

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

Under the Estonian Constitution, a maintenance obligation is a family's duty to provide for its members who need assistance.

A maintenance allowance is an amount ordered by a court to be paid for maintenance, which is generally remitted periodically in the form of money. At the request of an entitled person, a court may in some cases order a maintenance obligation to be paid as a one-time sum. A person obliged to pay a maintenance allowance to a minor child may, if there is a valid reason, demand to be allowed to perform the maintenance obligation in a non-monetary manner.

Generally, the obligation to pay a maintenance obligation to a person needing assistance rests on a person's ascendants and descendants of the first and second degree – in other words, an adult child, parent and grandparent are mutually bound to provide for each other. Spouses are also obliged to mutually maintain their family by means of their work and property, which includes activities aimed at covering the costs of a joint household and at satisfying the usual and extraordinary needs of either spouse and their children. The obligation to provide a maintenance allowance for a person who needs assistance may also extend to a divorced spouse or a person to whom the person is not married but with whom he or she has a child.

Maintenance is paid in the form of an allowance by a parent of a minor child, particularly if the parent does not live with the child or is not involved in raising the child. The divorced spouse of a person who needs assistance is obliged to provide maintenance primarily if, after the divorce and owing to the responsibility of caring for a child, the person is not capable of providing for himself or herself or if he or she needs assistance due to age or a health condition. A person who has a child with a person who needs assistance is obliged to provide maintenance for 12 weeks after the birth of the child and also later, if the person needs assistance as a consequence of a health problem caused by raising the child, pregnancy or childbirth.

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

The age of majority is 18, and a person under the age of 18 is a minor. A minor child is entitled to benefit from a maintenance allowance, and it is primarily the child's parents who bear equal responsibility for supporting their child. A child who has turned 18 and is continuing to study under a basic or secondary school curriculum at a basic school, upper secondary school or vocational educational institution or completing a higher education degree at a university is also entitled to benefit from a maintenance obligation, but only until he or she turns 21.

Other ascendants or descendants who are not capable of supporting themselves are entitled to receive maintenance if it is determined that they need assistance.

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

A parent of a minor child can be required to perform a maintenance obligation. If the parent does not voluntarily pay maintenance, an application can be lodged with a court for a maintenance allowance to be paid. To apply for maintenance, either a petition for application of the expedited procedure in matters of a payment order regarding the maintenance allowance for the child or a statement of claim (maintenance allowance action) should be submitted to the court. No state fee is charged for these when claiming a maintenance allowance for a minor child.

The expedited procedure in matters pertaining to a payment order is a simplified procedure where payment of a maintenance allowance can only be ordered if the allowance is claimed for a minor child, the name of the parent obliged to pay maintenance appears on the child's birth certificate, the allowance does not exceed 1.5 times the minimum maintenance rate (see question 8) per month and the other parent does not challenge the payment of the maintenance allowance. If the conditions for submitting the payment order are not met, a statement of claim must be filed with the county court of the residence of the child to obtain a maintenance allowance.

More details about the expedited procedure in matters of a payment order in a claim for a maintenance allowance for a minor child are available [here](#). The form for a statement of claim for payment of child maintenance is available [here](#).

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

Minor children are entitled to receive maintenance. Insofar as minors have limited active capacity, the legal representative of the child – the parent with legal custody – is the one who files the statement of claim with the court on behalf of the child. If the child has been appointed a legal guardian, the action is to be filed by the child's guardian in the capacity of the child's legal representative.

An adult with active legal capacity independently files an action for maintenance.

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

Petitioning a court to compel a parent to perform a maintenance obligation with regard to a minor child is dealt with as a maintenance matter. In a maintenance matter, the statement of claim must be submitted to the county court of the residence of the child. If the child does not reside in Estonia, the action is filed according to the defendant's residence. If the defendant does not reside in Estonia, the action is filed according to the plaintiff's residence. Maintenance may also be requested under the expedited procedure in matters pertaining to a payment order (see the reply to question 3).

**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?**

To seek child maintenance in a court, it is necessary to file an action for which professional legal aid or the services of an intermediary are not necessarily required. The court orders the payment of maintenance as of the date on which the action was filed, but the court may also, on the basis of the action, order that maintenance be paid retroactively up to one year before the action was filed.

The form for a statement of claim for payment of child maintenance is available [here](#).

**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?**

No state fee is charged for an action filed to enforce a maintenance obligation with respect to a minor child or for review of a petition for application of the expedited procedure in matters of a payment order in a claim for child maintenance.

It is possible to seek state legal aid or procedural aid to cover procedural costs.

In the case of state legal aid, a person is appointed a lawyer by the Estonian Bar Association. The role of the lawyer is to represent and provide advice to the person in the proceedings. State legal aid is available to persons who due to their financial status are unable to pay for expert legal services at the time that they need the legal aid or are able to do so only in part or in instalments, or whose financial status would make it impossible to subsist after paying for the legal services. Receiving state legal aid does not release the person from the obligation to bear other procedural expenses.

More detailed information regarding State legal aid is available [here](#).

Applications for state procedural aid to cover procedural costs may be made by persons who are unable to pay those costs due to their financial status or who are only able to pay them in part or in instalments. There must also be sufficient reason to presume that the planned participation in the proceedings will be successful.

The application form for procedural aid for a natural person and the notice regarding the personal and financial status of the applicant and family members is available [here](#).

#### **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)?**

A court may order that a fixed or variable amount be paid as a maintenance allowance to a minor child, specifying the basis for calculating the amount of maintenance. Courts generally order that the maintenance be paid as monthly payments. The monthly maintenance for one child may not, however, be less than one-half of the minimum monthly wage established by the Government of the Republic (the minimum allowance was thus EUR 250 per child in 2018 and EUR 270 in 2019). Nevertheless, a court may, if there is a valid reason, reduce maintenance to below the minimum monthly wage established by the Government. Valid reasons in this case may include a parent's incapacity for work or if the person obliged to pay maintenance has other dependents.

The obliged person may, if there is a valid reason, demand to be allowed to provide maintenance in some other manner. Parents may by mutual agreement come to a detailed arrangement as to how the maintenance obligation with respect to a child is to be performed, and determine how and at what intervals maintenance is to be provided.

The scope of maintenance is determined on the basis of the child's needs and usual lifestyle. A child's usual lifestyle depends on the financial means at the parents' disposal. If the grounds for paying maintenance change, either party may file an action with a court for the maintenance to be either increased or reduced.

If the change is approved, the amount of maintenance can generally be changed as of the decision being taken – i.e. outstanding maintenance arrears cannot be changed.

In Estonia, the amount of maintenance changes automatically if the maintenance ordered in a court decision was linked to the minimum monthly wage established by the Government and if this minimum is changed. The minimum monthly wage can be found [here](#).

#### **9 How and to whom will the maintenance be paid?**

In general, maintenance is paid as a periodic sum of money. The person obliged to perform a maintenance obligation in respect of a minor child may, if there is a valid reason, demand to be allowed to provide maintenance in some other manner. Maintenance is paid in the form of a maintenance allowance by a parent of a minor child, particularly if the parent does not live with the child or is not involved in raising the child. Maintenance is paid in advance for each calendar month. Although the recipient of the maintenance is the child, the maintenance must generally be paid to the other parent. Maintenance may be paid directly to the child if the parents have so agreed or there is a court decision to this effect.

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

If a court judgment ordering maintenance has entered into force or is subject to immediate execution but the other parent fails to comply, a bailiff should be contacted. If the debtor does not make the payments indicated in the judgment at the required time, the bailiff will, on the basis of petition by the person who took measures to secure the action, arrange for the debtor's assets to be seized. Seizure of the debtor's assets requires that the court judgment be submitted to the bailiff accompanied with an application for enforcement. Information about the debtor and if possible his or her assets (residence, contact details, known information regarding assets) should be indicated in the application for enforcement. If the petitioner wishes that the bailiff use all opportunities set out in legislation for collecting the debt, it should be noted in the application for enforcement that the petitioner is making a claim for payment on the debtor's registered immovable property, movable property and rights of claim. In enforcement proceedings, child maintenance has priority over other claims, and in order to satisfy a claim for maintenance it is possible to seize assets in greater amounts and indefinitely suspend by a court ruling the following rights and the validity of the following authorisations: hunting rights, the right to drive power-driven vehicles, weapons permits and acquisition permits for weapons, the right to drive recreational craft and personal water craft, fishing cards.

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

Persons are released from a maintenance obligation to the extent they are unable, in light of their other obligations and their property status, to provide maintenance to another person without harming their own usual maintenance. In spite of the above, parents are not released from the maintenance obligation in respect of their own minor children. A court may also release an obliged person (debtor) from a maintenance obligation, limit the time period for performing the obligation or reduce the amount of maintenance if it is extremely unfair to demand that the obligation be performed, for example if the person entitled to receive maintenance has developed a need for assistance due to their own ill-advised actions.

Compensation for damage due to non-payment of maintenance and failure to perform an obligation can be demanded retroactively for up to a maximum of one year before a maintenance suit is filed in court. The limitation period for payment of maintenance as a maintenance obligation is ten years for each individual obligation. The limitation period begins at the end of the calendar year in which the claim corresponding to the obligation becomes collectible. A maintenance obligation is a personal obligation that expires on the death of the entitled or obliged person; exceptions apply with regard to advances and offset amounts.

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

In the case of cross-border maintenance disputes, the central authority, i.e. the International Judicial Cooperation Division of the Criminal Policy Department in the Ministry of Justice, can provide assistance.

**State legal aid** can be applied for when filing a maintenance claim with a court. There are no separate organisations or authorities that provide assistance in the case of domestic maintenance claims.

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

As of 1 January 2017, a parent raising a child has the right to apply for a state maintenance allowance for the duration of judicial proceedings and enforcement procedures from the Social Insurance Board (*Sotsiaalkindlustusamet*). This maintenance allowance is temporary aid from the state for a parent who is raising and providing for a child alone. The state pays maintenance on behalf of the parent who is not paying maintenance, recovering the money from the non-paying parent at a later date. The state maintenance allowance is paid to a person in connection with court proceedings in a maintenance matter. The condition for receiving the state maintenance allowance is that the person must petition a court for payment of maintenance either under the expedited procedure in matters of a payment order or in an action.

The maintenance allowance guarantees a child at least EUR 100 per month.

More information on applying for the allowance is available [here](#).

#### **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?**

In order to obtain maintenance under Council Regulation (EC) No 4/2009, assistance can be obtained from the International Judicial Cooperation Division of the Ministry of Justice.

To apply for maintenance in another country, an application for initiating a maintenance matter should be submitted to the International Judicial Cooperation Division at the Estonian Ministry of Justice and to the competent authority of the other country. A copy of the child(ren)'s birth certificate or court judgment establishing paternity should be appended. If paternity has not been established, this should be noted in the application sent to the other country.

The application form is available [here](#).

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

The International Judicial Cooperation Division at the Estonian Ministry of Justice can be contacted by telephone at +372 6 208 183 or by e-mail at [central.authority@just.ee](mailto:central.authority@just.ee).

#### **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?**

A claim from an applicant residing in another country will receive best consideration by contacting the appropriate authority in the country of residence, which in turn will contact the central authority at the Estonian Ministry of Justice.

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

See the reply to question 14.1.

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

The Hague Protocol of 2007 has been ratified by the European Union, of which Estonia has been a Member State since 1 May 2004.

#### **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 reply to question 16.

#### **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?**

In cross-border cases within the European Union involving applications for maintenance, state legal aid and state procedural aid is available under the Regulation. This ensures that the person is represented in the proceedings by someone with appropriate legal expertise and that the person has access to justice by way of covering procedural costs. The rules governing state legal aid and procedural aid note that national law is applied unless stipulated otherwise in Council Regulation (EC) No 4/2009.

In principle, the same guarantees that apply to persons residing in Estonia also apply to persons living in other EU Member States. In the case of cross-border maintenance cases, legal aid and advice as well as state legal aid and procedural aid are available from the central authority, i.e. the International Judicial Cooperation Division of the Ministry of Justice, in accordance with Council Regulation (EC) No 4/2009 and, as regards the parts not covered by the Regulation, on the basis of national law.

#### **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?**

A central authority has been established for cross-border judicial cooperation – the International Judicial Cooperation Division of the Ministry of Justice. Therefore to obtain maintenance under Council Regulation (EC) No 4/2009, assistance can be obtained from the International Judicial Cooperation Division of the Ministry of Justice, which conducts proceedings concerning international applications for legal aid.

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