child from establishing habitual residence in the territory of that Member State, for the purpose of maintenance recovery. As a result, the applicable maintenance law under Article 3 of the Hague Protocol may be the law of the State to which the child has been removed.

In its decision, the Court emphasises that the concept of habitual residence must be interpreted autonomously and uniformly for the purposes of the Hague Protocol (para. 62). This being said, the CJEU points out that the determination of habitual residence is factual. The advantage of this connection is that the maintenance obligation can be determined by taking into account the legal and factual conditions of the social environment of the country in which the creditor lives (para. 65). The presence in the territory of a particular State was the main factor. Consequently, following an assessment

of all the circumstances of the case, with due regard to the best interests of the child, the national court can consider the lawfulness of the removal or retention of the child and conclude whether or not the degree of stability of the child's presence in the territory of a Member State justifies the establishment of a new habitual residence in that State (para. 73).

The decision of the CJEU admittedly leads to the possibility of two different decisions with regard to the concept of habitual residence in relation to the same child in the same case with regard to two different matters in dispute (i.e., child abduction and child support). However, it seems right in view of the fact that maintenance is about securing the immediate needs of the child at the place where the child is located at the time. It should also be pointed out that this decision takes into account the fact that the parties to a maintenance proceeding and the parties to a custody proceeding are not always the same. The decision also highlights that an applicant child/maintenance creditor does not necessarily have the same interests as their parents.

The decision is available [here](#).

CSW-Newsletter – get involved!

Thank you for your feedback on the latest contributions!

You are kindly invited to continue sharing information with us regarding:

- Your national child support law and public supporting instruments,
- Private international law developments related to child support,
- The practice of cross-border recovery of child support in your State,
- Any events related to cross border recovery of child support.



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