

# MAINTENANCE OBLIGATION IN THE BRAZILIAN LAW SYSTEM

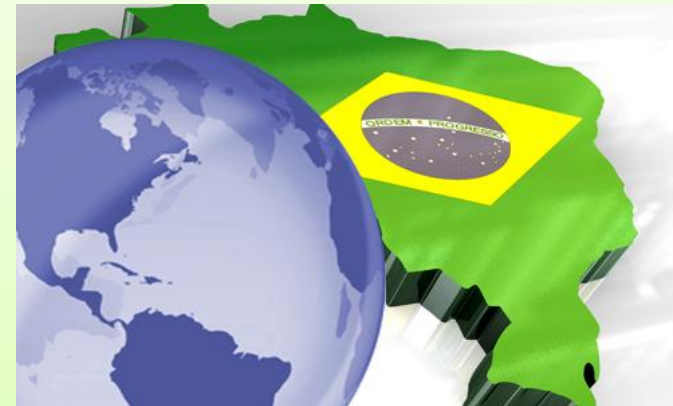
Preparing for the  
implementation of the 2007 Child  
Support Convention and its  
Protocol on the Law Applicable to  
Maintenance Obligations



# Brazilians abroad

- **According to Ministry of External Relations:**

- **Foreign-born population:**
  - **About 3 million.**
- **Tourist population:**
  - **About 3,5 million annually.**



# Concept of Maintenance Obligation

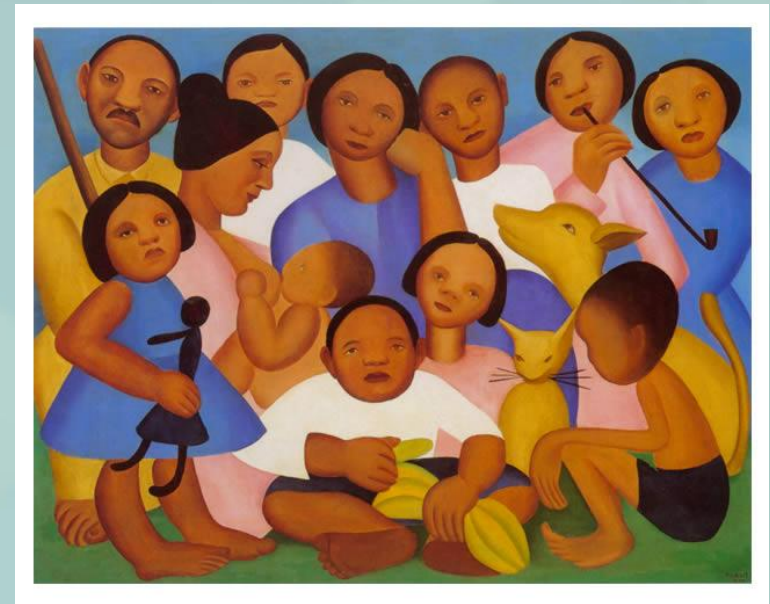
Recovery of Maintenance in the  
European Union and Worldwide  
Heidelberg Conference 5 – 8 March 2013



- Maintenance is due to those who have not sufficient assets or have no means for providing their maintenance by their own work e can be claimed to another person without embezzlement necessary for its sustenance (Civil Code, article 1695).

# Reciprocity Principle

- The right to maintenance is a reciprocal obligation between parents and children, and extended to all ascendants, descendants and second degree collateral relatives.
- (Civil Code, article 1696).



# Nature of Maintenance Obligation

The nature of maintenance is divided:

- ➡ **Necessary or natural maintenance:** comprises those for basic needs, the very survival of person, in accordance with articles 1694, § 2<sup>o</sup> and 1704 of Civil Code.
- ➡ **Appropriate or civil maintenance:** refers to the others necessities, for instance education and health benefits, as stated in Article 1694 of the Civil Code, that a person needs to live in a manner consistent with its standard of living.

# Jurisprudence

The Superior Court of Justice has decided:

➡ **Father and mother have a joint obligation:**  
and each of them assumes an independent  
status in relation to maintenance obligation  
(REsp 964.866).



➡ **Duration of child support:** The maintenance obligation is  
due to 18 years-old. However, courts have determined to  
pay up to 24 years old. (REsp 1.218.510). **Reasons:**  
necessity of adequate professional education (only  
undergraduate or technical studies) and also by proof of  
necessity.

# Jurisprudence

- **The Superior Court of Justice has decided:**
- **Grandparents' maintenance obligation:** it is subsidiary and complementary; the most remote relative will be demanded only in case of the inability of the closest to provide maintenance (REsp 1.211.314).



**Parents' right to maintenance obligation by sons and daughters – solidarity nature of the obligation when parents are old - based on The Statute of Elderly (Special law) .**  
(Resp 775.565)

# Jurisprudence

- The Superior Court of Justice has decided:
- Paternity Investigation lawsuit with child support – it can be claimed at residence of child and once upheld is due from the quote (Precedents n. 1 and 277/STJ).
- Spousal maintenance – it is exceptional and temporary. (REsp 933.355).



Cancellation of maintenance obligation – it is subject to a judicial decision, with the right to appeal (Precedent n. 358/STJ).



# Jurisprudence



- The Supreme Federal Court has decided:
- **Marriage equality (civil unions equality)** - legal recognition of same-sex marriage, which include social security benefits, adoption of children, maintenance obligation.

# Maintenance Recovery Proceedings

Recovery of Maintenance in the  
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- ➡ **Law n° 5.478 (25/July/1968)** - refers to proceeding for recovery of child support and others family maintenance.
- ➡ The judiciary system is organized into federal and state branches. Proceedings for maintenance recovery are taking before state Courts .
- ➡ Provisional measures for maintenance obligation may be established by judges until final decision.



# Maintenance Recovery Proceedings

- The Brazilian procedure for litigation involves some proceeding stated by law. In general, there are four phases for ordinary procedures :
  - a pleading stage (fase postulatória),
  - a conclusive opening order (despacho saneador),
  - an evidentiary stage (fase probatória) and
  - a decision-making stage (sentença).



# Enforcement of the Decision

- ➡ **Enforcement by means of income withholding**  
(article 734 of the Code of Civil Procedure )
- ➡ **Enforcement under the penalty of pledge**  
(article 735 of the Code of Civil Procedure)
- ➡ **Enforcement under the penalty of civil arrest**  
(article 733, paragraph 1 of the Code of Civil Procedure)

# International Maintenance Obligation

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## Brazilian Perspective

- International legal cooperation has been the milestone for promoting cross-border judicial disputes. It's based upon
  - ➡ **Multilateral treaties**
    - ➡ Convention on the Recovery Abroad of Maintenance
    - ➡ Inter-American Convention on Maintenance Obligation.
  - ➡ **Bilateral treaties**
  - ➡ **Reciprocity principle**

# Debtor lives abroad

- ▶ **Service of documents abroad:** letter rogatory (Treaties or Reciprocity)
- ▶ **Taking of evidence abroad:** letter rogatory (Treaties or Reciprocity)
- ▶ **Recognition and enforcement of a court order/decision:** MERCOSUR – letter rogatory (Treaties)
- ▶ **Establishment of a decision in the requested State:**  
The 1956 United Nations Convention on the Recovery of Maintenance from Abroad (Treaty)

# Creditor lives abroad

- ➡ **Service of documents abroad:** letter rogatory (Treaties or Reciprocity)
- ➡ **Taking of evidence abroad:** letter rogatory (Treaties or Reciprocity)
- ➡ **Recognition and enforcement of a court order/decision:** Recognition Action before the Superior Court of Justice (STJ). MERCOSUL - letter rogatory (Treaties)
- ➡ **Establishment of a decision in the requested State:** The 1956 United Nations Convention on the Recovery of Maintenance from Abroad (Treaty)

# Brazilian's Policy for Recovery of Maintenance

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- ▶ **Studying Group** for analysing both instruments, the Hague Convention and the Protocol – dialogue with academy

(Portaria SNJ n. 16/2009).



- ▶ **Inter-Ministerial Working Group** (Ministry of Justice (SNJ, CONJUR, SAL) and Ministry of External Relations (SBEG, CONJUR))

Portaria n. 500/2012 with participation of representative of judicial power and civil society.



# Access to Justice for All

- ➡ **Cross-border family's conflicts:** free legal assistance, may or shall include all means of providing it and also be assured for vulnerable person?
- ➡ **Local decisions with global effects:** new roles for central authorities?
- ➡ **International litispentence:** Article 90 – Code of Civil Procedure?
- ➡ **Enforcement measures:** states should provide enforcement of a decision which includes civil arrest?



# Access to Justice for All

- **Direct communication or request to competent authorities: *exequatur*, direct legal assistance and recognition of foreign decision procedures.**
- **Lower costs for transferring of small amounts or fee waivers for very low values: binding agreement among states?**
- **Costs of translation documents: high costs of translation, requirement must be translated to Portuguese.**



# Access to Justice for All

- *The effectiveness of persons' rights in a globalized world depends on its international access to justice wherever they are or where they have to do so.*
- *International maintenance obligation is based on human rights principles (dignity of human being and family solidarity); therefore states boundaries cannot be used for undermining any right.*

• **THANK YOU!**

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