



Ombudsman of the Republic of Latvia

National regulations of formal child maintenance administration in Poland and Baltic states

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Introduction

During the Annual meeting of Estonian, Latvian, Lithuanian, and Polish Ombudspersons for children (hereafter - Ombudspersons meeting) which took place in Riga, 1.-2. of March, 2017, the participating representatives of national children rights institutions agreed to carry out a joint study on the topic what they all agreed is currently the most topical for all participating countries – national regulations on child maintenance administration. The Ombudsman's Office of the Republic of Latvia took the charge to coordinate the study and present results during the next Ombudspersons meeting in Warsaw, 2018.

The child support is an important human right (both of the child and the parent who cares for the child) and it is important to develop comparative studies on different national regulatory frameworks that aim to improve child maintenance. The continued maintenance for the child in cases if parent does not share the same household with the child is crucial for sustainable development of inclusive society, particularly taking into the account the increase of divorced families and single parent families, as well as increasing migration of European population which results in multi-national births and families with multiple residence countries. This study provides with a good regional example (as it is cross-country study of Poland and Baltic States) which can be further expanded to a larger country report.

This study overlooks and compares existing legislation and practices of child maintenance administration. The aim of this study is to gather a brief comparison of child maintenance administration systems in four countries (Estonia, Latvia, Lithuania and Poland) to bring out the best practices.

The study consists of four parts. First part overlooks and compares the national regulations on child maintenance. Second part analyses the administration of child maintenance by state and in civil proceedings. Third part looks at measures of enforcement. In the end the summary of the best practices and questions for further discussions are presented.

1. National Regulations on Child Maintenance

1.1. Estonia

In Estonia a minor child (up to 18 years) is entitled to receive maintenance¹. This right is also extended to a child who is acquiring basic, secondary or higher education or formal vocational education as an adult but not more than until he or she attains 21 years of age (Family Law Act, 97).

The amount on maintenance is determined based on the needs and usual lifestyle of the child entitled to receive maintenance. Upon determining maintenance, all the needs of the child, including the expenses relating to education and vocational training corresponding to his or her abilities and leanings, and, in the case of a minor dependant, the expenses relating to raising him or her, must be taken into account.

A court may order maintenance as a fixed amount or as a variable amount by determining in advance the bases for the calculation of the amount of maintenance. The law does not differentiate the amount of maintenance according to age. The amount of monthly maintenance for one child may not be less than half of the minimum monthly wage established by the Government (Family Law Act, 101) In 2017 the minimum monthly wage is 470 € brutto.

As a general rule a parent cannot be released from the obligation to provide maintenance to their minor child. If a parent is in a situation where he/she is unable to provide maintenance to the child without damaging his/her own usual maintenance, he or she shall use the assets at his/her disposal for the maintenance of himself/herself and his/her child similarly (Family Law Act, 102 (2)).

With good reason, however, a court may reduce the amount of maintenance to less than the absolute minimum amount (half of the minimum wage). A good reason is, inter alia, incapacity to work or a situation where a parent has another child who would be financially less secure than the child for whom the parent was ordered to pay maintenance in the minimum amount.

1.2. Latvia

Parents, commensurate to their abilities and financial state, have a duty to maintain the child. Such duty lies upon the father and the mother until the time the child is able to provide for

¹ The term in Estonian law is “*elatis*”

himself. Disputes regarding the means of maintenance for the child are settled by the court. The duty to provide for the maintenance of the child does not terminate if the child is separated from the family or does not live together with one of the parents or with both parents. If children have their own property, but that owned by their parents does not suffice to cover the expenditures necessary for the maintenance of the children, then these expenditures may be covered from the income derived from the property of the children; if such income does not suffice, then part of the property of the children may be used, but only with the permission of the custody institution. If the parents are absent or they are not able to maintain the child, this duty lies in equal shares upon the grandparents. If the financial state of the grandparents is unequal, a court may specify for them the maintenance duty commensurate with the financial state of each (Civil Law, Article 179). The minimal amount of means of maintenance, which is the duty of each of the parents to ensure for the child irrespective of his or her ability to maintain the child and their financial state, is determined by the government taking into account the minimum monthly salary and the age of the child. Currently it is 25% of Minimum wage for children up to 7 years and 30% for children aged 7 - 18 years (Cabinet Law Nr.37).

There are no age limits in Latvian normative acts for a child to be eligible for maintenance. However according the court rulings, the maintenance is usually given to the child up to 24 years of age if he/she continues to study. This is based on the court's interpretation that the legal composition of the first paragraph of Article 179 of the Civil Law "until the time the child is able to provide for itself" is interpreted in accordance with Article 19 of the Law On State Pensions, that "persons, who have not reached 24 years of age [...] be considered as family members not having the capacity to work, if they [...] are studying at general, vocational education institutions, colleges or higher education institutions in full time studies, except the time when the person has stopped studies" (see Senate judgment of 14 March 2001 in Case Nr.SK C-144/2001). This means that Article 179 of the Civil Law is translated in such a way that a child who learns full time of the average or higher education institution and is not over 24 years of age is considered incapable of supplying himself. Consequently, parents are obliged to maintain a child. By contrast, if a child is older than 24 years old and continues to learn, it is perceivable that the child is able to supply himself and the parents are no more obliged to pay maintenance (Senate judgment of 7 January 2015 in Case Nr.SK C-14782015).

There are no minimal amount of maintenance that needs to be paid to the major child. The court may rule that the child's expense is too wasteful for a student and thus rule a smaller amount than the actual expenses of the child.

1.3. Lithuania

Parents are obliged to maintain their underage (up to 18 years) children. (Lithuanian Civil Code, Art. 3. 192). The procedure and form of maintenance is determined by the mutual agreement of the parents. The exact amount of the maintenance is not set by law. The amount for maintenance must comply with the needs of the child and the financial situation of his parents; it must ensure the existence of conditions necessary for the child's development. Both parents must provide maintenance to their underage children in accordance with their financial situation (Lithuanian Civil Code, Art. 3.192).

The case law indicates that the indicative criteria for satisfying the child's basic needs is the maintenance of the minimum wage (currently – 380 Eur/month), which parents must share in half, i.e. each parent must provide 190 Eur per month for the needs of the child. The Supreme Court of the Republic of Lithuania has indicated that in case of any doubts, all the circumstances must be evaluated in the best interests of the child; therefore, in the case of limited parental financial opportunities to maintain a child, it determines half the amount of the minimum monthly salary, i.e. 190 Eur. If the maintenance was awarded in periodical payments, the maintenance amount must be indexed annually in accordance with the inflation rates in the procedure established by the Government (Lithuanian Civil Code, Art. 3.208) If the parents (or one of the parents) fail in the duty to maintain their underage child, the court may issue a maintenance order until the child reaches 18 years of age, except in cases when the child is determined incapacity due to his disability (Lithuanian Civil Code, Art. 3.198). The maintenance amount must be used equally for all the children except in cases where objective reasons (illness, etc.) demand a departure from the principle of equality (Lithuanian Civil Code, Art. 3.198). The amount of maintenance is not dependent on child's age, however in case of changing circumstances or if there are additional expenses related to the care for the child (illness, injury, special needs, etc.), it is possible to apply to the court for changing the amount of maintenance (Lithuanian Civil Code, Art. 3.201).

Parents (if they have possibility) are also obliged to maintain their adult children who are studying a secondary school program, or a formal vocational education program (to achieve first qualification) or studying a permanent study program at a higher education institution (university, college) and are no older than 24 years old, if they are in need of maintenance, according to their wealth, income, opportunities to receive income and other important circumstances (Lithuanian Civil Code, Art. 3.192¹). If parents (or one of the parents) do not fulfil the obligation to maintain their adult child, a child has a right to apply to the court for a maintenance order. The court, when deciding on the award of maintenance and its size, takes into account financial, family and other relevant circumstances of adult child and his parents.

However, parents are not obliged to maintain their adult children who are seeking higher education or vocational qualification not for the first time.

If the person obliged to pay maintenance dies, the duty of maintenance passes to his or her successors within the limits of the inherited property (Lithuanian Civil Code, Art. 3.196)

The child himself, the child's parent, the state institution for the protection of the child's rights or a public prosecutor can apply to the court for maintenance (Lithuanian Civil Code, Art. 3.201). Maintenance of a child might be awarded in the following ways: periodical monthly payments, a certain sum or award of certain property. In making a maintenance order in respect of two or more children, the court determines a payment amount sufficient to meet at least the minimal needs of all the children. There are no possibilities for a parent to be relieved from duty of maintenance to his minor children. (Lithuanian Civil Code, Art. 3.195). The parents' duty to maintain their underage children retains after the separation of the children from their parents or the limitation of parental authority except in cases where the child is adopted.

1.4. Poland

Obligatory child maintenance by parents is settled in the Act of 25 February 1964 the Family and Guardianship Code. Maintenance may be settled on the basis of the party's free will, an agreement between the parties or as a result of court proceedings.

Parents are obliged to pay maintenance to the benefit of the child who is not yet capable of maintaining himself or herself fully on his or her own, unless the income from the child's property is enough to cover the costs of the child's maintenance and upbringing (Family and Guardianship Code, Article 133 § 1).

The scope of maintenance benefit depends on the reasonable and justified needs of the child and on the economic potential of the obliged person (Family and Guardianship Code, Article 135 § 1). The court evaluates each case in terms of the obliged person's potential to maintain his or her child, taking into consideration the current economic status (the financial condition) of the obliged person. Parents may evade payment of maintenance for their major child if this payment is a burden too heavy for them or if the child does not make any effort to gain economic independence.

Conclusions

Estonia and Latvia have a minimum amount of child maintenance regulated by law. Both in Estonian case it is half of minimum wage, in Latvia – is a quarter of minimum wage for children up to 7 years, and around one third for children aged 7-18 years. Only Latvia

differentiates the maintenance amount by age – rest of the countries do not differentiate a maintenance amount according child's age.

The analysed countries presents two ways how child maintenance is regulated – by age or by the capacity to provide for himself. Lithuania and Estonia regulates that the maintenance is paid up to 18 years, except in cases if the child continues his studies (up to 21 years in Estonia and 24 years in Lithuania (if it is his first post-secondary education)).

In case of Latvia and Poland most important criteria is not the age of the child but his incapacity to work. In Latvia according the rulings of Supreme Court, this “incapacity to work” ends when the child reaches 24 years if he continues his full time studies and does not work. Both Latvia and Poland also allows use child's property as maintenance source in case if parents does not how sufficient means.

The legislative framework of Latvia, Lithuania and Poland provides disabled children who are not able to work to be still eligible for the maintenance also after they attain their majority.

In case of Latvia there are no exceptions on minimum amount – every parent must pay this amount regardless of their income, health or other children he must provide for. In turn in Estonia a court may reduce the amount of maintenance to less than the absolute minimum amount if there is a sound reason (e.g. incapacity to work or a situation where a parent has another child who would be financially less secure than the child for whom the parent was ordered to pay maintenance in the minimum amount). This provides more equality for those children who are in direct care of the parent and thus are not eligible for the minimum maintenance (as they live together with the parent).

2. Administration of child maintenance by state and in civil proceedings

2.1. Definitions used in legal framework

Estonia

Child maintenance: Maintenance is generally provided by making periodic payments of money. With good reason, an obligated person may request that he or she be allowed to provide maintenance in another manner. A parent of a minor child shall perform the obligation to maintain the child by paying support primarily if the parent does not live together with the child

or does not participate in rising of the child. The parent living together with the child shall use the support in the interests of the child.

Debtor (for child maintenance): Adult ascendants and descendants related in the first and second degree are required to provide maintenance.

Latvia

Applicant - a parent of a child or guardian who takes care of the child and who has submitted an application to the Administration of the Maintenance Guarantee Fund regarding the disbursement of maintenance, or a person of legal age who has submitted an application to the Administration of the Maintenance Guarantee Fund regarding the disbursement of maintenance and continues to acquire basic education, secondary education, vocational education or specialised education in the Republic of Latvia (Maintenance Guarantee Fund Law, Section 1.3).

Debtor - a parent who has been imposed a duty to pay maintenance to his or her child by a decision of the Administration of the Maintenance Guarantee Fund, a court judgment or a notarial deed providing for an agreement on periodical maintenance payments and must be enforced according to the procedures for enforcing court judgments (hereinafter - the agreement on maintenance), and instead of whom maintenance payments are covered from the Maintenance Guarantee Fund due to the reason that he or she does not provide the minimum amount of maintenance (Maintenance Guarantee Fund Law, Section 1.2).

Maintenance - monthly expenses of supporting a child which each parent has the duty to provide to his or her child irrespective of his or her ability to support the child and his or her financial condition, and the minimum amount of which has been determined by the Cabinet on the basis of Section 179, Paragraph five of The Civil Law (Maintenance Guarantee Fund Law, Section 1.3).

Lithuania

Child maintenance funds - funds for the maintenance of a child, which must be awarded by a person in accordance with a court decision or a child (children) maintenance contract approved by the court and which are paid on a regular basis once a month.

Debtor (for child maintenance) - a debtor is a person who, by a court judgment or a child maintenance agreement, is required to pay monthly child benefits (child support), but does not execute the judgment or pay all the amounts awarded by the court.

Poland:

Plaintiff - in civil cases, a person entitled to maintenance becomes the plaintiff. Most often, if one of the parents claims maintenance on behalf of his or her child, it is considered that the child is the plaintiff and give a note that the child is represented by the parent.

Debtor - a person obliged to pay maintenance under an enforcement order (e.g. A legally binding court judgement of agreement made before court with a warrant of execution) against whom the enforcement procedure proved to be ineffective.

2.2. Civil procedure

Estonia

A claim for maintenance can be filed with a court either as an action (*hagi*) in ordinary civil court proceedings or as a petition for application of expedited procedure (*avalduks maksekäsu kiirmenetluses*) (Code of Civil Procedure, Article 483 (1)).

In expedited procedure, the court adjudicates a petition for application of expedited procedure in a matter of a payment order within ten working days after the receipt thereof. For adjudicating an action, the law does not give a deadline, the court has to solve the case without a delay, but the actual duration depends on the complexity of the case.

The child (child's representative) may request securing an action by the court (*hagi tagamine*) before solving the case. An action may be secured by imposing an obligation on the defendant to pay maintenance during the time of the proceedings. The court has to solve the petition for securing an action not later than on the working day following the date of submission of the petition (Code of Civil Procedure, Article 377; 378 (3); 384(1)).

Latvia

If the mother or father do not care about the child and, during negotiation, it is not possible to agree on the provision of maintenance for their child, one of the parents must claim maintenance through the court (Civil Law, Article 179). For civil proceedings it does not matter whenever the parents are married or not and whenever they live together or are separated. The fact that parents live in a single house and are married is not an obstacle to claim maintenance. The only foundation is if one or both parents are not providing for their child.

In the case of maintenance claims, a person may bring the claim in court not only by the defendant's, but also after claimant's place of residence. This is very important from the financial aspect, as for the claimant it might be difficult to follow the court in the place of residence of defendant.

The claimant must explain and prove (if the amount exceeds general amount for maintenance) the amount claimed in court for child maintenance (with invoices, cheques, etc).

Generally, maintenance claims are considered relatively quickly because all cases affecting the rights of the child are examined or at least should be dealt first. At the same time, the applicant must count on a certain amount of time around 3 to 6 months. The court proceeding will be longer if the maintenance is requested together with the claim for divorce and the regulations for access rights. In cases where maintenance is necessary immediately, the Civil Procedure Law has the possibility to request a interim measures - to take a decision which will be in force until the case is concluded with a court judgment. Such request must be justified before the court.

Lithuania

While the case is pending, the court might issue a ruling and set the temporary maintenance (Civil Code, Art. 3.196, part 2). The court decides on the application of interim measures not later than within 3 working days from the date of receipt of the request. In exceptional cases, when it is necessary to collect additional data, within 7 working days from the date of receipt (Code of Civil Procedure, Article 147).

Based on the information provided in the annual report of civil cases of first instance in 2016, the duration of majority of the proceedings in cases of child's maintenance was up to 6 months (4930 cases), 6 to 12 months – 1093, 12 months and more (392 cases).

Poland

Competent courts are those which have jurisdiction over the place of residence of the child or the person obliged to pay maintenance. In case the maintenance is adjudicated in the course of divorce proceedings involving spouses who have common children, the district court is the competent one. In the procedure, the regulations of the Act of 17 November 1964, the Code of Civil Procedure are applied.

Mother, father, legal carer are the persons entitled to claim child maintenance in court proceedings.

The parent must prove the origin of the child by attaching the child's birth certificate to the lawsuit. The lawsuit must present justified costs of child maintenance and the economic potential and property of the person obliged to provide maintenance payment. It is not the real income of the obliged person (or lack of this income) but the potential income and the property of the obliged person that determine the level of maintenance payment.

Conclusions

In all four countries in case if the parents of the child cannot reach an agreement, the level of maintenance must be defined by court (the due sum may be also settled under a court agreement).

The duration of the court proceedings varies and can last. As common to civil proceedings the duration depends on the complexity of the dispute, requirements and the requests of the parties provided during the proceedings. The court may also take interim measures concerning the child maintenance.

The claimant must present justified costs for requested child maintenance, particularly in cases if the claim is higher than minimum amount set by national regulations or in cases if it corresponds to average living expenses.

2.3. National institution for guaranteed child maintenance funding

National debt

	Latvia ² (2016)	Lithuania ³ (2017)	Poland ⁴
How many children receive state administrated child maintenance	33934 (9.6%)	22701 (4,38 %)	Around one million (almost every tenth child and a young person up to 25 years of age)
Debtors	37353	35000	-
Total debt to the state	197,5 million EUR	121,2 million. EUR	2,4 billion EUR
Effective enforcements (%)	4 295 638 (2%)	5,33%	6%

² Statistical data is available from the Maintenance Guarantee Fund Public Overview 2016, available at: http://www.ugf.gov.lv/files/publiskie_parskati/UGFA_publ_parsk_2016.pdf, [Accessed 20 May 2018]

³ Statistical data provided on 27 October 2017 by The Administrator of the Child Maintenance Fund under the Ministry of Social Security and Labor

⁴ Data provided by Ombudsman for children of the Republic of Poland, October 2017.

Poland, Lithuania and Latvia all display a notable amount of total debt to the state of the parents who does not comply with their duty to pay maintenance. In cases of Latvia and Poland every tenth child does not receive his/hers due maintenance.

Lithuania and Poland is somewhat more efficient than Latvia enacting enforcements from the debtors.

For those children whose parents do not pay maintenance, it is essential that state steps in and secures their wellbeing. However there needs to be a well-functioning mechanism how to ensure that parents fulfil their parental obligation and pay maintenance to their child sufficiently and in time.

Estonia

From 1 January 2017 the system of state guaranteed maintenance allowance (elatisabi) was initiated. The purpose of maintenance allowance is to ensure provision of maintenance by the state to a child if the obligated person does not perform the maintenance obligation during the time of court proceedings or enforcement proceedings.

The state provides for a maintenance allowance for children entitled to maintenance in case the debtor fails to pay the minimum amount of maintenance. Maintenance allowance is paid during court proceedings or during enforcement proceedings. The amount of maintenance allowance during court proceedings for one child is 100 € per calendar month.

Maintenance allowance during enforcement proceedings must be paid on the basis of a court decision ordering payment of maintenance or a decision of an administrative authority considered equal to a court decision. The amount of maintenance allowance during enforcement proceedings for one child is up to 100 € per calendar month and it must be paid on the basis of the amount of maintenance paid by the debtor.

Maintenance allowance during court proceedings must be paid for 150 days as of the date of making the ruling on proposal for payment or the ruling on securing an action obligating the parent to pay maintenance.

Maintenance allowance during enforcement proceedings must be paid if four months have passed from the opening of an enforcement file for the collection of maintenance and after that arrears have arisen from the first day of the calendar month until the last day of the calendar month. (Family Benefit Act, § 49 (3), § 54 (1), § 50 (2)).

Latvia

The Maintenance Guarantee Fund (hereinafter - the Fund) was established in August 2004. The purpose of founded Fund was to ensure the implementation of the right of a child to social security and to promote the acquisition of education by a child. By establishing the Fund for disbursement of the minimum maintenance, provided that the child acquires education in the Republic of Latvia and either one or both parents of the child fail to provide maintenance (Maintenance Guarantee Fund, Article 2).

The Fund is the amount of resources provided for in the State budget. The Fund Administration is a direct administrative authority which is subject to the control of the Ministry of Justice. The resources of the Fund are used for providing a child with maintenance until he or she attains legal age and also persons of legal age, provided that they continue to acquire basic education, secondary education, vocational education or specialised education in the Republic of Latvia, but not longer than until attainment of the age of 21 years.

The Fund can pay maintenance in two cases – according the court ruling (if the parent does not carry out it) or if the parent who cares for the child turns directly to the Fund (since April 2017). In the second case the caring parent can have only the minimum amount of Maintenance. The procedure lengths up to six months. If the parent wishes to claim larger sum, he must then turn to court (Maintenance Guarantee Fund, Article 3).

The amount of the maintenance paid by Fund is equal to the minimum amount of the maintenance that is set according to national regulations (Maintenance Guarantee Fund, Article 179). However, considering that in the year 2018 minimum wage have been increased considerably (from 380 EUR to 430 EUR), the amount paid by Fund have not been increased accordingly, but instead Transitional provision was introduced which determined that the minimum amount of nationally regulated maintenance will be reached gradually in following three years⁵ (Maintenance Guarantee Fund, Transitional provisions, Article 9). This is not the first time when such transitional provision have been introduced into the Maintenance Guarantee Fund Law, similar case was in year 2010, when because of Global financial crisis and following austerity measures the minimum amount of maintenance paid by the Fund was reduced significantly. This resulted in a constitutional case where the Constitutional Court of the Republic of Latvia ruled that such transitional provision is not against constitution and the maintenance obligation is primely the responsibility of parents. The Constitutional Court also noted, that a reasonable balance between protection of legitimate expectations derived from

⁵ reaching 107.50 EUR for children up to 7 years and 129 EUR for children aged 7-18 (or 21 given that they continue their secondary or vocational education) in year 2020. Currently the minimum maintenance amount paid by state is 98,90 EUR for children up to 7 years and 118,25 EUR for children aged 7-18 (or 21 given that they continue their secondary or vocational education).

the Maintenance Guarantee Fund Law and ensuring of interests of the society must be observed. Court thus concluded that when adopting the Transitional provisions, the legislator was basing on rational and substantiated considerations and has ensured the rights of all children who have the right to receive support from the Fund. By reducing the amount of child support to be disbursed, it is possible to disburse them to each child who has the right to receive social support from the state in the form of child support. Consequently, the benefit gained by the society from such Transitional provision is greater than the detriment done to rights and legal interests of a person (Judgment of Constitutional Court, 2011).

Lithuania

Children's Maintenance Fund was established in 2008, based the regulation of Civil code, that the state maintains underage children receiving no maintenance from their parents or adult close relatives who are in a position to maintain the child (Civil code, Article 3.204)

The state pays the child care allowance when he does not receive an awarded maintenance for more than a month, or receives only a part of it (when maintenance is awarded by the court decision or court-approved child maintenance agreement). When a child receives only a part of awarded maintenance, the difference between the awarded sum and debtor's paid sum is paid. In both cases the monthly allowance per child can not exceed the amount of 1.5 Basic Social Benefit (i.e. 57 Eur)

Fund benefits are paid as long as the child is entitled to maintenance awarded by the court decision or court-approved child maintenance agreement, but does not receive it or receives only part of the maintenance (Child Maintenance Fund, Act 3). The maintenance is paid until child reaches 18 years and the child must reside in the Republic of Lithuania. The maintenance is paid as well for the disabled offspring over 18 years of age who became disabled before turning 18 years of age and who does not receive the maintenance or part of maintenance established in accordance with the decision of the court.

Poland

It is the obligation of the state to support poor persons who are not capable of satisfying their needs on their own and do not receive relevant support from persons obliged to provide maintenance to them. Granting and paying benefits from the maintenance fund is a task appointed to the local administrative units (gminy) as part of governmental administration. The maintenance fund grants the benefits to the person entitled to maintenance if enforcement of the maintenance proved to be ineffective (it becomes ineffective after 2 months of non-payment). Payment of benefits from the maintenance fund, costs related to this service and costs of

measures undertaken against the debtors are financed in the form of earmarked subsidies from the state budget for family benefits.

Benefits from the maintenance fund are to be paid back by the debtor. The maintenance debtor is obliged to pay back to the relevant body (administrative unit) the due sums equal to sums paid to the entitled person along with statutory interest rate. 40% of the sum paid back by the debtor becomes the income of the administrative body and the remaining 60% of this sum and the interest rate become the income of the state.

Upon establishing the right to benefit from the maintenance fund, the family members' income for the calendar year proceeding the benefit period is taken into consideration. Families whose monthly net income per person does not exceed the sum of 170 EUR are entitled to receive benefits from the maintenance fund. Since 2008, this level of income has not changed. The sum of the benefit from the maintenance fund is limited. The benefit may be received in the sum equal to the level of adjudicated maintenance benefit but not higher than 118 EUR per person.

In order to apply for the benefit, the entitled person or his or her statutory representative must file an application (the form is available on the internet site of the Ministry of Family, Labour and Social Policy). The application is filed directly to the local administration unit office (urząd gminy), the municipal office or the social service centre having jurisdiction over the place of residence of the entitled person. The applicant must attach a certificate issued by the body running the enforcement proceedings saying that the proceedings proved to be ineffective.

The entitled person may apply for benefits from the maintenance fund until the age of 18 (or 25 if he or she is a student of a higher school or university). If the entitled person is the holder of a certificate of severe disability, the benefit is paid without any time or age limit. Persons who have entered into marriage or have been placed in any institution of all day care or foster care are not entitled to receive the benefit.

The procedure is closed by issuing an administrative decision within 30 days from the day the application was filed and all documents completed. The benefit is granted for the period from 1 October of the current year to 30 September of the following year.

Conclusions

Latvia (2004) and Lithuania (2008) first have introduced guaranteed maintenance allowance. In some cases there are settled certain preconditions – for example in Lithuania a child must permanently residence in country. In case of Latvia a child must attend educational institution in the territory of Latvia.

In Poland maintenance allowance is more as social benefit, paid accordingly the income of the whole family (and not for the mere obstacle that it is impossible to enforce maintenance payment from the debtor).

Only in Latvia guaranteed maintenance allowance corresponds to the minimum amount of maintenance allowance set by national regulations.

Lithuania and Poland provides maintenance also for disabled major descendants.

Since 2017 in Latvia the maintenance can be claimed through the Maintenance fund thus easing the procedure and shortening the duration of the procedure.

2.4. Measures of enforcement

Estonia

In an enforcement proceedings regarding the maintenance, the bailiff may use all the general enforcement methods stipulated in the Code of Enforcement Procedure. In case of financial claims, as the claim for maintenance, the main method of enforcement is seizure and sale of property of the debtor (as one of the first means, the bank account of the debtor is seized and the bailiff may collect payment form the bank account of the debtor). A claim can be satisfied out of the money received from the sale of the property.

In addition to the above general measures taken by the bailiff, there is a number of special measures that can be taken in order to enforce the maintenance claim. If a debtor fails to regularly pay maintenance within three months in the course of the enforcement proceedings initiated for collection of maintenance and a bailiff fails to collect it out of the assets of the debtor, a court may, with the consent of the claimant and based on an application of the bailiff, to which the warning of the debtor preceded, suspend by a regulation and without a term the following rights and the validity of the following authorisations:

- 1) hunting rights;
- 2) right to drive power-driven vehicles;
- 3) weapons permits and acquisition permits for weapons;
- 4) right to drive recreational craft and personal water craft;
- 5) fishing cards.

Violation of obligation to provide maintenance to child is a **criminal offence** according to the Penal Code. A parent who knowingly evades payment of monthly maintenance ordered by a court to his or her child of less than eighteen years of age or to his or her child who has attained

the age of majority but is incapacitated for work and needs assistance is punishable by a pecuniary punishment or up to one year's imprisonment.

Latvia

Similarly as in Estonia, in Latvia the bailiff may use all the general enforcement measures stipulated in the Civil Procedure Law. This includes seizing and selling the movable and immovable property of a debtor, including the property in the possession of other persons and intangible property, and seizing wage or other payments or income of the debtor, seizing deposits in credit institutions or with other payment service providers (Civil Procedure Law, Section 557).

In addition to the above general measures taken by the bailiff, there is also two special measures that can be taken in order to enforce the maintenance claim, but they are enforced not by court as in case of Estonia, but by the Maintenance Guarantee Fund.

First enforcement activity organised by Maintenance Guarantee Fund was the publication of the information about the debtor (Maintenance Guarantee Fund Law, Section 7). At the beginning this information was available to everyone (publicised on internet), however, Constitutional court established that it is against the constitutional right for private life securement but the unlawful act was constituted not against the debtor but against the child of the debtor – whose parent's identity as well as fact that his parent does not provide for him was made public (Constitutional Court, 2016). Consequently currently this information is available only upon official electronic request, providing the personal data of the debtor.

Another enforcement available for Maintenance Guarantee Fund is the prohibition for a debtor to use a driving licence for motor and water vehicles (Maintenance Guarantee Fund Law, Section 7).

Avoiding of maintenance of the child according to the Criminal Law is a criminal offence. For a person who commits avoiding, the caring for and providing maintenance to his or her parents, grandparents, children, grandchildren, or other persons, if such an obligation has been imposed by a court judgement or the decision of a judge the applicable punishment is a temporary deprivation of liberty or community service, or a fine (Criminal Law, Section 170).

Lithuania

In Lithuania as well there are coercive enforcement measures under Art. 624 Code of Civil Procedure. They include:

- 1) exaction from the debtor's funds and property or from his property rights;
- 2) exaction from the debtor's property and pecuniary amounts placed with other persons;

- 3) prohibiting other persons from handing over to the debtor money, property or perform any other obligations for the debtor;
- 4) taking of the documents proving the debtor's rights;
- 5) exaction from the debtor's wage, pension, scholarship or other income;
- 6) taking of particular property items indicated in the court judgment from the debtor and conveyance thereof to the judgment creditor.

In addition to the enforcement measures laid down in the Code of Civil Procedure, criminal liability for avoidance to maintain a child might be applicable to the debtor (Criminal Code, Art.164).

The Administrator of the Child Maintenance Fund has the right to demand a pre-trial investigation on debtor's criminal liability for avoidance to maintain the child (when such obligation was established by court decision or child maintenance agreement was approved by the court).

Poland

Having received the application, the administrative unit interviews the debtor to define his or her situation (family status, income, job, health and the reasons of non-payment). Then the unit collects a declaration on income from the debtor.

In case the debtor cannot perform his obligation because he or she is unemployed, the administrative unit:

- 1) obliges the debtor to register as an unemployed or job-seeking person;
- 2) informs a work agency on the need to activate the debtor on the labour market.

If the debtor is doing his or her sentence (deprivation of liberty), the creditor may file the enforcement order to the manager of the penal facility, which is obliged to pay the creditor for the work done by the debtor or pay the creditor with the money of the debtor put in the deposit of the facility.

In case the maintenance debtor makes it impossible for the administrative unit to interview him or her, or has refused:

- 1) to file the declaration of property;
- 2) to register in the work agency as an unemployed or job-seeking person;
- 3) without any reasonable reason, to accept the proposed job or other gainful employment, to do any social work, intervention works, public or similar works or to participate in a training, apprenticeship or vocational training for adults;

the local administrative unit opens proceedings to deem the debtor as a debtor who evades his/her maintenance obligations.

Such decision shall not be issued with respect to a debtor who, in the period of preceding 6 months paid due maintenance in the amount not lower than 50% of the amount due.

If the decision on deeming the debtor a debtor that evades the maintenance obligations becomes legally valid, the administrative unit files an application for prosecuting for the crime under Article 209 of the Act of 06 June 1997 - the Penal Code (Dz. U. Journal of Laws of 2016, Item 1137 with later amendments). In Poland this is novelty, as the amendment of the Penal Code with respect to Article 209 came into force only on 31 May 2017. Pursuant to new regulations, sentencing a parent who is not paying due maintenance is easier: a sentence of imprisonment up to one year may be adjudicated against a person who does not pay the maintenance for only 3 months, and the court does not have to analyse the economic situation of the child. Evading the maintenance obligation which results in exposing the entitled person to the risk of being not capable of satisfying his or her basic living needs is a qualified act and is subject to penalty of even two years of imprisonment. At the same time, a new institution has been introduced, called “active repentance”: If a parent against whom proceedings had been instituted, pays what he or she owes to the child, the proceedings may be dismissed. The penalty should then not be imposed on the perpetrator who, not later than within 30 days from the first hearing as a suspect, pays the due maintenance. As it has been functioning for a short time it is not yet possible to collect any statistical data connected with it.

Having received information from the central database of licensed drivers that the debtor has a driving license, the unit may also file an application to the relevant body for seizure of the driving license.

Conclusions

In all countries the avoidance to pay maintenance has criminal liability. However, only in Lithuania and recently in Poland it is the maintenance administration institution that can file an application for prosecuting for the crime. In Latvia such cases when prosecutor starts criminal investigation because of avoidance of maintenance is rarity, usually they are terminated due to the inability to prove the malintent of the debtor to not pay maintenance. Therefore, maintenance administration institutions should have the right, in cases if debtor does not cooperate, to bring the claim for the criminal procedure, because in their position is all the prove that the debtor avoids cooperation (and thus have malintent). Such rights would give the national maintenance administration institutions more power to persuade debtors to cooperate. No rights to file the application for prosecuting the crime of avoidance of maintenance in Latvia may explain the low percent of effective enforcements.

Another way of how to increase the power of maintenance administration institution is to give them power to suspend certain rights or licenses. Currently such rights are for Latvian and Polish maintenance administration institutions. In case of Estonia it is the court who may rule the suspension. It is disputable whenever national maintenance administration bodies should be entitled to suspend certain rights of persons, given that they do not belong to the judicial system. It might be more reasonable to give national maintenance administration institutions rights to ask court for certain rights suspension in case if debtor avoids maintenance.

Summary of best practises

- To follow child best interests and avoid possible inequalities, the state should determine a minimum amount for the child maintenance. Currently Latvia and Estonia have settled the minimum amount. In case of Latvia it differs depending of the age of the child. Estonia and Latvia link the minimum amount of maintenance to the national minimum wage; thus the amount is increased accordingly to the existing national financial situation.
- As there are often cases when a child after he or she attains majority still is unable to maintain himself due to the studies or other reasons, it is important to have regulations that would allow receive maintenance also after he/she has come of age, because the main aim of the parents' maintenance is to secure child's ability to provide for himself. Therefore the possibility for the child to continue his education is important. All countries in their national regulations provide for the child the possibility to continue to receive maintenance also after he has come of age if he continues his studies.
- The legislative framework of Lithuania, Latvia and Poland provides disabled children who are not able to work to be still eligible for the maintenance also after they attain their majority. However, the "disability" criteria should not be linked to the maintenance automatically and the possibility for the child to acquire education and became independent should be encouraged first.
- In Estonia a court may reduce the amount of maintenance to less than the absolute minimum amount if there is a sound reason. Even though the minimum amount provides equality among children who receive maintenance, it should not be at the expense of children who do not receive maintenance. Therefore, in cases where a parent has another child with whom he lives together and who would be financially less secure than the child for whom the parent was ordered to pay maintenance in the minimum amount, the court should have possibility to deviate from the general regulation. However, it must be noted the parent must be stimulated to increase his income through employment so that he is able to provide for all his children. Another case when the state should consider reducing the minimum amount is when a parent has legitimate incapacity to work (due to severe disability or illness), because in such cases it is not reasonable to further deteriorate the situation of parent (which can later complicate the recovery of the parent).
- Since April 2017 in Latvia the maintenance can be claimed through the Maintenance Guarantee Fund, if the claimant asks for minimum maintenance amount. Thus, the procedure for maintenance claims have been made more accessible and faster.

- There are two possibilities how to distribute the national maintenance allowance in cases if parent is unable to provide maintenance: it can be distributed according to the income of the child or according to the wealth of the family where child lives. All three Baltic States use universal approach for maintenance allowance distribution, Poland distributes allowance depending on the income of the family where child lives.
- In Lithuania and Poland it is the maintenance administration institution that can file an application for prosecuting for the crime for the avoidance to pay maintenance. Maintenance administration institutions should have the right, in cases if debtor does not cooperate, to bring the claim for the criminal procedure, because in their disposal is all the prove that the debtor avoids cooperation (and thus have malintent). Such rights would give the national maintenance administration institutions more power to persuade debtors to cooperate.
- Another way of how to increase the power of maintenance administration institution is to give them power to suspend certain rights or licenses. Currently such rights are for Latvian and Polish maintenance administration institutions. In case of Estonia it is the court who may rule the suspension. It is disputable whenever national maintenance administration bodies should be entitled to suspend certain rights of persons, given that they do not belong to the judicial system. It might be more reasonable to give national maintenance administration institutions rights to ask court for certain rights suspension in case if debtor avoids maintenance.

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