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## **The Institution of the Maintenance of Minors in France and England and Wales in the Light of Historical Development**

*The paper gives an overview of the institution of the maintenance of minors in France and in England and Wales in the light of historical development, by giving a glimpse into the main reforms of French and English family law. In France, the institution is regulated in the Civil Code, in England, separate acts establish the basic concepts and principles. In both countries underage children are entitled to maintenance and the obligation does not cease, when they reach the legal age. The parents are the primary obligees. The principles of calculating the amount of maintenance are similar, the parents' income conditions and the children's needs and education are taken into account. The basic principles, the material law aspects are very similar between the two states, but from the procedural law point of view they have different systems.*

**Keywords:** *family law, maintenance, minors, France, England and Wales, marriage, parental responsibility*

### **1. Introduction**

The paper summarizes institution of the maintenance of minors in France and England and Wales according to criteria of the obligator and obligee of the child support, the amount and means of maintenance, the procedural rules, the and the system of enforcement. A brief introduction is also given about the legal history of family law (focusing on marriage and parental responsibility) in both states, since it is essential to know the historical development, in order to understand the way these models work.

I examined the related statutes such as the French Civil Code<sup>1</sup>, the New French Civil Procedure Code<sup>2</sup>, the various Acts regulating child support in England and Wales and the national reports on parental responsibilities and divorce by the Commission on European Family Law (CEFL) and the legal literature, since maintenance is an obligation deriving from kinship, but also closely connected to parental responsibility as it is one its aspects.

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<sup>1</sup> For the research I used the original, up-to-date version of French text of the Code Civil des Français Code Civil des Français (1804) from the Légifrance (<https://www.legifrance.gouv.fr/>) website and the English translation, translated by David W. Gruning, Professor of Law, Loyola University, School of Law, New Orleans, as of 1 July 2013, no modifications have been made since in the cited articles.

<sup>2</sup> For the research I used the original, up-to-date version of French text of the Code Civil des Français Code Civil des Français (1804) from the Légifrance (<https://www.legifrance.gouv.fr/>) website and the English translation, translated by Yves-Antoine Tsegaye, Lawyer, PhD, LLB, as of 30 September 2005, no modifications have been made since in the cited articles.

The institution of maintenance in the Western countries can be divided into three main models: ‘court’, ‘agency’ and ‘hybrid’.<sup>3</sup> In the ‘court’ models courts have the main responsibility for awarding maintenance obligations and its amount, which can be done either by the determination or by the ratifying the parents’ agreements. The amount could be a fixed rate (by tables and guidelines) or according to the ‘discretionary power’ of the courts.<sup>4</sup> In the ‘agency’ model an administrative body or agency is responsible for either or all of the assessment, collection, and transference of child maintenance obligations.<sup>5</sup> The ‘hybrid’ model is a mixture of the other two models, where the responsibility for the determination of child support obligations is located in several institutions (courts and administrative bodies as well).<sup>6</sup>

This paper solely focuses on France which follows the ‘court’ model and England and Wales which uses the ‘agency’ model.

## 2. A brief legal history of French family law

The French civil law was codified with the issuing of the Civil Code on March 21, 1804, which included the thirty-six statutes voted between March 1803 and March 1804 and annulled the previous royal decrees and customary law provisions.<sup>7</sup> The Code – in 2281 articles – is divided into three Books: persons; property and the modifications of ownership; ways of acquiring property.<sup>8</sup> The Civil Code of 1804 is still in effect today with revisions, since the Code was interpreted and developed according to the changing conditions, so the comprehensive revision was unnecessary.<sup>9</sup> There were several major reforms regarding the family law provisions.

Two main periods of transformations can be identified, the period before and the period after the First World War (1914). In the first period, it was not subjected to deep transformations, the major amendments were for example, the reestablishment of divorce (1884), the reform of the law of marriage (1896, 1907), the inheritance rights of natural children (1896) and the admission of paternity search (1912).<sup>10</sup> After the war, the idea of a general revision of the Code was taken up,<sup>11</sup> so in the second period, bigger changes appeared: between the world wars there were only sporadic amendments; after the Second World War, firstly, huge parts of the Code Civil were completely enacted anew, especially in the Book of Persons (guardianship, filiation, divorce, matrimonial property); secondly other Codes were enacted in specific areas and thirdly, judicial interpretation also had a role in completing and refining the broad and flexible rules contained in the Code Civil.<sup>12</sup>

Since 1964, significant changes were made in family law regarding marital and parent-child relationships. Between 1964 and 1975, seven fundamental revisions were effectuated they concerned Minority, Tutorship and Emancipation (1964), Matrimonial Regimes (1965), Adoption

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<sup>3</sup> SKINNER–DAVIDSON, *Recent Trends* 33., See also: SIMON, *Tartásdíjigények érvényesítése határok nélkül* 41–46.

<sup>4</sup> SKINNER–DAVIDSON, *Recent Trends* 33–34.

<sup>5</sup> SKINNER–DAVIDSON, *Recent Trends* 36.

<sup>6</sup> SKINNER–DAVIDSON, *Recent Trends* 36.

<sup>7</sup> TAKÁCS, *A Code Civil története* 31–35.

<sup>8</sup> BESSETTE, *French Civil Law System* 338.

<sup>9</sup> KAJTÁR – HERGER, *Egyetemes jogtörténet* 236.

<sup>10</sup> PARIS-DOBOZY, *Still Alive* 91–92.

<sup>11</sup> DE LA MORANDIERE, *Reform of the French Civil Code* 3.

<sup>12</sup> PARIS-DOBOZY, *Still Alive* 92–95.

(1966), Major Interdicts (1968), Parental Authority (1970), Filiation (1972), Separation and Divorce (1975).<sup>13</sup> The changes emphasized the equality of the spouses in matters relating to the marriage and to the children of the marriage; made it clear that serving the interests of the children is the primary motive to be considered by courts in making its determinations of child custody or other matters relating to a child after the dissolution of a marriage.<sup>14</sup>

That is important in the history of French family law, since according to customary law (*droit coutumier*), before the Code Civil, paternal authority or power belonged not only to the father but also to the mother and ended when a child reached majority age or received express or tacit emancipation and was watched over by the justice system. Paternal power derived from both customary law and the written law (*droit écrit*) prior to the revolutionary reforms.<sup>15</sup>

According to the Code Civil, before 1970, parental responsibilities belonged solely to the father. After that, both parents had parental responsibilities but had to use them in the child's interest and the legal terminology changed to '*autorité parentale*' (parental authority) from '*puissance paternelle*' (paternal power). A reform in 1985 abolished the only advantage the father had retained, namely the administration of the child's property. In 1987 the exercise of parental responsibilities after divorce was modified, as well as for all other non-married parents. Another reform in 1993 stated the principle of joint parental responsibilities for divorced or separated parents and for non-married parents.

Until 2002 a classical triptych formed the contents of parental responsibilities (*garde, surveillance, éducation*). *Garde* meant that parents should live with their child or determine where their child should live; *surveillance* was a parental duty to take care of, to protect, and to pay attention to the child and its needs. *Éducation* had several aspects, including school education and studies, moral education, professional orientation and religious upbringing. The latest reform in 2002 provided a new definition for parental authority, omitting the previous triptych and replacing it with being a collection of rights and duties aiming at the child's interest in the Article 371-1 of Civil Code, modernised the exercise of parental responsibilities by following and improving the principle of equality between the parents.<sup>16</sup> It also abolished the differentiation between children born in and out of wedlock and reformed several other family law territories such as adoption, family name and divorce.<sup>17</sup>

The development of divorce also has to be cleared before explaining maintenance. From the ninth century, there was no dissolution of divorce, merely the *divortium quoad torum et mensam* or *divortium quoadhabitationem* (separation from bed and board), which was only a judicial separation, which neither dissolved the marriage nor permitted the separated parties to marry again.<sup>18</sup> For a long time the Church had exercised an exclusive jurisdiction over all matters concerned with marriage and its consequences, and was gradually deprived of it. By the eighteenth century royal courts taken over all cases of validity and nullity of marriage, and the procedural secularization of marriage pressed forward the idea that marriage was not only an ecclesiastical, but also a civil

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<sup>13</sup> AUDIT, Recent Revisions of the French Civil Code 758.

<sup>14</sup> BLAKESLEY, Child Custody and Parental Authority 295.

<sup>15</sup> BLAKESLEY, Child Custody and Parental Authority 289–290.

<sup>16</sup> FERRAND, National Report: France 1–4.

<sup>17</sup> SZEIBERT, Európai családjog 29–30.

<sup>18</sup> STOLJAR, A History of the French Law of Divorce 138.

institution, being closest analogically to a civil contract, marriage came to be regarded, in the words of *Pothier*, as ‘*the most excellent and most ancient of all contracts*’.<sup>19</sup> On 20 September, 1792, a famous law – admittedly voted in some haste, on the eve of the dissolution of the legislative assembly – stated that ‘*marriage is dissolved by divorce*’. The grounds for divorce were the following: mutual consent; allegation of incompatibility of temper; and a collection of eight determined causes: insanity; conviction or infamy; violence, cruelty or grievous injury committed by one spouse against another; dissolute life; desertion of at least two years; absence without news for at least five years; and emigration by one of the spouses.<sup>20</sup> After that, the Code Civil in 1804 changed the grounds for divorce (wife’s sexual misconduct or if the adulterous husband introduced the concubine into the home; violence, cruelty and grievous physical injury; degrading punishment; mutual consent), introduced an entirely new procedural system (a relevant regulation for the topic is that the spouses had to prepare an inventory of all their goods, because each party had to contribute half of his or her estate for the benefit of the children) and it instituted judicial separation as an alternative to divorce.<sup>21</sup> In 1816 divorce was abolished after the downfall of the Napoleonic Empire,<sup>22</sup> and was re-established in 1884 with the ‘*loi Nacquet*’ named after *M. Nacquet* whose twelve-year perseverance resulted in that law.<sup>23</sup> The grounds for divorce were fault-based grounds: adultery, condemnation to an infamous punishment and grave violation of marital duties, leaving out no-fault grounds.<sup>24</sup> Upon divorce, the custody of minor children was awarded to the spouse who obtained the divorce (not at fault), with exceptions made where the interests of the child so required.<sup>25</sup> In 1976, a new divorce reform introduced no-fault grounds for divorce, which now was a complex system which offered many alternative forms. The legislator intended divorce by mutual agreement to be the ‘preferred form’, and that the other forms (fault divorce, ‘resignation-divorce,’ divorce after legal separation, and two limited types of divorce on objective grounds) would be resorted to only in exceptional cases.<sup>26</sup> According to this reform, the custody of the children would be given to a parent by considering the interest of the child and not to the parent who is not at fault for divorce.<sup>27</sup>

### 3. The French model

The institution of the maintenance of minors is not regulated separately in the French Civil Code. The obligation of maintenance derives from marriage and parental authority. The Book I of Persons, Chapter V regulates the Obligations Arising from Marriage in Articles 203 to 211. According to Article 203, the spouses contract together, by the sole fact of marriage, the obligation of feeding, supporting and educating their children. It is not a separate contract, but under the aegis of the French Civil Code, marriage itself is a contract. It stipulates the obligation for the children

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<sup>19</sup> STOLJAR, A History of the French Law of Divorce 139.

<sup>20</sup> STOLJAR, A History of the French Law of Divorce 140–141.

<sup>21</sup> STOLJAR, A History of the French Law of Divorce 148–150.

<sup>22</sup> STOLJAR, A History of the French Law of Divorce 152.

<sup>23</sup> STOLJAR, A History of the French Law of Divorce 152–153.

<sup>24</sup> GLENDON, The French Divorce Reform Law 200.

<sup>25</sup> GLENDON, The French Divorce Reform Law 221–222.

<sup>26</sup> GLENDON, The French Divorce Reform Law 199.

<sup>27</sup> GLENDON, The French Divorce Reform Law 222.

to support their parents and other ascendants who are in need, stating that this obligation is reciprocal.<sup>28</sup>

Articles from 371 to 387 of the French Civil Code are about parental responsibility, which encompasses care and protection, the maintenance of personal relationships, determination of the child's residence, the child's education, legal representation, a maintenance obligation towards the child, administration of property, and civil liability of the parents for damages caused by their child,<sup>29</sup> so parental authority is a set of rights and duties, and its finality is the welfare of the child.<sup>30</sup> Married and unmarried parents exercise parental authority jointly<sup>31</sup> and their separation has no influence on the rules of devolution of the exercise of parental responsibility. Each of the father and mother shall maintain personal relations with the child and respect the bonds of the latter with the other parent. Any change of residence of one of the parents, where it modifies the terms of exercise of parental responsibility, shall be the subject of a notice to the other parent, previously and in due time. In case of disagreement between them, the most diligent parent shall refer the matter to the family causes judge who shall rule according to what the welfare of the child requires. The judge shall appoint moving expenses and adapt accordingly the amount of the contribution to the support and education of the child.<sup>32</sup>

In France, the child is entitled to child support, there is no upper age limit for how long the child is entitled to it, because the maintenance obligation of the parents does not end when the child reaches the age of majority<sup>33</sup> since it is necessary to cover the child's needs and teach them until they become financially independent, in order to ensure the necessary conditions for their development and the continuation of their studies.

The maintenance may be paid voluntarily by the separated parent, and parents may enter into agreement on maintenance and they may request the family judge for the homologation (judicial approval) of this agreement. The family judge (*juge aux affaires familiales*) does not approve the parental agreement unless it protects the child's interests or provided that the consent of one parent was not freely given.<sup>34</sup>

As of 2018, a new way was introduced, and at the joint request of non-married parents who separated, the director of the body paying family benefits (*caisse d'allocations familiales, CAF*) gives enforceability to the agreement by which they determine the amount of the contribution to the maintenance and education of the child, if there is no court order for maintenance yet and if the amount is in line with the restrictions. Its decision cannot be appealed, but the parents may, together or separately, refer the matter to the family court for determination of the amount of the contribution to the child's maintenance.<sup>35</sup>

The parent or third party taking care of the child may file a claim for maintenance to be determined by the court in the first-instance court of general jurisdiction (*tribunale de grande instance*) before the family law judge. The territorially competent judge is determined by the place where the

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<sup>28</sup> French CC Art. 205–207.

<sup>29</sup> FERRAND, National Report: France 1.

<sup>30</sup> French CC Art. 371–1.

<sup>31</sup> French CC Art. 372.

<sup>32</sup> French CC Art. 373–2.

<sup>33</sup> French CC Art. 371–2.

<sup>34</sup> FERRAND, National Report: France 17.

<sup>35</sup> FERRAND, Update – France 11.

family residence is located or the residence of the parent with whom the minor lives, not that of the place of residence of the parent who exercises the parental authority alone.<sup>36</sup> The parties can agree on the amount and means of maintenance before the court, failing which the court delivers a judgement considering the results of the taking of evidence.<sup>37</sup>

Parents shall contribute to the education and support of the children in proportion to his or her means, to those of the other parent and to the needs of the child.<sup>38</sup> Maintenance is meant to cover the costs of the child's needs and education and must provide its conditions. Based on the Article 371-2 of the French Civil Code, the amount is adjusted to the financial situation of the parents, as well as to the needs of the child, and the parents must contribute to the costs of child support in proportion to their income. Education includes school education and studies<sup>39</sup> and has to meet the elementary needs of the child: food, maintenance and upbringing.<sup>40</sup>

After 2010, the Minister of Justice published, as a proposal, a reference table on the amount of child support, recommending the amount to be determined based on the income of the parents, the number of children under their supervision, the scope of contact rights and housing aspects.<sup>41</sup> The judge indexes the alimony at regular intervals based on the general consumer price index for households. Judges apply the same criteria, such as the income of each parent, property, child's age and needs, exceptional costs of one parent or of both.<sup>42</sup>

The method of payment can be a periodical payment<sup>43</sup> and it can also be done by directly financing the costs incurred, or by transferring the right of use or usufruct, or by donating assets.<sup>44</sup> In order to facilitate the payment of the child maintenance and to avoid conflicts between the parents a new public service was introduced in 2019, to recover child maintenance (ARIPA: *Agence de recouvrement et d'intermédiation des pensions alimentaires*). The maintenance may be paid to the creditor parent through the body responsible for paying family benefits (CAF). In these cases, the debtor will not send the maintenance amount each month to the creditor, but to an agency (ARIPA) subordinate to the CAF, in order to avoid conflicts.<sup>45</sup>

If the creditor has an enforceable document, there are several enforcement procedures if the obligee fails to pay maintenance. The direct payment procedure<sup>46</sup>, which allows the recovery of the last six months of allowance arrears and of the current allowance; the attachment of wages;<sup>47</sup> the

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<sup>36</sup> French Civil Procedure Code Art. 1070.

<sup>37</sup> French Civil Procedure Code Art. 1071–1072.

<sup>38</sup> French CC Art. 371–372.

<sup>39</sup> FERRAND, National Report: France 2.

<sup>40</sup> FERRAND, National Report: France 5.

<sup>41</sup> <https://www.justice.fr/simulateurs/pensions-alimentaire/bareme> (30. 11. 2022).

<sup>42</sup> FERRAND: National Report: France 6.

<sup>43</sup> French CC Art. 205.

<sup>44</sup> French CC Art. 373–2–2.

<sup>45</sup> FERRAND, Update – France 12.

<sup>46</sup> Code of Civil Enforcement Procedures Articles L 213–1 and R 213–1.

<sup>47</sup> Employment Code Articles L 3252-1 and R 3252–1.

foreclosure of assets<sup>48</sup>, moveable<sup>49</sup> and immoveable properties,<sup>50</sup> or ARIPA will proceed with the collection of the sums.<sup>51</sup>

From a criminal law point of view, the obligee can be sentenced for the offence of abandonment of the family according to Article 227-3 of the French Criminal Code since the non-execution of a judicial decision or a judicially affirmed agreement imposing upon a person an obligation to pay, in the interest of a legitimate, natural or adoptive child of a descendant by remaining more than two months without fulfilling that duty in its entirety is punished by two years' imprisonment and a fine of € 15,000. In some cases, the court can release the parents from their duty to maintain (e.g. if the child has assets and resources).<sup>52</sup>

#### 4. A brief legal history of the family law in England and Wales

England has a common law legal system, which means that its primary sources are judicial decisions and legal acts.<sup>53</sup> The cradle of family law can be found in the nineteenth century since wives and husbands were deemed at law to be a single entity under the law of coverture before that. Although, it has to be mentioned, that the Germanic notion of *munt* (combines the tempered and controlled rights, power and responsibility of the father)<sup>54</sup> extended to Anglo-Saxon England, and at one point in England, the wife was free to repudiate a marriage and to leave, taking her children and half of the marital property.

Then feudalism and the increased power of the church ended everything concerning spousal equality or children's rights: the father held the absolute power over children. He was the natural guardian of his children, had the natural right and authority to control his children's education and religious training and to benefit from their services; the mother was '*entitled to no power [over them], but only to reverence and respect*' according to *Sir William Blackstone*, until the *Shelley* case in 1817, when the poet *Shelley* lost custody of his children because of his atheistic and immoral lifestyle and attitude.<sup>55</sup> The father not only had power over his children, but also his wife. According to *Sir Blackstone* in his 1756 Commentaries on the Law of England: '*by marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband, under whose wing, protection and cover, she performs everything*'.<sup>56</sup> Under coverture women could not sue their husbands, so if they had family law disputes, there were no forum for resolving these issues,<sup>57</sup> the wife's legal identity was absorbed into her husband's, so the property she owned prior to the marriage or inherited and earned during marriage became his husband's; she could not enter into contracts or incur debts without his approval. Only the extremely wealthy were exempted from these, since under the rules of equity, a

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<sup>48</sup> Code of Civil Enforcement Procedures Articles L 211-1, L 162-1, R 211-1 and R 162-1.

<sup>49</sup> Code of Civil Enforcement Procedures Articles L 221-1 and R 221-1.

<sup>50</sup> Code of Civil Enforcement Procedures Articles L 311-1 and R 311-1.

<sup>51</sup> FERRAND, Update – France 12.

<sup>52</sup> FERRAND, National Report: France 6.

<sup>53</sup> KECSKÉS, Polgári jogi fejlődés az angol és a skót jogban 86.

<sup>54</sup> BLAKESLEY, Child Custody and Parental Authority 287.

<sup>55</sup> BLAKESLEY, Child Custody and Parental Authority 291–292.

<sup>56</sup> O'SULLIVAN, Protection Against Unilateral Dispositions of the Family Home – An Irish Perspective 401.

<sup>57</sup> WRIGHT, The Crisis of Child Custody 182–183.

portion of a married woman's property could be set aside in the form of a trust for her use or the use of her children, but the establishing of trusts had vast legal costs.<sup>58</sup>

In the nineteenth century, Parliament began enacting statutes concerned with matters such as child custody (in 1839, the Sgt. Talfourd's Act or the Custody of Infants Act gave mothers a limited right to petition the courts for access to children over age seven, and custody of children under age seven<sup>59</sup>) divorce (the Matrimonial Causes Act of 1857, which legalized divorce in England<sup>60</sup>) and married women's property rights (the 1870 Married Women's Property Act which signalled the demise of coverture by establishing the principle of married women's separate property<sup>61</sup>), that slowly cut away the most significant restrictions of coverture.<sup>62</sup>

Until 1857, church courts had jurisdiction over marriages (the parties could seek an annulment on the grounds that the marriage was invalid for technical reasons, or seek a separation from bed and board (*a mensa et thoro*) and lay divorce was only available for the husband, who had to bring a criminal action against his wife's lover for damages, obtain a legal separation in the ecclesiastical court, then petition both Houses of Parliament for a bill allowing him to remarry.<sup>63</sup> After January 1, 1858, the Matrimonial Causes Act of 1857 unified the jurisdiction over all matrimonial matters by giving them to the court. Divorce was granted to both husbands and wives, the final bill granted husbands the right to an absolute divorce upon evidence of mere adultery by their wives, but wives needed to prove aggravated adultery to petition for the same remedy. This law stood relatively unchanged until 1937 when desertion, cruelty, habitual drunkenness, and incurable insanity were added as fault bases that stood alone.<sup>64</sup>

Regarding children, many acts disposed of regulations concerning the rights of children until 1989. In the 1980s, the need for a unified regulation arose since preliminary works found that the acts were sometimes conflicting and not satisfactory for the interest of the children.<sup>65</sup> The most issuing problems were according to the Review of Child Care Law that the responsibilities (powers and duties) of local authorities for services to support families with children were not clear or easily identified and these differed according to their legal status; there were more than twenty separate provisions leading to care under a court order with several different sets of criteria for the court to apply and there were defects and anomalies in each of these; and it was complicated for practitioners to identify which statutes are in force. So, the aim of the reform was to make these regulations more simple and straightforward.<sup>66</sup> Also, there was not a coherent legal concept of parenthood, and 'parental responsibility' was scattered throughout statutes with various terms,<sup>67</sup> so it was needed to regulate the relations between parents and children, the jurisdiction and procedure regarding the legal matters of children according to the proposal by the Law Commission.<sup>68</sup> Based

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<sup>58</sup> ABLOW, 'One Flesh,' One Person, and the 1870 Married Women's Property Act. See also: IRELAND, Re-examining the Presumption: Coverture and 'Legal Impossibilities' in Early Modern English Criminal Law 187–190.

<sup>59</sup> WRIGHT, The Crisis of Child Custody 176.

<sup>60</sup> HAGER, Chipping Away at Coverture: The Matrimonial Causes Act of 1857.

<sup>61</sup> ABLOW, 'One Flesh,' One Person, and the 1870 Married Women's Property Act.

<sup>62</sup> STRETTON, Married Women 128.

<sup>63</sup> WRIGHT, The Crisis of Child Custody. 176–178.

<sup>64</sup> WRIGHT, The Crisis of Child Custody 177.

<sup>65</sup> DÓCZI, A gyermekekről szóló 283.

<sup>66</sup> Review of Child Care Law: Report to Ministers of an Interdepartmental Working Party 2–3.

<sup>67</sup> The Law Commission: Family Law Review of Child Law, Guardianship and Custody 11.

<sup>68</sup> The Law Commission: Family Law Review of Child Law, Guardianship and Custody.

on this, the Children Act of 1989 repealed many prior acts governing custody and modified others, such as the Matrimonial Act of 1973 and the Family Law Act of 1986.<sup>69</sup>

## 5. The model in England and Wales

In England and Wales, today, the maintenance of minors is governed by the Child Support Act, a separate legal act, and there are provisions in the Children Act as well.

The marriage in this state is solemnized<sup>70</sup>, it does not follow the contractual concept. The Children Act governs the institution of parental responsibility and according to the commentators, this concept encompasses among others the duty to provide a home for a child, protect and maintain the child; provide for the child's education.<sup>71</sup> Both parents have parental responsibility which is not affected by separation or divorce,<sup>72</sup> residence and contact orders could be issued by the courts determining where the child will live or what contact arrangements need to be put in place after separation.<sup>73</sup> Based on that, their obligation towards the child are unaffected as well. Each parent of a qualifying child (if one or both of his parents – in relation to the child – are absent parents, e.g. non-resident parents) is responsible for maintaining him.<sup>74</sup>

The child is entitled to child support, there is no upper age limit, as a child over the age of eighteen can also receive child support from the parent for further education if they are undergoing training for a trade, profession or vocation (whether or not while in gainful employment) or in special circumstances<sup>75</sup> (illness, disability). Although, if the child has not reached the age of sixteen or has not attained the age of twenty and satisfies the abovementioned conditions, then parents can turn to the Child Maintenance Service for determining support, and in other cases, courts have jurisdiction to order it.<sup>76</sup>

The determination of the child support of minors could be a public administrative process and a court procedure as well. Parents can agree on maintenance<sup>77</sup>, and it may be determined by the courts or through the Child Maintenance Service, which is an administrative body of the Secretary of State. The government implemented fees for using the service in order to 'nudge' parents into making their own private agreements outside CMS.<sup>78</sup>

A parent, guardian or special guardian of a child, or any person, who is named in a child arrangements order as a person with whom a child is to live may turn to the court for an order of child support<sup>79</sup> and file a claim from the date six months before the application is made; or the date on which the current calculation took effect or, where successive maintenance calculations have

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<sup>69</sup> DÓCZI, A gyermekekről szóló 283.

<sup>70</sup> Marriage Act 1949.

<sup>71</sup> LOWE, National Report: England & Wales 2.

<sup>72</sup> LOWE, National Report: England & Wales 17–21.

<sup>73</sup> PARKINSON, Family Law and the Indissolubility of Parenthood 245.

<sup>74</sup> Child Support Act S. 1.

<sup>75</sup> Children Act S. 8 and 15.

<sup>76</sup> Child Support Act S. 55.

<sup>77</sup> Child Support Act S. 9.

<sup>78</sup> MEYER – SKINNER – COOK – FLETCHER, Child support systems and government budgets: thorny policy choices to recover costs 10.

<sup>79</sup> Children Act Schedule 1 S. 15.

been continuously in force with respect to a child, on which the first of those calculations took effect.<sup>80</sup>

In case of for divorce, nullity of marriage or judicial separation the court may issue a financial provision order<sup>81</sup> for the party to pay for the benefit of a child of the family.<sup>82</sup>

The parent living with the child may apply to Child Maintenance Service for maintenance assessment. The Child Maintenance Service calculates the amount of maintenance in accordance with the Schedule 1 of Child Support Act, but the parents can agree on a different amount as well.<sup>83</sup> If needed, the Child Maintenance Service has powers to gather information needed for the making of any decision or in connection with the imposition, the collection or the enforcement of child support.<sup>84</sup> The decision of the Child Maintenance Service is enforceable. The party who is unsatisfied with the decision can apply for the decision to be reviewed by a child support official, and on a second tier, appeals could be made against the decision to the Tribunals.<sup>85</sup>

The means of maintenance may periodical payments or it can be delivered in a lump sum.<sup>86</sup> When determining the amount of maintenance the court shall have regard to all the circumstances including the income, earning capacity, property and other financial resources, the financial needs, obligations and responsibilities of the obligee and the person taking care of the child have or are likely to have in the foreseeable future; the financial needs of the child; the income, earning capacity (if any), property and other financial resources of the child; any physical or mental disability of the child; the manner in which the child was being, or was expected to be, educated or trained.<sup>87</sup>

Schedule 1 of Child Support Act determines a formula which is to be taken as the minimum amount necessary for the maintenance of the child when the Child Maintenance Service calculates the amount, based on the gross income of the obligee, the number of children, considering other factors increasing or decreasing the amount, such as additional income or shared care.

Upon application, the Child Maintenance Service arranges for the collection of child support maintenance payable in accordance with a maintenance assessment.<sup>88</sup> A deduction from earnings order may be made against the liable person to secure the payment,<sup>89</sup> regular deductions can be made from the account<sup>90</sup> or the bank accounts could be frozen.<sup>91</sup> The Child Maintenance Service may apply to the court, on the grounds that a person has failed to pay an amount of child support with the intention of avoiding payment of child support maintenance, or if is about to make a disposition or to transfer out of the jurisdiction or otherwise deal with any property for an order restraining the person from doing so.<sup>92</sup>

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<sup>80</sup> Children Act Schedule 1 S. 15.

<sup>81</sup> Matrimonial Causes Act S. 21.

<sup>82</sup> Matrimonial Causes Act S. 23.

<sup>83</sup> Child Support Act S. 11.

<sup>84</sup> Child Support Act S. 14.

<sup>85</sup> Child Support Act S. 18–21.

<sup>86</sup> Children Act Schedule 1 S. 15.

<sup>87</sup> Children Act Schedule 1 S. 15.

<sup>88</sup> Child Support Act S. 29.

<sup>89</sup> Child Support Act S. 31.

<sup>90</sup> Child Support Act S. 32A.

<sup>91</sup> Child Support Act S. 32G.

<sup>92</sup> Child Support Act S. 32L.

When the person who is liable to make payments fails to make one or more of those payments; and it appears that it is inappropriate to make a deduction from earnings order against him (because, for example, he is not employed); or although such an order has been made against him, it has proved ineffective, the CMS may apply to a magistrates' court for an order ("the liability order") against the liable person. If the court finds them liable, then the court may levy the appropriate amount by distress and sale of the liable person's goods.<sup>93</sup> The court may issue of a warrant committing the liable person to prison or order for him to be disqualified from holding or obtaining a driving licence if there has been wilful refusal or culpable neglect on the part of the liable person.<sup>94</sup>

## 6. Summary

Overall, in France, the institution is regulated in the Civil Code under the articles of marriage and parental responsibility, while in England, in lieu of a Civil Code, separate acts establish the basic concepts and principles. It can be stated that in both countries underage children are entitled to maintenance and if needed, the obligation does not cease, when they reach the legal age, since if they are pursuing further education, they are entitled to maintenance. The parents are the primary obligees, in France it derives from the obligations of marriage and parental responsibility, and in England, from kinship, but is also an aspect of parental responsibility. The principles of calculating the amount of maintenance are similar, the parents' income conditions and the children's needs and education are taken into account. Parents can agree on child support in both countries and both the courts and certain administrative have powers to issue enforceable documents. In France parents jointly can turn to an administrative body as well, to give enforceability to the agreement and - as in many other European countries - in the absence of an agreement or during divorce proceedings, the decision on child support falls under the jurisdiction of courts. In England and Wales the parents can turn to an administrative organization to determine the amount of child support and the court decides it provided there is a procedure going on for the dissolution of the marriage or the conditions are not met according to the Child Support Act. In both countries, maintenance is enforceable in civil law matter, but is also protected by criminal law, since the obligee could be fined or sentenced to imprisonment if he or she is at fault of wilfully not paying child support. To sum up, it can be stated, that the basic principles, the material law aspects are very similar between the two states, but from the procedural law point of view they have different systems.

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