



Republic of Latvia Ombudsman

## Practices of formal child maintenance administration in Poland and Baltic states

Annual Meeting of the Ombudspersons of Estonia, Latvia, Lithuania and Poland 21-22 May 2018

2018.05.22.

A joint study prepared by the Ombudsman's Office of the Republic of Latvia in cooperation with:

- Office of the Chancellor of Justice of Estonia
- Institution of the Ombudsperson for Children Rights of the Republic of Lithuania
- the Office of the Ombudsman for children of the Republic of Poland

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## The Aim

To gather a brief comparison of child maintenance administration systems and national regulations in four countries (Estonia, Latvia, Lithuania and Poland) in order to bring out the best practices

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## Content of presentation

### I Part: Presenting content of the study:

1. The national regulations on child maintenance
2. The administration of child maintenance by state and in civil proceedings
3. The measures of enforcement

### II Part: Discussion of best practices

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# National Regulations on Child Maintenance

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## Estonia

### Regulations on the child's maintenance:

- must be paid up to 18 years
- or up to 21 years for a child who is acquiring basic, secondary or higher education or formal vocational education
- The amount is based on the needs and usual lifestyle of the child entitled to receive maintenance
- Minimum amount: half of the minimum wage (2017- 235 Euro)

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## Estonia

With a good reason a court may reduce the amount of maintenance to less than the absolute minimum amount

A good reason can be: incapacity to work or a situation where a parent has another child who would be financially less secure

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## Latvia

### Regulations on the child's maintenance:

- paid until the time the child is able to provide for himself (Supreme Court - 24 years for a child who is studying full time and does not work)
- commensurate to the abilities and financial state of both parents
- if child has his own property – the maintenance can be covered from the income derived from the property of the children
- If the parents are absent or they are not able to maintain the child, this duty lies in equal shares upon the grandparents

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## Latvia

- The minimum amount of maintenance - 25% of minimum wage for children up to 7 years and 30% for children aged 7 - 18 years
- No minimum amount for a child who has attained majority

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## Lithuania

### Regulations on the child's maintenance:

- paid up to 18 years
- or up to 24 years if the child is studying (for the first time)
- the amount for maintenance must comply with the needs of the child and the financial situation of his parents
- no minimum amount - the case law indicates half of minimum wage (currently 380 Eur)
- if parent dies - the duty of maintenance passes to his or her successors within the limits of the inherited property

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## Poland

### Regulations on the child's maintenance:

- until the time the child is able to provide for himself
- if child has his own property – the maintenance can be covered from the income derived from the property of the child
- commensurate to the abilities and financial state of both parents (*the potential income and the property of the debtor determine the amount of maintenance*)
- 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

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## Conclusions

- Estonia and Latvia have a minimum amount of child maintenance regulated by law which is attributed to the minimum wage
- Maintenance can be regulated according to the child's age or to his capacity to provide for himself:
  - Lithuania and Estonia – 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)
  - Latvia and Poland – most important criteria is not the age of the child but his ability to provide for himself

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## Conclusions

- The legislative framework of 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
- Latvia – no exceptions on minimum amount, every parent must pay this amount regardless of their income, health or other children he must provide for
- Estonia – a court may reduce the amount of maintenance to less than the absolute minimum amount

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## Administration of child maintenance by state and in civil proceedings

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## Conclusions

- The court rules on the level of maintenance based on the needs of the child and the financial situation of parents
- The fact that the parents live in a single household and are married is not an obstacle to claim maintenance (Latvia)
- The duration of the court proceedings varies and can last

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## Conclusions

- The court may also take interim measures concerning the child maintenance
- The claimant must present justified costs for requested child maintenance
- A person may bring the claim in court also by the claimant's place of residence (Latvia)

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## National institution for guaranteed child maintenance funding

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## National debt

	Latvia (2016)	Lithuania (2017)	Poland
<b>How many children receive state administrated child maintenance</b>	33 934 (9.6%)	22 701 (4,38 %)	Around one million (almost every tenth child and a young person up to 25 years of age)
<b>Debtors</b>	37 353	35 000	-
<b>Total debt to the state</b>	197,5 million EUR	121,2 million. EUR	2,4 billion EUR
<b>Effective enforcements (%)</b>	4 295 638 (2%)	5,33%	6%

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## Estonia

- Since 2017 the system of state guaranteed maintenance allowance was initiated
- Paid during the time of court proceedings or enforcement proceedings
- maintenance allowance during court proceedings for one child is 100 € per calendar month.
- maintenance allowance during enforcement proceedings for one child is up to 100 € per calendar month (based on the amount paid by the debtor).

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## Latvia

- The Maintenance Guarantee Fund and thus national maintenance allowance was established in August 2004
- Paid until the child acquires basic education, secondary education, vocational education or specialised education in the Republic of Latvia, but not longer than 21 years old
- Paid according the court ruling or if the parent who cares for the child turns directly to the Fund (since April 2017)
- approximated to the minimum amount of the maintenance

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## Lithuania

- Children's Maintenance Fund was established in 2008
- 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
- monthly allowance per child can not exceed the amount of 1.5 Basic Social Benefit (57 Eur )
- Child must reside in Lithuania
- Paid up to 18 years
- Can be paid for the disabled descendant over 18 years of age who became disabled before turning 18 years of age

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## Poland

- Granting and paying benefits from the maintenance fund is a task appointed to the local administrative units as part of governmental administration
- Families whose monthly net income per person does not exceed the sum of 170 EUR are entitled to receive benefits from the maintenance fund
- Maintenance amount: up to 118 EUR per person.
- Paid 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

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## Conclusions

- Latvia (2004) and Lithuania (2008) first to introduce guaranteed maintenance allowance
- Precondition – residence in country (Lithuania) or participation in the national education system (Latvia)
- Estonia, Latvia, and Lithuania have universal approach
- In Poland maintenance allowance is tended as social benefit
- Only in Latvia guaranteed maintenance allowance corresponds to minimum amount 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 Guarantee Fund

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## Measures of enforcement

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## Estonia

- General enforcement measures stipulated in the Code of Enforcement Procedure (seizure and sale of property of the debtor)
- A court may 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

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## Latvia

- General enforcement measures stipulated in the Civil Procedure Law (seizure and sale of property or seizing income of the debtor)
- The Maintenance Guarantee Fund may:
  - Publicate the information about the debtor;
  - suspend driving licence for motor and water vehicles
- Avoiding of maintenance of the child according to the Criminal Law is a criminal offence (penalties include: temporary deprivation of liberty or community service, or a fine)

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## Lithuania

- General enforcement measures stipulated in the Code of Civil Procedure (seizure and sale of property or seizing income of the debtor)
- criminal liability for avoidance to maintain a child might be applicable to the debtor
- 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

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## Poland

- Administrative unit can:
  - take actions in order to stimulate the debtor to join labour market (in case if he is unemployed or is imprisoned)
  - to take decision to confer the debtor a status of debtor who evades his/ her maintenance obligations
- In case the status of debtor who evades maintenance comes to force, administrative unit files an application for prosecuting for the crime according the Penal Code for avoidance of maintenance
- the unit may also file an application to the relevant body for seizure of the driving license

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## Summary of best practises

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Currently Latvia and Estonia have settled the minimum amount of child maintenance . 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. Poland and Lithuania does not set any minimum amount (Lithuania only by case law). In Estonia a court may reduce the amount of maintenance to less than the absolute minimum amount if there is a sound reason.

Should the minimum amount be regulated by law?

Should there be possibilities to deviate from the general regulation on minimum maintenance amount?

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For the eligibility to receive the maintenance, Latvia and Poland do not set the age limit, but as criteria uses the child's ability to provide for himself.

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, how to regulate the eligibility for the maintenance after a child has come of legal age?

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The legislative framework of Lithuania and Poland provides disabled children who to be still eligible for the maintenance also after they attain their majority.

Should the "disability" criteria be linked to the maintenance automatically or should the possibility for the child to acquire education and became independent be examined first even for disabled persons?

Should it be a parents responsibility to care for their disabled adult child?

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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.

Should maintenance be claimed only by courts?

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All three Baltic states use universal approach for maintenance allowance distribution, Poland distributes allowance depending on the income of the family where child lives.

Should maintenance allowance be a social benefit or social right?

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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. 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. In turn national maintenance institutions have greater possibilities to prove the malintent of debtor (in cases if he does not cooperate).

Should the maintenance administration institutions have the right, in cases if debtor does not cooperate, to bring the claim for the criminal procedure?

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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.

Should national maintenance administration bodies be entitled to suspend certain rights of persons, given that they do not belong to the judicial system?

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Thank you for attention

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