

OUTLINE

HAGUE CHILD SUPPORT CONVENTION



The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance

Introduction

The Twenty-First Session of the Hague Conference on Private International Law closed in The Hague on 23 November 2007 with the signing of the Final Act of the Session,¹ which contains the text of the *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, and the *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*. The Final Act has been signed by seventy States.² Both of the new instruments were agreed by consensus. The completion of the two new instruments is the culmination of work which had begun in the 1990's with two formal reviews³ of the existing Hague Conventions concerning maintenance⁴ and, of the *New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance*.

How the Convention pursues its objectives

The object of the Convention is "to ensure the effective international recovery of child support and other forms of family maintenance".⁵ The Convention pursues these objectives by a combination of means:

- an efficient and responsive system of co-operation between Contracting States in the processing of international applications;
- a requirement that Contracting States make available applications for establishment and modification, as well as for recognition and enforcement, of maintenance decisions;
- provisions which ensure effective access to cross-border maintenance procedures;
- a broadly based system for the recognition and enforcement of maintenance decisions made in Contracting States;
- expedited and simplified procedures for recognition and enforcement; and
- a requirement of prompt and effective enforcement.

The Convention pays attention to many practical matters that can affect the efficiency with which international claims are pursued, for example, language requirements,⁶ standardised forms⁷ and exchange of information on national laws.⁸ It also allows and encourages the use of new information technologies to reduce the costs and delays which have in the past plagued international claims. The Convention builds on the strengths of existing international

¹ See Final Act of the Twenty-First Session, The Hague, 23 November 2007, at <www.hcch.net> under "Conventions", then Convention #38, then "Final Act of the Twenty-First Session".

² *Ibid.*

³ Special Commissions of November 1995 and April 1999 on the operation of the Hague Conventions relating to maintenance obligations and of the *New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance*.

⁴ The *Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children*; *Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children*; *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations*; and *Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations*.

⁵ Art. 1, *Chapeau*.

⁶ Art. 44.

⁷ A mandatory transmittal form will accompany all applications under Chapter III (Art. 12(2)). Forms for the applications themselves are recommended rather than mandatory (Art. 11(4)).

⁸ Art. 57. See below the *Pre-Convention requirements – provision of information on national laws and procedures* section of this article.

instruments, in particular the existing Hague Conventions,⁹ the *New York (United Nations) Convention of 1956 on the Recovery Abroad of Maintenance*, as well as several regional and inter-state or inter-provincial instruments and arrangements.¹⁰

Scope of the Convention

The whole of the Convention applies on a mandatory basis to child support cases.¹¹ Applications for the recognition and enforcement of spousal support when made with a claim for child support also come within the core scope of the Convention,¹² and all chapters of the Convention extend to them. Other claims for the recognition and enforcement of spousal support (*i.e.*, when not made in conjunction with a claim for child support) come within the compulsory scope of the Convention, but do not benefit from the provisions of Chapters II and III¹³ which establish the system of administrative co-operation via Central Authorities, and which also contain generous provisions for assistance in child support cases (see below). In addition, Contracting States may by declaration bring within the scope of the Convention (or any part of it) any other maintenance obligations arising from a family relationship, parentage, marriage or affinity.¹⁴

The processing of applications

Most applications for child support are likely to be processed through the system of Central Authorities established under the Convention. In many countries, the case-specific functions of the Central Authority will be carried out by child support agencies or authorities operating centrally or regionally.¹⁵ The primary role of such authorities will be to transmit and receive applications and to initiate or facilitate the institution of proceedings.¹⁶ Other functions¹⁷ include assistance in locating a debtor or creditor or obtaining information about the resources of either; encouraging amicable solutions with a view to voluntary payment; facilitating ongoing enforcement, as well as the collection and transfer of maintenance payments; assistance in establishing parentage where necessary for support purposes; and help in obtaining any necessary provisional measures. These functions will mostly be carried out in the context of a specific maintenance application, but certain services (*e.g.*, location of the debtor or assets) may be requested in order to determine whether it is worth bringing an application.¹⁸

Effective access to procedures

The Convention is remarkable for the emphasis which is placed on “effective access” to procedures, recognising that small financial obstacles confronting an impecunious creditor may deter the bringing of an international claim. The provisions in the Convention, particularly with regard to the provision of free legal assistance in child support cases, go much further than any previous Hague Convention to ensure that the international procedures will be genuinely accessible.¹⁹ The resource implications in Contracting States were viewed by negotiators in the light of the considerable savings in social support costs than can accrue from the effective enforcement of private support obligations.

⁹ *Supra*, note 4.

¹⁰ Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters; Council Regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters; Inter-American Convention of 15 July 1989 on support obligations; the Uniform Interstate Family Support Act (USA) of 1996; in Canada legislation such as the Inter-Jurisdictional Support Orders Act 2001 (Manitoba) based on uniform legislation; Reciprocal Enforcement of Maintenance Orders (REMO).

¹¹ In the words of Art. 2(1) *a*), “the maintenance obligations arising from a parent-child relationship towards a person under the age of 21.” However, a Contracting State may by reservation reduce the age to 18 (Art. 2(2)).

¹² Art. 2(1) *b*).

¹³ Art. 2(1) *c*).

¹⁴ Art. 2(3).

¹⁵ Art. 4.

¹⁶ Art. 6(1).

¹⁷ For the full list see Art. 6(2).

¹⁸ Art. 7.

¹⁹ See Articles 14–17.

Recognition and enforcement of existing decisions

The bases for recognising and enforcing maintenance decisions of other Contracting States under the Convention are broad.²⁰ The habitual residence of either the respondent or the creditor in the State of origin when proceedings were initiated, are likely to be the principal bases in practice. A reservation in respect of creditor's jurisdiction is possible,²¹ but any State making such a reservation will in return be obliged to recognise foreign decisions made in factual circumstances which confer or would have conferred jurisdiction on its own authorities to award maintenance.²²

The detailed procedures set out in the Convention regulating the procedure on an application for recognition and enforcement represent a considerable advance on the 1973 Hague Convention, in which this matter was left to be regulated largely by the law of the State addressed. It is by now well understood that cumbersome procedures at the stage of recognition and enforcement – including any extensive *ex officio* review – may cause serious delays and costs and place unjustified additional burdens on a creditor. The procedure, which is set out in Article 23, limits *ex officio* review to the ground of public policy; it rules out submissions by the parties at the initial stage when the foreign decision is registered or declared enforceable; it allows for a challenge by either party to the decision on registration, but within a strict time period and on limited grounds; it also supports, as a general principle, the idea that any further appeal should not have the effect of staying enforcement.

Because procedures whereby foreign decisions are registered for enforcement or declared enforceable are not familiar to certain States in which applications for recognition and enforcement go directly to the court for a decision, the Convention also provides an alternative procedure on an application for recognition and enforcement, which Contracting States may opt for by declaration.²³ This alternative procedure is also designed to ensure that procedures are expeditious, that the grounds on which the court addressed may review a foreign decision of its own motion are limited, and that the onus of raising certain defences will rest on the respondent. However, in these last two respects the alternative procedure is not as strict as the principal procedure.

'Decisions' and 'maintenance arrangements'

The definition of a decision for the purposes of recognition and enforcement includes a settlement or agreement concluded before or approved by a judicial or administrative authority. It may also include automatic adjustment by indexation, a requirement to pay arrears, retroactive maintenance, interest payable and a determination of costs and expenses.²⁴

Moreover, the Convention provides for the recognition and enforcement of 'maintenance arrangements',²⁵ which include agreements as to maintenance drawn up in the form of an authentic instrument or otherwise authenticated by, or concluded or registered or filed with a competent authority.

Enforcement under internal law

Another traditional preserve of national or internal law into which the new Convention tentatively advances is that of enforcement. Enforcement is to be "prompt"²⁶ and the enforcement measures

²⁰ For the full list of bases, see Art. 20.

²¹ Art. 20(2).

²² Art. 20(3).

²³ See Art. 24.

²⁴ Art. 19(1).

²⁵ Art. 30.

²⁶ Art. 32(2).

made available must be "effective".²⁷ The burden that is imposed on an applicant when a separate application for enforcement is required is removed. Also, the requirements concerning the provision by Contracting States of "effective access" to procedures (see below) extend to enforcement procedures.

Pre-Convention requirements – provision of information on national laws and procedures

An unusual feature of the Convention is the more extensive requirements for the provision of information on national laws and procedures at the time of ratification or accession. The requirement is to provide a description of laws and procedures concerning maintenance obligations, a description of how the newly Contracting State will meet its obligations under Article 6 (which concerns the functions of Central Authorities), a description of how it will provide effective access to procedures as required by Article 14, as well as a description of its enforcement rules and procedures. The importance of these requirements concerning information provisions has been further underlined by the detailed work that has already been carried out to develop a standardised format for the provision of such information - the so-called "Country Profile".²⁸

Conclusion

An Explanatory Report on the Convention and a Checklist on the implementation of the Convention have been completed and are available on the Hague Conference website. A Practical Handbook for caseworkers under the 2007 Child Support Convention is currently being finalised. Work, which is already advanced, will continue on the development of standardised forms for applications under the Convention, and on the Country Profile mentioned above. Work will also continue on the development of an automated case-management system, iSupport, which will further assist cooperation, efficiency and consistency in the processing of applications. All of this work is being carried out with a view to exploiting to the maximum the opportunities presented by new technologies.

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²⁷ Art. 34(1).

²⁸ Referred to in Art. 57(2).