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Family maintenance

Bulgarien

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 maintenance obligation is the obligation of one member of a family to provide another member of the family with the means of subsistence. It is statutory, i.e. generally applicable by virtue of the law, subject to certain criteria, rather than by agreement between the parties. It is personal and ends upon the death of the person entitled to claim it.

A person is only entitled to maintenance if they are unfit for work and lack the means to support themselves.

Maintenance can be claimed by the person entitled to it from the following persons and in the following order: a spouse or ex-spouse; children; parents; grandchildren and great-grandchildren; brothers and sisters; grandparents and ascendant relatives. If the person first in line is unable to provide maintenance, maintenance becomes payable by whoever is next in line.

When a person is obliged to maintain a number of others, maintenance is payable in the following order (to the exclusion of those further down the list): children, a spouse or ex-spouse, parents, grandchildren and great-grandchildren, brothers and sisters, grandparents and ascendant relatives.

In the event of divorce, only a spouse not at fault in the divorce is entitled to maintenance.

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

Parents must pay maintenance for minor children under 18 years of age, regardless of whether they are able to work or whether they have the means to support themselves. In the case of children over that age, parents must pay maintenance if the children are unable to support themselves from their own income or from their own property when they are studying regularly at a secondary school (up to 20 years of age), or training college or university (up to 25 years of age), but only if the payment of maintenance does not cause the parents particular difficulties.

Maintenance is payable to an adult only if he or she is unfit for work and cannot subsist on his or her property.

Maintenance for an ex-spouse is payable for a maximum of three years from the termination of the marriage, unless the parties agreed a longer period, and ends if the spouse receiving maintenance remarries. The court may extend the period if the maintenance payee is in a particular hardship and the maintenance payer can pay the maintenance without particular difficulty.

Each person may claim maintenance not only with immediate effect but also retroactively, for a period of up to one year before the application is brought.

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

Maintenance claims are lodged with a court, regardless of their nature, the amount of maintenance, the person claiming maintenance and the person from whom maintenance is being claimed. The district court (rayonen sad) has jurisdiction. Geographical jurisdiction rests with the court of the place of residence of the claimant or the respondent; the claimant may choose which he/she prefers. The procedure is by application under the Civil Procedure Code. A self-standing application for maintenance is examined under the expedited procedure, i.e. within a shorter timeframe.

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

Maintenance claims for minors are lodged by a parent with parental rights or a guardian.

Maintenance claims for minors between 14 and 18 years of age are lodged by the child himself/herself, with the knowledge and consent of the parent with parental rights or the guardian.

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

The court with international jurisdiction is determined in conformity with the rules laid down by the Code of International Private Law (KMChP), bilateral international treaties or Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, if applicable.

Under the Code of International Private Law, where an application for maintenance is brought in a matrimonial case, i.e. as part of the divorce petition, Bulgaria's courts have jurisdiction over the applications for maintenance and the matrimonial petitions if one of the spouses is a Bulgarian national or is habitually resident in Bulgaria. Cases relating to the maintenance of an ex-spouse are handled by the courts with jurisdiction over the divorce petition.

Bulgaria's courts have jurisdiction over maintenance cases where the respondent is habitually resident in Bulgaria, where the claimant is a Bulgarian national or is habitually resident in Bulgaria.

In the above cases, Bulgarian law is applicable as set out below in Questions 18, 19 and 20.

Where it is determined that the Bulgarian court has international jurisdiction, a district court has natural jurisdiction. Geographical jurisdiction rests with the court of the place of residence of the claimant or the respondent; the claimant may choose which he/she prefers.

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?

Maintenance claims are lodged with a court, regardless of their nature, the amount of maintenance, the person claiming maintenance and the person from whom maintenance is being claimed. The involvement of a lawyer is optional.

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?

Claimants in maintenance cases are exempt from state fees. When granting a maintenance claim, the court orders the respondent to pay state fees and the costs incurred by the claimant in the proceedings.

State fees are charged only in cases in which the claimant is the individual who owes maintenance and he or she claims a reduction in the amount of maintenance.

Legal representation is not necessary in maintenance cases.

The parties to the case can obtain legal aid under the usual terms for its provision. These are laid down in the Legal Aid Act (Zakon za Pravnata Pomosht).

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)?

The amount of maintenance is determined according to the needs of the person entitled to maintenance and the possibilities of the person who has to pay it. The minimum amount of maintenance owed by a parent for minors is equivalent to a quarter of the minimum wage fixed by the Council of Ministers (for 2019, the minimum amount of maintenance for a minor is BGN 140). The amount of maintenance is determined by the court according to the needs of the children and the means of the parent.

At the request of the parent, the court may determine a supplement to the maintenance set to cover the child's exclusive needs up to an amount that the parent can pay without particular difficulty. At the party's request, the maintenance order may be amended or revoked if there is a change in circumstances. Any modification must also be effected through the courts.

Maintenance is paid monthly. Statutory interest is due on late payments.

9 How and to whom will the maintenance be paid?

The maintenance is paid personally to the person entitled to it. In the case of minors between 14 and 18 years of age, it is paid to them specifically but with the knowledge and consent of the parent with parental rights.

Maintenance for minors under 14 years of age is paid via the parent with parental rights or the guardian.

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

Maintenance is paid monthly. Statutory interest is due on late payments.

Court decisions that have entered into force are subject to enforcement under the conditions and procedures laid down in the Code of Civil Procedure (Grazhdanski Protsesualen Kodeks).

Non-payment of maintenance constitutes a criminal offence in the cases provided for in Article 183 of the Criminal Code (Nakazatelen kodeks).

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

Enforcement is carried out by a state or private bailiff of the maintenance creditor's choosing.

State bailiffs work for the enforcement service of a district court (rayonen sad) and their area of operation coincides with the geographical jurisdiction of the court.

Private bailiffs operate in the geographical jurisdiction of the relevant provincial court (okrazhen sad).

Under Article 149 of the Family Code, the longest period for which retroactive maintenance can be claimed is one year before the application is brought.

Once the existence and amount of a maintenance obligation has been established by a court decision, that obligation will continue until it is extinguished under the general rules applicable to extinctive prescription: Articles 110 to 120 of the Obligations and Contracts Act (Zakon za zadalzhniyata i dogovorite). See Enforcement of judgments.

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

The Child Protection Act (Zakon za Zakrila na Deteto) provides for a number of protection measures, including keeping children and parents informed of their rights and obligations, and ensuring the provision of legal aid by the state. Pursuant to Article 15 of the Child Protection Act, children are entitled to legal aid and appeals in all proceedings affecting their rights or interests. Legal aid is provided by the National Legal Aid Bureau.

The Bar Act (Zakon za Advokaturata) expressly provides that a Bulgarian or EU lawyer may provide free legal help and assistance to persons who are entitled to maintenance. In such a case, if the opposing party is ordered to pay the costs in the proceedings, the lawyer can claim a lawyer's fee, which is determined by the court.

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

Where it is established in enforcement proceedings that the individual who owes maintenance has no income and possesses no property, the maintenance awarded is paid by the State on that individual's behalf under the conditions and procedure laid down by a regulation issued by the Council of Ministers. In such a case, the State pays the amount of maintenance laid down in the court decision up to the ceiling set annually by the State Budget of the Republic of Bulgaria Act (Zakon za darzhavniya byudzhnet na Republika Bgaria).

Under the social assistance procedure, the State takes care of people in need when nobody else is liable by law or able to provide maintenance.

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?

Yes, under the procedure laid down in Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. The Republic of Bulgaria is also party to a number of mutual legal assistance treaties with countries, including some that are not EU Member States. The Ministry of Justice is a central authority under these treaties and in this capacity provides assistance on applications from members of the public.

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

The Ministry of Justice is the central authority and can be contacted at:

Ministry of Justice

Ul. Slavyanska 1

1040 Sofia

Bulgaria

Telephone: (+359 2) 92 37 555

Fax: (+359 2) 987 0098

Contact person:

E_Gyurova@justice.government.bg

M_Parvanova@justice.government.bg

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?

Yes, under the procedure laid down in Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. If the applicant is in a country with which the Republic of Bulgaria has concluded a mutual legal assistance treaty, the applicant can seek assistance from the Ministry of Justice as a central authority under that treaty.

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

Under the procedure laid down in Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, or under the procedure laid down in the relevant mutual legal assistance treaty.

See above for the contact details of the Ministry of Justice as a Central Authority.

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

Yes, the Republic of Bulgaria is bound by the 2007 Hague Protocol.

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?

See the answer above.

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?

The applicable rules are laid down in Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, and in Articles 627a to 627c of the Code of Civil Procedure (in force since 18 June 2011). When a decision is given in a Member State bound by the 2007 Hague Protocol, the application for enforcement of the decision on the basis of the documents referred to in Article 20 of Council Regulation (EC) No 4/2009 is submitted to the provincial court of the debtor's permanent address or for the place of performance of the obligation. A refusal or suspension of enforcement within the meaning of Article 41 of Council Regulation (EC) No 4/2009 is decreed by the provincial court.

An application to declare the enforceability of a decision or another act given in an EU Member State that is not bound by the 2007 Hague Protocol is submitted to the provincial court of the debtor's permanent address or for the place of performance of the obligation. A copy of the application for service on the debtor is not presented. The court examines the application in camera. In the order granting the application, the court sets a deadline for appealing under Article 32(5) of Council Regulation (EC) No 4/2009. Provisional enforcement of the order granting the application may not be granted. In the order granting the application, the court also gives a decision on the interim and precautionary measures sought. The order has the significance of a decision in an action. The order is subject to an appeal on points of fact or law before the Sofia Court of Appeal (Sofiyski apelativen sad) under the terms and procedures laid down in Article 32 of Council Regulation (EC) No 4/2009. The decision of the Sofia Court of Appeal is subject to an appeal on points of law only by the Supreme Court of Cassation.

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?

Changes have been made to the size and structure of the staff of the International Legal Child Protection and Intercountry Adoptions Directorate, whose duties include carrying out the activities assigned to the Ministry of Justice as a central authority under Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. Powers have been conferred on that Directorate to interact with the Directorate-General of Civil Registration and Administrative Services (GRAO) of the Ministry of Regional Development and Public Works, the National Revenue Agency and the National Legal Aid Bureau when processing applications from EU Member States relating to maintenance obligations under Council Regulation (EC) No 4/2009.

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