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Family maintenance

Литва

1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

The obligation of parents to provide for their children.

Parents are obliged to provide for their minor children. The manner and form of maintenance is determined by mutual agreement of the parents. The amount of maintenance must be commensurate with the needs of the minors and the financial situation of their parents; it must safeguard the conditions necessary for the child's development. Both parents must provide support for their minor children in accordance with their own financial situation (Article 3.192 of the Civil Code (*Civilinis kodeksas*)). Under certain circumstances specified by law, parents must provide for their adult children (up to 24 years of age), where they are able to do so (Article 3.192(1) of the Civil Code).

The obligation of adult children to provide for their parents.

Adult children are obliged to provide for parents who have lost earning capacity and are in need of support. Maintenance is provided (awarded by court) in the form of a monthly payment of a fixed amount (Article 3.205 of the Civil Code).

The mutual maintenance obligation between spouses.

When issuing a separation order, the court may order the spouse at fault to pay maintenance to the other spouse in need of it unless maintenance matters have been settled by mutual agreement of the spouses. Maintenance may be ordered as a lump sum or monthly maintenance payments or property transfer (Article 3.78 of the Civil Code). In the event of a marriage being annulled, the spouse not at fault and in need of maintenance has a right to seek maintenance from the spouse at fault for a maximum of three years (Article 3.47 of the Civil Code).

The mutual maintenance obligation between former spouses.

When issuing the divorce order, the court awards maintenance in favour of the spouse in need of maintenance unless the matter of maintenance has been settled by the agreement between the spouses concerning the effects of divorce. A spouse has no right to maintenance if his or her assets or income are sufficient to fully support him or her. Maintenance is presumed to be necessary if the spouse is bringing up a minor from the marriage or is incapable of working because of his or her age or state of health. The spouse responsible for the divorce has no right to maintenance. When issuing the maintenance order and deciding on the amount of maintenance, the court takes into account the duration of the marriage, the need for maintenance, the assets owned by the former spouses, their state of health, age, work capacity, how likely the unemployed spouse is to find employment and other important factors. Maintenance may be ordered as a lump sum or monthly maintenance payments or property transfer (Article 3.72 of the Civil Code).

Mutual maintenance obligations between other family members.

Where possible, an adult sibling must provide for his or her minor sibling who is in need of support, has no parents or is unable to obtain maintenance from them (Article 3.236 of the Civil Code). Adult grandchildren in a position to do so must pay maintenance to their grandparents if they are unable to work and are in need of support. Grandparents in a position to do so must pay maintenance to their minor grandchildren who have no parents or cannot obtain maintenance from them (Article 3.237 of the Civil Code).

Maintenance contract and life annuity contract

Under a maintenance contract, one party, the payer of maintenance (debtor) undertakes, either gratuitously or in exchange for transfer of capital to his ownership, to make periodic payments to the other party, the beneficiary of maintenance, a sum of money determined in the maintenance contract or to maintain the beneficiary in any other way. The duty to pay maintenance may be established not only by contract but likewise by law, a court judgment or a will (Article 6.439 of the Civil Code). Under a life annuity contract, the annuitant, a natural person, transfers a house, apartment, plot of land or other immovable property belonging to him to the ownership of the annuity payer, while the latter is obliged to maintain the annuitant and/or another person (persons) specified by him for life (Articles 6.460 and 6.461 of the Civil Code).

2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

Parents are obliged to provide for their minor children. The procedure and form of maintenance is determined by mutual agreement of the parents. The amount of maintenance must be commensurate with the needs of the minor children and the financial situation of their parents; it must safeguard the conditions necessary for the child's development (Article 3.192 of the Civil Code). Thus, in principle parents are obliged to provide for their children until adulthood (18 years) in all cases.

The duty to provide for children until they reach the age of 24 depends on a number of circumstances. Where they are in a position to do so, parents must provide for their adult children up to 24 years of age who are enrolled in a secondary education programme or a formal vocational training programme to acquire an initial qualification or in a school of higher education under a full-time programme, if they require financial assistance based on the financial situation of the adult children, their income, the possibility of obtaining income on their own and other important factors. Parents are not required to provide for adult children studying for additional higher education or professional qualifications (Article 3.192(1) of the Civil Code). The requirements concerning the form and amount of maintenance of minor and adult children do not differ and depend on specific circumstances.

3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

If maintenance is not paid to a child, it is awarded by judicial procedure. If the parents (parent) fail(s) in the duty to maintain their minor children, the court may issue a maintenance order in an action brought by a parent or the child's guardian (custodian) or the State institution for the protection of the rights of the child. A maintenance order may also be issued by the court if, upon divorce or separation, the parents did not agree on the maintenance of their minor children (Article 3.194 of the Civil Code). If the parents (parent) of an adult child fail(s) to respect the child maintenance obligation, the child may file a court action for maintenance (Article 3.192(1) of the Civil Code). Spouses, former spouses and other family members may also be awarded maintenance under the judicial procedure.

Maintenance cases are heard by district courts in Lithuania. Applications are filed with the court based on the defendant's place of residence. Where the defendant's place of residence is unknown, it may be filed based on the location of the defendant's assets or based on the last known residence. Where the

defendant' does not have a place of residence in the Republic of Lithuania, it may be filed based on the location of the defendant's assets or based on the defendant's last known place of residence in the Republic of Lithuania. A maintenance action may also be brought according to the applicant's place of residence (Articles 26, 29 and 30 of the Code of Civil Procedure).

The State provides maintenance to minors who have not received, for a period of more than one month, maintenance from their parents or adult close relatives who are in a position to provide for them (Article 3.204 of the Civil Code). Maintenance allowances are allocated and paid by the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour. When applying for the allowance, the applicant (the parent awarded custody of the child by the court or the guardian/curator) must submit the following documents: the application for the allowance, the court ruling or the court-certified contract for child maintenance, or certified copies, transcripts or extracts thereof, specifying the established amount of required child maintenance, and the documents showing that: the child is a Lithuanian national, a stateless person or an alien permanently resident in Lithuania; the child has not received child maintenance, or has received just a portion of the maintenance, for a period of more than one month; the applicant is a Lithuanian national, a stateless person or an alien permanently resident in Lithuania (where the institution is unable to obtain the said documents or data from State or institutional registers or State information systems). By paying the maintenance allowance in accordance with the stipulated procedure, the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour, acquires the right, as from the moment the allowance is paid, to recover from the debtor the amounts paid, plus interest charged on the amount owed in respect of each day's delay. A ruling on the recovery of the amounts of allowance paid and/or interest jointly constitute an enforcement instrument.

4 Can a request be made on behalf of a relative (if yes, what grade), or a child?

Yes. An application on behalf of a minor may be lodged by his/her legal representatives (parents, adoptive parents, guardians, custodians). It may also be lodged by an individual eligible to act under authorisation as a natural person's representative in court (lawyer, legal assistant, etc.). Natural persons may also be represented in court under authorisation by persons having university education in law, provided that they represent their close relatives or spouse (co-habitant). Close relatives include lineal relatives up to and including the second degree (parents and children, grandparents and grandchildren) and collateral relatives of the second degree (siblings) (Article 3.135 of the Civil Code).

5 If I plan to bring the case to court, how do I know which court has jurisdiction?

Maintenance cases are heard by district courts in Lithuania. Applications are filed with the court based on the defendant's place of residence. Where the defendant's place of residence is unknown, it may be filed based on the location of the defendant's assets or based on the last known residence. Where the defendant does not have a place of residence in the Republic of Lithuania, it may be filed based on the location of the defendant's assets or based on the last known residence in the Republic of Lithuania. A maintenance action may also be brought according to the applicant's place of residence (Article 26, 29 and 30 of the Code of Civil Procedure).

When bringing a court action, the applicant is not required to use the services of a lawyer or any other intermediary. See also questions 3 and 4.

6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?

When bringing a court action, the applicant is not required to use the services of a lawyer or any other intermediary. See also questions 3 and 4.

7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?

Legal costs comprise stamp duty and the costs of hearing the case (Article 79 of the Code of Civil Procedure). The amounts of the court stamp duty charged for filing a court action are governed by Article 80 of the Code of Civil Procedure. In property disputes, the amount of the court stamp duty is calculated based on the value of the claim: for claims up to EUR 30 000 – 3%, but no less than EUR 20; for claims from EUR 30 000 to EUR 100 000 – EUR 900 plus 2 per cent of the amount of the claim in excess of EUR 30 000; for claims above EUR 100 000 – EUR 2 300 plus 1 per cent of the amount in excess of EUR 100 000. The total amount of the court stamp duty in property disputes may not exceed EUR 15 000 (Article 80 of the Code of Civil Procedure).

The amount of the claim in the case of an action for maintenance by means of periodic payment is established based on the total annual amount of payments (Article 85 of the Code of Civil Procedure). In actions for maintenance, applicants are exempt from the court stamp duty (Article 83 of the Code of Civil Procedure).

Where a person's financial resources are insufficient, he or she may qualify for State-guaranteed legal aid under the procedure prescribed by the Law on State-guaranteed Legal Aid. Secondary State-guaranteed legal aid also covers reimbursement of the legal costs incurred in civil proceedings.

8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?

Mutual maintenance obligations between parents and children

The court may issue a maintenance order obliging one or both parents who have failed to maintain their children to provide maintenance to their children in the following ways: (1) as a monthly payment; (2) as a lump sum; (3) as a transfer of property to the child. Pending the outcome of the case, the court may order provisional payment of maintenance. The amount of maintenance must be commensurate with the needs of the children and the financial situation of their parents; it must safeguard the conditions necessary for the child's development. Both parents must provide maintenance to their children in accordance with their own financial situation (Articles 3.192 and 3.196 of the Civil Code).

In an action brought by a child, the child's parent, the State institution for the protection of the child's rights or a public prosecutor, the court may reduce or increase the amount of maintenance if, after the award of the maintenance order, the financial situation of the parties has fundamentally changed. An increase in the amount of maintenance may be ordered if there are additional expenses related to child care (illness, injury, nursing or full-time care). If necessary, the court may issue an order to cover future expenses relating to the treatment of the child. At the request of the persons referred to above, the court may change the previously established form of providing maintenance (Article 3.201 of the Civil Code).

Adult child maintenance is paid (awarded) to the parents in the form of a fixed monthly payment. The amount of maintenance is determined by the court having regard to the financial situation of the children and of the parents as well as the other important circumstances of the case. In establishing the amount of the maintenance, the court must take into consideration the obligation to maintain all adult children of the parent, irrespective of whether the action for maintenance has been brought in respect of all the children or only one of them (Article 3.205 of the Civil Code).

In the event of maintenance being awarded in the form of periodic payments, the amount of maintenance is indexed annually under the procedure established by the Government in accordance with the rate of inflation (Article 3.208 of the Civil Code).

Mutual maintenance obligation between spouses.

When issuing the maintenance order and determining the amount, the court must take into consideration the duration of the marriage, the need for maintenance, the financial situation of both spouses, their state of health, age and earning capacity, the unemployed spouse's chances of finding employment and other important circumstances. Maintenance may be ordered as a fixed lump sum, monthly payments or property transfer. Where

maintenance is awarded in the form of periodic payments, in the event of a fundamental change in the circumstances either spouse may request an increase, reduction or termination of the payments. Periodic payments are indexed on an annual basis under the procedure prescribed by the Government (Article 3.78 of the Civil Code).

Mutual maintenance obligation between former spouses.

When issuing a maintenance order and deciding on its amount, the court must take into account the duration of the marriage, the need for maintenance, the financial situation of both former spouses, their state of health, age, work capacity, the unemployed spouse's chances of finding a job and other important circumstances. Maintenance is reduced, made temporary or refused if at least one of the following circumstances exist:

(1) the marriage lasted less than a year; (2) the spouse entitled to maintenance has committed a crime against the other spouse or his/her close relatives; (3) the spouse entitled to maintenance brought about their precarious financial situation through their own culpable actions; (4) the spouse requesting maintenance did not contribute to their joint assets or wilfully acted against the interests of the other spouse or the family during the marriage. Maintenance may be ordered as a fixed lump sum, monthly payments or property transfer.

Where maintenance in the form of periodic payments has been awarded, in the event of a fundamental change in the circumstances either of the former spouses may request an increase, reduction or termination of the payments. Periodic payments are paid throughout the creditor's life and are inflation-indexed annually under the procedure laid down by the Government. Where the former spouse who has been awarded maintenance dies or remarries, the maintenance payment is terminated (Article 3.72 of the Civil Code).

Mutual maintenance obligations between other family members.

Where possible, an adult sibling must provide for a minor sibling who is in need of support, has no parents or is unable to obtain maintenance from them (Article 3.236 of the Civil Code). Where they are in a position to do so, adult grandchildren must provide for their grandparents where they are unable to work and in need of support. When in a position to do so, grandparents must provide for their minor grandchildren who have no parents or are unable to obtain maintenance from them (Article 3.237 of the Civil Code). The provisions of the Civil Code governing the mutual maintenance obligations between children and parents are applicable *mutatis mutandis*.

9 How and to whom will the maintenance be paid?

The maintenance debtor has to pay maintenance to the maintenance creditor. Where an application on behalf of the minor child is brought by a parent, maintenance is paid to the parent rather than to the child. If a child is placed under guardianship/into custody, maintenance is paid to the guardian/custodian who must use it exclusively in the interests of the child.

10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?

Requests for enforcement of court decisions must be directed to a bailiff. The basis for enforcement action is the enforcement instrument as submitted. Enforcement instruments include, *inter alia*, enforcement orders issued on the basis of a court decision as well as judicial orders. Once the enforceable decision has become final, the court of first instance issues the enforcement order to the creditor based on a written request.

Avoidance of the child maintenance obligation is punishable under criminal law: Article 164 of the Criminal Code provides that a person who avoids the court-imposed obligation to maintain a child, to pay child maintenance or to provide other necessary financial support for a child is to be punished by community service, restriction of liberty, arrest, or a custodial sentence of up to two years. Failure to comply with a court decision of a different nature may also be subject to criminal liability: under Article 245 of the Criminal Code, a person who has not complied with a non-punitive court decision has committed a misdemeanour, punishable by community service, a fine, restriction of liberty or arrest.

11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system

In the event of recovery from natural persons, recovery may not be enforced against any household, work or training materials or other property that is necessary for the livelihood of the debtor or his/her family or his/her professional employment or training. The list of the above property is set out in the Decision Enforcement Manual. Moreover, recovery may not be enforced in respect of a sum of money up to the minimum monthly wage set by the Government or in respect of any items needed by children and the disabled (Article 668 of the Code of Civil Procedure).

Deductions from the portion of the debtor's share of wages or equivalent payments and allowances up to the minimum monthly wage set by the Government are made based on enforcement instruments until the amounts to be recovered are fully covered: when enforcing maintenance by periodic payment or compensation for damage caused by mutilation or other health impairment or death of the breadwinner, the rate shall be 30 per cent, unless otherwise stipulated by the enforcement order or required by the laws or by the court. Deductions from the part of wages and equivalent payments and allowances in excess of the minimum monthly wage set by the Government shall be equal to 50 percent unless otherwise required by the laws or by the court (Article 736 of the Code of Civil Procedure). Article 739 of the Code of Civil Procedure also defines the amounts of money that are not subject to recovery (for instance, maternity and paternity benefits, childcare benefits, etc.).

Recovery of money from the debtor's assets is not allowed if the debtor has submitted to the bailiff evidence showing that the recoverable amount and the costs of execution can be recovered in six months or, in the case of recovery from the debtor's only home where he/she resides, in 18 months by means of deductions of the amounts specified in Article 736 of the Code of Civil Procedure from the debtor's wages, pension, student grant or other income. Enforcement orders based on court decisions may be submitted for execution within five years from the entry into force of the court decision. If the court decision requires recovery in periodic payments, the enforcement instruments remain valid throughout the period of recovery, the deadline set beginning on the day the deadline for each payment expires (Article 605 of the Code of Civil Procedure).

12 Is there an organisation or an authority which can help me to recover maintenance?

The State provides for minor children who have not received maintenance from their parents or close adult close relatives who are in a position to maintain the child (Article 3.204 of the Civil Code) for a period of more than one month. Maintenance allowances are allocated and paid by the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour. When applying for the allowance, the applicant (the parent assigned custody of the child by the court or the guardian/custodian) must file the following documents: the application for the allowance, the court ruling or the court-certified contract for child maintenance, or certified copies, transcripts of extracts thereof, specifying the established amount of required child maintenance, and the documents showing that: the child is a Lithuanian national, a stateless person or an alien permanently residing in Lithuania; the child has not received child maintenance funds at all, or has received just a portion of the maintenance, for a period of more than one month; the applicant is a Lithuanian national, a stateless person or an alien permanently residing in Lithuania (where the institution is unable to obtain the said documents or data from State or institutional registers or State information systems). By paying the maintenance allowance in accordance with the stipulated procedure, the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour, acquires the right, as from the moment the allowance is paid, to recover from the debtor the amounts paid, plus interest charged on the amount owed in respect of each day's delay. A ruling on the recovery of the amounts of allowance paid and/or interest jointly constitute an enforcement

13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?

See Question 12.

14 If I am in this Member State and the debtor has his/her residence in another country:

14.1 Can I obtain the assistance of an authority or private organisation in this Member State?

14.2 If so, how can that authority or private organisation be contacted?

The State-guaranteed Legal Aid Service is the central authority authorised to perform the functions specified in Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligation (hereinafter referred to as 'the Maintenance Regulation').

Where applications concern the maintenance obligations of persons under 21 resulting from relations between parents and children, the functions of the central authority referred to in Article 51 of the Maintenance Regulation are performed by the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour.

Contact details of the State-guaranteed Legal Aid Service:

Address: Odminių g. 3, 01122 Vilnius, tel. +370 700 00 211, fax +370 700 35 006, e-mail: teisinepagalba@vgtpt.lt

Contact details of the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour:

Mažeikiai Branch of the Board of the State Social Insurance Fund, address: Vasario 16-osios g. 4, LT-89225 Mažeikiai, tel. +370 (443) 26659, fax +370 (443) 27341, e-mail: mazeikiai@sodra.lt

15 If I am in another country and the debtor is in this Member State:

15.1 Can I address a request directly to such an authority or private organisation in this Member State?

15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?

See Question 14.

16 Is this Member State bound by the 2007 Hague Protocol?

Yes.

17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?

The 2007 Hague Protocol is applicable in Lithuania.

18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?

When the Maintenance Regulation applies, legal aid is provided in accordance with Articles 44-47 of the Maintenance Regulation, Article 31-5 of the Law on the implementation of European Union and international legislation governing civil proceedings and the Law on State-guaranteed legal aid. Applications for State-guaranteed legal aid are forwarded directly to the competent authorities responsible for State-guaranteed legal aid (State-guaranteed Legal Aid Service and its local branches).

19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?

In order to implement the provisions of the Maintenance Regulation, amendments to the Lithuanian Law on the implementation of European Union and international legislation governing civil proceedings have been adopted. These define the institutions authorised to perform the functions of the Central Authority under the Maintenance Regulation and the procedure for providing legal aid, and authorise the institutions performing the role of the Central Authority to obtain, free of charge, from State and municipal institutions, other bodies, banks and other credit and financial institutions, and from State registers and other information systems, the data needed to perform the functions set out in the Maintenance Regulation.

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