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Family maintenance

Netherlands

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-----English-----

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

Maintenance is an obligation to contribute to the cost of living of the maintenance creditor. The obligation to pay maintenance arises from blood relationships and affinity, and a (previous) marital bond.

Which persons have to pay a maintenance allowance to another person:

- parents to their children
- children to their parents
- a divorced spouse to the other spouse (ex-registered partners)

The maintenance obligation that exists between spouses during marriage continues after the dissolution of the marriage. The court may, during the divorce judgment or during a later judgment, grant a maintenance allowance at the expense of one ex-spouse to the ex-spouse who does not have sufficient income to support his or her living costs (and is not, as far as can reasonably be expected, able to acquire it) at the latter's request. In establishing this maintenance allowance, the judge takes into account the needs of the one ex-spouse and the means (financial resources) of the other ex-spouse. Non-financial factors may also play a role, such as the duration of the marriage or the duration of cohabitation. If the court does not specify a time limit for the maintenance obligation, the maintenance obligation terminates automatically after 12 years. An extension to this period may be granted by the court at the request of the ex-spouse requiring maintenance in cases where the latter is in particular financial difficulty. Following a short (not longer than 5 years), childless marriage, the duration of the maintenance obligation is, in principle, not longer than the duration of the marriage itself.

The above also applies with regard to maintenance between ex-registered partners.

The ex-spouses may come to agreements as regards maintenance between themselves out of court. These are usually laid down in the divorce covenant. In practice, this covenant will be confirmed by the court during the divorce judgment. Confirmation of this kind gives the maintenance creditor more legal certainty.

Other categories of maintenance obligation:

Spouses/registered partners

Spouses and registered partners must both, except in exceptional circumstances, contribute to household expenses. They may make other agreements in this regard in prenuptial or partnership agreements.

Natural father/partner in the life of the mother

There is an obligation on the part of the child's natural father to provide maintenance for the child fathered (not acknowledged) by him, as long as the child does not have a legal family relationship with this man or any another man (in other words, as long as there is no legal father). The same obligation applies for the partner in life of mothers who consented to an act which could have resulted in the procreation of the child.

Joint custody

The non-parent having custody of a child together with the parent has a maintenance obligation towards that child (Article 1:253w BW). The maintenance obligation continues until the child's twenty-first birthday when joint custody ends due to the child becoming of age.

In which cases?

Generally speaking, the obligation to pay maintenance exists only if the maintenance creditor is in need. A person is considered to be in need if he or she has insufficient income to provide for himself or herself and is not, as far as can reasonably be expected, able to acquire it himself or herself.

Exception

An exception to this rule is in the case of maintenance obligations of parents and natural fathers towards their minor children and towards young adult children (up to 21 years old). In these cases, the maintenance obligation applies even if the creditors are not in need.

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

In the case of children below the age of 18 (minor children), the parents must pay the costs of care and upbringing. This concerns the cost of living and the other costs involved in bringing up the child, such as education and leisure activities. Parents are obliged to provide for the costs of care and upbringing according to their means. The obligation applies even if the child has his or her own means and/or income.

In the case of children of 18, 19 and 20 years old (the 'young adults'), the parents are responsible for paying the costs of living and education. The costs of living and education are taken to mean the same as the costs of care and upbringing during childhood. This maintenance obligation is independent of the need of the maintenance creditors.

The extended maintenance obligation also exists for this category of children even if they have their own income from employment or capital, or if they are married. Any income from the child himself or herself does, however, determine the extent of their need for a maintenance allowance.

In the case of children of 21 years and over, the parents only have a maintenance obligation if the child is in need and is not able to care for himself or herself. For example, if a child is physically or mentally handicapped.

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

The sum that the maintenance debtor must pay can either be established by the parties themselves and laid down in an agreement or determined by a court ruling.

In the context of divorce proceedings, the court is often also requested to decide on the maintenance for the ex-spouse or child maintenance.

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

No: the application has to be submitted by the maintenance creditor's lawyer. Maintenance creditors are not permitted to submit an application without a lawyer. A minor child is represented by his or her legal representative (usually a parent).

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

A distinction is made here between international jurisdiction (does the Dutch court have jurisdiction?) and internal jurisdiction (which Dutch court has jurisdiction?).

International jurisdiction within the European Union

As far as international jurisdiction of the Dutch court is concerned, in the context of the European Union the so-called 'Brussels I' Regulation (EEX) is applicable. This Regulation contains rules on the jurisdiction of the courts with regard to maintenance claims.

Pursuant to Article 2 of the Regulation, a maintenance debtor (respondent) residing in the Netherlands is, in principle, summoned to appear before the Dutch court by the maintenance creditor (applicant).

The 'Brussels I' Regulation also contains an alternative rule in respect of maintenance obligations. Article 5(2) specifies that a respondent residing within the territory of a Member State may be summoned to appear in another Member State:

before the court of the place where the person entitled to maintenance is domiciled or habitually resident,

or, if it is an additional requirement relating to a claim concerning the family law status of persons, i.e. the divorce court judge or, for example, the judge who decides on affiliation, before the court that has jurisdiction over this, unless that jurisdiction is based solely on the nationality of one of the parties.

Pursuant to the first indent, a maintenance creditor residing in the Netherlands may summons a maintenance debtor residing in France, for example, to appear before the Dutch court, which has international jurisdiction pursuant to Article 5(2). The court of the place of residence of the applicant has jurisdiction. In addition, concerning maintenance obligations within the European Union, 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 obligations has been in force since 18 June 2011.

The rules on jurisdiction in the Maintenance Regulation largely tally with those of the EEX Regulation. Under the general rule, the court of the place of habitual residence of the defendant or the maintenance creditor has jurisdiction for cases concerning maintenance. In contrast to the EEX Regulation, there is no requirement for the application of the Maintenance Regulation that the habitual place of residence of the defendant is located within the territory of a Member State.

International jurisdiction outside the European Union

As far as international jurisdiction of the Dutch court outside the context of the European Union is concerned, the following is applicable. If the respondent (be it the creditor or the debtor) lives outside the European Union, then the aforementioned 'Brussels I' Regulation is not applicable and the Dutch court derives its jurisdiction from the Code of Civil Procedure (*Wetboek van Burgerlijke rechtsvordering*). The Dutch divorce court is then authorised to make provisional arrangements with respect to the divorce or ancillary provisions such as a maintenance allowance or continued occupation of the matrimonial home. The Dutch court consequently has jurisdiction to decide on an independent application for maintenance allowance if either the applicant or one or more of the parties concerned stated in the application live(s) in the Netherlands or, if the case is otherwise sufficiently related to the legal sphere of the Netherlands, if they chose the Dutch court to have jurisdiction or if the party concerned appears in the course of the proceedings and does not put forward a plea of lack of jurisdiction.

Internal jurisdiction

As far as internal jurisdiction of the Dutch court is concerned, the rule as regards the type of court (law court, court of appeal, the Netherlands Supreme Court) is that the law court has jurisdiction in maintenance cases. Which law court has jurisdiction is determined by the Code of Civil Procedure. It is the law court of the place of residence of either the applicant (one of the applicants) or one of the parties concerned stated in the application that has jurisdiction or, in the absence of a place of residence of one of these parties, the court of the place of actual residence of one of them.

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?

A request to establish, change or terminate a maintenance allowance must be submitted by a lawyer. The lawyer represents the applicant during the sitting. Names and addresses of lawyers can be found on the [national law society's](#) website.

There is a [Society of Family Lawyers and Divorce Mediators](#), the members of which specialise in divorce and maintenance, amongst other things. They also specialise in divorce mediation and all that this entails.

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?

A contribution towards the costs involved in the administration of justice must be paid for court proceedings. This is the court registry fee. In addition to this, lawyer's and bailiff's fees will also be incurred.

If the litigant is unable to pay the (full) costs of a lawyer, he or she may, under certain circumstances, qualify for legal aid. This is known as a 'legal aid case'. The government pays part of the costs and the litigant pays a 'personal contribution'. The extent of this 'personal contribution' depends on the income and financial means of the litigant. The [Legal Aid Council](#) grants legal aid. The litigant must submit an application for legal aid to the Council in the area of jurisdiction (=jurisdiction of a court of appeal) where the lawyer's office is situated. In practice, the application is often made by the lawyer, if he or she has already been approached prior to the application for legal aid.

Furthermore, a 'Declaration of Income and Assets' (to be obtained from the municipal authority of the place of residence) must be submitted. This declaration must be sent with the application to the Legal Aid Council, which investigates whether the litigant is eligible for legal aid. If this is indeed the case, proof of entitlement to legal aid is issued. The court registry fee is also reduced in such cases.

Entitlement to legal aid also applies in the case of cross-border disputes, i.e. if the applicant resides outside the Netherlands. This is provided for in the European [Directive on Cross-border Legal Aid](#). Legal aid may be requested, invoking Articles 23A to 23K of the Legal Aid Act (*Wet op de rechtsbijstand*), via the Legal Aid Council in The Hague, using the standard form accompanying this Directive, which is identical in all Member States.

If necessary, the [Legal Aid Council](#) can provide assistance with choosing a lawyer. The Council's address is given in the response to question 14.2.

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)?

In its decision, the court will take into account the needs of the person requesting or receiving the maintenance allowance and the means (financial resources) of the person who is required to pay or is paying the maintenance allowance. Needs and means are relative concepts. The court has a certain

degree of liberty to make a decision according to the circumstances of the individual case. Guidelines have been developed by the judiciary (the so-called *Trema* standards), although these are not binding on the court.

The following incomes and expenditures are important in the court's decision:

income from employment

income from ancillary employment

study grants

benefits

pension

income from (sub)letting

interest and other incomes from assets

contributions to the households of others with whom a joint household is run

existing possibilities to increase income (earning capacity)

statements of assets

rent payments

mortgage repayments and interest as well as fixed charges. The part of the mortgage that has not yet been paid off must also be stated here.

insurance policies

necessary regular travel costs

financial obligations towards others

costs of special medical care for the maintenance creditor and/or his or her family members

expenses related to production of income

any statements of debts

Statutory indexation

Each year, the Minister for Justice fixes the percentage by which a maintenance contribution granted by the court or a contribution fixed by agreement is increased by law. In the calculation of this percentage increase, the Minister considers salary development in the business community and the government and the development of salaries in other sectors. This percentage is published in the *Staatscourant* [the Dutch Government Gazette].

There are a number of exceptions to this automatic adjustment of maintenance allowances. The parties as well as the court may rule out the statutory indexation or establish an alternative method of indexation.

9 How and to whom will the maintenance be paid?

Maintenance for ex-spouses is paid directly to the maintenance creditor. Maintenance payments fixed by the court for minor children are paid directly to the parent (or guardian) who is caring for 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?

If the maintenance obligation is determined by a court ruling and the maintenance debtor is in default of payment of child and/or partner maintenance, compliance can be enforced via the [National Bureau for the Collection of Maintenance Payments](#) (LBIO) in Rotterdam. Compliance can also be enforced by the bailiff. If there is no court ruling, the case must be brought before the court. A lawyer must be called in for this.

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

In the case of attachment on benefits or wages, the attachment-exempt threshold must be taken into account. The limitation period of a maintenance allowance to be paid monthly is 5 years. If a judgment exists in which the payment arrears are recorded, i.e. if in fact a fixed amount has been stated, the limitation period amounts to twenty years. To prevent expiry of a claim, the limitation period must be suspended.

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

In the case of arrears in child and/or partner maintenance payments, this authority is the [National Bureau for the Collection of Maintenance Payments](#) (LBIO). The LBIO must be authorised to do so by the maintenance creditor. The LBIO may, if necessary, proceed to collection by means of levying execution. The LBIO may, for example, attach the salary, benefits or immovable or movable property of the maintenance debtor.

Calling upon the services of the LBIO is free of charge for the maintenance creditor if both parties are resident in the Netherlands. On receiving a request for collection, the attempt is first made to prevent collection involving costs through brief mediation and/or providing an explanation. This is successful in nearly three quarters of cases. However, where the LBIO takes over collection, the maintenance debtor pays the recovery costs to the LBIO. The LBIO imposes a surcharge for collection. This surcharge is 15 % of the monthly amounts owed and the maintenance in arrears. Any costs of execution are also recovered from the maintenance debtor.

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

Despite the fact that the LBIO is a government institution, no maintenance payments are advanced. The government can do this in the case of child maintenance or legal aid.

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?

The LBIO also has tasks in the field of the international collection of maintenance. These tasks arise from regulations and conventions to which the Netherlands is party.

The Netherlands is party to the UN Convention on the recovery abroad of maintenance, New York, 20 June 1956. This is a convention on mutual legal assistance, the aim of which is to facilitate the acquisition of maintenance in international cases. To this end, the Convention has established a system of sending and receiving institutions, which assist the maintenance creditor in enforcing maintenance claims. The LBIO is the sending and receiving institution for the Netherlands.

Anyone who resides in the Netherlands and encounters problems with the collection of maintenance from a maintenance debtor residing abroad (i.e. in a country that is party to the New York Convention) can invoke the New York Convention. The Convention relates to child maintenance as well as partner maintenance.

Since 1 August 2014, the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance has been in force between the European Union (apart from Denmark) and other contracting States. In addition to the EU Member States, the Convention is also in force in Albania, Bosnia-Herzegovina, Norway and the Ukraine. Regarding relations between EU Member States, the Maintenance Regulation (Regulation (EC) No 4/2009) takes precedence.

The Hague Maintenance Convention is applicable for children under 21 years of age. It can be extended to cover other family members if both contracting States involved adopt a declaration to this effect.

In order to engage the services of the LBIO, the application form '[collection of international maintenance allowance](#)' must be submitted. This form can be

downloaded from the [LBIO](#) website.

The activities conducted by the LBIO and the foreign institutions themselves in the context of the New York Convention and the Treaty with the United States are in principle free of charge. Costs may arise in connection with legal proceedings abroad or with the recovery of the maintenance allowance.

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

In the case of child and partner maintenance:

Landelijk Bureau Inning Onderhoudsbijdragen (LBIO)

Postbus 8901

3009 AX Rotterdam

In the case of legal aid:

[Raad voor Rechtsbijstand](#),

Postbus 450,

2501 CL The Hague

Telephone number +31703701414

In the case of legal aid in cross-border cases:

Raad voor Rechtsbijstand

Regiokantoor Den Haag

attn. Jan Ouwehand

Laan van Meerdervoort 51B

2517 AE The Hague

Tel: 0031(0)88 787 1320

e-mail: j.ouwehand@rvr.org

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?

The LBIO also collects maintenance at the request of maintenance creditors residing abroad from maintenance debtors residing in the Netherlands. If a maintenance creditor who is located in another Member State wishes to claim maintenance from a maintenance debtor residing in the Netherlands, he or she can invoke the system of the Convention. He or she must then apply to the sending institution in his or her own country, which then contacts the receiving institution in the Netherlands (the LBIO). The receiving institution then takes the necessary measures to obtain the maintenance.

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

For contact details, see response to question 14.2.

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?

Not applicable.

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?

A contribution towards the costs involved in the administration of justice must be paid for court proceedings. This is the court registry fee. In addition to this, lawyer's and bailiff's fees will also be incurred. If the litigant is unable to pay the (full) costs of a lawyer, he or she may, under certain circumstances, qualify for legal aid. This is known as a 'legal aid case'. The government pays part of the costs and the litigant pays a 'personal contribution'. The extent of this 'personal contribution' depends on the income and financial means of the litigant.

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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?

No amendments have been made pursuant to Article 51 of the Regulation.

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