

**A COMPARATIVE STUDY OF CHILD MAINTENANCE REGIMES**

**Answers to the questionnaire for national informants for**

**France**

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### **Focus of questionnaire**

The questionnaire concerns your child maintenance (child support) regime. By this we mean the overall system in your country under which parents meet their financial obligations in respect of children with whom they do not live. These financial obligations arise when parents live apart following a divorce or separation, or when parents have never lived together.

### **Scope**

The questionnaire is primarily concerned with regular payments for financial support, which we call here child maintenance. There are other forms of financial transactions between parents who do not live with each other including spouse maintenance (or alimony), lump sum payments, transfers of property, assets and pension rights. We are interested in these other forms of support only in so far as they affect child maintenance. We do not define a child. Please use those age related definitions of a child or children that are relevant in your country, throughout the questionnaire, with appropriate explanations when necessary.

The child maintenance regime includes arrangements for determination, enforcement and revision of payments. In most countries, the child maintenance regime will be some combination of private voluntary arrangements, formal arrangements made by courts, and formal arrangements made by other organisations or agencies. We seek information about all these.

The questionnaire is primarily concerned with entitlements to and liabilities for transfers of private resources. There are a few additional questions about the interaction of child maintenance with public resource transfers (for example maintenance guaranteed by the state and social benefits).

This questionnaire is not concerned with children for whom the state has assumed responsibility, and/or who live in foster homes, children's homes or other institutions. We seek information about child maintenance in respect of children living at home with one parent.

We are interested in three different groups of parents:

- separated married parents (whether formally divorced or not)
- separated cohabitantes
- parents who have never lived together.

### **Core terms**

We call the parent who has the main day-to-day responsibility for the child(ren) concerned, the parent with care. We call the parent who is not currently living with the child(ren) and their other parent, the non-resident parent. The amount of money the non-resident parent is required to pay (or agrees to pay) the parent with care is called the obligation. (In some literature or countries this may be called the award or the obligation.) Definitions of other terms are provided below.

### **Organisation of questionnaire**

The questionnaire is organised in the following way.

- Part One seeks information about the history and general objectives of your child maintenance regime.
- Part Two asks how families enter the child maintenance system, including the general framework for divorce, separation, and the establishment of paternity for nonmarital children.
- Part Three covers detailed information about the determination of maintenance due. We ask how obligations are set, looking at rules, guidelines and discretionary components.
- The procedural aspects of collection and enforcement, and the implications of non-compliance are covered in Part Four.
- Part Five asks about the interactions of receipts and payments with other policies.
- Administrative costs and quantitative data on outcomes are covered in Part Six.
- Part Seven asks you to draw on existing research in a brief evaluation of the child maintenance regime in your country; it also asks for the main topics of research and debate in your country.
- Part Eight presents two vignettes, or cases, in which we describe the circumstances of parents and children, and ask you to describe how they might be dealt with under your child maintenance

*regime.*

*There are further instructions on how to fill in the questionnaire at the beginning of each part (with instructions presented in shaded text). We suggest that you read through the whole questionnaire thoroughly before you begin. We assume you will find it more convenient to complete the questionnaire directly onto the file. If you would prefer a paper copy, with space allowed after each question, please let us know.*

*We ask that you provide us with a list of the sources you consulted most frequently when answering this questionnaire.*

*When we ask for current information, this relates to the situation at 1 July 2006.*

<b>TERMS AND DEFINITIONS</b>	
<i>Advance maintenance</i>	<i>Program in which child maintenance money is provided in advance of any payment made by the non-resident parent. In effect this guarantees an amount of child maintenance.</i>
<i>Child</i>	<i>We do not define a child. Please use those age related definitions of a child or children that are relevant in your country throughout the questionnaire.</i>
<i>Child maintenance</i>	<i>This refers to the money due to children from their liable parent (following the breakdown in the parental relationship). It may be paid to the parent with care or the child(ren); this varies by country.</i>
<i>Child maintenance regime</i>	<i>We include here all arrangements under which non-resident parents provide financial support for their children. We include voluntary arrangements, arrangements through the legal system, and arrangements through governmental agencies. We include both explicit and implicit governmental policies.</i>
<i>Cohabitees</i>	<i>We use this to refer to unmarried parents who live together</i>
<i>Guaranteed maintenance</i>	<i>Same as 'Advanced Maintenance' (see above)</i>
<i>New child or children</i>	<i>Where parents move on after separation or divorce and produce another child/children with a new partner.</i>
<i>New family</i>	<i>Where parents move on after separation or divorce and develop family relationships with a new partner. This may or may not also include children.</i>
<i>New partner</i>	<i>Where parents move on after separation or divorce and develop an intimate relationship with a new adult.</i>
<i>Non-resident parent</i>	<i>Refers to the parent with whom the children do not live a majority of the time. In many countries this is commonly the father.</i>
<i>Nonmarital child or children</i>	<i>Refers to a child or children from a relationship in which the parents are not married.</i>
<i>Obligation or 'child maintenance obligation'</i>	<i>This refers to any award of money made for child maintenance only. We use it as a general term to refer to all official and unofficial arrangements.</i>
<i>Prior child or children</i>	<i>Some parents have children from more than one relationship. We use "prior children" to refer to children from a previous relationship.</i>
<i>Parent with Care</i>	<i>This is the parent who has the main day-to-day responsibility for the children and the child(ren) live with this parent the majority of the time. In many countries this is commonly the mother.</i>
<i>Social assistance</i>	<i>By this we mean programs that provide income to low-income individuals or families. These programs have an income test, and often also have asset limits. This is one type of social benefit.</i>
<i>Social benefit</i>	<i>We intend this to be a very broad term. It includes all programs that provide income to individuals and families. This includes social assistance programs and programs that do not have an income test.</i>
<i>Step child</i>	<i>Where a parent has responsibility for a child living in their household who is not related to them biologically.</i>
<i>Tax benefit</i>	<i>We use this term broadly to refer to special features of the tax system that allow individuals in certain circumstances to pay less taxes. We also include programs that provide income through the tax system.</i>

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## PART ONE: DEVELOPMENT OF CHILD MAINTENANCE REGIME

*This part of the questionnaire seeks a broad overview of your current system.*

*Please remember that we are interested in three groups of parents:*

- *separated married parents (whether formally divorced or not)*
- *separated cohabitantes*
- *parents who have never lived together.*

### **1.1 Consider the overall arrangements in your country for determining, enforcing and revising child maintenance payments. What are the broad policy objectives of these arrangements? We are interested in both explicit and implicit objectives.**

#### Determining:

A juridical civil procedure determines legally the child maintenance payments: this procedure is systematic after a divorce or formal legal separation of married parents ("séparation de corps"), and only on demand (generally if disagreement or if no payment) in the case of separated married or unmarried parents. The Judge of family issues ("juge aux affaires familiales or JAF) is the only responsible of the determining of the amount of the child maintenance. He/she can also confirm officially a private arrangement.

#### Enforcing:

The system of enforcement is a mix of juridical procedure and social protection arrangement for tempting to enforce child maintenance in case of no payment. A social Security benefit and/or child maintenance enforcement facilities exist when child maintenance is not paid, but this social Security arrangement does not and cannot replace the juridical procedure which always takes precedence. The social Security system is subsidiary and is only aimed at complementing and/or facilitating the enforcement of juridical decisions relative to child maintenance (more explanations in question 1.2 and following sections).

#### Revising

The juridical procedure (see determining, above) may decide of an annual revising of child maintenance payments (it is not automatic but more and more decided in the judge's decision on child maintenance determination). The decision of the Court may also indicate an index for the automatic revision or indexation of the amount. This index is normally the "indice des prix à la consommation" at a precise date.

For a more fundamental revising of the child maintenance payment due to important changes (in case of unemployment, family changes....), it is also a juridical civil procedure: one of the parents has to ask the judge to revise a new amount.

#### Objectives

The explicit objective is the respect of obligations stated by the civil legislation, notably enforcing parental liability. In France, there has not been any objective of reducing possible costs to the State due to children not living with both parents.

An implicit objective may be to promote the negotiation between both parents to reach an arrangement and thus make this arrangement more acceptable and stable. The reference is "to stay parents even after separation", what is called "co-parentalité" or co-parenthood.

### **1.2 Please explain briefly the history and development of the current regime.**

#### **The regime is based on civil legislation.**

The very general principle of "**obligations alimentaires**" (alimony) is born with the Code Civil of 1804. It is a broad juridical principle that covers the "solidarité familiale" (between persons linked by kinship or marriage; not only obligations/relations between parents and children) that is implicitly considered as

"natural". It covers what is tied with needs to live, and is thus limited to the strict necessary to live, but "devoir de secours entre époux" (between spouses) and "obligation d'entretien des parents à l'égard de leurs enfants" (from parents to children, including child maintenance after separation or divorce) are two particular cases that go beyond the obligation to provide food.

- The "**obligation d'entretien des parents à l'égard de leurs enfants**" (child maintenance) is a particular application of the principle of "obligation alimentaire": the spouses contract together, by the only fact of the marriage, the obligation to feed, educate ("entretenir") and rear ("élever") their children (article 203 of the Civil Code). This obligation is also applicable to natural parenthood (unmarried parents) if the filiation has been juridically recognised, and is larger than food ("obligation alimentaire") since it also covers the cost for education and scholarship.

- The "**obligation aux subsides**" in case of no established filiation (art. 342 Code civil) is also a particular case of the principle of "obligation alimentaire": a single lone mother may do an "action à fins de subsides" (action in court aimed at subsidies), in order to receive child maintenance from the man whose paternity is not established but who had intimate relations with the women during the conception period (between 300 and 180 days before the birth). The man may stop the action if he can demonstrate that he is not the father.

- The "**devoir de secours entre époux**" (duty of help/aid between spouses) is a particular application of "obligation alimentaire" between spouses (art 212 Code civil). It vanishes with most divorces, but not in the case of "divorce pour rupture de la vie commune" (see later).

### **The role of social security in child maintenance enforcement**

**The law of 22 décembre 1984** ("loi relative à l'intervention des organismes débiteurs des prestations familiales") aimed at improving the system for making child maintenance enforcement work better. It created the "**allocation de soutien familial**" (ASF) a benefit replacing the former "allocation d'orphelin" (AO). AO was initially a benefit given in case of death of the mother and/or the father. It had been extended by a law of 3 janvier 1975 to a lone parent when there is no established filiation with another parent and to a lone parent when there is "abandon manifeste" by the other parent (manifestly abandoned child was supposed to mean the cases when a parent does and/or cannot pay for a sufficiently long period). Some feared that AO which was given in case of "abandon manifeste" could constitute an incentive to the non-resident parent for not complying with the obligation to pay the child maintenance.

ASF, that replaced AO, aimed at improving this inconvenient and is constituted by three aspects:

- the benefit (82 euros per month and per child) is given in case of "abandon manifeste", only if the lone parent undertakes a juridical action for determining the child maintenance ("action en fixation de pension alimentaire à l'égard du conjoint défaillant") against the other parent.

- the benefit is only served as an advance (on future child maintenance payments) in case of non payment of a child maintenance. The "Caisse d'allocations familiales" (CAF), the social Security agency, may recuperate the benefits from the non resident parent ("parent défaillant").

- the CAF have the mission to help the enforcement of child maintenance (and not only for recuperating the ASF benefit CAF served). This mission is very large since it does not concern only lone parents and ASF recipients, but, theoretically, also the parent with care that has formed a new couple.

**1.3 If there has been a major transfer of administrative responsibilities or any major change in approach since 1997, please describe the policy context and the process of creating and implementing the initiative. Were the changes controversial? (an example here might be the establishment of a new agency)**

#### Changes

**On the child maintenance approach itself, there has not been any significant change since 1985**

The "*Loi du 4 mars 2002 relative à l'autorité parentale*" (law relative to parental authority) is an important

law but it has changed very minor aspects concerning child maintenance:

- the “obligation d’éducation et d’entretien” (obligation to educate and rear) continues even when the child is major (18), for all parents (married, cohabiting, divorced, separated, etc.).
- if divorced parents have revised themselves by agreement the level of child maintenance, i.e. without asking the judge to revise it according to the formal juridical procedure (see revising 1.1), the non resident parent paying the child maintenance may deduct the new revised amount from its income tax declaration [before (s)he could only deduct the amount decided officially by the judge].

On other connected issues, the new 2002 law makes several changes of which:

- the promotion of the principle of “coparentalité” (co-parenthood – article 372-3 civil code) implying obligations such as : “each mother and father must maintain personal relations with the child and respect its own links with the other parent”, that “prior information about any change of residence of one of the parents must be given to the other parent. If disagreement, the judge of family affairs may decide what is best for the child”, etc.
- the judge may decide a “résidence alternée” (alternate residence) for the child, i.e., both parents are considered as parent with care, with a share of time to care the child, defined with the judge. In consequence, the legislation on security social is also modified so that children may benefit of social health insurance through their both parents.
- A recent decision of the “Cour de cassation” (26 June 2006) stipulates that the family allowances may be shared between parents in case of alternate residence on equal basis (in practice and till now, family benefits are most often received by the mother even in situation of “résidence alternée”).

The new “loi du 26 mai 2004” (applicable from 1 January 2005) has reformed the divorce with the aim of simplifying, pacifying and de-dramatizing procedures. The new law has introduced one change regarding support between divorced people. With the new law, the decision to determine a “prestation compensatoire” (a benefit, generally a one-off payment, paid by one spouse to the other one as a compensation for sacrifices given during marriage), and the level of this benefit, are totally disconnected from the reason of the divorce [before, if a divorce was pronounced/justified by the “torts” (faults) exclusively from one spouse, this spouse could not received any “prestation compensatoire”]. This change, together with other measures reforming the divorce, is aimed at reducing the number of conflictual divorce procedures and more generally at pacifying conjugal ruptures.

### Controversies

**There is no real debate and child maintenance has not been on the political agenda for very long.**

One may only mention discussions between experts (see part 7)

#### **1.4 Which of the following were explicit objectives of the change?**

- Limiting public expenditures
- Enforcing obligations to biological children
- Reducing child poverty
- Influencing relationship formation and dissolution behaviour
- Influencing employment of lone parents
- Increasing voluntary arrangements for maintenance
- Other (please describe briefly)

To facilitate the voluntary agreements and the acceptability by the parents of the decisions of the Court. Nevertheless, the whole question (1.4) is not very relevant because there has not been any major change on child maintenance since mid 1980s and very few controversies about this scheme.

## PART TWO: ENTERING THE CHILD MAINTENANCE SYSTEM

*In this part of the questionnaire we are interested in entrance into the child maintenance system, considering arrangements for couples who have been married, those who have cohabited, and those who have not lived together.*

### 2.1 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE BEEN MARRIED

#### 2.1.1 In your country, who has primary responsibility for divorce proceedings?

Courts

Other (please list and describe)

#### 2.1.2 Please explain briefly the legislative, administrative and procedural framework for divorce in your country.

**Among official separation of married couple, one has to distinguish 4 types of divorce (I) and 2 types of formal legal separation recognized by law (II).** In all cases, a demand must be made, with the help of lawyer(s), to the judge. But, according to the type of divorce/legal separation, the procedure will differ in further procedures and length.

#### Divorces in 2004

Type of divorce	number	in % (total divorces)	Average length (in months)
Divorce on common request (mutual consent*)	63881	47,5	9.3
Divorce on accepted demand (accepted divorce*)	17412	12,9	14.1
Divorce for fault	50079	37,2	19.5
Divorce for breakdown of common life (divorce definitive alteration of the conjugal link *)	1374	1,0	18.1
Conversion from a "séparation de corps"	1855	1,4	8.6
TOTAL Divorce	134601	100,0	
Other official legal separation of married people ("separation de corps")	3214		14.7

\* new label since 2005 reform

Source : Ministry of Justice, "Annuaire statistiques de la Justice", Edition 2006

### I. Divorces

There are two cases of divorces with agreement of the spouses and two without agreements of both spouses.

#### **a) "divorce par consentement mutuel et requête conjointe" (divorce by mutual consent and common request)**

*(before 2005, called "divorce sur requête conjointe". The new version is simpler, quicker for divorcing parents)*

**For spouses that agree on the principle of divorce and on all its consequences** (attribution of parents' home, fixation of the main residence of children with one of both parents, possible 'prestation

compensatoire', share of common goods, ....). There is no need to give any evidence of one reason of divorce. The "juge des affaires familiales" (JAF) has just to check that the will is free and that parents' interests and children's ones are preserved. (S)he hears the spouses, first separately, then together, and, afterwards with their advocate(s). He/she may hear the minor child(ren), "capable of discernement" (discernment/understanding) alone or in presence of the child's advocate or of another person (chosen by the child). He/she may cancel or modify any points of the convention that would not preserve sufficiently the interests of the child(ren). If not he/she may suggest what are the necessary conditions and guarantees for the children that must be included/added/modified in the definitive convention for obtaining the divorce.

After the reform of 2005, there will be only one appearance in court against two in the previous procedure.

Before the reform this procedure concerned 47,5% of the cases (in 2004) with a medium length of 9,3 months (the proportion of such divorces has increased and the length of procedure has slightly reduced) .

#### **b) "divorce accepté » (accepted divorce)**

*(before divorce 2005 reform, called « divorce sur demande acceptée" (divorce on accepted demand).*

**For spouses that agree on the principle of divorce (without invoking any fault) but not on all its consequences.** They just have to declare in front of the "juge des affaires familiales" (JAF) that the maintaining of common life has become intolerable. Afterwards, the consequences of the divorce are decided by the JAF, especially for deciding about the issues of disagreements. The faults are shared between the spouses ("torts partagés").

This procedure is a bit longer (14,1 months in average in 2004) and less simple than "divorce par consentement mutuel". In 2004, this type of procedure represented 12,9% of the cases.

In summary, the two first procedures of divorce including mutual consent/agreement concern around 60% of divorces.

The two other following cases of divorce are divorces when spouses disagree.

#### **c) "divorce pour alteration définitive du lien conjugal"** (divorce for definitive alteration of the conjugal link)

(since 2005 reform, it replaces former "divorce pour rupture de la vie commune" /divorce for breakdown of common life).

Before the reform this procedure concerned only 1% of divorces in 2004 and the average length of this procedure was 18,1 months.

**This divorce may be asked by a spouse after an actual separation of common life of least 2 years** (6 years before the new reform)

No need to have the consent of the other spouse. No idea of fault.

The procedure is longer than previous, but has been simplified and should be accelerated thanks to the new 2005 reform. The main change is the possibility for one spouse to ask after 2 years of separation instead of 6 years before the new reform. It should be replace "divorce for fault" (see after) in many more cases than before.

#### **d) "divorce pour faute" (divorce for fault).**

(as other types of divorces are simplified and encouraged, the divorce for fault should be less often chosen by spouses after the 2005 reform). Contrarily to some propositions which suggested in 2003, when began the discussion, just to abolish it, the objective of the reform is to keep this procedure only for the "serious cases of violation of the duties and obligations of marriage".

It is asked for by one of the spouses invoking facts that "constitute an important or renewed violation of

duties and obligations of marriage and that make common life intolerable" (art 242 Code civil). The procedure is much longer in average. In 2004, the average length of this procedure was 18,1 months and it concerned 37,2% of the cases.

\* The evidence of the fault.

In French law, the demanding spouse must prove and bring evidence of the fault(s). The proofs may be brought by any means:

- witness or written attestations by other people,
- other written proofs (medical statement ; declaration of assault and battery at police "main courante"; any letters; photos or recording if they were not taken without the other spouse's consent; copies of banking account).
- "constat" : a "huissier de justice" (usher) may certify some facts : if a spouse has taken off all his clothes, adultery,
- "sommation interpellative": a "huissier de justice" may ask the spouse to tell or do something such as coming back home, giving you the new key of the conjugal home..

\* The types of fault(s)

The fault(s) must be precise and voluntary. Some examples of recognised faults : assault and battery ; violences ; adultery ; refusal to contribute to marriage material charges ; refusal to accomplish one's conjugal (sexual) duties or to cohabit ; insults, making scenes, vexatious comportments. It may sometimes be more subtle or large (no caring for the sick spouse which is a violation of duty of "assistance", aid; not caring for ones children when it compromise their health, security, morality or education; making ones children have a lack of respect or affection with the other parent; refusal to accompany one's spouse; abusive sexual practices; unjustified refusal to have children; dishonouring behaviour such as strong alcoholism, gambling.. etc.). The divorce is pronounced by the judge only if there is (are) fault(s). It may be pronounced in case of faults by both spouses ("divorce aux torts partagés des époux").

*Procedure*

The initial request: the demanding spouse's lawyer send the initial demand of divorce for fault with all details (see infra, evidence and faults). According to circumstances, the lawyer may ask the request in the urgent, rapid or norma way.

The first appearance/hearing in front of the JAF consists of an attempt of reconciliation: the JAF hears the spouses, first separately, then together. If he/she has some doubts on the disagreement (that may be temporary), he/she may impose a delay of 8 days for making spouses think about or ask them to come back for another audience within a (maximum) delay of 6 months (in this case, he decides provisionnal measures for daily family life). In most cases, the JAF establishes an "ordonnance de non conciliation" (statement of no reconciliation). After this "ordonnance", the demanding spouse has six months at the maximum for asking a divorce audience by means of an "assignation" to the defending spouse.

The reaction of the other spouse: he/she may refuse to divorce, he/she may accept it, or he/she may ask for a "demande reconventionnelle" asking a divorce on the faults of the demanding spouse or, at least, on shared faults ("torts partagés").

The judgement : Three possibilities

- The divorce is pronounced only on the defending spouse's fault(s).
- The divorce is pronounced only on the demanding spouse's fault(s).
- The divorce is pronounced for both spouses' fault(s).

The spouse(s) have one month to contest the decision.

## **II. formal legal separation of married parents (recognised by law, without divorce)**

This is not very widespread. Actually, in 2004, there were 3214 official legal separations of married people (to be compared to 134601 divorces – see table question 6.2.1). "séparation de corps" (see after) is also sometimes called slow divorce, since it may be converted into divorce later. It is estimated that around two-thirds of "séparations de corps" are later converted into divorce.

a) "**séparation de corps**" (separation of bodies).

This arrangement, sometimes called the "divorce of Catholics", is a measure aiming at

excusing/dispensing the married spouses of their "devoir de cohabitation", duty of cohabitation, that is the obligation to live together, but not of their other obligations (fidelity, "devoirs de secours"/assistance). It authorises the spouses to have separate residences and to dispose freely of their own goods ("régime de séparation de biens", regime of separation of goods).

"Séparation de corps" may be pronounced in the same cases and at the same conditions as divorce, i.e., it is possible to "separate bodies" on "requête conjointe", "demande acceptée", "pour faute" or "pour rupture de la vie commune" i.e., on mutual consent, accepted demand, definitive alteration of common life, for fault (see divorces). question 2.1). The procedure is the same.

b) "**séparation de fait légalisée**" (separation of married parents actually legalised by a juridical act) in two cases :

\* within a procedure of divorce : if a divorce "pour faute" or "pour alteration définitive de la vie commune" has been definitively rejected by the judge on family issues (JAF), the JAF may however have to decide on the contribution to marriage charges, residence of the family and parental authority on minor children, for instance when parents already live separately, when the residence has been attributed to one of the spouse, when a pension for one spouse has already been decided, when rights and obligations relative to the minor children have been determined... This enables to organise juridically and materially the relations between both separated parents.

\* without any divorce, a spouse may ask the JAF for the determination of the contribution to the charges of the marriage, for the determination of the usual residence of the children and of the clauses and details about the right of visit and housing (of the non-resident parent).

### **2.1.3 Explain how decision-making about child maintenance fits around the divorce process. Who has the main responsibility for deciding whether and how much child maintenance should be paid when a couple divorce?**

In all divorces [and in all cases of legal separation of married couple], the "juge des affaires familiales" (JAF - judge on family issues) has the main responsibility on child maintenance issues, but the scope of his/her responsibility depends on the type of divorce. He decides of the amount in the cases of divorce for fault (d) and divorce for definitive alteration of the conjugal link (c). He also decides of the amount in the case of an accepted divorce (b) on accepted demand when the parents do not agree on the amount. He does not decide of the amount in case of accepted divorce if parents agree on the amount, and in case of divorce by mutual consent (only pronounced if there is an agreement). However, in the latter cases, he/she must check that the children's and spouses' interests are sufficiently preserved and, if not, may refuse to pronounce the divorce.

According to a 1996 study, children are involved in 65 % of divorces. We may then estimate that child maintenance decision is made in around 87000 divorces in 2004 (= 65 % of total 135000 divorces in 2004).

Source :

Belmokhtar Z. (1999), « Les divorces en 1996. Une analyse statistique des jugements prononcés », *Etudes et statistiques Justice* n°14, Ministère de la Justice.

Jeandidier B. & Ray J.C. (2006), "Pensions alimentaires pour enfants lors du divorce", *Recherches et Prévisions* n° 84, juin 2006

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## **2.2 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE LIVED TOGETHER WITHOUT BEING MARRIED**

### **2.2.1 Please explain briefly the legislative, administrative and procedural framework (if there is one) in which unmarried parents who had lived together separate.**

If the link of filiation has been juridically established, never married parents have the same "obligation d'entretien" as married parents. The "**obligation d'entretien des parents à l'égard de leurs enfants**" (child maintenance) is a particular application of the principle of "obligation alimentaire" (see question 2.1). It is the obligation to feed, educate ("entretenir") and rear ("élever") their children and is also applicable to natural parenthood (unmarried parents) if the filiation has been juridically recognised, and is larger than "obligation alimentaire" since it also covers the cost for education and scholarship.

If the filiation is not established with the father, a single lone mother may do an "action à fins de subsides" (action in court aimed at subsidies), in order to receive child maintenance from the man whose paternity is not established but who had intimate relations with the women during the conception period (between 300 and 180 days before the birth). The man may stop the action if he can demonstrate that he is not the father. This particular type of child maintenance in case of not established filiation is called "**obligation aux subsides**" (art. 342 Code civil).

In France, 47,5 % of births were out of the wedlock in 2004 (55 % of first births). [20 % in 1985, 30 % in 1990, 40 % in 1996]. A growing number of such 'natural' (out-of the wedlock) birth/filiations are recognised by the father before birth: 56 % in 2004 (40 % in 1993). Source: Institut national d'études démographiques ; statistiques de l'état civil, INSEE.

Moreover, many other out-of the wedlock births are recognized by the father at birth or later:

- 70 % of such out-of the wedlock were recognized at birth at the latest in 1991 (40 % in 1975 and 22 % in 1965)

- 82 % before the child is three in 1991 (56 % in 1975 and 39 % in 1965)

- 93 % before the child is five in 1991 (75 % in 1975 and 66 % in 1965).

Source: Institut national d'études démographiques

According to another recent study with more recent data (Munoz-Pérez F. & Prioux F, "Les naissances hors mariage en France : trente années de changements", *Recherches et Prévisions* n° 59, mars 2000), fewer and fewer out-of the wedlocks are not recognized by father. **Thus, the paternity issue is lower than ever and remains rather marginal in France (it is not an issue of debate or controversies)**

## **2.2.2 Explain how decision-making about child maintenance fits into this framework. Who has the main responsibility for deciding whether and how much child maintenance should be paid when an unmarried couple separate?**

If no agreement between parents, the Court decides ("*juge des affaires familiales*" – JAF - judge of family issues).

## **2.2.3 Please explain briefly what happens if paternity is disputed in couples who have lived together.**

**When the link of filiation between the child and the father is not established (non married parents)**, there are three possibilities for establishing this link of filiation/paternity. As the first one ("reconnaissance expresse") is based on recognition/agreement made voluntarily by the father, only the second and third possibilities are likely if paternity is disputed.

[The "reconnaissance expresse" (expressed recognition): that stems from the parents' will. This voluntary recognition may happen at different moments: by declaration during the pregnancy or after the birth in any "mairie" (commune), in front of a "notaire" (lawyer/notary) or a judge, and even in a will/testament made with a "notaire"].

\* The "possession d'état" (possession of state?): the fact, for a mother or a father, to behave as a parent may be considered as a link of filiation (the evidence may be brought in front of a judge by any means of proof). This way may be particularly relevant for couples who have lived together for a long time.

\* The "action en recherche de paternité" (action in research of paternity) : the filiation may be established by a judgement ; the research of (natural) paternity may be undertaken, under a judge's decision, if there exist sufficient presumptions or important signs of it. These presumptions or signs may be the fact of having cohabited with the mother during the conceptual period. Without having cohabited, it may be the fact of having had several sexual relations during the conceptual period (for instance, proved by visits at mother's home twice a week for one month, or common holidays).

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## **2.3 CHILD MAINTENANCE ARRANGEMENTS FOR THOSE WHO HAVE NEVER LIVED TOGETHER**

### **2.3.1 In couples who have not lived together, explain how decision-making about child maintenance is made. Who has the main responsibility for deciding whether and how much child maintenance should be paid?**

Same as 2.2.

If no agreement between parents, the Court decides ("*juge des affaires familiales*" – JAF - judge of family issues).

### **2.3.2 Please explain briefly the process for establishing legal paternity in couples who have not lived together when paternity is not in dispute. (For example, legal paternity is presumed if the father's name is on the birth certificate.)**

The way to establish legal paternity, when there is no dispute about paternity, is the "reconnaissance expresse" (expressed recognition) that stems from the parent's will. This voluntary recognition may happen at different moments: by declaration during the pregnancy or at any time after the birth in any "mairie" (commune), in front of a "notaire" (lawyer/notary) or a judge, and even in a will/testament made with a "notaire".

### **2.3.3 Please explain briefly what happens if paternity is disputed in couples who have not lived together.**

Two possibilities to establish paternity in case of dispute:

\* The "possession d'état" (possession of state?): the fact, for a mother or a father, to behave as a parent may be considered as a link of filiation (the evidence may be brought in front of a judge by any means of proof). This way is however rather unlikely for a parent that has never lived with the other parent and the child.

\* The "action en recherche de paternité" (action in research of paternity): the filiation may be established by a judgement ; the research of (natural) paternity may be undertaken, under a judge's decision, if there exist sufficient presumptions or important signs of it. These presumptions or signs may be the fact of having cohabited with the mother during the conceptual period. Without having cohabited, it may be the fact of having had several sexual relations during the conceptual period (for instance, proved by visits at mother's home twice a week for one month, or common holidays).

## **PART THREE: THE DETERMINATION OF CHILD MAINTENANCE DUE**

*Part Three of the questionnaire is concerned with determination of the child maintenance obligation and entitlement - the decision-making process by which child maintenance is agreed between parents, or decided by Courts or Agencies. This part of the questionnaire does not ask about arrangements for collection or enforcement of maintenance, which is dealt with in Part Four.*

*After an initial overview (Questions 3.1.1-3.1.5), we ask for detailed information about the determination of child maintenance due in three sections which address separately:*

- *voluntary agreements between parents (Questions 3.2.1-3.2.3)*
- *obligations determined by Courts (Questions 3.3.1-3.4.4)*
- *obligations determined by other agencies/organisations (Questions 3.5.1-3.6.5)*

*One of these three sections may not be relevant in your country (for example, if Courts are not involved in determination of maintenance obligations). Please complete the sections which are relevant to your country, and if you leave out a section please explain why.*

*Please remember that we are interested in three groups of parents:*

- *separated married parents (whether formally divorced or not)*
- *separated cohabitantes*
- *parents who have never lived together.*

**NB : there is no situation in France where separated cohabitantes and parents who have lived together are treated differently. All never married parents are treated equally, there is no difference.**

### **3.1 OVERVIEW**

**3.1.1 Are parents who were married allowed to make a voluntary agreement as to the amount of maintenance? Are separated cohabitantes? Are parents who have never lived together? For each group, please briefly discuss the circumstances in which they are allowed to make a voluntary agreement.**

Voluntary agreements as to the amount of maintenance are possible in all cases.

- In divorces and in cases of legal separation of married couple, the “juge des affaires familiales” (JAF - judge on family issues) ratifies the voluntary agreements most often. He may however change it, if he/she considers the children's and spouses' interests not are sufficiently preserved (see 2.1.3)
- Never married parents may, at any time and as they want, make voluntary agreements (see 2.2.2 and 2.3.1)

**3.1.2 If parents can make a voluntary agreement, does it have to be approved by someone else? By whom? What criteria are used? How often is the agreement approved, and what happens if it is not? (Again please answer each part of this question for separated married parents, separated cohabitantes, and those who have never lived together.)**

For separating married parents (divorced or under a formal legal separation), voluntary agreements will be ratified by the judge in the decision of divorce or legal separation. Generally, agreements are approved. The judge checks that the children's and spouses' interests are sufficiently preserved and, if not, may ask a change or refuse to pronounce the divorce. No statistics but in most cases the judge accepts the

agreement.

For never married parents (having or not cohabited together), there is no formal acknowledgement, ratification or approval of voluntary agreements. Never married parents ask the judge to determine the level of child maintenance when they do not agree or when there is a conflict between them about the child maintenance.

**3.1.3 Do courts play a role in determining maintenance amounts? If so, is it a primary role, or residual? Please briefly explain the circumstances and the types of cases in which the court is involved.**

Courts play a major role in determining maintenance amounts. They participate in the determining of child maintenance in all divorces. And, in cases of non married parents, they determine the child maintenance if there is no voluntary agreement between parents: for non married parents, the role of Court is subsidiary.

**3.1.4 Do agencies other than the court play a role in determining maintenance? If so, which agency/agencies? Please describe its functions, both in terms of functions related to child maintenance and functions related to other areas of responsibility. Please explain the circumstances and the types of cases in which the agency is involved.**

There is no agency playing a role in determining maintenance

**3.1.5 For children of formerly married parents, is the child maintenance obligation in the child's name or in the name of the parent with care? Is this different for separated cohabitantes or for children of parents who have never lived together? Does it differ depending on whether it is a voluntary agreement versus being determined by the court or an agency?**

The child maintenance is normally awarded to the parent with care, but, theoretically, a child may undertake a juridical action in front of a court in his/her right on the basis of article 203 of Code civil ("obligation d'entretien des parents à l'égard de leurs enfants"). This uncommon situation might happen for adult children. This situation may arise more often after the law 2002 on divorce (see 1.3) that has stated formally that "obligation d'éducation et d'entretien" (obligation to educate and rear) continues even when the child is major (over 18) and not yet working.

There is no difference for never married parents.

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*We now ask more detailed questions about the three types of arrangements, voluntary, court-determined, and agency-determined.*

## **3.2 VOLUNTARY AGREEMENTS ABOUT CHILD MAINTENANCE**

**3.2.1 Please provide information on voluntary agreements: are lawyers, agencies or other organisations involved in mediating or helping to negotiate voluntary child maintenance agreements? If so, please explain the processes. Are there any formal guidelines on deciding the amount?**

Lawyers/advocates

In the framework of all divorces and "séparations de corps", the intervention of lawyer is compulsory. In cases of agreements about child maintenance (always on common request, possibly on accepted demand), they may help/advise the parents to find an agreement. In these cases, one lawyer for both spouses may be used (this is less costly for parents).

Mediator

The Law concerning parental authority (4 March 2002) gives the possibility to the judge to recommend a mediation between the couple in case of disagreement (article 373-2-10 of civil code). Nevertheless, mediation is not compulsory but is just recommended by the judge. The only obligation for the parents is to accept to receive information by a mediator about the mediation process. This optional practise is still marginal. In 2003, around 8000 mediations have been executed, mainly without any intervention of a judge. The JAF only recommend mediation in less than 1% of the cases of separation or divorce (8000 compared to 259000 cases of intervention of the JAF with minor children concerned).

Mediation is organised by associations (around 200). Some of these associations are also offering the possibility for parents to surround the “exercice du droit de visite” for non custodial parents with problems of violence or very hard disagreement between ex-partners, what is called in France “point de rencontre” (meeting point). The mediation is not free of charge for the parents. They have to contribute and can obtain legal aid. But the medium real cost is around 500€ The contribution of the parents is globally of 500,000€ plus 115,000€ paid by the legal aid. The rest of the budget of mediation in France depends of the funds allowed by the State (one million euros in 2003) and the public and local authorities (2 millions euros).

A general agreement is emerging between professionals (lawyers, judges) concerning the positive contribution of mediation in the procedure of separation and divorce. It contributes to the reduction of tensions and conflicts and seems to contribute to the best interest of the children. The better way to obtain an agreement between parents and to make it as stable as possible is certainly the fact that this agreement is the result of a process of negotiation between them. A recent mission of the Parliament about family issues is recommending to support the development of mediation and a specific system of financial support comparable to the legal aid (“aide juridictionnelle”, see question 6.1.6).

### Guidelines

There is no official guideline for deciding the amount of child maintenance. The judge decides him/herself. This amount is supposed to take many dimensions into account: the respective level of resources of each partner (salaries, universal social allowances –not the means-tested allowances, properties, etc.), and the needs of a child or the costs to assume his/her daily needs (including education, etc.).

The following checklist may be useful here:

- number of children, their ages and education levels
- earnings of either parent - employee and self-employed earnings
- pensions and benefits of either parent
- savings and investment of either parent
- earnings, pensions, benefits and savings of child (ren)
- costs of accommodation of either parent and child (ren)
- other needs or expenses of either parent, including childcare
- other needs or expenses of children
- length of marriage
- other financial transactions made during divorce

This absence of guidelines explains the important differences in the level of child maintenance depending of the localities, the judges and the cases. This absence of guideline or the discretion of the decision of the judge is sometimes considered as the only way to obtain a very specific agreement, taking into account so many variables. But this absence is also very problematic for many others, because it may end in unfair situation. That's the reason why some judges have proposed to create such guideline for their own practises, like the JAF of Colmar, in the East of France, a formula that has been used by many other judges and lawyers. He suggests a method with the following steps: first to identify the resources of the spouses (salaries, universal family allowances, financial investments), then the respective charges of each spouse to define the availability of each one (charges like housing cost, taxes, electricity and gas cost, credits, insurances, travel costs, etc). The next step evaluates the contribution of each spouse.

We can also find also on the website of the association “Condition parternelle”, a formula to evaluate directly the level of the child maintenance with tables on: the real estimated cost of a child per month and per parent (housing, vacations, leisure, food, transport, clothes, health, transport linked to the circulation of the child between the households, schooling, childcare), then a table about the financial advantages linked to the

presence of a child (tax deduction, reduction of the housing taxes, reduction on transport,, family allowances, housing allowances, scholarship purses, etc). The difference between the cost of the child and these advantages is supposed to represent the real cost of the child. Then the formula to obtain the theoretical level of the child maintenance is the following: parent's resources/couple's resources x real cost of the child = theoretical contribution. Then, it suggests another formula to equilibrate the contribution of each parent: theoretical contribution of one parent – charges for the parent + advantages of the parent= re-equilibration for each. The parent who has a positive result of this formula will compensate for the other. Some academics, economists, have proposed some other formula (See, for example, Cecile Bourreau-Dubois, Bruno Jeandidier and Bruno Deffains, *Revue française des affaires sociales*, n°4-2005). They have compared different systems of evaluation of the child maintenance and proposed one, which approximates relatively well the real level decided by judges in one jurisdiction. They defend the idea that a formula is necessary to give a background to facilitate the negotiation between the different protagonists: the parents and the judge. They also defend the idea that such a formula has to be used as an indication and not as an obligation or as a compulsory system. The judge has to keep the possibility to adjust this theoretical level with the reality of the negotiation and the parties.

### 3.2.2 What happens if parents attempt to reach a voluntary agreement but are unable to do so?

In that case, the solution could be a mediator and then the JAF, as already mentioned.

## 3.3 COURT DETERMINATION OF CHILD MAINTENANCE

*This section seeks detailed information about child maintenance determined by Courts. If Courts are not involved in determination of maintenance in your country, please go on to the section on agency determination (after question 3.4.4). If courts are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the Court uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabitees, and parents who have never lived together).*

### 3.3.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Court decisions about regular child maintenance. Does this differ for separated married parents, separated cohabitees, and parents who have never lived together?

In the framework of all divorces and "séparations de corps", the intervention of lawyers is compulsory. They notably help a parent to defend his/her/their proposal regarding the child maintenance. In the case where parents reach an agreement by themselves in a contract, with or without a mediator, wit or without their respective lawyers, they have to obtain the decision of the JAF to confirm the agreement. In the case where they can't reach any agreement, the JAF will decide in the best interest of the child with his/her own method of evaluation.

It is the same for the non-married parents or separated cohabitees.

### 3.3.2 How would you describe the main method of Court determination of the amount of maintenance on the following continuum:

- Full discretion
- Mostly discretion, but with informal guidelines
- Formal guidelines
- Rules/rigid formulae

There is no automatic schedule (see section 321 above). The JAF decides according to many parameters. Two main parameters are taken into account: the children's needs (that differ according to their age, the type of school or their social origin) and the parents' resources (that depend on the income and on the incompressible charges, such as housing charges, mortgages, etc.).

Most often, the amount are between 0 euros and 1000 euros per month per child. The average amount, according different studies, is 150 to 170 euros per month per child. It appears that the non-resident parent's income (i.e., his ability to pay) is one of the main criteria to guess the level of child maintenance decided by the judge. In average, the amount is in a proportion of around 15 % of the non resident parent for one child, 20 % for two children and 30 % for three children. (see question 3.2.1)

**If more than one method is used, please describe the circumstances that could lead to different methods.**

No automatic guidelines. Judge decision. See above, 3.2.1.

**Please report any differences between separated married parents, separated cohabitants, and parents who have not lived together.**

No differences

**3.3.3 Is there a minimum amount of maintenance required?**

**No**

**Yes. How much? What are the circumstances in which it is used?**

According to a 1996 study on all divorce decisions, child maintenance is 0 in 20 % of cases (Source : Belmokhtar Z. (1999), « Les divorces en 1996. Une analyse statistique des jugements prononcés », *Etudes et statistiques Justice* n°14, Ministère de la Justice.)

According to another 2000 study on one region, a quarter of child maintenance are under 130 euros per month per child.

Some experts suggest to use the level of the “allocation de solidarité familiale” - ASF (family allowance to compensate the absence of payment of the child maintenance) as a minimum (which means 82€per child and per month). But this proposition has also been criticized by many other experts, because it goes against the principle of “obligation alimentaire”. The level of the child maintenance is supposed to take into account the level of needs of a child and the level of possible contribution of a parent. Some parents are unable to pay the level of the ASF and others have the possibility to pay much more.

**If there is a maximum, please also provide information on its level and the circumstances in which it is used.**

No maximum

**3.3.4 These questions deal with how the Court takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.**

**A. How much of the non-resident parent's earnings are considered?**

**All**

**Some (explain)**

**None (go to 3.3.4 C)**

**B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?**

**Gross**

**Net (What is deducted?)**

Generally, the judge asks information such as income tax declaration that informs on the taxable income. This taxable income is more or less equal to the sum of net wages and other (capital) incomes, that is net earnings. But (other) child maintenance paid (possibly to another caring parent) is deducted from this sum.

**C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?**

**All ignored**

**All considered**

**Some ignored, some considered. Which ones?**

**D. Are the non-resident parent's basic living expenses taken into account?**

**No**

**Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.**

**Yes. Please describe the way in which it affects the obligation.**

The judge take into account the personal situation and may decide 0 euros if (s)he considers the non resident parent is not in state of paying (see 3.3.3)

**E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?**

Any element may be taken into consideration by the judge

**How?**

In front of the judge, the non resident parent may present all arguments or circumstances such as justifications of personal expenses.

**F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?**

Idem, all expenses may be considered by the judge. However, most often (especially if not specified contrarily in the judge's decision), the travel cost for the non resident parent to fetch the kid(s) for the week-ends or for holidays are on the entire charge of the non resident parent.

**3.3.5 The following questions deal with how the Court takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.**

**A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?**

Any change in the situation of one or both parents may produce a revision of the level of the child maintenance. Nevertheless, the level of the resources of the new partner should not be taken into account, because he/she has no obligation towards the children of his/her new partner. But his or her contribution to the common charges of the household modifies the situation of the parent with care and this may lead to a revision by the judge.

**B. Is the obligation affected by whether the non-resident parent had prior children? In what way?**

As for the previous point, the JAF may be called for arbitration about such situations, but there is no precise rule except the necessity to take into account a minimum level of income of the non-resident parent to allow his/her to assume his/her responsibility.

**C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?**

Idem

**D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?**

The JAF has to decide in the best interest of the children concerned.

**3.3.6 These questions deal with how the Court takes account of the parent with care's resources in determining whether there is an obligation and its amount.**

**A. How much of the parent with care's earnings are considered?**

- All  
 Some (explain)  
 None (go to 3.3.6 C)

**B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?**

- Gross  
 Net (What is deducted?)

**C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?**

- All ignored  
 All considered  
 Some ignored, some considered. Which ones?

**D. Are the parent with care's basic living expenses taken into account?**

- No  
 Only in certain circumstances. Please describe the circumstances in which

**this would occur and the way in which it affects the obligation.**

**X Yes. Please describe the way it which it affects the obligation.**

Idem as for the non resident parent.

**E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?**

Idem as for the non resident parent.

**3.3.7 These questions deal with how the Court takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.**

**A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?**

Idem as for the non resident parent. the level of the resources of the new partner should not be taken into account, because he/she has no obligation towards the children of his/her new partner The judge may take them into considerations. No rules-based decision.

Actually, a recent study (Jeandidier B. & Ray J.C., "Pensions alimentaires pour enfants lors du divorce", *Recherches et Prévisions* n° 84, juin 2006), using econometric calculations, tend to show that, in divorce decisions, the new living arrangements are not considered by judge (= this has no influence on the amount of child maintenance). However, in case of later revision, one may not exclude that this may be more taken into account by judges.

**B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?**

Idem as for the non resident parent.

**C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?**

Idem as for the non resident parent.

**3.3.8 These questions deal with how the Court takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.**

**A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?**

Normally, when the child is in a perfect equal time living with each parent ("residence alternée"), there should not be any child maintenance for any of the parents. Nevertheless, this logical share is not always the rule and it exists cases, where such a shared custody gives rise to a child maintenance for the parent whose resources are bigger. Generally the amount of the child maintenance is smaller than in the other cases, where a parent is really a main residence parent for the children. So it can be said that there is no general rule.

A recent study has shown that ", there was no child maintenanc in 70 % of situation of "residence alternée". The other cases (30 %) concern situations when earnings are very different, even if care is equally shared, the judge often decides a small child maintenance. Most often the amount is inferior to 200 euros per month per

child.

Source : « La résidence en alternance des enfants de parents divorcés », Etudes et Statistiques Justice n°23, Ministère de la justice 2005/

**B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?**

In such cases, and under the responsibility of the JAF, the repartition of the charge will depend on this amount of time. But it remains under the discretion of the parents' (if agreement) or of the JAF to decide how they will take this particular situation into account.

**3.3.9 These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.**

**A. Does the child's age affect the amount of the obligation? If yes, what are the age groups? Do obligations increase or decrease with age?**

This is the case in the formula suggested by the experts presented below (see section 321). But this formula is only a proposition, not adopted. So the estimation of the impact of the age of the child on the child maintenance level is under the discretion of the protagonist of the decision (parents, lawyers and JAF).

A recent study (Jeandidier B. & Ray J.C., "Pensions alimentaires pour enfants lors du divorce", *Recherches et Prévisions* n° 84, juin 2006), using econometric calculations, tend to show that, in divorce decisions, judges decide the same amount whatever the age of children. The researchers consider that this result is contradictory to what is known about the cost of children (that increases with age). Judges would not take into account the age of the children.

**B. Does the number of children affect the amount of the obligation? How?**

Normally the level of the child maintenance in the decision of the court is presented globally and we generally divide this global amount per child to have the amount per child. So, there is no formal rule to consider that a family with 2 or more children could have a progressive cost, taking into account that a second child may have a smaller cost than the first one, etc.

Actually, the total child maintenance per child decided by judges decrease with the number of children. This is confirmed by several studies. This would be justified by scale economies within household.

**C. Is there a minimum desirable amount set per child?**

No precision. We only know that the mean child maintenance is around 150 to 170€per month and per child, which is much less than the estimated real cost of a child in a household.

**D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).**

Any characteristic of a child may justify a bigger amount. It depends of the negotiation between the protagonists.

Two studies, using econometric tools (ceteris paribus methods) [Sofer C. & Sollogoub M., Le divorce : approches économiques, report for Ministry of Justice, CRESEP, University d'Orléans ; Jeandidier B. & Ray J.C., "Pensions alimentaires pour enfants lors du divorce", *Recherches et Prévisions* n° 84, juin 2006], have shown that judges give higher child maintenance to boys compared to girls (+ 12 euros per months according to Jeandidier B. & Ray J.C.). Researchers assume that this is due to discriminatory (while unintentional) decision.

**E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)**

Theoretically, all the expenses (child care, health, school expenses) are taken into account in the determination of the child maintenance level.

**3.3.10 These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)**

**A. Please explain how the Court treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.**

All those elements may be taken into account by the judge. Anyway, during the divorce, the share of assets has to be set up and the way the assets are shared (e.g., housing) may not be without impact on the judge's decision about child maintenance. Moreover, the child maintenance may take other forms than a monthly payment (such as free use of housing), notably in the non resident parent is considered as not reliable (art 294 Code civil).

It may be:

- a sum of money left at a homologated instance (bank, insurance company)
- a good left for "usufruit", free use of conjugal home for instance.
- an attribution of goods/equities providing regular incomes

**B. Please explain how the Court treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:**

- lump sum payments
  - previous voluntary child maintenance payments
  - spouse maintenance (alimony) or other financial transfers to ex-partners
  - transfer of pension rights
- 

**- Lump sum payments : (see above, question 3.3.10 A)**

**- Previous voluntary child maintenance payments :** the judge may use these previous levels agreed by parents as a guideline for determining the child maintenance, but he has to check that the interest of the child is preserved.

**- Spouse maintenance (alimony) or other financial transfers to ex-partners**

*During the divorce (or separation) procedure*, a "pension alimentaire" to the spouse (spouse maintenance) is decided by the judge (but in the particular case of divorce or separation on common request, the amount is decided by both parents). This payment stops at the end of the procedure.

*After the divorce (or separation) is pronounced by the judge*,  
2 situations depending on the type of divorce or separation

\* there is a "pension alimentaire" corresponding to the "devoir de secours" paid to the other parent only in the case of divorce (or legal separation) for definitive alteration of the conjugal link (before 2005 reform = divorce or separation for breakdown of common life) (art 239 Code civil) : this "pension

alimentaire" is due till the death of the parent that has not taken the decision to divorce for breakdown of the common life (see question 2.1) ; it may be revised if there is a change of revenues and charges of one of both spouses, notably once one parent takes an activity; it is cancelled in case of remarriage or cohabitation; it may be paid by regular payment or by capital or the use of certain goods ; it must include the cost of social insurance.

\* in all other divorces (and legal separations), the judge may decide of a "prestation compensatoire", compensatory benefit, aimed at reducing the inequality of situation between both spouses as a consequence of the divorce. In divorce (and separation) on common request, the amount of the "prestation compensatoire" is decided by both spouses. In other cases, it is decided by the judge if there is no agreement between both spouses. In practice, "prestation compensatoire" is for wives (especially who have never worked). Before last reforms, if the wife loses the divorce for fault, then she lost her rights to such benefit. The new 2005 reform cancel this. The decision of granting such a compensatory benefit is independent on the reasons, and possible faults (torts), of the divorce.

"Prestation compensatoire" takes the form of capital/assets (lump sum of money, free use of a good such as housing and furniture...) in priority, otherwise the form of a regular income/payment. This latter solution is much rarer since the last reform of 2005. The judge takes into consideration many criteria (art 272 Code civil): age and health of spouses; time already spent or to spend to care for the children (the presence of children); professional qualifications; availability for a new job; existing and forecast rights; lost of rights for social insurance reversion pension; patrimony/assets. But it is not a rules-based decision.

The amount may differ from the choice between a capital or a regular income. It may also differ according the assets owned by the wife and the length of marriage. Such "prestation compensatoire" might be revised (by a judge) only under very exceptional circumstances and very serious consequences. After the 2005 reform, even more than before, **“prestation compensatoire” to one ex-spouse is considered as independent to the decision about child maintenance; but as both are decided in the same decision by the judge, one may not discard the fact that both decisions are connected.** The reform encourages the form of a capital (a one off payment to compensate for the past).

#### **- Transfer of pension rights**

The pension rights of reversion (when one is dead) are conserved by the divorced spouse. However if the deceased spouse remarried after the divorce, the pension rights are shared between different spouses in proportion of the length of the marriages.

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### **3.4 PROBLEMS AND REVISIONS FOR COURT DETERMINATIONS**

#### **3.4.1 Please discuss any problems that arise in gathering information necessary for the Court to determine maintenance, and how such problems are dealt with.**

If parents do not provide enough information, the judge may ask them some, such as income tax declaration. The judge on family issues has wide inherent powers to seek disclosure of evidence. As the judge decides, it is not in the interest of a parent not to collaborate with the judge.

#### **3.4.2 Approximately how long does it usually take for the Court to make the financial decisions about child maintenance?**

The procedure for a divorce takes generally 9 to 12 months, at the minimum. For a revision of the amount of the child maintenance, the judge may give an answer inside a month, sometimes some months, depending of the number of affair (s)he has to treat.

#### **3.4.3 When does obligation for and entitlement to Court-determined child maintenance end for divorced and separated parents and their children?**

**Please explain with reference to:**

- **child's age/education level**

The child maintenance ends generally when the child is 18 years old. However, the limit is prolonged till the end of studies and even till the exercise of an activity providing sufficient earnings for a real financial independence: this was firmly confirmed by 2002 law (see question 1.3). The child maintenance can be received directly by an adult child.

- **marriage/cohabitation of child**

Not taken into account in principle. See above

- **any other characteristics of child**
- **cohabitation/remarriage of parent with care**

It is not a recognised motive for revising Court-determined child maintenance. See 344C

- **cohabitation/remarriage of non-resident parent**
- **any other characteristics of either parent.**

idem

#### **3.4.4 These questions deal with revisions to the amount due.**

- A. Does the Court do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)**

The juridical procedure (see determining, above) may decide of an annual revising of child maintenance payments (it is not automatic, and generally must be asked by one of the parents). The decision of the Court may also indicate an index for the automatic revision or indexation of the amount. This index is normally the "indice des prix à la consommation" at a precise date.

- B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?**

Review only on demand of a parent to the judge.

- C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?**

At any time, any of the parents may ask the judge, without the intermediary of an advocate, to revise the child maintenance payment. He/she will have to prove a real change of the situation needing a revising of the amount: change in the needs of children such as education fees or change in the resources for instance if unemployment (but it will be refused to the non resident parent that would make his/her situation voluntarily insolvent).

However, it is rather restrictive: the new facts must be serious, no forecastable, recent and put in danger the parent.

For the non resident parent, being remarried and having subsequent children is often considered as forecastable acts. It is the same if the parent with care remarry with a person richer than the non resident parent, but in some decisions, the fact of remarrying or cohabiting for the parent with care may be accepted for revising the child maintenance.

In all case, the judge on family issues may decide with a certain range of discretionarity.

### The procedure of revising is not very flexible

Even if the procedure is simpler and less costly than for a divorce or "séparation de corps" since the intermediary of a lawyer/advocate is not necessary.

There are around 30,000 demands of revising of child maintenance for divorced (or legally separated) parents, and this number has tended to decrease, and 15 000 demands for never married parents (see table)

	1998	1999	2000	2001	2002	2003
<b>Demands of revising child maintenance (after divorce)</b>	41 650	38 751	36 515	34 052	30 337	29 929
<b>Demands regarding revision of child maintenance for never married parents</b>	17 039	15 335	14 494	14 130	14 840	16 343

Source : repertoire general civil – Ministère de la justice (<http://www.senat.fr/rap/r05-388/r05-3881.pdf>)

## NO DETERMINATION OF CHILD MAINTENANCE BY AGENCY IN FRANCE

### 3.5 AGENCY DETERMINATION OF CHILD MAINTENANCE

*This section seeks detailed information about child maintenance determined by agencies or organisations other than the Court. In some countries there are no such agencies involved in the determination of child maintenance liabilities and entitlements, because such matters are handled solely by the Court. If this applies to your country, please go straight on to Question 3.7.1. If agencies are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the agency uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabitantes, and parents who have never lived together).*

**3.5.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Agency decisions about regular child maintenance. Does this differ for separated married parents, separated cohabitantes, and parents who have never lived together?**

**3.5.2 How would you describe the main method of Agency determination of the amount of maintenance on the following continuum:**

- Full discretion
- Mostly discretion, but with informal guidelines
- Formal guidelines
- Rules/rigid formulae

If more than one method is used, please describe the circumstances that could lead to different methods.

Please report any differences between separated married parents, separated cohabitantes, and parents who have not lived together.

**3.5.3 Is there a minimum amount of maintenance required?**

- No
- Yes. How much? What are the circumstances in which it is used?

If there is a maximum, please also provide information on its level and the circumstances in

which it is used.

**3.5.4** These questions deal with how the Agency takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.

- A. How much of the non-resident parent's earnings are considered?
- All
  - Some (explain)
  - None (go to 3.5.4 C)
- B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?
- Gross
  - Net (What is deducted?)
- C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?
- All ignored
  - All considered
  - Some ignored, some considered. Which ones?
- D. Are the non-resident parent's basic living expenses taken into account?
- No
  - Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
  - Yes. Please describe the way it which it affects the obligation.
- E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?
- How?
- F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?

**3.5.5** The following questions deal with how the Agency takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?
- B. Is the obligation affected by whether the non-resident parent had prior children? In what way?
- C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?

- D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?

**3.5.6** These questions deal with how the Agency takes account of the parent with care's resources in determining whether there is an obligation and its amount.

- A. How much of the parent with care's earnings are considered?
- All
  - Some (explain)
  - None (go to 3.5.6 C)
- B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?
- Gross
  - Net (What is deducted?)
- C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?
- All ignored
  - All considered
  - Some ignored, some considered. Which ones?
- D. Are the parent with care's basic living expenses taken into account?
- No
  - Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
  - Yes. Please describe the way in which it affects the obligation.
- E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?

**3.5.7** These questions deal with how the Agency takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?
- B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?
- C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?

**3.5.8** These questions deal with how the Agency takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.

- A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?
- B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?

**3.5.9** These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.

- A. Does the child's age affect the amount of obligation? If yes, what are the age groups? Do obligations increase or decrease with age?
- B. Does the number of children affect the amount of obligation? How?
- C. Is there a minimum desirable amount set per child?
- D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).
- E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)

**3.5.10** These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)

- A. Please explain how the Agency treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.
- B. Please explain how the Agency treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:
  - lump sum payments
  - previous voluntary child maintenance payments
  - spouse maintenance (alimony) or other financial transfers to ex-partners
  - transfer of pension rights.

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## **3.6 PROBLEMS AND REVISIONS FOR AGENCY DETERMINATIONS**

<b>NO DETERMINATION OF CHILD MAINTENANCE BY AGENCY IN FRANCE</b>
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**3.6.1** Please discuss any problems that arise in gathering information necessary for the Agency to determine maintenance, and how such problems are dealt with.

**3.6.2** Approximately how long does it usually take for the Agency to make the financial decisions about child maintenance?

**3.6.3** Please explain any circumstances in which Agency-determined child maintenance obligations are overridden by other legal requirements.

**3.6.4 When does liability for and entitlement to Agency-determined child maintenance end for divorced and separated parents and their children?**

**Please explain with reference to:**

- **child's age/education level**
- **marriage/cohabitation of child**
- **any other characteristics of child**
- **cohabitation/remarriage of parent with care**
- **cohabitation/remarriage of non-resident parent**
- **any other characteristics of either parent.**

**3.6.5 These questions deal with revisions to the amount due.**

- A. Does the Agency do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)**
- B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?**
- C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?**

*This ends the sections of the questionnaire that have detailed questions on the way maintenance amounts are determined in voluntary, Court-based, and agency-based arrangements. The final section of this part asks broader questions.*

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### 3.7 REVIEW AND SUMMARY

#### 3.7.1 Please review all your answers in Part Three, “The Determination of Child Maintenance Due.” Please summarize the key differences in the ways in which separated married parents, separated cohabiters, and parents who have never lived together are treated differently. What is the rationale for these differences in treatment?

There is no fundamental difference between the different situations: separated married parents, separated cohabiters and parents who have never lived together.

The determination of child maintenance is approved and/or determined by the court systematically for married parents, when parents divorce or ask for a formal legal separation. The court plays a role only in case of dispute/disagreement between parents in the other situations, i.e., for

- separated married parents (neither divorcing, nor engaging a legal separation)
- separated cohabiters
- parents who have never lived together.

But the court intervenes only in case of disagreement between parents. Otherwise voluntary agreements are frequent.

#### 3.7.2 What are the perceived advantages associated with voluntary agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages and problems, and by/for whom?

##### Perceived advantages:

- simple, no conflict, no need to fight (at least a perceived advantage for children's sake);
- less costly for parents. For married parents (divorcing or engaging in a formal legal separation), the fees for the advocate in case of divorce or "séparation de corps" on mutual consent are lower since only one advocate is necessary in this case (in other types of divorces or "séparations de corps", each parent need his/her own advocate). Even no cost at all for not cohabiting married parents and never married parents, as there is no need to go to court.

##### Perceived disadvantages :

- rigidity in case of divorce or "séparation de corps" (that implies an agreement on all consequences of which the child maintenance payments), the parents must be sure of their choice that will become rather definitive and be difficult to revise in case of changes.
- no legal guarantee: in case of non married parents, there is no legal guarantee, it is just a private arrangement. Not a guarantee for the parent with care since the non resident parent may not pay (regularly) the child maintenance; not a durable/lasting/reliable guarantee for the non resident parent since he/she may have to pay, later, a higher child maintenance that would be decided by the judge after a demand from the parent with care.

#### 3.7.3 What are the perceived advantages associated with Court-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?

##### Perceived advantages

The decision is strong since it is a Court's decision. It gives to the parent with care some more guarantees and/or procedures for enforcing the payment. The parent with care may undertake a civil legal action to recover the child maintenance. The determination of child maintenance by a Court may also enable the parent with care to receive a benefit called "allocation de soutien familial" and/or to be helped by the social Security agency for collecting unpaid child maintenance (see later).

##### Perceived disadvantages

For both parents, the possibilities for revising are very difficult in practice, the procedure is considered as too slow, and, as a whole, it remains a heavy procedure, as any court's procedure. It cannot follow over time the real and current changing situations of both parents. As there is no rules-based decisions, this gives to many the impression of a certain arbitrary of the judge's decision (even if there is actually be a certain coordination/harmonisation in the practices of child maintenance determination).

**3.7.4 What are the perceived advantages associated with Agency-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?**

Question not relevant (no determination of child maintenance by agency)

**3.7.5 Please comment on the way that voluntary agreements, Court agreements and Agency agreements interact. What happens if later a voluntary agreement breaks down? Can the parent with care seek assistance from the Court or Agency? Would they recalculate the amount of the obligation?**

If a voluntary agreement breaks down, there is always, at any time, the possibility for a parent – parent with care or non resident parent - to ask from the Court to determine or revise child maintenance. The Court decides of a the new amount of child maintenance.

## PART FOUR: COLLECTION, PAYMENT AND ENFORCEMENT OF CHILD MAINTENANCE

*This part of the questionnaire is concerned with the way in which child maintenance monies are transferred from the non-resident parent to the parent with care and/or child. For some people, this may be achieved entirely by their own arrangements, including the direct transference of monies from non-resident parent to the parent with care, or arrangements through a bank. For others, transfer of monies may involve an intermediary (for example, a collecting agency), which has responsibility for receiving child maintenance from non-resident parents, and forwarding payments to parents with care/children. We seek information on collection and forwarding, non-payment, and guaranteed or advance payment schemes.*

### 4.1 DIRECT ARRANGEMENTS FOR COLLECTING MAINTENANCE

#### 4.1.1 Under what circumstances may non-resident parents choose to pay child maintenance directly? We mean direct transfers of money from the non-resident parent to the parent with care or a private bank transaction.

The collection of child maintenance is achieved by private arrangements. Direct transfer (cash payment, banking cheque or bank transfer) is the usual transaction for paying child maintenance.

#### 4.1.2 Are these direct payments monitored, and if so, how?

No

#### 4.1.3 If direct payments are not made, can parents with care seek enforcement of payment? How? What steps would occur?

In case of no payment, the main way is a juridical procedure, with the possible help of social Security agencies

In case of non payment, there are two main legal ways (juridical procedures) : one comes from civil legislation (I), the other one comes from penal legislation (II).

The civil legislation procedure may be reinforced by the subsidiary intervention of social Security agencies (III).

**(I) The civil procedure** for collecting (unpaid) child maintenance may take several forms :

a) the "**paiement direct**" (direct payment) is the simplest and quickest procedure. As soon as a (part of) child maintenance is not paid, the parent with care may be paid directly by the non resident parent's employer; bank, saving bank, unemployment benefit agency, pension insurance funds, etc.... However, the parent with care can collect past unpaid child maintenance only for the 6 previous unpaid monthly child maintenance. Those previous unpaid child maintenance are collected/recovered on a period of 12 months. A minimum income, corresponding to the "revenu minimum d'insertion" (the general minimum guaranteed income) must be left to the non resident parent.

*Procedure* : the parent with care has just to send a "huissier de justice" (usher) a copy of the official judgement (divorce, "séparation de corps" or determination of child maintenance in case of never married parents) and to give him/her the name and adress of employer/bank.... Within 8 days, the usher sends an official letter ("lettre recommandé avec avis de réception") to the employer or bank that is obliged by law to pay (in case of refusal, it may be condemned and become the debtor). The cost or charges of the procedure are also paid by the non resident parent (by the same way) or by the State (if the non resident parent is not found). The usher has also the legal right to obtain information on the non

resident parent from any public administration, fiscal agencies, social security, post, banks... (no professional secret can be opposed to the usher).

b) the "**saisie des rémunérations**" (attachment/distress of earnings) enable the parent with care to collect unpaid child maintenance, even if it is older than 6 months (i.e., to overcome the limitation of the previous "paiement direct" procedure - see a).

*Procedure* : the parent with care writes to the "greffier du tribunal d'instance" (clerk of the court) with the amount of unpaid child maintenance, noun and address of the other parent's employer and the official judgement (divorce, "séparation de corps" or determination of child maintenance alone in case of never married parents). There will be first an attempt of reconciliation in front of the judge. If this attempt fails, the judge sends an "acte de saisie" (act for attaching) to the employer that is obliged to pay (in case of refusal, the employer would become the debtor).

c) other types of "**saisies**" (attachment/distress) exist : same as b), but attachment is relative to other forms than earnings from the employer : banks, selling other parent's goods/housing.

*Procedure* : With the help of a "huissier" (usher), one may use a "saisie-attribution" (attachment-attribution) notably on the banking accounts, or a "saisie-vente" (attachment-selling) by attaching and selling goods, furniture, housing, etc.

d) the "*recouvrement par le Trésor public*" (collection/help directly by Treasury – fiscal administration): only possible if all other previous procedures failed. A parent with care may ask the Treasury administration to collect. As for "paiement direct", the collection is however for the present and limited to the 6 previous unpaid monthly child maintenance.

*Procedure* : the parent with care writes to the "procureur de la République" (public attorney ?) with all necessary information (see before) and documents justifying that all other procedures failed. The fiscal administration will (try to) collect itself the child maintenance and will take for itself a supplement of 10 %.

**(II) The penal procedure** : is a very serious procedure used notably when a non resident parent put himself intentionally in an insolvent position or vanishes without leaving an address. This procedure is far from guaranteeing by itself the future payment of child maintenance, but constitutes rather a strong pressure or a threat for enforcing the payment of child maintenance.

There is one main "délit" (offence) relative to the non payment of such obligation, and two others that may also be used by a parent with care against the non resident parent.

\* The non resident parent may be condemned for abandon of family, if he has refused intentionally to pay the total child maintenance during more than 2 months. He/she may have to pay a fine and be jailed up to 2 years and 15000 euros (article 227-3 du code pénal). He/she may also lose his/her exercise of parental authority till he/she has fulfilled his/her (child maintenance) obligations during at least 6 months. Several thousands of condemnations are pronounced each year for this (4450 in 2003).

\* the "Code pénal" condemns also a person who "organise or enlarge one's insolvency" notably by dissimulating earnings, assets or pretending false debts. This offence may be condemned with up to 3 years jail and a fine (article 314-7 du code pénal).

\* the "Code pénal" also punishes the non resident parent who has to pay child maintenance and has not warned the parent with care that he/she has changed of domicile (up to 6 months of jail and a fine).

There are three ways for the initial/starting phase of penal procedures : complaining at the police station, writing to the "procureur de la république" (Public attorney) or introducing a procedure called "citation directe " (for abandon of family). In the two first cases, the "procureur de la république" will decide on his/her own if he/she decides to follow the demand/complaint (that is, ask a judge for the examination of the issue); which is often uncertain. In the third case, the parent with care is certain that a court will examine the issue (but he/she will have to pay all charges in advance). He/she asks his/her advocate to act such as to "cite" the other parent in front of the "tribunal correctionnel" (penal court). There will be two appearances/hearings and the procedure may last many months.

Remarks on penal procedures : they are always long, and this is an inconvenient for the parent with care that has also to advance the charges of justice (advocate, court..), the results are often disappointing (courts tends to consider those offences as not important and tends not to really condemn non resident parent), the penal procedures may be psychologically very difficult (especially if the non resident parent goes to jail after several condemnation/sentences and without having paid any child maintenance...) and, even when they succeed, only a part of maintenance due is generally collected.

### (III) The role of social Security agencies in collecting child maintenance

A law of 22 décembre 1984 ("loi relative à l'intervention des organismes débiteurs des prestations familiales") was passed for making child maintenance enforcement work better. It creates the "**allocation de soutien familial**" (ASF) a benefit served by "Caisses d'allocations familiales" (CAF - family fund social security agencies) and replacing the former "allocation d'orphelin" (AO, see question 1.2). ASF is a non means tested benefit: the amount is 82 euros per month and per child in 2006.

The scheme is not limited to a simple benefit, but may also imply the intervention of social security agencies (CAF) in the collection of child maintenance

- ASF is given in case of "abandon manifeste", only if the parent is a lone parent, if he/she does not receive child maintenance from the non resident parent, if he/she has already done a juridical action for the determination of the child maintenance ("action en fixation de pension alimentaire à l'égard du conjoint défaillant") against the other parent, that is, has obtained a judgement determining child maintenance (see section 2), if he has also undertaken a first juridical action for collecting it (any civil procedure, generally "paiement direct", see I) and if the child maintenance has not been paid for two months. NB : the determination of child maintenance exists already/always in case of divorce or formal separation/"séparation de corps" (the determination of child maintenance is inside the judgement) ; the determination of child maintenance exists in the other cases (i.e., never married parents and not legalised separation of married parents) but only if a formal demand/action has been undertaken by the parent with care for the determination by justice. See section 2 on these points.

- but, even if the condition of juridical court's determination of the child maintenance is not fulfilled, the benefit is however served by CAF for 4 months in case of non payment of a child maintenance, as an advance. If the parent with care wants to go on receiving ASF (and/or collecting the child maintenance, see later) after this period of 4 months, he/she has to undertake an action for determining child maintenance (it is the case only if parents were never married) and for collecting it.

- in all cases, the "Caisse d'allocations familiales" (CAF), the social Security agency, will continue to serve the ASF only if it is allowed by the parent with care to collect at his/her place the child maintenance from the non resident parent. If the CAF reaches to collect the child maintenance (by means of an amicable arrangement or civil procedures, see later), it will reimburse to oneself the ASF already served to the parent with care and pay the child maintenance to the parent with care with the sum that may remain.

- the CAF have the mission to help the enforcement of child maintenance (and not only for recuperating ASF) for all parents with care, and not only lone ones. This mission is very large since it does not concern only lone parents and ASF recipients, but, theoretically, also the parent with care that has formed a new couple (in this case, the parent with care is not eligible to ASF because he/she is not a lone parent, but may be helped by the CAF to collect the child maintenance). There must be the parent with care' s agreement.

#### *Procedure of collection by the CAF*

The first phase consists of an amicable proposal by the CAF to the non resident parent. If this procedure fails, the CAF may use any of the civil procedure (see I, above) in place of the parent with care.

#### **4.1.4 Please discuss the perceived advantages of direct payment arrangements, and the perceived problems.**

For both parents, the private transfers are simple, rapid and do not imply any further costs.

A problem may arise in case of erratic payment of the child maintenance, disagreements or conflicts because it may be more difficult for one parent to prove what has been paid or not paid.

Most frequent problems are : checks arriving too late (at the end of the month instead of the beginning) ; only a part of the pension is paid ; the check sent by post has never arrived at parent with care's... It may be in the non resident parent's interest to pay by cheque or bank transfer – and not in cash - in order to keep a proof of his payment.

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## **4.2 MEDIATED ARRANGEMENTS FOR COLLECTING MAINTENANCE**

There is no mediated arrangement for collecting maintenance in France
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**4.2.1 Is there an organisation/agency that has primary responsibility for collecting and forwarding child maintenance? Which organisation? If this is a different organisation than the agency that assesses maintenance, please provide information on its functions.**

**4.2.2 Please provide information about the administrative and procedural arrangements for collecting and transferring maintenance. If you have more than one scheme, please deal with these separately. Please explain any difference in arrangements for different groups of parents (separated married parents, separated cohabitantes and parents who have never lived together). Please explain any differences for whether the amount was set voluntarily, through a Court, or through an Agency.**

**4.2.3 Please describe any types of circumstances in which payments are automatically withheld from wages (that is, prior to any problem with non-payment).**

**4.2.4 In Section 4.4 below we ask for information on schemes that forward maintenance due in advance of collection. Other than these schemes, what is the usual timescale for delivering payments to parents with care/children?**

**4.2.5 What are the perceived advantages of your collection and forwarding scheme(s), and what are the main problems?**

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## **4.3 NON-COMPLIANCE**

**4.3.1 For parents with mediated arrangements for collecting and transferring maintenance, we are interested in what happens when non-resident parents do not pay the amount due. Which of the following could happen?**

**See 4.1.3 for more details**

X Attachment of earnings

X Deductions from bank accounts/savings/pensions

X Deductions from benefits : especially unemployment benefits

X Recovery through tax : not directly, but possible action by Treasury-fiscal administration (4.1.3 I.)

d)

Seizing and selling assets

Driving licenses revoked

Passport confiscation

Criminal prosecution (uncommon see 4.1.3. II)

Imprisonment : (even less uncommon see 4.1.3 II)

Interest charged on debt

Other

**4.3.2 Of the interventions marked in 4.3.1, which are most likely? Please comment on whether these typically occur in a particular sequence, that is, differentiate between any that are routinely used at the first instance of non-payment and those only used for persistent non-payment. Finally, please comment on the timing of collection interventions; how soon after non-payment would something happen? (If different types of cases have different steps or different timing, please explain.)**

Attachment of earnings and deductions from bank are the most frequent. If it does not work, then, and only then, the help of Treasury (fiscal administration) is also used. See 4.1.3. for details.

**4.3.3 When parents with care and their children do not receive the child maintenance due to them as a result of non-compliance by non-resident parents, what steps could the parent with care take? Who would they complain to? What happens when a complaint is made? (Arrangements by which child maintenance due (or some part of it) is guaranteed by the state are covered in the next section, so do not need to be covered here.)**

We assume that the child maintenance has been determined (during the divorce or legal separation procedure, or separately for never married people).

In case of non payment, there are two possibilities : either the parent with care undertakes himself civil procedures (described in 4.1.3 I), or she asks the CAF (social security fund) to help her, to do actions at her place. But either done by the parent with care herself, or by CAF, the possibilities given by legal civil procedures are the same. The situation of asking to CAF is more frequent for parent still leaving alone because they receive ASF to compensate for non payment of child maintenance.

The most likely civil procedure would be (either undertaken directly by the parent, or by CAF) :

- First "direct payment" (but this is limited to 6 months).

- Second (or even first if "direct payment" is not chosen, e.g., because unpaid period is over 6 months), "saisies".

Both procedures consists of kind of attachment/deductions procedures from the employers, banks, assets (see 4.1.3).

- Third, help of Treasury.

A penal procedure is not that frequent unless the non resident parent has means and really acts intentionally in order not to pay child maintenance (see 4.1.3 II)

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## 4.4 GUARANTEED MAINTENANCE PROGRAMS

**4.4.1 We are specially interested in schemes which forward maintenance due to the parent with care/child in advance of collection from the non-resident parent, thus guaranteeing that something is received. (We do not include here general social assistance programs available to all low-income parents.) Does your country have such a guaranteed maintenance program?**

Yes (continue)

\_\_\_ No (go to Part Five)

**4.4.2 Please describe eligibility for the guaranteed maintenance program. For example, are all parents with care eligible, or only those in which non-payment has occurred? Is there an income test? Is this available only for those with certain court or agency agreements, or can those with voluntary agreements also participate?**

When the non resident parent is still alive, the parent with care may ask a benefit (ASF) – only if she lives alone – to the CAF as an advance for unpaid child maintenance.

There is no income test.

There must have been a determination of child maintenance by the judge. But even in case, there is still not such a determination, the CAF will provide the ASF benefit during 4 months whatsoever.  
See description after 4.4.5.

**4.4.3 Please describe the amount guaranteed. Is this a proportion of the amount owed or a flat amount? Is there a minimum or a maximum? Does the amount vary across parents? Is the amount ever adjusted (for inflation or for changes in individual situations)? Under what circumstances is it adjusted?**

See explanations after 4.4.5.

**4.4.4 We are interested in the interaction between the guaranteed maintenance program and other parts of your social benefits system. Is the guaranteed maintenance program intended to be an alternative to other benefits or is it intended to supplement them?**

ASF is not intended to be an alternative to other benefits.

**4.4.5 Please describe the administration of the program. Who administers it? Who is responsible for recovery of the amounts forwarded?**

#### **The role of social Security agencies in guaranteeing and collecting child maintenance**

A law of 22 décembre 1984 ("loi relative à l'intervention des organismes débiteurs des prestations familiales") was passed for making child maintenance enforcement work better. It creates the "**allocation de soutien familial**" (ASF) a benefit served by "Caisses d'allocations familiales" (family fund social security agencies) and replacing the former "allocation d'orphelin" (AO, see question 1.3). ASF is a non means tested benefit: the amount is around 82 euros per month and per child in 2006 (the amount is revised each year, together with all other family benefits, that is generally at the same pace as inflation).

The scheme is not limited to a simple benefit, but may also imply the intervention of social security agencies (CAF) in the collection of child maintenance

- ASF is given in case of "abandon manifeste", only if the parent is a lone parent, if he/she does not receive child maintenance from the non resident parent, if he/she has already done a juridical action for the determination of the child maintenance ("action en fixation de pension alimentaire à l'égard du conjoint défaillant") against the other parent, that is, has obtained a judgement determining child maintenance, if he has also undertaken a first juridical action for collecting it (any civil procedure, generally "paiement direct") and if the child maintenance has not been paid for two months. NB: the determination of child maintenance exists already/always in case of divorce or formal separation/"séparation de corps" (the determination of child maintenance is inside the judgement); the determination of child maintenance exists in the other cases (i.e., never married parents and not legalised separation of married parents) but only if a formal demand/action has been undertaken by the parent

with care for the determination by justice.

- but, even if the condition of juridical court's determination of the child maintenance is not fulfilled, the benefit is however served for 4 months in case of non payment of a child maintenance, as an advance. If the parent with care wants to go on receiving ASF (and/or collecting the child maintenance, see later) after this period of 4 months, he/she has to undertake an action for determining child maintenance (it is the case only if parents were never married) and for collecting it.

- in all cases, the "Caisse d'allocations familiales" (CAF), the social Security agency, will continue to serve the ASF only if it is allowed by the parent with care to collect at his/her place the child maintenance from the non resident parent. If the CAF reaches to collect the child maintenance (by means of an amicable arrangement or civil procedures, see later), it will reimburse to oneself the ASF already served to the parent with care and pay the child maintenance to the parent with care with the sum that may remain.

- the CAF have the mission to help the enforcement of child maintenance (and not only for recuperating ASF) for all parents with care, and not only lone ones. This mission is very large since it does not concern only lone parents and ASF recipients, but, theoretically, also the parent with care that has formed a new couple (in this case, the parent with care is not eligible to ASF because he/she is not a lone parent, but may be helped by the CAF to collect the child maintenance). There must be the parent with care's agreement.

#### *Procedure of collection by the CAF*

The first phase consists of an amicable proposal by the CAF to the non resident parent. If this procedure fails, the CAF may use any of the civil procedure (see above 4.1.3) in place of the parent with care

There is no figure on the total benefits given when child maintenance is not paid. Taking the total ASF numbers given by statistics (690000 parents and 900000 children in 2005) would be a mistake since it also includes children whose at least one of parent is dead for instance.

There are only old data coming from a 1997 report with statistics on parents receiving ASF due to "abandon" by the non resident parent (= still existing but either is considered as not able to pay, or is not willing to pay). (see table below – no more recent study = this is not considered as an issue in France).

From this table, we have estimated to around 200000 parents receiving ASF due to non payment in 2005. This would concern around 380000 children (380000 benefits), that is a gross cost that may be something like 375 millions euro per year (own broad estimation).

According to CAF, only around 15 % is considered as "recuperable", that is, CAF tries to be refunded by the non resident parent. This would be something like 55 millions euros which are recuperated.

But only a proportion of those "recuperable" benefits are actually recuperated at the end. Only around half of them would be actually recuperated (according to 1997 report), that is, according to our very broad estimation, something like 30 millions in 2005.

Consequently, the net cost of programme would be something like 350 millions euros per year for 200000 lone parents and 380000 children.

Lone parent families receiving ASF in reason of "abandon" (unpaid child maintenance by the non resident parent)

at year	end	Number of lone parent families receiving ASF in reason of "abandon" by the non resident parent
1984		64 008

1985	52 609
1986	50 976
1987	54 431
1988	60 237
1989	66 473
1990	73 055
1991	78 859
1992	85 030
1993	96 396
1994	113 501
1995	123 006

Source : “Le recouvrement des pensions alimentaires et de l’allocation de soutien familiales par les caisses d’allocations familiales”, rapport de Denis Eglin pour la CNAF, février 1997

#### **4.4.6 What are the perceived advantage and disadvantages of the scheme?**

Advantages : CAF brings practical help for lone parents with care. Even in case of non payment of child maintenance, the lone parent receives at least ASF (82 per month and per child). And if child maintenance is determined at a level inferior to 82 euros, the lone parent has the guarantee to receive at this 82 euros.

Main problem : a large part of child maintenance remains unpaid when child maintenance amount is higher than ASF

## PART FIVE: FINANCIAL INTERACTIONS

*This part of the questionnaire is concerned with the interactions between child maintenance amounts and other policies in your country.*

### 5.1 TREATMENT OF MAINTENANCE RECEIVED

**5.1.1 Do child maintenance payments received by the parent with care/child count as taxable income, for purposes of both central and local taxation? How? If, in your child maintenance regime, child maintenance is in the child's name (rather than the name of the parent with care), please explain how this income is dealt with for tax purposes. Does it matter if child maintenance was agreed on a voluntary basis, or determined by the Courts or Agency? How? Please also explain any differences in tax treatments which depend on the current marital status of the parent with care (whether married to a new partner or not).**

Yes, child maintenance payments received by the parent with care/child count as taxable income for purposes of both central and local taxation. It is added to other net earnings in the compulsory annual declaration to fiscal agencies. However, the ASF benefit, that is intended at compensating for unpaid child maintenance (see 4.4), is not taxable.

**5.1.2 Do child maintenance payments received affect any social benefits of the parent with care and/or child? How? If maintenance counts as assessable income for purposes of social assistance, please explain any disregards that operate. Also, if some portion of child maintenance is retained by the government and not sent to the parent with care, please explain this as well.**

Yes it may affect many social benefits since child maintenance payments is included in taxable income (5.1.1) and since most social security entitlements, especially means tested family and housing benefits.

Child maintenance received is also taken into **account for purposes of social assistance** receiving either "allocation de parent isolé" (API), lone parent benefit, or "revenu minimum d'insertion" (RMI), the general minimum guaranteed income/safety net.

- If the recipient of API or RMI has undertaken Court actions for determining and collecting child maintenance but could not obtain it, it will not be taken into account for API entitlements, but the CAF has the right to (try to) collect child maintenance in place of the recipients (no need to have the parent with care's agreement in this case). In this case, ASF is served to API and RMI recipients, and is taken into account in the calculation of API or RMI.

- If the recipient of API recipient does not undertake actions for determining or collecting child maintenance, the amount of his/her will be lowered by a fictive amount of ASF (while not receiving neither child maintenance, nor ASF). The same applies for RMI recipients, but RMI recipients may have the possibility from the "préfet" to be dispensed of collecting child maintenance.

**5.1.3 Do child maintenance payments received affect any tax benefit for the parent with care and child? Do they affect any other formal financial liability or entitlement for the parent with care and child?**

No

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### 5.2 TREATMENT OF MAINTENANCE PAID

**5.2.1 How does child maintenance paid interact with the tax system, in both central and local**

**tax regimes? Can the amount paid be deducted from income, thereby lowering tax liabilities? Does the amount paid affect any tax benefits for the non-resident parent? If there are different tax treatments according to whether the child maintenance is agreed on a voluntary basis, or determined by the Courts or Agency, please explain this. Explain any differences in tax treatments which depend on the non-resident parents' current marital status (whether married to a new partner or not).**

Child maintenance paid is deductible from taxable income.

It does not affect tax benefits for the non resident parent.

No difference in tax treatment whether the child maintenance is agreed by the Courts or on voluntary basis, whether the non resident parent's current marital status is.

**5.2.2 Does child maintenance paid (or not paid) affect any social benefits of the non-resident parent?**

As most means tested social benefits, especially family benefits and housing benefits, are calculated from taxable income, child maintenance paid – which is deducted from earnings to be declared to tax administration – may affect positively social benefits received paid by the non resident parent.

**5.2.3 Does child maintenance paid (or not paid) affect any other formal financial liability or entitlement of the non-resident parent?**

No

## PART SIX: COSTS AND QUANTITATIVE DATA ON OUTCOMES

*The first section focuses on costs of the child maintenance regime, beginning with governmental costs of any targeted child maintenance agency (if any). We then also ask you to estimate, if possible, costs for court and agencies that may deal with assessment and enforcement. The final section asks for quantitative data on outcomes that are available in your country.*

### 6.1 COSTS OF THE CHILD MAINTENANCE REGIME

**6.1.1** If your country has an agency (or more than one agency) that is primarily responsible for assessing, collecting or enforcing child maintenance, what are its administrative costs? If possible, identify any categories of costs, either by function (costs of assessment versus enforcement) or for different types of cases. Please provide information about the types of costs included and not included (for example, whether these costs are net of any fees or any amounts retained by the government). Finally, if the amount of maintenance collected per unit of administrative cost is available in your country, please provide this information here.

No such agency in France

**6.1.2** If your country has any child maintenance functions within the courts, please provide, if possible, estimates of the administrative costs associated with assessing, collecting or enforcing child maintenance. Note that we are interested only in the portion of court costs directly related to the assessment, collection and enforcement of child maintenance, not to divorce or separation in general.

No such statistics available in France.

**6.1.3** If your country has any child maintenance functions within an agency other than an agency primarily responsible for child maintenance, please provide, if possible, estimates of the administrative costs associated with these functions. Again, note that we are interested only in the portion of costs directly related to child maintenance, not to other benefits due to all children or even all low-income children.

No such statistics available in France

**6.1.4** If your country has an advanced or guaranteed maintenance programme, please provide any details of costs that are available. If possible, differentiate between administrative costs and monies paid to parents with care that are not reimbursed.

See question 4.4.5.

we have estimated a gross cost of the guaranteed maintenance programme by CAF at something like 375 millions euro per year. The net cost (after recuperation of unpaid child maintenances) would be something like 350 millions euros in 2005

**6.1.5** Please list any financial costs to parents that are associated with assessing, collecting, or enforcing child maintenance (for both parents with care and non-resident parents). For example, there may be legal fees associated with enforcement, fees for a mediator who assists with voluntary arrangements, fees charged to non-resident parents for forwarding child maintenance to the parent with care, or interest charged to non-resident parents who are behind in their payments. (We do not intend for you to include financial debt that parents with care incur because of non-payment.)

No figure available

**6.1.6 Are there any programs that assist parents in meeting any of these costs? Please provide a short overview of these programs and any estimates of the costs of these programs.**

There exists a means-tested scheme for covering the costs of justice (fees) or a part of them, that is for paying a lawyer. This scheme is called "**aide juridictionnelle**".

Conditions of eligibility:

- being accepted by the tribunal (the procedure must be considered as not abusive or unfounded)
- be French or legally resident foreigner.
- there are two level : fees are paid totally (full aid) or partially (partial aid) depending on average resources of the previous civil year (see table).

Maximum monthly income to be eligible to "aide juridictionnelle" (in euros) from 1 January 2006

Number of person at the charge of the demanding person	Full aid	Partial aid
0	859	1288
1	1014	1443
2	1169	1598
3	1267	1696
4	1365	1794
5	1463	1892

**In 2004, "aide juridictionnelle" was granted for 67,2 % of divorces (during which child maintenance is determined) and 57,1 % for further demands to the judge about child maintenance**

Source : répertoire général civil, répertoire de l'aide juridictionnelle in "Les chiffres clefs de la justice", october 2005, Ministère de la Justice - <http://www.justice.gouv.fr/chiffres/chiffrescles05.pdf>

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## **6.2 QUANTITATIVE DATA ON CHILD MAINTENANCE**

*In this section, please provide information on child maintenance outcomes. (Note that we will be conducting analyses of the Luxembourg Income Study, so you do not need to report these here.) We are interested in information collected by the government as part of the administrative records of courts or agencies, information that comes from household surveys that include questions on child maintenance, and information that comes from any other source. Please provide information from all sources that are available.*

**6.2.1 Please provide the percentage of parents with care who have child maintenance agreements. Of those that have agreements, what percentage of parents have voluntary agreements; what percentage have court agreements, and what percentage have agency agreements? If you can provide these answers separately for separated married parents, separated cohabitantes, and parents who have never lived together, please do so.**

No precise statistics but we may make an estimation.

There is obligatorily a voluntary agreement between parents about regular child maintenance payments for divorce on mutual contentment, that is nearly half of total divorces (see table). As there is no statistics about the proportion of agreement on child maintenance for the three other types of divorce (see question 1.2 on the different type divorces), we may just say that there is **an agreement in at least 50 % of divorces about child maintenance**). As with "divorce for faults", agreement is very unlikely, and as this kind of divorces represent nearly 40 % of divorces, **one may estimate that there is no agreement in at least around 40 % of divorces.**

For non married parents, no data is known. One may think that, like for divorced parents, at least half of them have voluntary agreements.

#### Divorces in 2004

Type of divorce	number	in % (total divorces)	Average length (in months)
Divorce on common request (mutual consentment*)	63881	47,5	9.3
Divorce on accepted demand (accepted divorce*)	17412	12,9	14.1
Divorce for fault	50079	37,2	19.5
Divorce for breakdown of common life (divorce definitive alteration of the conjugal link *)	1374	1,0	18.1
Conversion from a "séparation de corps"	1855	1,4	8.6
TOTAL Divorce	134601	100,0	
Other official legal separation of married people ("separation de corps")	3214		14.7

\* new label since 2005 reform

Source : Ministry of Justice, "Annuaire statistiques de la Justice", Edition 2006

#### 6.2.2 What is known about the main reasons a parent with care would not have an agreement?

No information available

#### 6.2.3 Please provide whatever information is available on amounts paid by non-resident parents, including the proportion paying anything, the proportion paying the full amount due, and the proportion paying part of the amount due.

There exist only one old studies led in 1985 (no more recent) that has shown that  
60 % of child maintenance would be paid correctly  
10 % would be partially paid  
30 % would not be paid.

This survey showed that unpaid child maintenance was higher in 1970, at around 40 %, decreases at around one third in 1975 and remained stable between 1975 and 1985

Source : Festy P. & Valetas M-F (1987), « Le divorce et après », *Populations et sociétés*, n° 215, INED ;  
Valetas M.F. (1994), « Le paiement des pensions alimentaires en France et en Russie », *Population* n°6, INED.

#### 6.2.4 What is known about the characteristics of the non-resident parents who are not making payments or who are paying only a portion of the amount due? What is known about reasons for non-payment?

No recent inquiry on this subject.

Nevertheless, a survey led by INED in 1985 (see 6.2.4) showed that around 30 of child maintenance was never paid. The lower the amount of child maintenance, the higher the probability not to be paid (only 30 % of very low child maintenance is paid and this is due to lower income of non resident parents that have to pay lower child maintenance)

The proportion is higher when the parent (mother) with care is younger (half of under 25 year old lone mother do not receive the child maintenance), when the amount of the child maintenance is low (two third of child maintenance under 350 francs were not paid, only one fifth of child maintenance over 850 francs), when the number of children is higher and when the non resident parent is unemployed (one fifth of working non resident parents owing a child maintenance over 350 francs did not pay, three quarters of unemployed non resident parents with a child maintenance under 350 francs).

According to this 1985 survey, the potential population of lone parents with care not receiving child maintenance was 130 000, that is only half the number of ASF recipients (high non take-up) at that time.

Sources :

- Festy P. & Valetas M-F (1987), « Le divorce et après », *Populations et sociétés*, n° 215, INED ;
- Valetas M.F. (1994), « Le paiement des pensions alimentaires en France et en Russie », *Population* n°6, INED
- Festy P. (1986), *Quelques variables associées au montant et au paiement des pensions alimentaires*, report by INED to the CNAF, décembre 1986.
- Renaudat E. et Villac M. (1991), *Recherches et prévisions* n°3, janvier 1986.

### **6.2.5 Is there data available on the proportion of cases in which children spend roughly equal time with both parents? What is known about the types of cases that have this type of arrangement?**

Since the law of 2002, there is the possibility of « résidence alternée » where children live alternatively at both parents.

In 2003, among 7716 decisions of judges, 680 (8,8%) were « résidence alternée ». In 95% of the cases, it was a request of the parents. The children concerned have a mean age of 7 years. In 80% of the cases, the rhythm is alternating weeks: one week with a parent and the following with the other. The parents concerned are generally well off. The mean salary of the fathers is 20% higher than the mean salary of men (and only 20 % asks for “aide juridictionnelle” that is means-tested benefit for paying lawyer fees, to be compared to an average of 67 %, see question 6.1.6), A child maintenance is paid in 30% of the cases, generally a small one to compensate the difference of resources between parents.

### **6.2.6 Consider parents with care who have an agreement in which child maintenance is to be paid. In what proportion are payments to be made directly (that is, directly from the non-resident parent to the parent with care, rather than through a collecting agency)?**

There is non collecting agency, so in most cases, the payment – if made – is made directly to the parent with care.

**Please provide references to any sources you consulted for this part of the questionnaire.**

Source :

- Jeandidier B. & Ray J.C. (2006), “Pensions alimentaires pour enfants lors du divorce”, *Recherches et Prévisions* n° 84, juin 2006
- Festy P. & Valetas M-F (1987), « Le divorce et après », *Populations et sociétés*, n° 215, INED ;
- Valetas M.F. (1994), « Le paiement des pensions alimentaires en France et en Russie », *Population* n°6, INED
- Festy P. (1986), *Quelques variables associées au montant et au paiement des pensions alimentaires*, report by INED to the CNAF, décembre 1986.
- Renaudat E. et Villac M. (1991), *Recherches et prévisions* n°3, janvier 1986.
- “La résidence en alternance des enfants de parents séparés », *Etudes et Statistiques Justice* n°23.
- P. Bloche, V. Péresse : *L’enfant d’abord. 100 propositions pour placer l’intérêt de l’enfant au cœur du droit de la famille*. Rapport de la mission d’information. Assemblée nationale, n°2832, 2 tomes, 1000 pages. ([www.assemblee-nationale.fr](http://www.assemblee-nationale.fr))
- “Le recouvrement des pensions alimentaires et de l’allocation de soutien familiales par les caisses

d'allocations familiales”, rapport de Denis Eglin pour la CNAF, février 1997

## PART SEVEN: THE OVERALL CONTEXT

*In this section we examine two topics: current topics of debate and research, and your own evaluation of how well the regime works along several dimensions.*

### 7.1 TOPICS OF DEBATE AND RESEARCH

#### 7.1.1 Consider the following potential topics of research:

- the impact of your child maintenance regime on relationships between the parents, and relationships of the parents with their children
- the impact of your child maintenance regime on 'new' relationships or marriages, or stepchildren
- the impact of child maintenance on the labour market behaviour of parents with care
- the impact of child maintenance on the labour market behaviour of non-resident parents
- (if there is a guaranteed maintenance program) the effect of guaranteed maintenance on non-resident parents payment of child maintenance
- (if some or all child maintenance is retained by the state for parents with care that receive means-tested benefits) the effect of this retention on non-resident parents payment of child maintenance?

**On which of these topics has there been research? What are the main conclusions of this research? Are there any other main areas of research on child maintenance in your country? Please provide citations of what you view as the 2-5 most important pieces of published research.**

During the last decade, very few researches have treated of the issue of child maintenance. So it may be useful to look at a period before 2000s (see box).

Before 2000s

-The seventies : issue of non paiement of the alimonies by non resident parents.

At the end of the seventies, two important researches have been done

- Marie-France Valetas for the CREDOC (Centre de recherche pour l'étude et l'observation des conditions de vie) : *Le règlement des pensions alimentaires*, CREDOC, 1978

- Colette Mème : *Le recouvrement des pensions alimentaires*, rapport for the "Ministère de la condition féminine" (ministry of feminin condition", 1980.

These researches underline particularly the fact that among debtors of child maintenance (non resident parents), many do not pay for economical or poverty reasons.

-The eighties : the child maintenance reform : from « Allocation orphelin » to the « Allocation de soutien familial »

One has then to wait for the vote of the law creating "allocation de soutien familial" (ASF, see questions 1.3 and 3.4) for new research to be undertaken on this issue. One may mention two important researches :

- on one hand, a research made for the CNAF (Caisse nationale des allocations familiales) by the "Institut national d'études démographiques" (INED) : *Quelques variables associés au montant et au paiement des pensions alimentaires*, (some variables associated to the amount and to the payment of child maintenance) décembre 1986.

- on the other hand, the research by Evelyne Renaudat, of the research department of the CNAF (Caisse

nationale des allocations familiales) : « Enquêtes auprès des bénéficiaires de l'allocation d'orphelin pour abandon manifeste » (survey of recipient of "allocation d'orphelin" in reason of manifest abandon), Publication de la CNAF, Recherches et prévisions, supplément au n°3 de janvier 1986.

- The nineties : the analysis of the frontier between justice and social administration

Some research have investigated the administrative processing of the issue of child maintenance. One may quote essentially works by Luc-Henry Choquet, on "allocation de soutien familial" (ASF) and on the relations between RMI (general guaranteed minimum income) and child maintenance, and more generally on the imbrication of civil law (child maintenance obligations) and social law (social protection) in the cases where the parent with care (and/or the non-resident parent) is a social assistance recipients.

L-H. Choquet, *La prise en charge de l'obligation d'entretien entre parents et enfants. Un dispositif qui déplace la frontière entre les agents administratifs et les professionnels de justice*, Rapport de recherche pour la CNAF, ADRESSE, mars 1990.

L-H. Choquet : *Un droit pris entre la conformité à la règle et l'adaptation aux situations : solidarité collective ou relance du parent défaillant dans le cas du RMI*, rapport de recherche pour la CNAF, ADRESSE, janvier 1992.

Other researches have approached this issue, but only at the margins, such as the researches that have studied the question of the relation father/child in cases of separation, or have examined the common exercise of parental authority after the law of 1987 on common parental authority :

- D. Bertaux et C. Delcroix, *La fragilisation du rapport père-enfant. Une enquête sociologique*, rapport de recherche pour la CNAF, avril 1990.

-G. Neyrand et S. Mekboul, *Résidence alternée de l'enfant et exercice commun de l'autorité parentale chez les parents séparés*, rapport de recherche pour la CNAF, janvier 1993.

- F. Vauville, *L'exercice conjoint de l'autorité parentale dans les couples dissociés face à la pratique*, rapport de recherche pour la CNAF, 1990.

- H. Fulchiron et alii, *L'exercice en commun de l'autorité parentale après-divorce et dans la famille naturelle. Bilan d'application de la loi n°87 570 du 22 juillet 1987 sur l'exercice de l'autorité parental*, rapport de recherche pour le Ministère de la Justice, 1993.

### **Recent research (2000s)**

Several recent researchers and experts have examined the possibility to introduce a "barème" (formal guidelines or formulae) for determining the level of child maintenance. The arguments that are in favour of such a system are justice and efficiency. The simulation of such a formal guideline takes into account the proximity with the level of child maintenance decided today by the judges, to make it more applicable. The aim is also to decrease the proportion of unpaid child maintenance. The proposition is also to adopt a formula as indicative and not as an obligation or a compulsory system, to let a "room of manoeuvre" to the judge and a possibility to adapt the formula to each case.

### **The most important pieces of published research.**

Bourreau-Dubois C. & alii (2003), *Les obligations alimentaires vis-à-vis des enfants de parents divorcés : une analyse économique au service du droit*, rapport CREDES-ADEPS, Université de Nancy 2 et CNRS.

Bourreau-Dubois C., Jeandidier B. et Deffains B., « Un barème de pension alimentaire pour l'entretien des enfants en cas de divorce », *Revue Française des Affaires Sociales*, n°4-2005, pp. 101-132.

Jacquot A. (2002), « Divorce, pension alimentaire et niveau de vie des parents et des enfants. Une étude à partir de cas-types », *Recherches et Prévisions* n°67.

Jeandidier B. & Ray J.C. (2006), "Pensions alimentaires pour enfants lors du divorce", *Recherches et Prévisions* n° 84, juin 2006

Sayn I. (2002), *Un barème pour les pensions alimentaires ?*, Paris, La Documentation française, coll. « Perspectives sur la justice », 2002.

### **7.1.2 What are the current main topics of interest and debate about your child maintenance regime?**

Child maintenance is not an issue of debate in France.

One may note a growing interest among experts, following some research (see above 7.1.2.) for the introduction of less discretionarity in the determination of child maintenance by the judge.

For instance, a recent report of the Parliament (Sénat, « rapport d'activité du 12 juin 2006 de Mme Gisèle Gautier fait au nom de la délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes (1) et compte rendu des travaux de cette délégation sur les familles monoparentales et les familles recomposées, déposé en application de l'article 6 septies de l'ordonnance n° 58-1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires » - <http://www.senat.fr/rap/r05-388/r05-3881.pdf>) recommends to create indicative guidelines, based on objective criteria, to calculate child maintenance, in order to facilitate et harmonize the determination by judges of amounts, but also to enable parents to better forecast the financial consequences of a separation or divorce.

### **7.1.3 Please describe any impending changes in legislation, or policy developments that are likely to affect your child maintenance regime in the coming five years.**

Nothing special is expected. Child maintenance is not an issue in the public debate.

### **7.1.4 What are the public's attitudes towards your child maintenance regime? Please refer to any evidence for your replies.**

No elements available

### **7.1.5 Please describe any organised opposition in your country to the determination and enforcement of child maintenance, and the issues of contention.**

Some associations which defend the position of fathers in the divorce procedures (Associations de pères) are playing this role. For example: Fédération des mouvements de la condition paternelle".

## **7.2 YOUR EVALUATION OF THE CHILD MAINTENANCE REGIME**

*This section provides several criteria that one might use to evaluate the child maintenance regime as a whole. We ask for your expert assessment of areas that your regime is working well and not working well.*

### **7.2.1 Please consider the following criteria that could be used to evaluate a child maintenance regime.**

- a. Maintenance is regularly provided to children and/or parents with care
- b. Children who need (or desire) maintenance have a formal entitlement
- c. Maintenance policies do not negatively influence relationships between children and their non-resident parents
- d. Those in similar circumstances are treated similarly
- e. Those who need more child maintenance, receive more
- f. Parents easily understand how amounts of maintenance are calculated

- g. Child maintenance obligations are determined promptly**
- h. Parents with care feel the amount of maintenance is adequate**
- i. Nonresident parents feel the amount of obligation is affordable given their costs of living**
- j. The child maintenance regime is administered efficiently and effectively**
- k. Non-compliance with maintenance obligations does not add a substantial amount to governmental costs**

**Select one or two of these in which your assessment is that your regime is performing well. (If your assessment is that your regime works well on multiple criteria, please select the most important one or two.) In one paragraph, explain.**

**K. Non-compliance with maintenance obligations does not add a substantial amount to governmental costs**, or at least, it is not perceived at all in the country as adding a substantial amount to governmental (or social security) costs. The advance/guarantee system – with ASF benefits provided to lone parents not receiving child maintenance – has not been discussed or criticized. Its cost (which is growing) is not an issue of discussion.

A. As a whole, “**Maintenance is regularly provided to children and/or parents with care**”: the level of non-payment (around one third according to available studies) is considered as acceptable. It is smaller than in UK for example. More generally, failures in enforcement are not considered as a major issue, because most failures are thought to come from parents with low incomes.

All the other affirmations are not really adequate.

**7.2.2 Select one or two of the above criteria in which your assessment is that your regime is not performing well. (If your assessment is that your regime does not work well on multiple criteria, please select the most important one or two.) In one paragraph, explain.**

**g. Child maintenance obligations are determined promptly**

Actually, the main problem is for divorce that may last, according to the type of divorce, from an average of 9 months to an average of 19 months. For simple revision of child maintenance, or even first determination of child maintenance for never married parents, the procedure is much more efficient and rapid, between one and two months.

**h. Parents with care feel the amount of maintenance is adequate**

It is often stated in studies that the level of child maintenance are too low (compared to the cost of children for instance) and there are some signs of family associations complaining about it. Actually, the amount of child maintenance may be considered as slightly to low in too many cases.

**7.2.3 Is there another criteria (not listed) on which you think your regime does particularly well or is a particular problem? What? In one paragraph, explain.**

*This concludes Parts 1-7 of the questionnaire. If you have additional comments, please write them here:*

## PART EIGHT: VIGNETTES

*In these vignettes, we provide a basic situation and ask the likely outcome given the child maintenance policies in your country. We then vary a selected characteristic and ask whether the outcome would differ. We then ask you to report on what would happen if various circumstances changed over time.*

### 8.1 BASE CASE 'A': MISS FIELD AND MR HILL

*Miss Field is 25 years old and has never been married. She has a daughter, Susan, who is three months old. Miss Field lives with Susan in a small rented flat in the town centre. Miss Field has not had paid work since Susan's birth, and is claiming the social benefits available to a person in her position.*

*Susan's father, Mr Hill, is 27 years old. He has never lived with Miss Field. He lives locally and sees Miss Field and Susan quite often. He is fond of his daughter, and remains a friend of Miss Field's, although they do not want to set up a home together. He bought baby clothes and equipment when Susan was born but he makes no regular financial contribution.*

*He is unemployed but sometimes takes temporary, low-paid work. He currently depends on the out-of-work social benefits available to a person in his position. He rents a small flat. He has no other children, or major financial responsibilities. He has begun to talk recently about a serious effort to re-train, possibly in engineering.*

*Miss Field knows he has very little money. However, she feels that, in view of Mr Hill's interest in re-training, and the possibility that he will be able to earn more in the future, she thinks it might be sensible to make a formal arrangement regarding child maintenance.*

#### **8.1.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, explain whether Miss Field has a free choice in deciding to seek a formal arrangement.**

Given the details of the story, we assume that the paternity (filiation) has been recognized.

Miss Field and Mr Hill have different choices for determining child maintenance. They may first find an informal/voluntary arrangement. They may reach such a voluntary arrangement with the help of a mediator that may ease an agreement.

Miss Field (but also Mr Hill) may also, at any time and especially in case of problems, ask the judge for family affairs (JAF) to determine the child maintenance and all other arrangements (father's visit, etc.) regarding the child. This is the formal arrangement. Only this kind of formal legal arrangement exists. Among different possibilities (voluntary agreement, voluntary agreement with the help of a mediator, formal legal arrangement), one may say that Miss Field is 'less free' (more constrained) in her choice since she is a social assistance recipients (see A).

- A. If she has free choice, please describe the options available to her in establishing a formal child maintenance arrangement. Which of these options would be most likely? What is the likely time-scale for a decision being reached if she decides to go forward?**

The formal child maintenance arrangement is the legal child maintenance arrangement, the one decided by the JAF. This arrangement is likely for a social assistance recipients like Miss Field since, as receiving social assistance, she will be asked to undertake such a procedure (i.e., calling for the judge to determine the child maintenance) if she wants to go on receiving the ASF benefits from CAF (social security family fund). During the 4 first months, ASF is actually given to Miss Field whatever she does. However,

If during these 4 first months, Miss Field has not undertaken a legal action (asking the judge to determine the child maintenance), CAF will stop granting ASF and, as Miss Field is on social assistance, CAF will also decrease the social assistance amounts by the amount of ASF (81 euros per month), as if she were receiving it or a child maintenance, considering it is her fault if she does not receive child maintenance.

If Miss Field has undertaken a legal action and accepts the CAF to act in her place, the CAF will guarantee her the payment of ASF (82 euros per months) and will try to get back the child maintenance from the father (helping the mother in enforcing procedures).

The moment between the demand to the judge and the final decision may last 4 months

**B. If she does not have free choice, please describe what happens, explaining the likely procedures and time-scale for a decision on child maintenance being reached.**

**Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.**

The judge will decide considering both parents' situations, notably their net incomes, their charges and expenses and, possibly, their belongings (housing, etc). Given Mr. Hill's low income and precarious situation, the judge will probably decide a very low level. He may even decide a level inferior to the ASF benefit (81 euros per month), even 0. In this situation (very low child maintenance inferior to ASF), if the child maintenance is paid, CAF will pay to Miss Field the difference between the child maintenance and ASF.

In all cases, if the child maintenance is not paid which is likely given Mr. Hill's situation, CAF will guarantee the payment of ASF to Miss Field. In case of non payment, after checking and undertaking action to enforce the child maintenance payment, the CAF may also conclude that Mr. Hill is not in capacity to pay the child maintenance and decide to continue to pay ASF to Miss Field but giving up all actions for collecting child maintenance from Mr. Hill

But Miss Field may at any time decide, especially if Mr. Hill situation improves, to ask the judge for family affairs (JAF) to revise the level of child maintenance.

**In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.**

**Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.**

**8.1.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. (Please provide the amount in your own currency.) It may be necessary to introduce quantitative information or new facts into your account. For example, you may need to introduce amounts of money, for rent or living expenses, in order to demonstrate the use of standard guidelines. Please use those amounts that would be typical in your country, and explain the basis for these decisions.**

See above 8.1.1

**8.1.3 If an obligation for child maintenance is set, please describe how monies be collected from Mr Hill? How would the money be transferred to Miss Field or Susan (if at all)?**

By any means: cash payment, banking cheque and bank transfers are the most frequent

**8.1.4 If Mr Hill does not pay, what would happen?**

The most likely situation is that CAF (caisse d'allocations familiales – social security family fund) will

undertake actions, in place of Miss Field, to make Mr. Hill pay. There exist several possibilities for CAF to try to make Mr. Hill pay (see question 4.1.3). But, most likely, during this trial, the CAF will find that Mr. Hill is not in capacity to pay, may give up and decide to go on paying ASF benefits.

Later, Miss Field (also CAF but this is unlikely) may at any time decide, especially if Mr. Hill situation improves, to ask the judge for family affairs (JAF) to revise the level of child maintenance.

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## 8.2 BASE CASE 'A', VARIANT 1: MR HILL HAS REGULAR EMPLOYMENT

*We would like to understand how the outcomes would change if one of the circumstances in this case were slightly different (Variant 1).*

*The situation is exactly the same as Base Case A except that at the time Miss Field pursues maintenance, Mr Hill has just completed his training course, and just gotten a job at which he earns 75% of median full-time male earnings.*

### 8.2.1 Would the maintenance obligation differ from what you reported in 8.1.2? Please explain.

The judge will ask both parents what is their situation (fiscal declarations, pay slips, etc.) and will decide a higher amount than the amount he would have decided if Mr. Hill was still in a precarious situation.

As Mr Hill receives significant earnings and as Mrs. Field is still on social assistance, the judge may decide an amount of around 15 to 20 % of Mr. Hill's net earnings (we assume that Mr. Hill has no other child and particular expenses/charges), that is around 250 euros per month.  
No other change.

### 8.2.2 Would any other outcomes likely differ? Please explain.

No

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## 8.3 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 1: MR HILL FINDS EMPLOYMENT THREE YEARS LATER

*We now explore how your system would deal with a change in Mr Hill's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.*

*Three years later, Mr Hill completes the training course, and accepts a job at which he earns 75% of median full-time male earnings. Miss Field feels the maintenance amount should be increased.*

### 8.3.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation would change? To what? Please explain.

The formal/legal child maintenance obligation will not change if nothing is undertaken by at least one of the

parents.

Since the child maintenance has already been decided by a first court sentence (at a low level), most likely, Miss Field will have to ask the judge for family affairs (JAF) to revise the level of child maintenance.

As Mr Hill situation has improved, while Mrs. Field is still on social assistance, the amount will be increased to an amount of around 15 to 20 % of Mr. Hill's situation (we assume that Mr. Hill has no other child and expenses/charges), that is around 250 euros per month.

### **8.3.2 Would any other outcomes likely differ? Please explain.**

- Because of ignorance about Mr. Hill's new situation, or because of reluctances to ask the judge (due to difficulties with procedures for cultural and socio-economic causes, due to fears for future relations with Mr. Hill, or between Mr. Hill and his daughter), Miss Field may prefer not ask the judge to revise the child maintenance. In this case she may continue either to receive the low level of child maintenance decided initially by the judge (that may be close to the level of ASF = 81 euros per month or even lower), or even, continue to receive ASF from CAF, while still not receiving any child maintenance from Mr. Hill.

- One may also consider the situation when both parents decide on a voluntary basis a new and higher amount of child maintenance, i.e. without asking the judge to change the initial legal/formal child maintenance obligation

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## **8.4 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 2: MISS FIELD FINDS EMPLOYMENT THREE YEARS LATER**

*We now explore how your system would deal with a change in Miss Field's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.*

*Three years later, Miss Field finds employment. She begins to work part-time and earns median female wages for part-time work. Mr. Hill feels his obligation should be reduced if not eliminated, now that she is working.*

### **8.4.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation change? To what? Please explain.**

Mr. Hill may ask the judge to change the child maintenance level. But, as the formal/legal child maintenance initially decided is low (at ASF level, i.e. 81 euros per month, or even lower), it is very unlikely that the judge will decide a lower amount. And, as most probably Mr. Hill already does not pay the child maintenance (and/or is considered as not in capacity to do it by CAF), he is in fault and will most likely not undertake anything.

### **8.4.2 Would any other circumstances likely differ? Please explain**

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## **8.5 BASE CASE 'B': MR AND MRS COAST**

*Mrs Coast is about to start divorce proceedings after having been married for ten years. The couple are in their early 40s, and have two children, Anne aged six years and John, aged nine years. Both*

*children attend school.*

*Mrs Coast and the children have remained in the rented accommodation they shared when they were together, while Mr Coast has moved away to another town 100 km away where he rents a small flat.*

*Mr Coast has a secure job, and earns one-and-a-half median male full-time earnings. Mrs Coast has a part-time job, earning median female part-time earnings. There are no child care expenses.*

*Mr Coast collects both children every other weekend, and cares for them in his new home from Friday evening to Sunday evening. This involves a long journey by car (100km each way). While the children are in his home he has full financial responsibility, and has bought stocks of clothes, bedding, equipment and toys, which he keeps at his home.*

*Mrs Coast believes her husband should make significant child maintenance payments. She feels that most of the additional expenditure made by Mr Coast for the children (on clothes and toys) only benefits them when they are at his home. She finds she cannot meet her fuel and telephone bills. She welcomes the chance to formalise their financial situation, and believes it will be in her favour.*

*Mr Coast points to his additional housing expenses, his need to run a car in order to share the care of his children, and the money he already spends on their weekend stays. He does not want to be divorced, anyway, and he is bitter about what has happened. He very much wants to maintain relationships with his children, and is worried that a formal financial arrangement will be made that will leave him in financial difficulties.*

**8.5.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, what are the options for formalising arrangements about child maintenance, under the circumstances described above. Explain the likely procedures and timescale for reaching a decision.**

Both parents may find a voluntary arrangement on child maintenance (possibly with the help of a mediator), but given the description, such a voluntary agreement is unlikely.

- If there is a prior agreement between parents (unlikely here) or if not, the judge on family affairs will decide anyway - inside the divorce decision - the level of child maintenance obligation (as well as other arrangements regarding care, visits, etc.).

- If both parents eventually reach an agreement on the principle of divorce but disagree on its consequences (like child maintenance), they may ask for “accepted divorce” (see question 2.1.3). Even if he intimately does not agree with the idea of divorcing, Mr. Coast (if intelligent) may eventually accept this “accepted divorce” procedure because it is less costly (moreover he is the parent that moved away and apparently not in position of accusing her spouse of faults). The procedure will last 14 months on average before decision is taken (see table question 6.2.1)

- If Mr. Coast refuses to divorce, the solution for Mrs. Coast is to ask unilaterally “divorce for fault” (see question 2.1.3). The procedure will even be longer, around 19 months on average (see table question 6.2.1)

**Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.**

The judge will mainly consider parent’s net earnings by asking them their income fiscal declaration, their pay slip, etc. Each parent may indicate any element or circumstances to the judge. The judge will probably accept the prior arrangement between parents for the week-ends, but will not think that the contribution of

the father (fetching kids by car, equipment and clothing expenditures) as significant and having to be considered, so (s)he will not consider to take it into account in the determination of child maintenance. Moreover, in most divorce decisions (at least implicitly if not précised in the divorce judgement), the travel costs for the non resident parent are entirely at the charges of this non resident parent. The judge may be reinforced in this opinion by the fact that Mr. Coast does not even care for his kids during school holidays ! Given Mr. Coast has a good wage and no special charges and Mrs. Coast is in a precarious situation while she cares for the child and has to pay a rent for a family, the judge may decide a child maintenance of 20 % to 25 % of Mr. Coast's net earnings, that is something like 600 euros per month for both kids.

**In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.**

**Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.**

**8.5.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. As before, it may be necessary to introduce quantitative information or invent new facts or life circumstances for the couple. You may need to decide how much Mr Coast now pays to rent his new flat. Please use those situations and amounts which would be typical in your country.**

See 8.5.1

**8.5.3 If an obligation for child maintenance is set, how would monies be collected from Mr Coast? How would the money be transferred to Mrs Coast or the children?**

By any means : cash payment, banking cheque and bank transfers are the most frequent

**8.5.4 If Mr Coast does not pay, what would happen?**

Mrs. Coast may undertake juridical actions. The most likely procedure, that may be undertaken with the help of a lawyer, is the "paiement direct" (direct payment) that enables to be paid directly by Mr. Coast's employer or bank. Other possibilities of "saisie" (attachement), i.e., collecting child maintenance directly from Mr Coast's employer or bank, exist. If these procedures are not sufficient, the Treasury (fiscal administration) may also help to collect child maintenance. Eventually [but this is unlikely since at least one of the previous means should be enough to get the child maintenance], Mrs Coast may undertake a penal procedure and Mr. Coast – in that situation – would be severely condemned.. See question 4.1.3

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## **8.6 BASE CASE 'B', VARIANT 1: CHILDREN LIVE WITH BOTH PARENTS EQUALLY**

*We would like to understand how the outcomes would change if one of the circumstances in this case were different (Variant 1).*

*The situation is exactly the same as Base Case B except Mr Coast lives in the same town as Mrs Coast and the children. The Coasts decide that the children will spend an equal amount of time living with each parent, alternating one week with Mrs Coast and one week with Mr Coast.*

**8.6.1 Would the maintenance obligation differ from what you reported in 8.5.2? Please explain.**

Yes, this is “garde alternée”. The judge will consider the situation. A recent study has shown that ”, there was no child maintenance in 70 % of situation of “residence alternée”. The other cases concern situations when earnings are very different, even if care is equally shared, the judge often decides a small child maintenance. Most often the amount is inferior to 200 euros per month per child.

Source : « La résidence en alternance des enfants de parents divorcés », Etudes et Statistiques Justice n°23, Ministère de la justice 2005/

So, as Mrs Coast have a much lower income than Mr Coast and as she is in a precarious situation, one possible decision of the judge would be to decide a small child maintenance : for instance, 100 euro per child and per month, that is 200 euros for both children

#### **8.6.2 Would any other outcomes likely differ? Please explain.**

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### **8.7 BASE CASE ‘B’, CHANGE IN CIRCUMSTANCES 1: MRS COAST HAS A NEW PARTNER THREE YEARS LATER**

*We now explore how your system would deal with a change in Mrs Coast’s family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.*

*Three years later, Mrs Coast tells her husband that she has a new partner who has moved into the house. Mr Coast knows the man personally, and knows he has earnings comparable to his own. He feels that the arrival of this new partner for Mrs Coast should count in the financial decisions that have to be made during the divorce.*

#### **8.7.1 How would Mr Coast go about trying to change the obligation?**

Mr Coast may ask the judge for a revision of the child maintenance.

#### **8.7.2 What would result -- is it likely the obligation would change? To what? Please explain.**

This is likely to lead only to a marginal change, if so. (see question 3.3.5 A)

Actually, Mrs Coast’s new partner has absolutely no legal obligation towards Mrs Coast’s kids even if they cohabit. The earnings of Mrs Coast’s new partner are not to be considered in the evaluation of Mrs Coast’s earnings. The most likely situation is an unchanged child maintenance (600 euros).

However, as all child maintenance determination, this is at the discretion of the judge and as Mrs Coast and her new partner shares certain charges related to care costs (rent, fuel...) that may also be taken into account by the judge, since the new situation have lowered Mrs Coast’s charges and needs. Due to this new situation, the judge might take it into account, especially if the new relationship/cohabitation is lasting, and reduce slightly the child maintenance. Let’s say that a judge might decrease the child maintenance for both kids from something like 600 euros to 500 euros.

#### **8.7.3 Would any other outcomes likely differ? Please explain.**

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### **8.8 BASE CASE ‘C’, CHANGE IN CIRCUMSTANCES 2: MR COAST HAS A NEW PARTNER**

## AND NEW CHILD THREE YEARS LATER

*We now explore how your system would deal with a change in Mr Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend; Mrs Coast does not have a partner). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.*

*Three years time later, Mr Coast has formed a new relationship with a woman and they have a ten month old child. He wants to maintain contact with his own children, whom he loves dearly, but his own household expenses have now gone up considerably. His new partner does not have paid work herself.*

### **8.8.1 How would Mr Coast go about trying to change the obligation?**

Mr Coast may ask the judge for a revision of the child maintenance in order to take into account the new elements

### **8.8.2 What would result -- is it likely the obligation would change? To what? Please explain.**

However, this is likely to lead only to a small change (see question 3.3.5 B/C).

If called by Mr. Coast, the judge may revise the child maintenance. But there is no precise rules-based calculations for the revising except the necessity to take into account a minimum level of income of the non-resident parent to allow his/her to assume his/her (new) responsibility. As Mr. Coast's earnings are significant, the minimum level of income is here guaranteed even in his new situation (with his new charges) and the child maintenance will likely be not changed or by very little.

### **8.8.3 Would any other outcomes likely differ? Please explain.**

***This concludes the vignettes (Part Eight). If you have additional comments on either of these vignettes, please write them here:***

One must keep in mind that the judge's decision remains rather discretionary regarding the determination of child maintenance. Even if some guidelines (shared/common practices between judges) exist, studies show some significant differences between judges.