



**FAMILY LAW CLINIC**

**Director: Professor Louise Crowley, School of Law UCC**

**Students: Deirdre McCormack, Laura Kennedy, Lina Rees, Marianne Joyce, Rachel Heffernan,**

**Valerie Philpott**

**Family Law Case Study November 2022**

You have been asked by Anne Barry to provide her with legal advice in relation to her query. She has set out the relationship timeline for you. Anne has a child with Jason, and her name is Jessica. Both parties are originally from Moldova and Anne now lives in California with their daughter. The parties were divorced in 2011 by a Moldovan court. Jason has never paid maintenance for his dependent child, Jessica, however the parties agreed that in lieu of the child maintenance he would pay the monthly mortgage on the joint family home in Dublin. Subsequently, Jason decided to sell the family home and it was agreed that the proceeds of the sale would be placed in a bank account for the benefit of Jessica and that Jason would thereafter pay €250 a month into the same bank account. As you will see from the timeline below, Anne decided to institute proceedings in the Moldovan courts in early 2022 for the payment of child maintenance and the court granted an order to the effect that Jason is to pay one fourth of his monthly salary as child support for Jessica. Anne is not aware if Jason has made any payments in this regard.

You have been asked to give advice and a solution on how to ensure that the maintenance is being paid in Ireland. Can you enforce the Moldovan divorce in Ireland the enforcement of the 2022 court order? Is this the way that you would do it or would you bring proceedings in District Court?

[**Maintenance Across Borders**](https://www.ucc.ie/en/familylaw/maintenance/) **– Family Law Clinic**

**The client has a maintenance order against her former husband, secured from the Moldovan court. Unfortunately, if he remains in Ireland the Moldovan order is not enforceable in Ireland, as Moldova is not a member of the EU, nor the UN Convention on the Recovery of Maintenance nor the Hague Convention** **on the International Recovery of Child Support and Other Forms of Family Maintenance.**

**Option A (preferred)**

Issue fresh proceedings in the Irish District Court as the respondent resides in Ireland.

**Option B**

Issue fresh proceedings in the Californian court and seek to have the order enforced in Ireland.

**Related research and information:**

**Enforcing an Irish maintenance order in another jurisdiction:**

When the other parent does not live in Ireland, maintenance secured in an Irish court can be successfully pursued in other jurisdictions. Once the country of residence of the payor spouse is established it must be determined what international conventions can be relied upon; EU Brussels II bis; the UN-Convention on the Recovery Abroad of Maintenance or the 2007 Hague Convention or the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. Thus, the country can either be part of the EU, and/or a state that signed the relevant UN-Convention, and/or a state that signed the Hague Convention; or it may be a state that does not belong to any of those three groups.

**If the debtor lives in an EU-state**, the maintenance order granted by an Irish court can be enforced quite easily. A judgment from another EU member state is enforceable in all other EU member states. However in very exceptional cases such as where a judgement already exists between the parties in the state, or the recognition is strongly contrary to Irish public policy, the judgment is not recognised and as a consequent not enforceable.

1. To enforce a judgment from another EU member state Articles 32-56 of theRegulation (EU) 1215/2012 of the European Parliament and of the Council on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial matters (Brussels I Regulation) are applicable. This is possible by either making a request online [here](https://e-justice.europa.eu/content_maintenance_obligations_forms-274-en.do#tocHeader0) or contacting the Irish Central Authority via mail, phone or post (details below).
2. The Brussels I Regulation was implemented in Ireland by Statutory Instrument 52 of 2002, European Communities (Civil and Commercial Judgments) Regulations 2002. If all the information of Article 53 of Brussels I Regulation are included, the Master of the High Court in Ireland will declare the judgment as enforceable. As a conclusion, the judgment of the EU member state has the same effects as if it were an Irish judgement.
3. Alternatively, a European Enforcement Order (EEO) can be received. An online form, which can be found here can be completed, allowing a judge to issue a European Enforcement Order. This order and a copy of the original judgment must be sent to the authority where the debtor lives. If a European Enforcement Order is granted right away, the judgment can be enforced without any further court appointments.

**If the debtor does not live in an EU-state**, it must be determined whether the state where the payor resides has signed the UN-Convention on the Recovery Abroad of Maintenance or the Hague Convention. A list of all states that have signed the UN-Convention can be found [here](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XX-1&chapter=20&Temp=mtdsg3&clang=_en), and all of that have signed the Hague Convention [here](https://www.hcch.net/en/instruments/conventions/status-table/?cid=131). If the concerned country is listed in one of those lists, the maintenance order can be enforced by contacting the Irish Central Authority.

**UN Convention on the Recovery Abroad of Maintenance 1956**

The United Nations Convention on the Recovery Abroad of Maintenance was signed in New York on 20 June 1956. This Convention is designed to help the recovery of maintenance by a person (applicant/creditor) living in one country against a person (respondent/debtor) living in another. In order for an applicant to make an application for the recovery of maintenance under the Convention the debtor must be residing in a country that has signed up for the Convention.

*Had Moldova signed the Convention, the maintenance order could be enforced in Ireland by contacting the* [*Irish Central Authority*](https://www.hcch.net/en/states/authorities/details3/?aid=98)*. To apply to establish/vary/enforce an order for maintenance, an application form is available by contacting the Irish Central Authority by email, telephone or in writing.**The Central Authority is not a legal office and cannot provide legal advice.*

**Hague Convention**

The purpose of the Hague Convention 2007 – Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, is to ensure the effective international recovery of child support and other forms of family maintenance.

*Had Moldova signed the Convention, the maintenance order could be enforced in Ireland by contacting the* [*Irish Central Authority*](https://www.hcch.net/en/states/authorities/details3/?aid=98)*. To establish/vary/enforce an order for maintenance, an application form is available by contacting the Irish Central Authority by email, telephone or in writing.*

**Contact Details: Irish Central Authority for Maintenance Recovery**

**01 – 6028202** mainrecov@justice.ie [www.gov.ie/justice/](http://www.gov.ie/justice/)

Department of Justice, 51 St Stephens Green, Dublin 2. D02 HK52

**Role of the Central Authority**

In the [explanatory note](https://assets.hcch.net/docs/70cda9de-283c-4892-80ec-292daec4f667.pdf) for the Hague Convention, the text describes the role of the Central Authorities under the Convention. Namely, it states:

“The Convention provides for a system of Central Authorities in all Contracting Parties and imposes general obligations on these authorities, such as: cooperating with one another; transmitting and receiving applications (i.e., applications for recognition, enforcement, establishment, or modification of a decision); initiating or facilitating the institution of proceedings; assisting in locating a debtor or creditor or obtaining information about the resources of either; encouraging amicable solutions; facilitating ongoing enforcement; collection and transfer of maintenance payments; assistance in establishing parentage; and help in obtaining any necessary provisional measures.”

There is a [handbook](https://assets.hcch.net/docs/b4c58880-8e8a-41a4-a52e-6597e1a08b42.pdf) that the Central Authorities can refer to when receiving applications. Sections from this handbook are outlined below.

The types of applications that may be initiated under the Convention or Regulation through Central Authorities are set out in Article 10 of the Convention and Article 56 of the Regulation. These applications are available to persons (or a public body in some cases) in the following situations:

|  |  |
| --- | --- |
| **Situation** | **Type of application available under the Convention or Regulation** |
| An applicant who has a maintenance decision from the requested State, and wants it enforced in that State | An application for enforcement  |
| An applicant who has a decision from a State in which the Convention or Regulation is in force or applicable and wants it recognised or enforced in the other State | An application for recognition or recognition and enforcement/declaration of enforceability  |
| An applicant who does not yet have a maintenance decision where the respondent resides in another State in which the Convention or Regulation is in force or applicable | An application to establish a maintenance decision |
| An applicant who has a maintenance decision but requires a new decision because there are difficulties in recognising or enforcing the existing decision in another State in which the Convention or Regulation is in force or applicable | An application to establish a maintenance decision |
| An applicant who has a maintenance decision in another State in which the Convention or Regulation is in force or applicable but wants to modify it, and the respondent (the other party) resides in another State in which the Convention or Regulation is in force or applicable | An application for modification |

Examples of this working in practice:

***EXAMPLE A***

J is residing in Country A and has a decision from Country A requiring her former husband to pay maintenance for her three children. Her former husband lives in Country B. J would like her maintenance decision enforced. Both Country A and Country B are States between which either the Convention is in force or the Regulation is applicable.

The Central Authority in Country A will transmit an application for recognition and enforcement (under the Convention) / recognition and declaration of enforceability (under the Regulation) of the decision to Country B. The Central Authority in Country B will send the decision to a competent authority to be registered for enforcement or declared enforceable. The former husband will be notified about the recognition or enforcement of the decision and may have an opportunity to challenge the decision, according to procedures specified under the Convention or the Regulation. If the former husband does not pay the maintenance voluntarily, a competent authority in Country B will take the necessary steps to enforce the decision and forward the payments to Country A.

***EXAMPLE B***

S resides in Country A and has a maintenance decision from Country B where the father of her child resides. She would like Country B to enforce the maintenance decision. Both Country A and Country B are States between which the Convention or Regulation are in force or applicable.

Under the Convention or Regulation, S can ask the Central Authority in Country A to transmit an application for enforcement on her behalf to Country B. S will not have to apply for recognition of the decision, as it is from Country B. The Central Authority in Country B will process the application and forward it to the competent authority in Country B for enforcement. If the debtor does not pay the maintenance voluntarily, the competent authority will use the measures it has available under domestic law to enforce the decision.

**What happens once the Central Authority receives an application?**

Recognition or recognition and enforcement of a decision from another Contracting State eliminates the need for a creditor to obtain a new decision in the State where the debtor now resides, or where assets or income are located.

Upon receipt of the application from another Central Authority, the Central Authority in the requested State will send the materials to the competent authority for processing. In some Contracting States, the Central Authority will be the competent authority for this purpose. In other States the competent authority could be a judicial or administrative authority.

The competent authority is required to promptly make a declaration that the decision is enforceable or register it for enforcement. The competent authority must take this step unless the recognition and enforcement would be “manifestly incompatible” with public policy. Neither the applicant nor the respondent can make submissions at this step, known as an ex-officio review.

In Contracting States using a registration process, registration may consist of filing the decision with a judicial authority or tribunal, or the registration of the decision with an administrative agency or official.

Once the decision has been declared enforceable both the applicant and respondent are given notice. The respondent is entitled to challenge or appeal the declaration or registration on certain limited grounds. For example, the respondent may appeal or challenge the registration or declaration if he or she did not receive notice of the initial request for maintenance or was not given an opportunity to challenge the maintenance decision that is now sought to be recognised and enforced. The challenge or appeal must be brought within 60 days of the notification of the declaration of enforceability. The challenge or appeal will be made to the competent authority as allowed in that State.

If the debtor is not willing to start making payments under the decision voluntarily, enforcement of the decision can take place as permitted by the law of the requested State, despite the ongoing challenge or appeal (see also Chapter 12 of this Handbook on Enforcement). While voluntary payments are important means of ensuring that payments start to flow to the creditor as quickly as possible, it is also important to ensure that enforcement is taken as appropriate to avoid delays in payment.

There is a flow chart on p.132 of the handbook which outlines the process following the Central Authority receiving documents relating to maintenance.

**Bringing proceedings in California**

**Applying for child support in California**

There are 47 child support agencies across California – local agencies work with the parents to come to an agreement. They can also help locate the other parent. Information on applying for child support services in California can be found at: [https://childsupport.ca.go](https://childsupport.ca.gov/)v A case can be opened whether there is a court order in place.

**Enforcing an existing order**

Section 7 of the Interstate Family Support Act 2008 provides for the registration, recognition, modification and enforcement of foreign child support orders. As the US is a signatory to the Hague Convention, any order made in California would be enforceable in Ireland and equally any order made in Ireland would be enforceable in California.