

Summary of the Child Support Forum

ONLINE MEETING ON 23RD NOVEMBER 2022

I. Introduction

On The Hague Convention's fifteenth birthday, the Child Support Forum met for the second time.

The topic of the second meeting was “**Challenges of the international maintenance recovery by public bodies**”.¹ After the introductory speech held by Prof. em. Dr. Dieter Martiny, representatives of seven different Child Maintenance Agencies from Belgium, the Czech Republic, France, Germany, Latvia, Lithuania and Sweden presented their view of the difficulties occurring in the process of cross-border maintenance recovery. In addition, representatives of the Hague Conference on Private International Law, the American association NCSEA as well as the German Federal Office of Justice and the Universities of Verona and Bergamo took part in the session and the subsequent discussion.

This report summarises the contents of the presentations and comments. It was drafted by Isabelle Jäger-Maillet (DIJuF, Germany) with the participation of Tom Boelaert (FPS Finance, Belgium), Miroslav Šindler (Office for International Legal Protection of Children, Czech Republic), Aurélie Schaaf (ARIPA, France), Pauline Blanc (CAF de l'Ain), Sintija Lavska (Administration of the Maintenance Guarantee Fund, Latvia), Jurga Pačerinskaitė (Valstybinio Socialinio Draudimo Fondo Valdybos, Lithuania), Karin Honorato dos Santos (Försäkringskassan, Sweden), Diletta Danieli (University of Verona, Italy) and Cinzia Peraro (University of Bergamo, Italy).

The presentations showed that the challenges in the international enforcement of maintenance are often related to the collision of national particularities and international rules. Previous to the meeting, a list of possibly relevant questions had been circulated among the participants. They represented the base of the presentation for the majority of the participants.

Questions shared previous to the meeting:

- Who is the applicant of the cross-border application for establishment of an order/ for enforcement?
- In which cases do public bodies make use of the assistance of Central Authorities under the Regulation 4/2009 or the Hague Convention? Do they also file direct applications abroad? Do they cooperate with other public bodies or law firms?
- According to which law is the claim for reimbursement calculated (Art. 10/ Art. 11 Hague Protocol)?
- How can public institutions obtain information on the place of residence and financial circumstances of the debtor residing abroad (within the cooperation between Central Authorities or outside)?
- How can they obtain a maintenance order in cases where benefits can be granted without a maintenance order being available (international jurisdiction)?

¹ Like in the first CSF-report, for purposes of clarity of the document and uniformity of language use, the term **child support** means the child's right to receive money from the non-custodial parent. The term **maintenance support** means the benefits paid by states in lieu of child support when the non-custodial parent fails to pay it.

II. Challenges of the cross-border recovery of maintenance from the academic perspective- - Contribution by Prof. em. Dr. Dieter Martiny -

After a short introduction, Prof. em. Dr. Martiny gave an overview of the most important European, international and national legal sources and of the legal position of public bodies in the context of cross-border maintenance recovery. He then focussed on the questions of obtaining a maintenance order and getting assistance, having maintenance orders recognized and enforced. Finally, he made some remarks on effectiveness of proceedings and costs.

1. Introduction

Cross-border maintenance recovery with its different stages and involved institutions is generally a very complicated issue. The “Challenges of the international maintenance recovery by public bodies” is an aspect of this complex field. A public body has different and manifold tasks to fulfil. The activities of public bodies are important, but only one element in the respective process.

Despite the fact that there is an international and a European frame, the situation in the single Member States of the EU is different. Therefore, sharing experiences and practices is useful. A former report with a summary of June 2022 already listed some information on the respective national support systems and the underlying administrative structures for maintenance recovery.

2. European, international and national legal sources

The recovery process takes place in a field that is dominated by different rules of private law and social security law. For international recovery, there exists a certain framework of legal rules of different origin. The interaction of the rules of different origin is, however, sometimes complicated.

The EU Maintenance Regulation (EC) No. 4/2009 deals with jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. Art. 64 gives public bodies as applicants some rights in the context of recognition and enforcement. The public body can act like a maintenance creditor with certain rights.

Art. 36 para. 1 of the 2007 Child Support Convention also deals with international maintenance recovery and follows the same concept as the European Maintenance Regulation. The Maintenance Obligations Protocol of 2007 also deals with the law applicable regarding the recovery of maintenance. The extent of the obligation of a maintenance debtor is restricted by the law applicable to the maintenance obligation (Art. 11 (f) Hague Protocol).

National social security and public law provisions play an important role. They determine the legal position of the public body under national law.

For recognition and enforcement proceedings, many other special European, international and national rules apply to procedural details.

Problems of recovery may also occur in respect of Non-EU-States and Non-Members of the 2007 Hague Convention. Support for the recovery of maintenance is also necessary outside of the EU Regulation and the Hague Convention.

It may be mentioned that the old 1956 New York Convention on the Recovery of Maintenance Abroad has relevance for some countries. There is also some relevance of the 2007 Lugano Convention on jurisdiction and enforcement with respect to Switzerland.

3. Relevant questions of cross-border maintenance recovery by public bodies

a. Legal position of the public body in the framework of international rules

The basic idea of the European and international rules is to put the public body on an equal footing with a maintenance creditor to a certain degree, which means that the public body only has limited possibilities. In national law, there is generally a subrogation of rights (*cessio legis*: e.G. in Belgium, Denmark, Finland, France and Germany as well as in Sweden when a maintenance order already exists) after the payment of benefits or an administrative act grants the public body a legal position on which it can base its claim (Czech Republic and Sweden).

Under the Maintenance Regulation, for the purposes of an application for recognition and enforcement of decisions, the term ‘creditor’ includes a public body to which reimbursement is owed for benefits provided in place of maintenance (Art. 64 para. 1 Maintenance Regulation). The public body has to take the initiative.

Where a foreign order on reimbursement already exists, a public body may seek recognition or claim enforcement of a decision given against a debtor on the application of the public body which can claim payment of benefits provided in place of maintenance (Art. 64 para. 3 (a)). A public body may also seek recognition or claim enforcement of a maintenance decision given between the original creditor and a debtor to the extent of the benefits provided to the creditor in place of maintenance (Art. 64 para. 3 (b)).

Where no maintenance order exists, generally an application for reimbursement/establishment is necessary.

b. Applicable substantive law

An important issue is the determination of the law applicable to the reimbursement claim. The 2007 Hague Protocol deals with the applicable law on the merits of a maintenance obligation, generally the law of the habitual residence of the maintenance creditor. If a ‘favoured’ creditor, like a child, files an application with the competent authority of a State where the debtor has his habitual residence, the law of that forum will apply, unless the creditor is unable to obtain, by virtue of this law, maintenance from the debtor, in which case the law of the State of the habitual residence of the creditor shall again apply (Art. 4 para. 3 Hague Protocol). The extent of the obligation of the maintenance debtor, where the public body seeks reimbursement of benefits provided in place of maintenance is restricted by the law applicable to the maintenance obligation (Art. 11 (f)).

c. Calculation of the claim for reimbursement

The amount of reimbursement and – if there is no maintenance order yet – the amount of maintenance has to be calculated according to the applicable maintenance law. The basis on which the public body can claim reimbursement is its own law. The law applicable to the original maintenance claim is relevant for the calculation of the claim for reimbursement (Art. 10, Art. 11 lit. f Hague Protocol). This may also be foreign maintenance law.

d. Obtaining a maintenance order and assistance

Often it is necessary to obtain a court order which raises procedural questions. A special issue is the relationship with the national Central Authorities and the cooperation between the involved institutions. The public body has to be distinguished from the national Central Authorities.

In order to obtain a court order, the public body may make use of the assistance of Central Authorities under the Maintenance Regulation or the Hague Convention, however, according to the applicable special rules. The public bodies may also file a direct application abroad which can be costly, however. The public bodies can also cooperate with other public bodies or law firms.

e. Information on the place of residence and financial circumstances of the debtor abroad

Information on the debtor's whereabouts and his or her economic situation is crucial.

Information on the debtor can be available to the Central Authority (Art. 61 para. 2 lit. a and b MR). Access is, however, restricted to enforcement proceedings (Art. 53 par. 2 no. 2 MR). It is therefore interesting to know if a public institution can obtain information on the place of residence and financial circumstances of the debtor abroad (within the cooperation between Central Authorities or outside)?

f. Getting a maintenance order after granting benefits

The sixth question deals with the problem of how the public institutions can obtain a maintenance order in cases where benefits can be granted under national law without a maintenance order being available. Is there, for example, international jurisdiction in the state of origin?

g. Difficulties during recognition and enforcement proceedings

Recognition and enforcement of foreign maintenance orders can be based on the MR or the Hague Convention. Enforcement procedure as such (including debtor protection) follows national law. Here the question arises as to whether public institutions encounter any specific difficulties during the recognition and enforcement proceedings?

3. Effectiveness and costs

a. Costs of proceedings

Maintenance recovery is an expensive enterprise. Only a certain amount of expenses may be reimbursed. Public bodies do not enjoy any exemption of costs for conducting proceedings abroad.

It would be interesting to know which role the costs of proceedings play in the decision to recover maintenance.

What is the cost-benefit relationship of recovery efforts?

b. Training of staff

Use of expedient measures for recovery is of crucial importance. For the different tasks and proceedings, the staff of the public body should be trained to deal with cross-border cases (use of special forms etc). An effective specialization is useful.

4. Conclusion

Public bodies perform a wide range of tasks in the cross-border recovery of maintenance. They meet numerous difficult challenges on all levels of their work.

They have to make specific applications as creditors.

There are different stages of procedure for obtaining maintenance orders and for the recognition and enforcement of such orders.

Public bodies have a relatively weak position under the international and European rules.

The following summary of the national reports gives an overview of the different challenges maintenance support agencies face when recovering maintenance in cross-border cases.

III. National reports

1. Belgium

In Belgium, maintenance creditors proceed to the recovery of maintenance with the help of lawyers, bailiffs, or other professionals or they ask for help from the Maintenance Claims Service (SMC).

SMC recovers alimony and arrears on:

- Child maintenance
- Maintenance between former spouses
- Pays advances on child alimony and requires reimbursement of the maintenance support from the debtor.

In international cases, they mostly make use of the help of the Central Authority. The Federal Public Service Justice - Department of International Judicial Cooperation is the competent authority for outgoing and incoming requests concerning the cooperation in civil matters.

Applicant of the cross-border application for establishment of an order/ for enforcement can be the creditor or the SMC itself. SMC does not need to apply for establishment of maintenance orders as an order always exist before maintenance support can be paid.

Via FPS Justice as the Central Authority, FPS Finance submits requests for assistance in the recovery of maintenance claims and the advances made on maintenance claims abroad. These requests for assistance are mainly based on Regulation (EC) No. 4/2009. The requests are made on the basis of the 2007 Hague Convention only when the conditions for the application of the Regulation are not met. All requests are addressed directly to FPS Justice as the Central Authority. There is no cooperation between FPS Finance and other public bodies or legal representatives.

Outside of the EU Regulation and the 2007 Hague Convention, the 1956 New York Convention can be used, even though it is not applicable to applications filed by public bodies on their own behalf. In practice this Convention applies to public bodies when they act on the basis of a power of attorney given by the (individual) maintenance

creditor. Through this power of attorney, public bodies represent the creditor and therefore benefit from the New York Convention. Outside of the international agreements, no attempt of recovery takes place.

A Belgian decision or a foreign decision enforceable in Belgium determines the amount of the maintenance claim. It doesn't need to be calculated. In the event of non-payment, FPS Finance recovers the total amount of the maintenance claims from the debtor under the Belgian law of 21 February 2003 creating a Maintenance Claims Service within FPS Finance (Article 12). This includes maintenance support that has been paid. As the maintenance support amount paid is the amount mentioned in the order (or max. 175 €), there cannot be any deviation between the amount paid and the reimbursement amount.

Information about the debtor's place of residence and his/her financial circumstances can be obtained from abroad within the cooperation between Central Authorities or outside. The information can also be provided by the maintenance creditor. Failing that, cooperation between the Central Authorities sometimes makes it possible (depending on how the Central Authority applies the rules of privacy) to obtain this information.

In Belgium, public bodies encounter no significant difficulties during the recognition and enforcement proceeding.

As to the question of costs, recovery is always based on a strategy that has been defined by the administration, which stipulates that forced recovery can only take place if the debt is above a certain amount. Costs of proceeding are not taken into account.

Education of staff is an important issue. In Belgium, there are people and services that specialize in international debt recovery. As far as maintenance claims are concerned, the services concerned work in consultation with the FPS Justice.

2. Czech Republic

With respect to the Czech Republic, challenges in the cross-border recovery of maintenance were mentioned regarding the interpretation of provisions and of differences between international and domestic law. Foreign authorities may have difficulties in understanding some conceptions commonly used in Czech law. Typical examples are the time of expiration of the claim, the duration of benefit entitlement (children of full age, students), the different enforcement measures in the CZ legal system and other states. Furthermore, explaining the maintenance obligation and the indexation set in a judgement to foreign authorities might be difficult. Complex formulations cannot be accurately reproduced in the extracts of decision (annex I-IV of the Maintenance Regulation). According to the interstate Czech law, creditors often have different expectations regarding the possibilities of the foreign authority and it is difficult to explain these limitations to them.

When the Act on Substitute Maintenance for a Dependent Child and on Amendments to Certain Related Acts entered into force on July 1st, 2021, the Czech Republic had nearly no experience concerning the cross-border recovery of maintenance by its public body (the Ministry of Labor). As it is necessary to have taken all possible steps in relation to the particular state and case (in particular, an enforcement attempt must have failed and the failure must have been certified by the Czech enforcement authorities or, in cross-border cases, by the Czech Central Authority to obtain the payment of maintenance support, the financial circumstances of the debtor have been checked before the payment of maintenance support. Under these circumstances, the number of recovery cases introduced by the public body will probably remain quite low. Until now, the Office for International Legal Protection of Children issued only a few certificates in cases where enforcement failed completely but also where only a partial recovery of maintenance was possible.

The Ministry of Labor does not need to apply for establishment of maintenance orders as an order always exists before maintenance support can be paid.

A few figures:

New applications for maintenance recovery:

- Sent: 152 applications
- Received: 68 applications

Maintenance recovered

- Received from foreign countries 36 213 000 CZK (about 1.522.230 €)
- Sent to foreign countries 16 455 000 CZK (about 691.693 €)

Challenges of Maintenance recovery in cross border cases from the perspective of the Office for International Legal protection of Children in 2021:

- Service of documents (relevant provisions, delivery)
- Obtaining and verifying information from the creditor (e.g.: direct payments)
- Long ways of communication, making a quick reaction complicated especially in case of change of creditor, when the child turns 18. Children often don't know about the proceeding introduced by the custodial parent. The cooperation should continue fluently and shouldn't be interrupted or started from the beginning.
- Expectations of creditors are sometimes unrealistic In view of the limited possibilities of action available to the authorities involved.
- Obtaining information on the debtor's residence or income (legal income employer, legal property, registry of citizens, inquiry – welfare office, labor office, tax office, prison)
- Obtaining voluntary payments upon notice is the ideal case but does not occur very often.
- File a motion – lack of information concerning required documents, time-limits, expiration of rights, the right contact person or authority, difficulties in obtaining free legal assistance
- Legal proceeding – obstruction, time-limit (Debtors sometimes use the rights guaranteed for fair trial to protract the trial (hiding, not picking up mail, switching their legal representative, hiding their legal income) which can exhaust the creditor and cause him/her to give up.)
- Enforcement difficulties such as: Employer changed before legal force of decision, unseizable payments or assets.
- Currency differences: When is the maintenance debt fulfilled? With payment to the foreign authority or with payment of the foreign authority to the debtor? What is the law applicable to the fulfillment of debt?

3. France

In case of non-payment of child maintenance, CAF first tries to obtain an amicable solution. If it is not possible, CAF creates a new case and helps the creditor to obtain the required documents for a cross-border recovery case.

a. Proceeding

There are different ministries competent for the transmission of applications abroad.

- **The Ministry for Europe and Foreign Affairs:** for Regulation (EC) No. 4/2009, the Hague Convention and the New York Convention.
- **Ministry of Justice:** For countries that are signatories to a bilateral agreement with France (Benin, Canada (province of Quebec), Democratic Republic of Congo, Djibouti, Egypt, Senegal, Chad, Togo).
- **Countries not party to a convention:** the CAF sends notice of an amicable recovery procedure. If this procedure fails due to lack of legal instruments, no international recovery claim can be made, and a non-recoverable allowance is paid to the receiving parent.

b. Specialization of teams

It emerged that international recovery of claims required specialized knowledge to best meet the receiving parents' needs and to optimize the sometimes complex processing of these types of claims (numerous and specific cases, exchanges with ministries, significant support to the receiving parent).

Where the debtor lives abroad, all activities are centralized in one CAF (CAF de l'Ain). The team is specialized in cross-border recovery and relies on tools developed with the Ministries. Technical and strategic meetings take place between the main actors: the Ministry for Europe and Foreign Affairs, the national CAF and CAF de l'Ain as the specialized unit to discuss difficulties and provide solutions. Processes have also been developed for more regular exchanges and for specific cases (phone calls, e-Mails).

To help receiving parents to open a case and to assist with transmitting their claim to the competent ministries and the central authority concerned, work has been jointly carried out by the Ministry for Europe and Foreign Affairs, the CNAF (National Family Benefits Fund) and the CAF of the Ain département. This work resulted in the creation of shared tools, based on the European Regulation and international conventions relating to the recovery of maintenance claims, as well as jointly developed documents such as:

- A foreign recovery claim submitted by the creditor and accepted in lieu of a handwritten application (notably requested under the New York Convention)
- A standard power of attorney form completed by the creditor authorizing the CAF to act in their name
- A standard power of attorney form completed by the CAF authorizing the ministry and the central authority concerned to act in the name of the receiving parent and children over the age of 18
- To help to create a case, when instructed to recover the sums and when it is a creditor as may be the case (due to advance payment of maintenance)
- CAF fills in all the application forms and annexes (Annex VI of the European Regulation, HCCH forms, breakdown of sums owed, etc...)
- A certificate indicating how indexation is calculated for maintenance

c. Information on the debtor's circumstances

The national tools at the CAF's disposal do not provide information on the paying parent's residence and financial circumstances abroad. Some of this information may be indicated in the enforcement order establishing the maintenance claim. Sometimes, the receiving parent also has some information that he/she provides CAF with.

In other cases, the Ministry for Europe and Foreign Affairs can be contacted for information on the debtor's location (specific measures).

d. Difficulties encountered

Despite established processes, international instruments and the simplification of the establishment and transmission of claims, difficulties or obstacles still remain:

- Enforcement orders outside of judicial procedures:

Divorce settlements by mutual agreement carried out before a Notary Public (Issued in France) are documents that do not involve judicial courts. Yet, some documents, and notably those required under Regulation (EC) No. 4/2009 (Annexes) must be completed by the courts. The Ministry for Europe and Foreign Affairs informed us that it has contacted its Belgian and Swiss counterparts to obtain further information on the recognition of such decisions abroad.

In the meantime, the Ministry asks judges of family affairs to complete the necessary Annexes in the EU or for Switzerland (this appears to work less in large courts than in smaller courts) and, should they refuse, the parties must first request the Judge's confirmation of their divorce settlement by mutual agreement.

- Applicable requirements:

Various requirements apply depending on the Central Authority concerned and how the law develops in these countries, which prevents a comprehensive and stable list being drafted in this respect. Thus, and following exchanges with the ministries, the CAF transmits the entirety of the known debt and may make adjustments based on the requests made by the country in question.

- Varying effectiveness depending on the country concerned

The European Union and Switzerland are the countries in which recovery works best, unlike some countries party to the New York Convention such as Algeria or Morocco.

- Costs of proceeding:

CAF does not apply any management fees to this type of recovery procedure.

There are potential costs relating to documents required from the creditor: notification if not carried out, registered letter with acknowledgment of receipt sent to the courts or our agency, or significant financial costs when the creditor must travel to the country having rendered the legal decision to obtain any necessary documents (e.g.: Algeria).

The cost of translating certain documents is also a potential cost: the ministries ask CAF to send French translations as far as possible when the decision has been issued in a foreign country. If a translation can't be provided, the ministries translation services provide a translation, but they have very little means for this.

4. Germany

In Germany, challenges in the cross border recovery of maintenance by public bodies are closely related to the particularities of the maintenance support system described in June 2022. The main specificities are:

- The decentralization of the system, with an important number of local maintenance agencies.
- The two-track assistance in child support matters, which are the legal support, where the youth welfare office acts on behalf of the child and does not necessarily seek the reimbursement of maintenance support and the financial support provided through the payment of maintenance support. In this case, the youth welfare office is a public body within the meaning of Art. 64 of the Maintenance Regulation or Art. 36 of the 2007 Hague Convention as it becomes the creditor.
- The payment of maintenance support without the need of a maintenance order (similar systems seem to exist in Sweden and Latvia).

a. Calculation of the amount to be reimbursed to the public body

If there already is an order, it mostly determines the amount to be reimbursed. If there is no maintenance order, the amount of reimbursement is determined by the child's substantial maintenance claim, which needs to be calculated by the public body. The second case leads to most difficulties in cross border cases.

When no maintenance order exists, the amount of reimbursement is calculated according to German law as far as the child has his/her habitual residence in Germany. There are some exceptions where foreign maintenance law becomes applicable but it would go beyond the scope of this report and in practice the German public bodies often ignore those exceptions and apply German law for their calculations. As a consequence of the close relation between the substantial maintenance amount and the reimbursement amount according to the German Advance Maintenance Payments Act, the limitation rules of Art. 11 lit. f) of the Hague Protocol do not play a significant role in practice. This is also the case where the child's claim is subject to foreign law, as even there, the reimbursement amount cannot be higher than the substantial maintenance amount.

b. Obtaining information on the debtor's financial circumstances

One of the biggest challenges in the cross-border recovery of maintenance is obtaining information on the debtor's financial circumstances and sometimes his whereabouts. In order to enable them to obtain said information, the child's right to information (Section 1605 German Civil Code) is transferred to the German public bodies, along with the maintenance claim itself. Under German law, this right to information can be sued for. The difficulty is that in practice there is no possibility of enforcing it in cross-border cases.

Furthermore, specific measures according to the EU Maintenance Regulation or the 2007 Hague Convention are only open to public bodies if a maintenance order already exists, but not in preparation of a maintenance proceeding.

c. Consideration of purchasing price parities

Another point which makes the calculation quite complicated for the staff is that German case law requires maintenance creditors on the basis of Art. 14 of the Hague Protocol to consider the purchasing price parities between Germany and the debtor's state of residence. However, the case law is not very clear on the method until now. The high court (BGH) has allowed the use of statistics like Eurostat or the World Bank statistics but such general findings are always very global and do not take differences between cities and rural areas into account.

d. Obtaining a maintenance order

Due to the fact that the payment of maintenance support does not require the existence of a maintenance order, the next challenge is to obtain such an order on behalf of the public body itself.

The main question is where proceedings can be filed. As long as the child has his/her habitual residence in Germany, the CJEU allowed public bodies to introduce maintenance proceedings in Germany at the child's place of habitual residence according to Art. 3 b) of the EU-Maintenance Regulation in 2020. This was a very helpful decision in practice. Nevertheless, it is not helpful when the child no longer lives in Germany and in cases of enforcement in the US because of the reservation expressed by the US concerning creditor-based jurisdiction (Art. 20 sec. 1c), sec. 2) of the Hague Convention). If German Courts are not competent, neither the Maintenance Regulation nor the 2007 Hague Convention allow the assistance of Central Authorities to obtain the establishment of a support order. This application is only open to individuals. As a consequence, the only option is to file a direct application for establishment in the debtor's country of residence. Such applications are possible but mostly quite expensive, unless proceedings are free of costs like for example in Norway or Canada. In the US we (DIJuF) had only two cases in which maintenance agencies accepted to establish an amount to be reimbursed. In France, we have an application pending. A first hearing is going to take place in 2023. The main issue concerning this kind of applications is that in countries where the applicant needs to be represented by a lawyer the public bodies mostly refuse to take the cost risk and rather renounce the recovery. The second problem is that applications for establishment of a support order filed by a public body are quite rare. As a consequence, they are often confusing for the foreign courts, which are not used to dealing with them.

e. Enforcement issues

As for enforcement, the Maintenance Regulation and the 2007 Hague Convention have significantly facilitated the recovery of maintenance by public bodies. Issues are not of legal nature but are related to the general economic situation in the country of enforcement. Even in the EU, significant differences in salaries for example between Germany and Eastern Europe make the (full) reimbursement of maintenance support impossible in the majority of cases.

Outside of these instruments, enforcement remains difficult. In those cases, the German Youth Welfare Offices generally try to cooperate with the child via a so called "Recession of the maintenance claim to the child". It means that the maintenance claim is transferred back to the child via a contract in order for the child to recover both, his/her own maintenance and the amounts to be reimbursed to the public body.

Further difficulties arising even in the scope of the 2007 Hague Convention and the Maintenance Regulation are those related to the determination of the limitation status.

Furthermore, the forms do not always take the particularities of applications filed by public bodies into account and unfortunately the cooperation with certain Central Authorities, which are obviously not sufficiently staffed, remains difficult. Concerning this point, cooperation between public bodies could be a solution.

f. Costs of recovery

The question of costs is an important obstacle to the recovery of maintenance by public bodies as, from our experience, in practice they are not exempted from costs, even if they were granted an exemption from costs in the country

of origin. Thus, the recovery of maintenance is only free of costs in states where proceedings are free of costs for everyone.

g. Education of staff

Due to the federal state structure in Germany, caseworkers are only faced with cross-border cases a few times in their career. As a consequence, many of them are not aware of the specificities of cross-border cases and are inclined to consider these cases as not refundable. Many efforts still need to be made to inform them better and probably to improve the concentration of competences, as some small youth welfare offices do not have sufficient caseloads to train specialized staff. DIJUF supports the German Youth Welfare Offices when they need to recover maintenance abroad and would also be more than happy to support the Network Child Support Worldwide in providing a useful pool of information accessible to caseworkers.

5. Latvia

The Administration of the Maintenance Guarantee Fund as the Latvian institution that pays maintenance support can:

- 1) request the enforcement of an existing judicial maintenance order and apply for enforcement abroad on the basis of a substitution;
- 2) request the enforcement of an administrative deed issued by the AMGF when AMGF acts as a court under Annex X of the EU Maintenance Regulation when there is no existing judicial maintenance order.

In general, no problems are encountered. However, when there is a judicial maintenance order and AMGF substitutes the creditor (custodial parent/guardian), the substitution is only partial – it is limited to the amount of the maintenance support received by the creditor. It means that in some cases two requests for the enforcement of the same judicial order might be submitted – by the public body and by the natural person (custodial parent/guardian) - in respect of arrears claimed by each creditor separately. While the total amount of arrears does not exceed the amount of the court order, the distribution of the recovered payments might lead to an overpayment to one creditor and an outstanding debt to the other. To prevent this, AMGF communicates with the other creditor (custodial parent/guardian) and the requested central authority about the sums due to each creditor on a regular basis.

At the same time, AMGF is the central authority within the meaning of the EU Maintenance Regulation and the 2007 Hague Convention. This approach diminishes the administrative burden that might occur if extra communication on a national level between the public body and the local Central Authority is needed. It also allows the case workers of AMGF to gain a deeper understanding of both - the national procedure for granting maintenance support as well as the enforcement procedure of cross-border maintenance recovery. By specializing in both procedures, the case workers are more competent to provide services to the customers. The key principle is to implement one-stop-shop and to put less burden on the customers.

When possible, any exchange of information is conducted directly between the authorities. It means that, on a local level, AMGF can obtain information about the debtor's address, income and assets. If the debtor is a Latvian citizen who has moved abroad, he is obliged to notify the relevant institution of his new address. When the debtor is abroad, it can also be attempted to obtain the information through the Central Authorities.

Currently, AMGF does not recover maintenance outside the scope of the EU Maintenance Regulation and the 2007 Hague Convention. There are bilateral agreements with some countries that provide procedures for the recognition of the court decisions available to the creditors.

6. Lithuania

a. The Board of the State Social Insurance Fund under the Ministry of Social Security, specifically the Klaipėda Department, is not the applicant in cross-border applications for the establishment of an order, only for the enforcement.

b. The Klaipėda Department of the State Social Insurance Fund Board, which performs the functions of the Central Authority in accordance with the Maintenance Regulation and the 2007 Hague Convention, is the administrator of paid maintenance support. The Klaipėda Department of the State Social Insurance Fund Board directly applies to other Central Authorities of foreign countries for requests regarding reimbursement of child support benefits.

c. The Klaipėda Department of the Board of the State Social Insurance Fund applies for maintenance recovery exclusively in accordance with the EU Maintenance Regulation and the 2007 Convention. Outside of these instruments, no attempts of recovery take place. Recovery requests and/or requests to take precautionary measures and requests to provide additional information to Member States of the European Union, Member States of the European Economic Area or Switzerland, are submitted in accordance with Article 73, Part 2, Articles 75, 78, 79, 80, Article 81, Part 2, Articles 82, 83, 84 or 90 of Regulation (EC) No. 987/2009.

d. The amount of reimbursement is determined by national law. The amending Law on the Child Maintenance Fund of the Republic of Lithuania dated 21 June of 2022 sets the requirement to refund the amount of paid maintenance support, there is no requirement for additional compensation. Foreign law does not apply as maintenance support is paid in accordance with the laws of the Republic of Lithuania.

e. In order to obtain information about the debtor's whereabouts and financial circumstances, the Klaipėda Department of the State Social Insurance Fund Board submits a request for specific measures according to Regulation (EC) No. 4/2009 or the 2007 Hague Convention.

f. Maintenance support is not payable in the Republic of Lithuania without a maintenance order, which should be issued by a court or other administrative authority entitled to make decisions or maintenance orders. Thus, the question of obtaining an order is not relevant.

g. Difficulties relating to the declaration of enforceability and enforcement: Under the national law of the requested central authority, a statute of limitation applies to the decisions issued by the Klaipėda Department of the State Social Insurance Fund Board.

h. The Klaipėda Department of the State Social Insurance Fund Board is a benefits administrator entitled to issue a decision for maintenance support recovery by itself and the costs of proceeding are not applying. Concerning costs of recovery proceedings filed abroad, no notices of costs have been received until now from foreign Central or national enforcement Authorities. It is assumed that these costs are recovered from the debtors. This is also the procedure in Lithuania.

i. The Central Authority cooperates closely and jointly with the Ministry of Justice of the Republic of Lithuania, the institution of embassies of the Republic of Lithuania, the State Guaranteed Legal Aid Service and the courts to resolve

cross-border cases. Klaipėda Department is very thankful for the effective cooperation with the Central Authorities of foreign countries in solving the problems that have arisen.

7. Sweden

a. Who is the applicant of the cross border application for establishment of an order/ for enforcement?

If the debtor lives abroad, chapter 19, § 29 Social Insurance Code gives the Swedish Social Insurance Agency the right to step into the child's right to child support insofar as a child support order exists. In this case, Försäkringskassan is the applicant. If the order is for more than Försäkringskassan has paid out, the parent normally gives Försäkringskassan a power of attorney to help him or her to enforce the full amount. The money is then paid to the account of Försäkringskassan, which can take the equivalent of what was paid out in maintenance support and pay the support that exceeds that amount to the child.

If the child support amount is not established in an order, Försäkringskassan requires the creditor to obtain a child support decision. Otherwise, the maintenance support payments stop. In this case, the child is applicant.

b. In which cases do public bodies make use of the assistance of Central Authorities under Regulation (EC) No. 4/2009 or the Hague Convention? Do they also file direct applications abroad? Do they cooperate with other public bodies or law firms?

Enforcement measures are only attempted in states bound by international instruments. Försäkringskassan does not file direct applications with foreign authorities.

c. According to which law is the claim for reimbursement calculated (Art. 10/ Art. 11 Hague Protocol)?

The right to receive maintenance support is governed by Swedish law. If the child is entitled to maintenance support, he/she receives a set amount depending on the child's age (parents who do not live together - Försäkringskassan (forsakringskassan.se)).

Depending on the order of child support, the claim for reimbursement is either the amount paid out in maintenance support or the same amount that the order is set to.

d. How can public institutions obtain information on the place of residence and financial circumstances of the debtor abroad (within the cooperation between Central Authorities or outside)?

Information is often obtained from the creditor him/herself. Otherwise, it can be obtained within the framework of specific measures. Where there is no maintenance order, the child has to apply for the specific measures as the scope of Art. 64 of the Maintenance Regulation/ Art. 36 of the Hague Convention is not open.

e. How can they obtain a maintenance order in cases where benefits can be granted without a maintenance order being available (international jurisdiction)?

The child has to file the application for establishment of an order either in Sweden (Art. 3 b) of the EU Maintenance Regulation) or abroad (Art. 3 a) of the Maintenance Regulation. He/she can make use of the assistance of Central Authorities to obtain the order abroad.

8. Italy

The representatives of the universities of Bergamo and Verona additionally gave an overview of the benefits paid in Italy. Maintenance Support *stricto sensu* is only paid in the Italian provinces of Trento and Bolzano. In other provinces, social benefits are paid to support children but not financed by maintenance recovery measures.

a. Situation in the province of Trento:

For general references, see the following websites:

http://www.apapi.provincia.tn.it/Tutela_minori_donne/Anticipazione_assegno_mantenimento_tutela_minori/

<https://www.trentinofamiglia.it/Politiche-familiari/Interventi-economici-e-agevolazioni-tariffarie/Anticipazione-dell-assegno-di-mantenimento-a-tutela-dei-minori>)

aa. Legal basis

Article 28-bis of Provincial Law L.P. 12-7-1991 no. 14 provides for the payment of sums intended for child maintenance and not paid by the obligated parent within the terms and conditions established by the judicial authority. (For the new regulation of the advance and the effectiveness of the repeal of Article 28-bis see, respectively, Articles 35 and 53 of Provincial Law no. 13 of 27 July 2007 (Social Policies in the Province of Trento) and Article 22, paragraph 2, of LP 6/2020).

The maintenance support is governed:

- by the Regulation Implementing Article 28 bis of Provincial Law No 14 of 12 July 1991, concerning the advance payment of maintenance allowance for the protection of minors, approved by Decree No 4-III/Leg of the President of the Province of 12 February 2008,
- and by the Resolution of the Provincial Council No. 1280 of 23 May 2008, concerning the 'Advance payment of child support as provided for by Article 28 bis of Provincial Law no. 14 of 12 July 1991 - Criteria and parameters for ascertaining the family's economic condition (ICEF) and obligations to be fulfilled by the managing bodies and subsequent amendments and additions.

bb. Conditions for disbursement

- Both parents must have been resident in the Province of Trento and the judge's ruling on the child support allowance must be subsequent to the acquisition of such residence;
- Existence of an enforceable title, based on an order of the Italian judicial authority or of another State, establishing the amount and modalities of contribution to maintenance by the parent obliged to pay maintenance;
- Production of a duly served writ of summons, not complied with within ten days, or of the judgment declaring the bankruptcy of the companies owned by the maintenance obligor, constituted in a form other than a corporation;
- **subrogation by the applicant in favour of the Province** in its rights against the obligor, pursuant to Article 1201 of the Civil Code, and notifying the obligor thereof by registered letter with acknowledgement of receipt.

In addition:

- the custodial parent, provided that he/she is not cohabiting with the parent obliged to maintain the minor child, or another person who has custody of the minor child, may apply for the advance payment of the sums

earmarked for the maintenance of the minor child, if the latter, at the time of submitting the application, is resident in the Province of Trento and belongs to the applicant's household;

- at the time of application for advance payments, the economic and financial condition of the household to which the minor and the applicant belong must show situations of economic difficulty, measured on the basis of the ICEF indicator, and in any case must not exceed a value of 0.19.

cc. Amount and duration of maintenance support

The amount of the maintenance support is determined taking into account the number of minor children concerned by the payment of maintenance allowance and in any case not exceeding the amount established by the court order, within a maximum amount revalued annually by the Provincial Council (currently €325.61 per month). The maintenance support starts from the month following the month in which the application is submitted and lasts for the following twelve months. In the event that the child for whom the allowance has been granted reaches the age of 18, the allowance stops from the following month. The allowance is paid in monthly instalments. The monthly amount of the advance granted shall be automatically suspended if the defaulting parent resumes payment of child support to the receiving parent.

dd. Submission of application

The application for the payment of maintenance support shall be submitted to the **Provincial Agency for Supplementary Assistance and Welfare**, also through the **peripheral branches** of the Province. In order to ensure continuity in the payment of the advance also for the following twelve months, the interested party must submit a renewal application in the twelfth month of payment of the current advance.

b. Situation in the Province of Bolzano

For general references, see the following websites:

- https://www.provincia.bz.it/it/servizi-a-z.asp?bnsv_svid=1013593&bnsv_psvd=1013260
- <https://www.provincia.bz.it/famiglia-sociale-comunita/sociale/Default.asp>

aa. General description

This benefit is of great help to single-parent families in cases in which the obligated parent, within the terms and in the manner established by the judicial authority, does not pay the custodial parent of the minor child the relative maintenance allowance. To obtain maintenance support, the applying parent must file an application with the social district at his or her municipality of residence. Like all financial assistance benefits, the payment of the advance on maintenance allowance is also subject to the applicant's financial situation.

bb. Legislation

- Provincial Law No. 15 of 3 October 2003 'Anticipation of maintenance allowance for the protection of minors'.
- Decree No. 30 of the President of the Provincial Council of 11 August 2000, and subsequent amendments and additions

- 'Regulations concerning social economic assistance and payment of fees in social services'.
- Regulation on the unified survey of income and assets: Decree of the President of the Provincial Council no. 2 of 11 January 2011. For the maximum amount, see <https://civis.bz.it/seca-resource?id=1034462&serviceID=1013593&lang=it>

cc. Conditions for disbursement

1. The benefit shall be available to the parent or other person having custody of the minor, if the minor is a national of

(a) Italy or of a member State of the European Union who has been residing and habitually resident in the Province of Bolzano for at least one year

(b) of a non-European Union Member State or stateless person who has been residing and habitually resident in the Province of Bozen/Bolzano for at least five years

2. The custodial parent who lives with the maintenance debtor is not entitled to the benefit.

3. The following persons are entitled to social economic assistance benefits, provided they have been residing and habitually resident for at least twelve months in the Province of Bozen/Bolzano before submitting each application

- Italian citizens
- citizens of States belonging to the European Union;
- third-country nationals who hold an EU long-term residence permit issued in Italy;
- holders of refugee status
- holders of subsidiary protection status.

The following persons, after five years of stable and uninterrupted residence in the Province of Bozen/Bolzano, if legally residing in the national territory, also have access to social economic assistance benefits.

- third-country nationals;
- Stateless persons.

c. Special Region of Friuli Venezia Giulia – maintenance contributions –

For general references, see the following website:

<https://www.comune.trieste.it/it/servizi-9173/servizio-sociale-comunale-9196/adulti-contributi-ai-genitori-affidatari-per-mancato-versamento-somme-mantenimento-figli-minori-9260>

- The Special Region (*Regione Autonoma*) F.V.G. has issued regulations establishing the criteria and procedures for providing contributions to support the parent who has custody of the minor child or children, in cases of non-payment by the obligated parent, of the sums intended for the maintenance of the minor child or children within the terms and conditions established by the judicial authority.
- The contribution is granted to the parent, resident in the Municipality of Trieste, who has been entrusted by the judicial authority with the custody of the minor child(ren) and who does not receive the sums intended for the maintenance of the child(ren) from the obligated parent.

Requirements

- Being resident in the Municipality of Trieste
- Being foster parents
- Being in possession of an ISEE certification of ORDINARY type valid for facilitated services for the minor(s) in whose favour the application is submitted, not exceeding € 23.651,65 for 2022
- Timeframe and deadlines: within 90 days

d. Family benefits in Italy

For all of Italy, different family benefits have been introduced to protect single families from poverty.

A **State Fund** was set up in 2016 (Law 28 December 2015 n. 208) for paying maintenance to spouses in financial hardship who were unable to earn their own living and to any minor children living with them, and also to any severely disabled adult children, when the other spouse required to pay maintenance failed to do so.

In order to be paid this maintenance (by the Ministry of Justice (*Ministero della Giustizia*)), the party concerned should have submitted an application to the court where they live.

The payments from the Ministry of Justice were made in advance. The Ministry of Justice then recovered the sums owed from the defaulting spouse. This benefit could have been assimilated to maintenance support, but it was withdrawn in 2018.

Other benefits like the **Single and Universal Allowance for Children** (*Assegno Unico e Universale per i Figli*), created in 2022 (see the following website: <https://ec.europa.eu/social/main.jsp?catId=1116&langId=en&intPagelId=4617>) or the bonus 800 for separated or divorced parents also seek to reduce child poverty but are not financed by recovery measures against the maintenance debtor (see the following website: <https://www.gazzettaufficiale.it/eli/id/2022/10/26/22A06061/sg>).

It was noted that no public data is available

- on applications before the Italian Central Authority (based on the Convention or on the Regulation) in cross-border maintenance recovery
- on the involvement of public bodies in domestic or cross-border cases!

e. Determining the amount of maintenance (Art. 14 Hague Protocol)

Even if the applicable law provides otherwise, the needs of the creditor and the resources of the debtor as well as any compensation which the creditor was awarded in place of periodical maintenance payments shall be taken into account in determining the amount of maintenance.

Art. 14 is a substantial rule which is not often referred to in Italian case law but still applied in practice.

The consideration of purchasing power parity is an unresolved issue in Italian practice and is apparently not discussed. Occasionally, Italian decisions mention Art. 14 when determining the current amount of maintenance, after having established the law applicable to that obligation. More generally, it can be said that the material principles provided for in Art. 14 are complied with even where it is not expressly mentioned in the decision.

III. Comments / Results of the discussion

The following challenges have emerged from the discussions.

1. Public bodies as applicant/ maintenance creditors

Under Art. 64 of the Maintenance Regulation and Art. 36 of the 2007 Hague Convention public bodies are only on an equal footing with individuals for the purposes of applications for recognition and enforcement of maintenance orders. Within this framework, they also have the privilege to enforce a maintenance order existing between the creditor and the debtor. Furthermore, these provisions include equality with respect to applications for administrative assistance under Chapt. 7 of the Maintenance Regulation and Chapt. 3 of the Hague Convention as well as for specific measures but only for purposes of declaration of enforceability and enforcement, not for the purposes of establishment of a maintenance order. Domestic jurisdiction under Article 3(b) of the Maintenance Regulation exists only if the maintenance creditor has his habitual residence in the country.

Outside of the 1973 and 2007 Hague Conventions and the EU Maintenance Regulation, public bodies are “ordinary claimants”. They must address their applications to the competent authorities of the executing State. They need a maintenance order in their own name. Administrative assistance cannot be used to file proceedings abroad. In this regard, the meeting showed that public bodies rarely file proceedings outside of the EU or the member states of the 2007 Hague Convention.

Moreover, it became clear that numerous states recover the sums paid as maintenance support by helping the child to file an application (Sweden, France, Belgium, to a certain extent Germany) instead of applying themselves. In Sweden, the child remains the creditor despite the payment of maintenance support when the debtor lives abroad and no order exists. In Germany, public bodies have the possibility to transfer the claim back to the child on the basis of a trust agreement, in order for him/her to become a creditor again. The public body of the Czech Republic can decide whether the claim is transferred to the public body via an administrative decision or the child remains the creditor.

Outside of a cooperation with the child, public bodies have no other choice than to file direct applications to the competent national courts of the debtor’s place of residence when they seek the establishment of a maintenance order abroad. Nevertheless, this practice is not very common as most of the states participating in the meeting require the child to have obtained a maintenance order before receiving maintenance support. Furthermore, they are generally reluctant to take action without the help of the Central Authorities.

An interesting question is which law is applied in practice to the calculation of the reimbursement amount when public bodies file their applications abroad. From DIJuF's experience, *lex fori* applies in Canada and England, but these states are traditional advocates of the *lex fori* application. In a proceeding filed in France by a German public body, German law was applied as the child resided in Germany at the time the benefits were paid. It is unclear whether Art. 4 para. 3 can be used as a basis for calculating the public bodies’ reimbursement amount.

2. Assistance of the Central Authorities

According to the participants of the meeting, it appears that public bodies rarely file proceedings abroad without the help of the Central Authorities. Regarding France, a close cooperation between the specialized public body (CAF de l'Ain) and the Central Authority was described. In Germany, DIJuF has had a good experience with direct applications in different states.

In terms of challenges in cooperating with Central Authorities, the different conditions and documents required by the different Central Authorities were mentioned. Furthermore, the long communication channels were pointed out, when a quick reaction is sometimes necessary. Another point is the weak staffing of some central authorities, which can lead to considerable delays.

3. Law applicable to the claim for reimbursement

This question is ruled by Art. 10/ Art. 11 f) of the Hague Protocol. Nevertheless, these provisions do not seem to cause major problems. At the same time, they are not really observed by the public bodies.

One reason is probably the fact that most of the states participating in the child support forum grant maintenance support under the condition that a maintenance order already exists. Under these circumstances, the question of the calculation of the reimbursement is not relevant as the amount results from the maintenance order and automatically cannot be higher than the order itself.

Challenges in calculating the reimbursement amount were only mentioned in the German report, which particularly highlighted difficulties in taking purchasing power differences between the creditor's and the debtor's place of residence into account within the scope of Art. 14 of the Hague Protocol.

4. Obtaining information regarding the current place of residence and the financial circumstances of the debtor abroad

All participants agreed that the questions of the debtor's location as well as investigations regarding his/her financial circumstances are crucial for the recovery of maintenance. Nevertheless, they remain rather difficult to obtain. The first source of information is the creditor him/herself. The assistance of the Central Authorities within the framework of specific measures is only possible in preparation of an enforcement proceeding but not in view of the establishment of an order when no order exists. Participants mentioned that they only try to obtain information with the assistance of the Central Authorities.

It would be interesting to list what possibilities there are to find out information outside the special measures (national registration offices, electoral rolls, websites, etc.).

5. Challenges at the level of enforcement

- A first point which was mentioned was the different interpretation of legal provisions like limitation periods and the understanding of maintenance orders (Czech Republic).
- Furthermore, the enforcement of extrajudicial enforcement orders remains difficult, when this type of enforceable deeds does not exist in the state of enforcement (deeds established by German Youth Welfare

Offices, French extrajudicial divorce agreements). Their enforceability and the respect of the rights of defendants are regularly questioned.

- Currency differences and transfer fees can also lead to discussions between the parties. Currency differences particularly play a role in common law states, where not only the enforcement order but the due amount is converted and registered at a given point of time. The question of transfer fees often occurs in cases related to the US and Switzerland where payments are made to a national recovery agency and transferred by this agency to the creditor, after deduction of bank fees. A further discussion of this point could be interesting (what is the place of fulfilment?).
- As the EU-Maintenance Regulation and the 2007 Hague Convention have significantly facilitated the cross-border recognition and enforcement of maintenance orders, the most important obstacle to the recovery of maintenance is the economic situation, which can vary greatly between the state of payment of maintenance support and the state of recovery.
- Outside of these instruments, the success of enforcement measures introduced by children is different from a state to another. Switzerland is a good example of cooperation within the UN-Convention, Canadian Provinces also provide effective assistance. However, public bodies don't fall within the scope of the 1956 UN Convention and don't have other choice in those states than to cooperate with the child or file direct applications.
- The question of how to deal with the forms (abstracts of decision) was not addressed. It should perhaps be one topic of a future meeting.

6. Obtaining voluntary payments

The question of voluntary payments was addressed several times, but not in great depth. The elaboration of solutions could be discussed at another meeting.

7. Costs of proceedings, effective proceedings and education of staff

Several participants declared that the costs and the effectiveness of proceedings did not play an important role in their decision to introduce recovery measures. Nevertheless, the fact that most of the participants only introduce proceedings where the assistance of Central Authorities can be provided shows that the decision was taken not to decide in every single case whether steps should be undertaken or not but generally not to recover maintenance outside of the framework of administrative assistance. In Germany, the guidelines for the cross-border recovery of maintenance for public bodies recommend checking the costs-benefits-relationship in each case. For this reason, the question of costs is of vital significance.

Moreover, it was generally recognized that a specialization of the staff is necessary in view of the complexity of the field. In some states, the public body is even based in the same unit/organization as the Central Authority.

IV. Conclusion

The second Child Support Forum showed that some challenges in the cross-border recovery of maintenance are very specific to one or two states. This is the case when it comes to calculating the reimbursement amount and obtaining a maintenance order, which is only problematic when a support order does not exist and maintenance support is paid. On the other side, a whole list of common problems was worked out. Most of them could only be touched upon. The focus of the next meetings will be on going deeper into these questions and, in a further perspective, on working out approaches to improve cross-border maintenance enforcement by public authorities.

Heidelberg, 15th March 2023