



Recommendation 869 (1979)¹

Final version

Payment by the State of advances on child maintenance

Parliamentary Assembly

The Assembly,

1. Bearing in mind that the year 1979 was declared the "International Year of the Child" by the United Nations ;
2. Acknowledging, on the one hand, that in recent years the member states of the Council of Europe have made considerable efforts to improve the situation of children born out of wedlock and to alleviate the difficulties which illegitimacy can entail ;
3. Aware, on the other hand, that in many cases under-age children are brought up by one parent, whether because they were born out of wedlock or because their parents are separated or divorced, and that in such cases the persons liable for their maintenance often do not live under the same roof as they do ;
4. Aware also that special protection is needed for children whose situation is aggravated by the attempts frequently made by such persons to evade their maintenance obligations ;
5. Noting that the remedies provided for by law in those cases often prove ineffectual, and that even attachment is not always a guarantee that the full amount of the maintenance will be recovered, and that it will be paid on the due date ;
6. Having regard to the fact that one of the parents must consequently not only assume sole responsibility for the child's maintenance, but also for its education, which is an unbearable burden ;
7. Believing it to be desirable, therefore, that the state should pay advances on maintenance due, so that, if the full amount of maintenance owing in respect of a minor child cannot be recovered on the due date, the state will guarantee its subsistence and then recover the sums advanced from the debtor ;
8. Recalling that the European Conference on Family Law, held in Vienna in September 1977, proposed that the Council of Europe should recommend states to take action with a view to intervention, by way of an advance payment or on any other basis when the father or mother or one of them fail to discharge their maintenance obligations, and that a committee of experts of the European Committee on Legal Co-operation has been instructed to examine this question,
9. Recommends that the Committee of Ministers should call on those governments of member states which have not already done so to bring their legislation into line with the principles approved by the Assembly and defined in the Appendix to this recommendation.

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 28 June 1979. See Doc. 4321, report of the Legal Affairs Committee.*



Appendix

Principles governing payment by the state of advances on child maintenance

1. Advances on maintenance due are normally payable in respect of any under-age child habitually resident in the country paying them.
2. Advances on maintenance are payable :
 - a. if an action to recover maintenance, instituted during the three months preceding the application for an advance and based on a writ of execution (judgment or agreement approved by the guardian), has failed, or
 - b. if a writ of execution cannot be obtained within three months of the instituting of proceedings to assert the child's right to maintenance, or
 - c. if the place of residence of the debtor is not known.
3. In the case of children born out of wedlock, advances may be paid without a writ of execution having been produced or before proceedings have been instituted to assert the child's right to maintenance.
4. The amount of the advance paid may not exceed the sum decided on in the writ of execution, and shall at least be equal to the subsistence level laid down in the national legislation.
5. The application for an advance may be filed by the child's legal representative, by the person who has custody of the child, or by the child himself.
6. The child's legal representative and the person who has custody of the child should, as soon as they have knowledge of it, inform the state of any new ground for reducing the advances or ceasing payment thereof ; anyone who fails to respect this rule may be required to refund any advance paid needlessly.
7. The grant of advances does not release the maintenance debtor from his obligations under family law.
8. The advances are conditional on surrender to the state of the equivalent amount from the child's estate.