

Experience of the Estonian central authority

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1. Introduction

International Judicial Co-operation

Recovery of Maintenance in the
European Union and Worldwide
Heidelberg Conference 5 – 8 March 2013

- In Estonia the Ministry of Justice deals with the management of international judicial co-operation
- The Ministry of Justice is the central authority for child abduction and cross-border maintenance proceedings
- The general e-mail address of the unit: central.authority@just.ee
- Ms. Astrid Laurendt-Hanioja – head of unit, criminal cases, astrid.laurendt@just.ee , +372 6 208 190
- Ms. Imbi Markus – advisor, criminal cases, imbi.markus@just.ee , +372 6 208 192
- Ms. Haldi Mäesalu – advisor, civil cases, haldi.maesalu@just.ee , +372 6 208 183
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International maintenance cases

Recovery of Maintenance in the
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Regulated by:

- EC Regulation No 4/2009 on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Cooperation in Matters Relating to Maintenance Obligations;
- *Hague Convention of 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (pending)*
- Lugano Convention of 2007 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters
- Hague Convention of 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations;
- UN Convention of 1956 on the Recovery Abroad of Maintenance;
- Bilateral agreements with Latvia, Lithuania, Poland, Russia and the Ukraine;
- Estonian Code of Civil Procedure

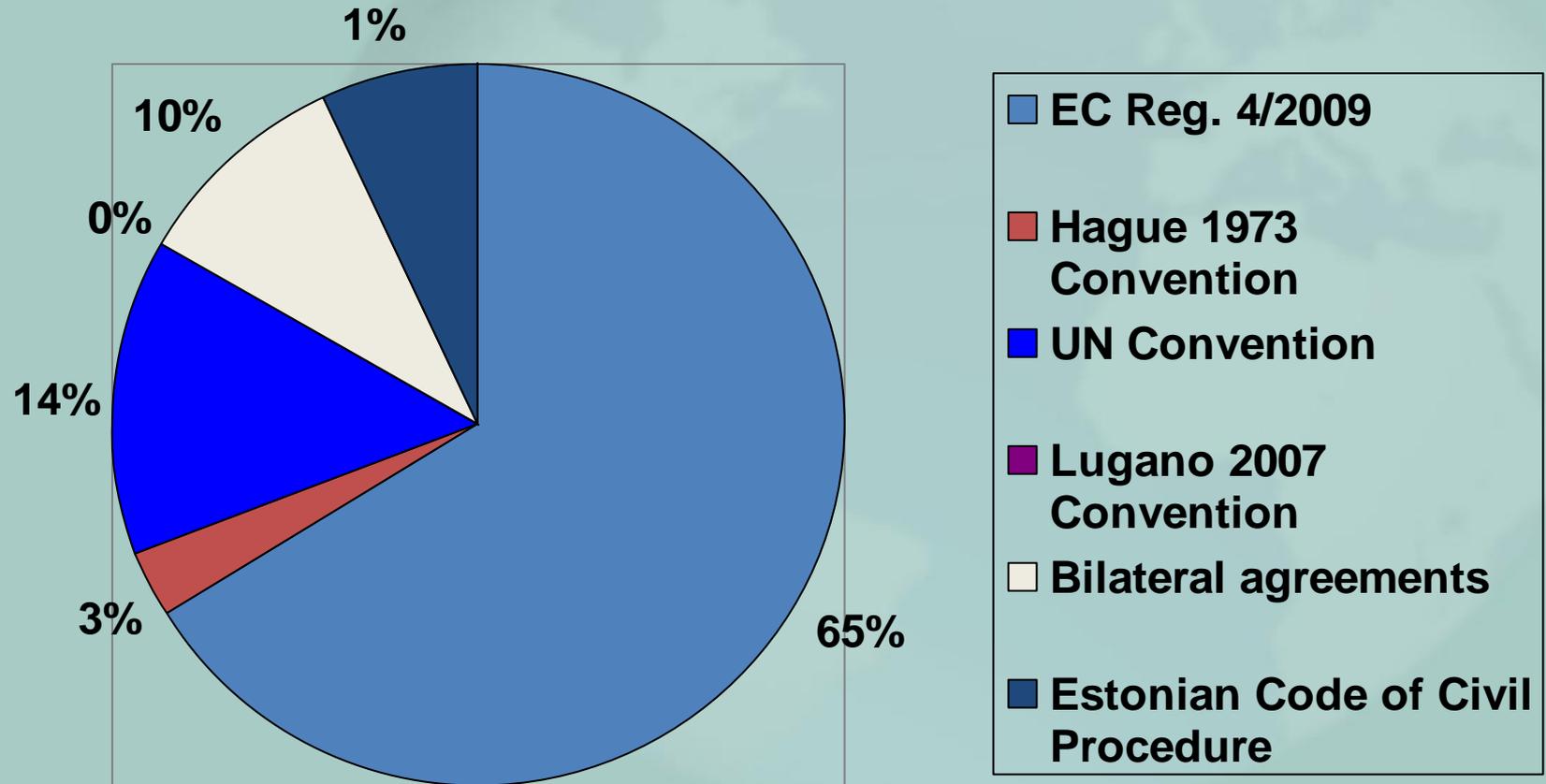
Which instrument applies? (1)

- If no court decision or maintenance agreement has been made and maintenance is sought in Estonia:
 - EU countries → EC Regulation No. 4/2009
 - non-EU countries → Estonian Family Law Act or Hague 2007 Convention
- If a court decision or maintenance agreement was made:
 - EU countries:
 - after May 1st 2004 → EC Regulation No. 4/2009;
 - before May 1st 2004 →
 - Hague 1973 and UN Conventions;
 - Latvia, Lithuania and Poland: bilateral agreements;
 - Code of Civil Procedure;

Which instrument applies? (2)

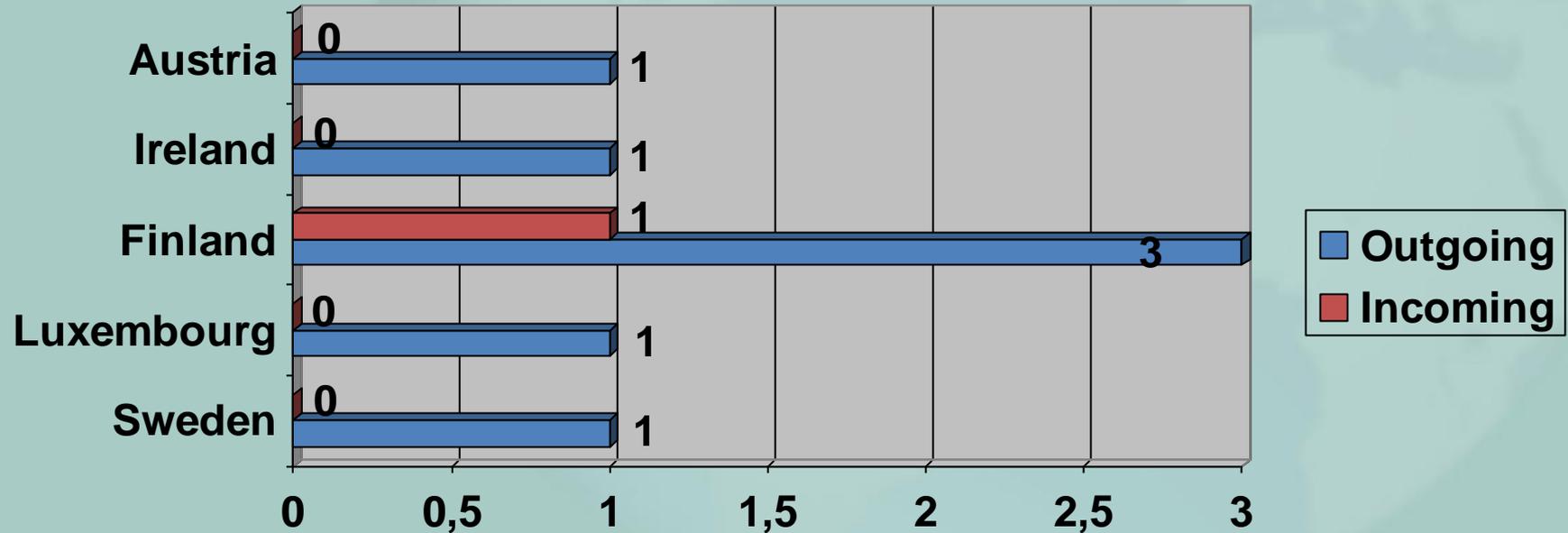
- If a court decision or maintenance agreement was made:
 - Russia, the Ukraine → bilateral agreement;
 - Norway, Iceland and Switzerland:
 - after January 1st 2010 (Norway) or January 1st 2011 (Switzerland), May 1st 2011 (Iceland) → Lugano Convention
 - Before the named →
 - Hague 1973 and UN Conventions;
 - Code of Civil Procedure if the conventions are not applicable;
 - Member states → Hague 1973 and UN Conventions;
 - If non of the above apply → Estonian Code of Civil Procedure

Statistics 1



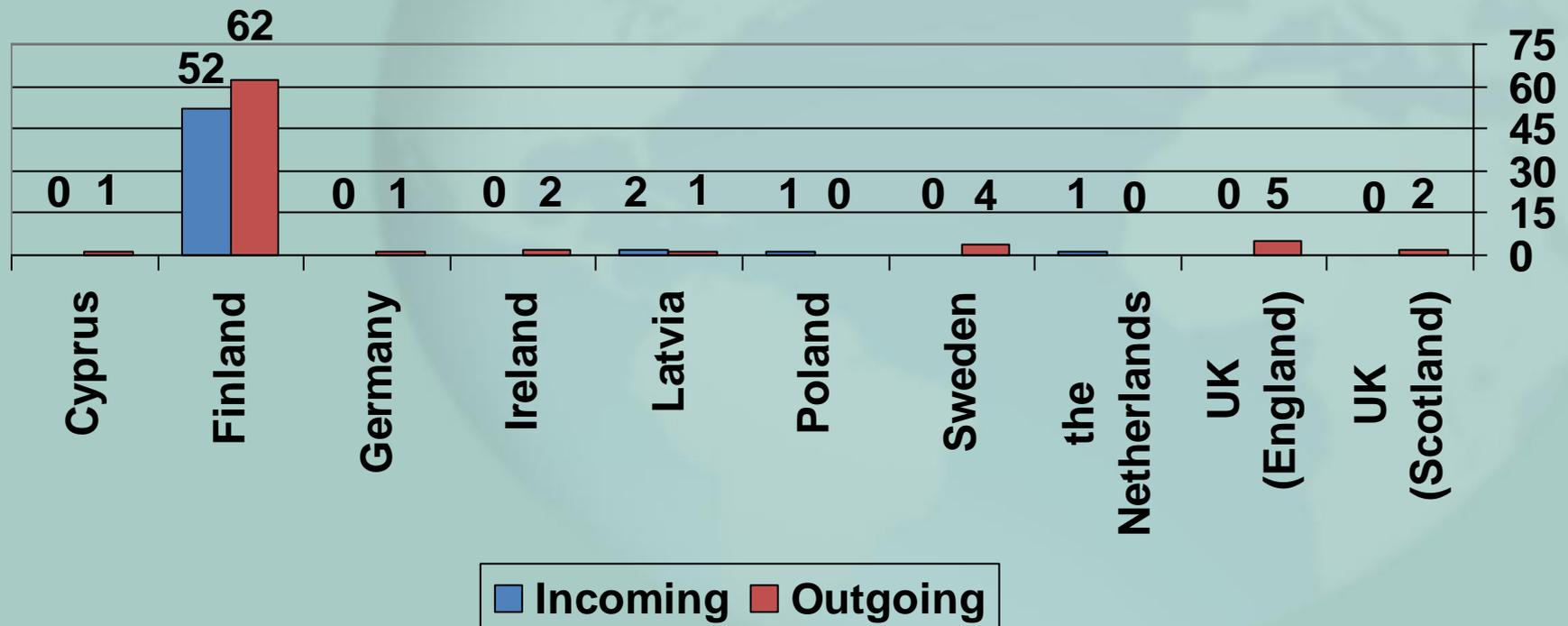
Statistics 2: EC No. 4/2009

Establishment of maintenance



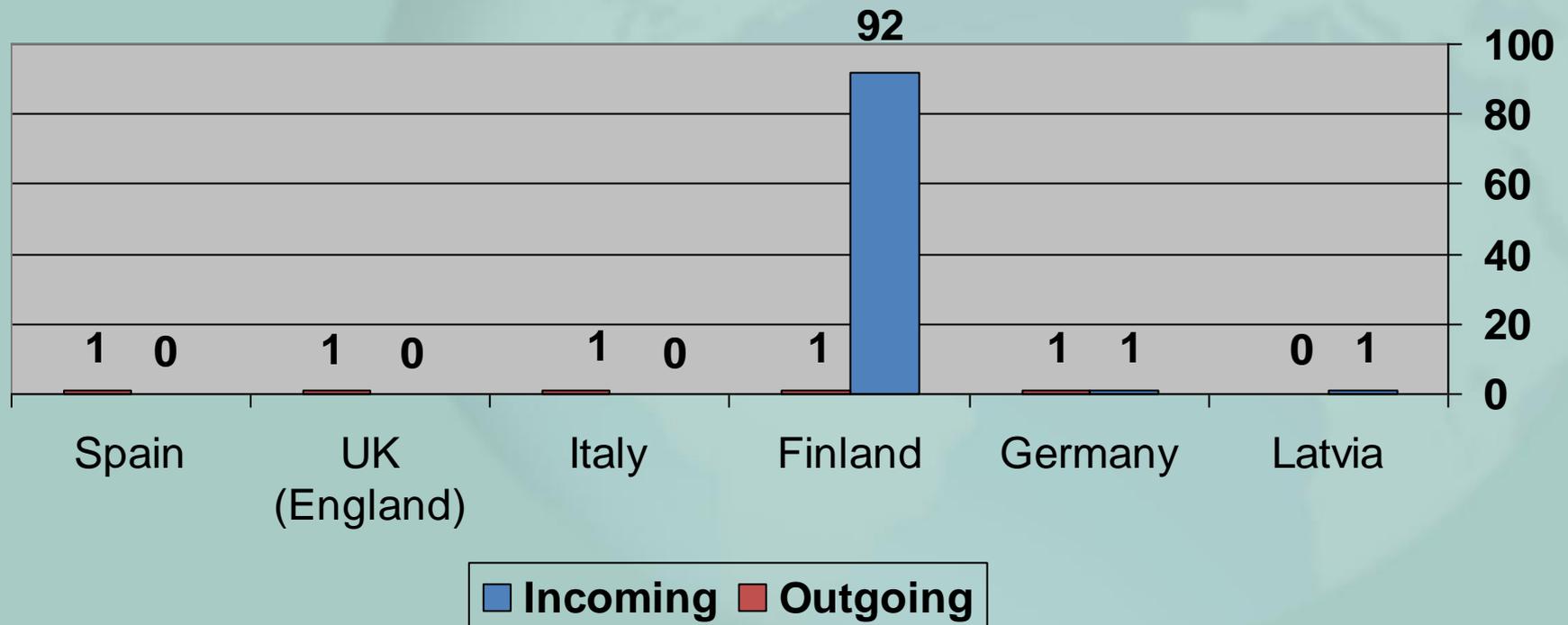
Statistics 3: EC No. 4/2009

Recognition and enforcement of maintenance



Statistics 4: EC No. 4/2009

Requests for specific measures



2. Estonian maintenance system

Obligated and entitled persons

- Persons required to provide maintenance:
 - adult ascendants and descendants related in the first and second degree are required to provide maintenance;
 - a descendant shall provide maintenance before an ascendant;
 - in the case of descendants and ascendants, a closer relative shall provide maintenance before a more distant relative.
- Persons entitled to receive maintenance:
 - underage child;
 - a child, who continues to acquire basic or secondary education in basic school, upper secondary school or vocational school as an adult, but not more than until he or she attains 21 years of age;
 - current or divorced spouse;
 - parent caring for a child under 3 years of age;
 - other descendant or ascendant, who needs assistance and is unable to maintain himself or herself.

Scope of maintenance

- The scope of maintenance shall be determined on the basis of the needs and usual lifestyle of the person entitled to receive maintenance
- All the needs of the entitled person shall be taken into account, including:
 - expenses relating to education and vocational training corresponding to his or her abilities and leanings,
 - in the case of a minor dependant, the expenses relating to raising him or her.

Manner of provision of maintenance

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- Maintenance is generally provided by making periodic payments of money (*support*)
 - 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 raising of the child
 - the parent living together with the child shall use the support in the interests of the child
 - parents may specify, by mutual agreement, the performance of the obligation to maintain their child and determine in which manner and after which period of time maintenance shall be provided
 - support shall be paid in advance for each calendar month.

Support for minor child

The monthly support payment for one child shall not be less than half of the minimum monthly wage

(until 14.05.2004 *quater* of minimum monthly wage)

| Starting | Until | EEK | EUR |
|------------|------------|-------|--------|
| 1.01.2000 | 31.12.2000 | 350 | 22,37 |
| 1.01.2001 | 31.12.2001 | 400 | 25,56 |
| 1.01.2002 | 31.12.2002 | 462,5 | 29,56 |
| 1.01.2003 | 31.12.2003 | 540 | 34,51 |
| 1.01.2004 | 13.05.2004 | 620 | 39,63 |
| 14.05.2004 | 31.12.2004 | 1240 | 79,25 |
| 1.01.2005 | 31.12.2005 | 1345 | 85,96 |
| 1.01.2006 | 31.12.2006 | 1500 | 95,87 |
| 1.01.2007 | 31.12.2007 | 1800 | 115,04 |
| 1.01.2008 | 31.12.2011 | 2175 | 139,01 |
| 1.01.2012 | 31.12.2012 | - | 145 |
| 1.01.2013 | ... | - | 160 |

Taking account of financial situation of obligated person

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- A person is released from the obligation to provide maintenance in so far as he or she is, considering his or her other obligations and financial situation, unable to provide maintenance to another person without damage to his or her own usual maintenance
- Parents are not released from the obligation to provide maintenance to their minor child
 - If a parent is unable to provide maintenance to a minor child without damaging his or her usual maintenance → he or she shall use the assets at his or her disposal for the maintenance of himself or herself and his or her child similarly
 - With good reason, a court may, however, reduce the amount of support to less than the minimum amount - a good reason is, *inter alia*, incapacity for work of a parent or a situation where a parent has another child, who would be financially less secure than the child receiving support if the minimum amount of support were ordered.

Restriction of claim for provision of maintenance

- A court may release an obligated person from the obligation to provide maintenance, limit the obligation in time or reduce the amount of support if it would be extremely unfair to request performance of the obligation in particular if:
 - the need for maintenance of the person entitled to receive maintenance has been caused by his or her unreasonable conduct;
 - the entitled person has severely violated his or her maintenance obligation against the person obliged to provide maintenance;
 - the entitled person is convicted of an intentionally committed criminal offence against the person obliged to provide maintenance or a person connected with him or her.
- This is not applied to the obligation of a parent to provide maintenance to his or her minor child.

Other principles

- Retroactive provision of maintenance:
 - an entitled person may request the performance of the obligation to provide maintenance and compensation for the damage caused by failure to perform the obligation retroactively for up to one year before filing an action for support in court.
- Preclusion of claim for provision of maintenance:
 - an agreement by which the performance of the obligation to provide maintenance in future is precluded or by which the obligation to provide maintenance is unreasonably restricted is void.
- Criminal offences:
 - Violation of obligation to provide maintenance to child: a parent who intentionally evades payment of monthly support ordered by a court to his or her child (minor or incapacitated for work and needs assistance) shall be punished by a pecuniary punishment or up to one year of imprisonment
 - The same exist in cases, where an adult child is ordered to maintain his or her parent

3. Foreign maintenance allowance claims

Kansaneläkelaitos (KELA)

- 90% of incoming cases from Finland are from KELA
- Has been designated as a public body according to art. 51 (3) of the Regulation
- When KELA has awarded maintenance to an individual entitled to it, it may perform the following CA functions:
 - apply for recognition or recognition and declaration of enforceability of a decision;
 - apply for enforcement of a decision given or recognised in the requested Member State;
 - make a request for specific measures.

KELA's requests

KELA sends us the following type of applications:

- request for specific measures;
- request for recognition and/or enforcement of a Finnish court decision;
- request for enforcement of an Estonian court decision;
- request for recognition and/or enforcement of a Finnish maintenance agreement;
- request for exchange of creditor in an ongoing enforcement matter.

Art 53 requests

- The request:
 - data usually requested: address, info on court or enforcement proceedings;
 - sent to haldi.maesalu@just.ee;
 - do not have to use the Annex V – simple e-mail will do!
 - must have info: debtor's name and date of birth
 - for enforcement cases data of the court decision (which court, when, number of civil case) is also needed;
 - I'll try to answer in about 1-2 weeks, will check:
 - the Population Registry,
 - Courts' Information System,
 - Enforcement Information System and
 - if needed Prisons' Information System

Recognition of a court decision (1)

- EU Regulation:
 - application to be sent to the Ministry of Justice by the other CA or competent public body;
 - documents needed:
 - Annex VI (Application form with a view to the recognition, declaration of enforceability or enforcement of a decision in matters relating to maintenance obligations) in Estonian or English;
 - copy of the court decision (not translated);
 - extract of the court decision (Annex I or II) in Estonian or English;
 - calculation of arrears in Estonian or English;
 - 3 copies (1 original and 2 copies) of everything if possible

Recognition of a court decision (2)

- Lugano Convention:
 - application to be sent to the Ministry of Justice by the other CA or competent authority;
 - documents needed:
 - application for recognition and declaration of enforceability in Estonian or English;
 - copy of the court decision (not translated);
 - certificate of the court decision (Annex V) in Estonian or English;
 - calculation of arrears in Estonian or English;
 - 3 copies (1 original and 2 copies) of everything if possible

Recognition of a court decision (3)

- Hague 1973 and UN Conventions:
 - application to be sent to the Ministry of Justice by the other CA or competent authority;
 - documents needed:
 - application for recognition and declaration of enforceability;
 - copy of the court decision;
 - calculation of arrears;
 - document proving that the decision is no longer subject to appeal and, where necessary, that it is enforceable;
 - if the decision was rendered by default, the original or a certified true copy of any document required to prove that the notice of the institution of proceedings, has been properly served on the defaulting party according to the law of the State of origin;
 - translations of everything into Estonian or English
 - 3 copies (1 original and 2 copies) of everything if possible
- Code of Civil Procedure: **same as above!**

Recognition of a maintenance agreement

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- Additional documents:
 - EU Regulation: Annex X;
 - other: information or national legislation on establishing and enforcing maintenance agreements (incl. competent authorities) and translation into Estonian or English

Maintenance allowance

- Additional documents:
 - copy of the maintenance allowance decision;
 - national legislation on maintenance allowance;
 - national legislation showing the change of collection right;
 - translations into Estonian or English.
- If the CA agrees, the competent social institution can send their applications straight to the Ministry of Justice of Estonia

Proceedings in court

- Legal representation is usually not needed;
- Maintenance proceedings are exempted from paying state court fees
- Decision of recognition usually made in 1-2 months (a lot of the time in a few weeks of arrival in court);
- Decision becomes enforceable in 1-2 months of receipt of all parties (usually takes 2-4 months time)
- When the decision has become enforceable, a copy of the decision is sent to the applicant and an updated calculation of debt is asked for → after receipt the case is forwarded to the Bailiff

4. Enforcement of a maintenance decision in Estonia

Estonian legislation on enforcement of maintenance

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- The enforcement of a recognized maintenance claim is dealt with by Bailiffs in Estonia
 - must be chosen according to the known address of the debtor or the location of debtor's assets
- Bailiff has no right to ask for pre-payment for work to be performed as in non-maintenance cases
- Bailiff shall conduct enforcement proceedings on the basis of an application of a claimant for enforcement and an enforcement instrument:
 - Estonian court decision;
 - foreign court decision and Estonian decision of recognition;
 - foreign court decision and Annex I of EC Regulation 4/2009;
 - Estonian maintenance agreement;
 - foreign maintenance agreement and Estonian decision of recognition;
 - foreign maintenance agreement and Annex III of EC Regulation 4/2009

Commencement of proceedings

- If the conditions for the commencement of enforcement proceedings are complied with, a bailiff shall deliver an enforcement notice to a debtor.
 - Upon delivery of an enforcement notice to a debtor, enforcement proceedings are deemed to have commenced.
 - An enforcement notice sets out:
 - the name of both a claimant and a debtor;
 - the marking of the enforcement instrument;
 - a proposal for voluntary compliance with the enforcement instrument and the term for voluntary compliance;
 - a warning that upon failure to voluntarily comply with the enforcement instrument, enforcement actions may be taken in respect of the debtor;
 - a reference to the debtor's rights
 - A copy of the enforcement instrument shall be appended to an enforcement notice.
 - In the case, where the enforcement notice cannot be served, it may be delivered publicly - the notice is deemed to be delivered to a debtor 10 days after publication in the official gazette

Voluntary enforcement

- Term for voluntary compliance with enforcement instrument:
 - if no term is specified for voluntary compliance with an enforcement instrument by law or a court decision, the term shall be specified by a bailiff;
 - the term is 10-30 days
 - with the consent of a claimant, the bailiff may specify a term which is longer than 30 days
 - Upon compliance with an enforcement instrument before the expiry of the term, a debtor may be required to pay only half of the bailiff's fee

Enforcement proceedings

- The Bailiff may make claims for:
 - payment on property or seizure of property;
 - seizure of movable things in the debtor's possession;
 - public sale of seized assets;
 - seizure of income.
- A claim for payment cannot be made on the following income:
 - state family benefits;
 - social benefits for disabled persons;
 - unemployment allowances, grants, transport and accommodation benefits and business start up subsidy paid through the Estonian Unemployment Insurance Fund;
 - compensation paid for causing of a bodily injury or health disorder, except compensation for lost income and compensation for non-patrimonial damage;
 - maintenance based on law;
 - parental benefit;
 - health insurance benefit, except benefits for temporary incapacity for work;
 - state pension to the extent provided by law;
 - support on release from prison.

Restrictions

- Restrictions:
 - the debtor's income is not subject to arrest if its amount is not more than the minimum monthly wage;
 - if the salary is above the minimum, the debtor keeps the minimum wage + 1/3 of the minimum wage per every dependent (valid up to 5 minimum wages)
 - in maintenance cases:
 - if it is not possible to collect maintenance in full at the expense of other property, the Bailiff may arrest up to 1/3 of the minimum

Motivating and influencing maintenance defaulters

- Purpose: to motivate the maintenance defaulters and influence them through society's condemnation (in addition to criminal liability)
- On the home page of the Chamber of Bailiffs and Trustees in Bankruptcy (www.kpkoda.ee) with the permission of claimants the Bailiff may put up the data of debtors, who have maintenance debts for more than 60 days
- Shown data: name of debtor, personal code, amount of debt, name of Bailiff, last update

At the moment there are 418

Enforcement of an Estonian court decision

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(1)

- If enforcement is not pending:
 - application for enforcement (EU – Annex VI);
 - calculation of debt;
 - copy of court decision;
 - copy of maintenance allowance decision;
 - national legislation on maintenance allowance;
 - national legislation showing the change of collection right;
 - everything in Estonian or English
 - 2 copies (1 original, 1 copy) of everything!
- The Ministry of Justice will:
 - choose a Bailiff;
 - compose an application for enforcement

Enforcement of an Estonian court decision

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(2)

- If enforcement is pending:
 - application for exchange of creditor;
 - calculation of debt;
 - copy of court decision;
 - copy of maintenance allowance decision;
 - national legislation on maintenance allowance;
 - national legislation showing the change of collection right;
 - everything in Estonian or English
 - 2 copies (1 original, 1 copy) of everything!
- The Ministry of Justice will:
 - compose an application for enforcement

Enforcement of a foreign court decision (2)

- If the decision is automatically recognised in Estonia (only EU-countries):
 - application for enforcement (EU – Annex VI);
 - updated calculation of debt;
 - copy of foreign court decision;
 - copy of extract of court decision (Annex I or III);
 - copy of maintenance allowance decision;
 - national legislation on maintenance allowance;
 - national legislation showing the change of collection right;
 - everything in Estonian or English
- The Ministry of Justice will:
 - choose a Bailiff;
 - compose an application for enforcement

Choosing a Bailiff

- When we receive an application for enforcement, we check if enforcement proceedings have been previously started;
- If enforcement is pending: the materials will be forwarded to the Bailiff enforcing the maintenance claim
- If enforcement is not pending: an automated system will choose a Bailiff according to the region of the debtor's or his / her assets' whereabouts

Problems with enforcement (1)

- People might not be aware of the court decision;
- Problems with how much maintenance is left in debt / arrears;
- People, who are not getting paid on their bank account and/or work unofficially;

Problems with enforcement (2)

- It is not possible to enforce interest, cost of living index and/or indexation unless marked in the court decision and/or extract

Any questions?

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