



Newsletter 2019, No. 40

Newsletter of the Global Network: “Child Support Worldwide”

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

The Court of Justice of the European Union determines interpretation of the Hague Protocol of 23.11.2007

The Court of Justice of the European Union (CJEU) ruling of 7 June 2018 in the legal case C-83/17 – with a commentary by Prof. Andrea Bonomi.

In a request for a preliminary ruling, the CJEU has given its opinion regarding the interpretation of Art. 4 (2) of the Hague Protocol in a case relating to child maintenance. The proceedings arose from the circumstance where a child entitled to maintenance moved from one EU Member State (Germany) to another (Austria). Following a change of the child's place of habitual residence, the child seized the competent court in his/her new country of residence to assert claims from the time prior to the move in addition to the ongoing maintenance. Invoking Art. 4 (2) of the Hague Protocol 2007 (referring to *lex fori*), the child requested the application of Austrian maintenance law, including with regard to maintenance due prior to the move.

The seized Austrian court referred two questions to the CJEU for a preliminary ruling. The first concerned whether Art. 4 (2) of the Hague Protocol can also find application in cases where the creditor has his place of habitual residence in the country of the seized court, or whether this constellation is not already adequately covered by the provisions in Art. 3 of the Hague Protocol, according to which the law of the state of habitual residence is applicable (before the move German maintenance law, after the move Austrian maintenance law). The deliberation of the court of origin on this point was that it would need to be a factual precondition of Art. 4 (2) of the Hague Protocol 2007 that the state of residence and the state of the court are not identical. Otherwise a scope of application would not be conceivable. In the present case it would be doubtful whether German law could find application if the child had his/her place of habitual residence in the state of the court. The CJEU has not followed this deliberation.

The second question dealt with the interpretation of the legal concept of “unable....to obtain maintenance”.



Prof. Andrea Bonomi has written a detailed commentary on the CJEU ruling. The report is published in the journal JAmt, 2019, 215 f. and can be requested here via e-mail in [English](#) and in [German](#).

EU-funded EPAPFR Project: Technical Committee on the subject of maintenance law

The Technical Committee of the EPAPFR project, comprising individuals and bodies who have taken part in the survey conducted on implementation of the European Maintenance Regulation, will be held in Heidelberg on 01.07.2019. The topics for discussion will be the evaluation of the results of the survey, along with the contents of the future European Platform for access to individual rights and family rights.



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