Family maintenance

Belgia

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

A ‘maintenance obligation’ may be defined as an obligation imposed on a person by law to provide another person who is in need and is connected with them by a ‘specific family’ link with the assistance necessary for life. ‘Maintenance’ covers not only food but everything that is necessary for life, including keep, clothing, housing and medical care.

The maintenance obligation is based on a family relationship or relationship through marriage or on an alternative obligation when that link is broken. It exists between certain blood relatives and relatives by marriage, between spouses and between legal cohabitants. It is founded in a way on a duty of ‘solidarity’ which may be stronger in certain cases.

parents towards their children

There are two types of obligation in such cases:

a wider maintenance obligation under which the father and mother are required to take responsibility, according to their means, for the housing, upkeep, health, supervision, education and training and development of their children. If the child’s education and training are still ongoing, the obligation continues after the child reaches its majority. It exists irrespective of the parent’s resources and the child’s needs. It is wider in the sense that, in addition to the child’s subsistence, it also includes its education and training etc. (Article 203 of the Civil Code);

a maintenance obligation based on parenthood, linked to the child’s needs irrespective of its age and the parent’s resources (Articles 205, 207, 208 and 353-14 of the Civil Code).

children towards their parents

The maintenance obligation applicable to parents for their children is reciprocal (Articles 205, 207 and 353-14 of the Civil Code). Children therefore have a maintenance obligation towards their father and mother if they are in need.

spouses

Maintenance obligations between spouses are based on the duty of help and assistance and the duty to contribute to the costs of the marriage provided for by the Civil Code (Articles 213 and 221 of the Civil Code). Those duties, linked to the cohabitation duty that is also imposed on the spouses, are reciprocal. If they are not fulfilled, legal proceedings may be brought for equivalent enforcement, in the form of maintenance proceedings or assignment (Articles 213, 221 and 223 of the Civil Code) – see question 10

divorced spouse towards former spouse

A distinction is to be made according to the type of divorce: divorce due to irretrievable breakdown or divorce by mutual consent:

Divorce due to irretrievable breakdown: if the spouses have not come to an agreement on the grant of any maintenance (Article 301(1) of the Civil Code), the court may, in the divorce decree or a subsequent decision, at the request of the spouse ‘in need’, order the other spouse to pay maintenance (first paragraph of Article 301(2) of the Civil Code).

The court may refuse to allow a claim for maintenance after divorce if the defendant proves that the claimant is guilty of serious misconduct making further cohabitation impossible (second paragraph of Article 301(2) of the Civil Code).

The amount of the maintenance may not in any event exceed one third of the income of the spouse liable for payment (third paragraph of Article 301(3) of the Civil Code).

Divorce by mutual consent: the spouses are not obliged to agree on the grant of maintenance for one of the spouses during the proceedings and/or after the divorce. If they so decide, the amount and arrangements for payment and enforcement of the maintenance are freely determined, as are its indexing and any grounds for variation (subparagraph (4) of the first paragraph of Article 1288 of the Judicial Code). Unless the parties have expressly agreed to the contrary, the court may, at the request of one party, increase, reduce or cancel the agreed maintenance after the divorce decree (third paragraph of Article 1288 of the Judicial Code) if, at least, the amount is no longer appropriate in view of new circumstances beyond the parties’ control. The maintenance may not be indexed unless indexing is specified.

Other, in what circumstances?

The maintenance obligation exists between relatives in the direct line, both ascending and descending (parents/children, children/parents, and also grandchildren/grandparents and vice versa - Articles 205 and 207 of the Civil Code).

Between relatives by marriage there are two possible scenarios:

surviving spouses have an obligation towards children of their deceased spouse of whom they are not the father or mother, within certain limits (Article 203 (3) of the Civil Code);

sons-in-law and daughters-in-law have an obligation towards their fathers-in-law and mothers-in-law and vice-versa. The obligation lapses if the father-in-law or motherinlaw remarries, or if the spouse (through whom there is a relationship by marriage) and the children of the marriage are deceased (Articles 206 and 207 of the Civil Code).

In certain circumstances maintenance is payable to the survivor or ascendants of the deceased from the estate of the deceased spouse (Article 205 bis of the Civil Code).

Children whose paternity is not established may claim maintenance for their upkeep and education and training from the man who had a relationship with their mother during the legal conception period (Article 336 of the Civil Code).

If the harmony between legal cohabitants is seriously disrupted, a party may apply to the court for maintenance under such interim measures as it may order. The same applies if the legal cohabitation ceases, under interim measures (Article 1479 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?

Normally the maintenance obligation ceases when the child is of full age and capacity. However, it may continue if the child’s education and training are still ongoing (Articles 203 and 336 of the Civil Code).

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

The debtor may meet the needs of the creditor voluntarily. Otherwise, if there is a dispute, disagreement or suspension, legal proceedings are necessary.
In a divorce due to irretrievable breakdown, a claim for maintenance after divorce may be made to the divorce court incidentally, either in the originating process or through submissions (fifth paragraph of Article 1254(1) and Article 1254(5) of the Judicial Code).
Outside divorce proceedings, it is the justice of the peace who hears and determines any claim for maintenance (Article 591(7) of the Judicial Code), except in proceedings claiming maintenance without declaration of parentage. See question 5.
Since 1 September 2014, apart from maintenance obligations linked to social integration income, all claims relating to maintenance obligations have come under the jurisdiction of the family court (Article 572 bis (7) of the Judicial Code), including maintenance proceedings without declaration of parentage.

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

The action is personal to the person entitled to maintenance (see in particular Article 337 of the Civil Code). The claim is made to the court by the claimant in person or their lawyer (see in particular Articles 1253 ter, 1254 and 1320 of the Judicial Code).
If the person does not have legal capacity, their legal representative acts on their behalf (father, mother, guardian, statutory representative).

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

The justice of the peace has general jurisdiction for maintenance disputes (Article 591(7) of the Judicial Code), but there are exceptions. In those circumstances, the action must be brought in the court for the claimant's domicile, except in the case of applications to reduce or cancel the maintenance (Article 626 of the Judicial Code).
The president of the family court (Article 338 of the Civil Code) has jurisdiction for proceedings brought by a child against a person who had a relationship with its mother during the legal conception period (Article 336 of the Civil Code).
Except in the case of urgent and interim measures, disputes concerning parental authority come under the jurisdiction of the youth court (Article 387 bis of the Civil Code) for the place of residence of the parents, guardians or persons with custody of the child (Article 44 of the Law of 8 April 1965 on the protection of juveniles, care of minors who have committed an offence and reparation for damage caused by the offence).
In the event of conflict between spouses before the divorce proceedings, claims are made to the justice of the peace (Article 594(19) of the Judicial Code) for the place of the last matrimonial home (Article 628(2) of the Judicial Code).
As soon as a petition is filed for divorce due to irretrievable breakdown, the president of the family court has jurisdiction (Article 1280 of the Judicial Code) until the marriage is dissolved. However, approval of the maintenance agreements reached by the parties is the responsibility of the court hearing the merits of the case (first paragraph of Article 1256 of the Judicial Code).
After the final divorce decree, the justice of the peace and the family court have jurisdiction. The president of the family court retains his jurisdiction for interim orders in urgent cases (Article 584 of the Judicial Code).
Since 1 September 2014, apart from maintenance obligations linked to social integration income, all claims relating to maintenance obligations have come under the jurisdiction of the family court (Article 572 bis (7) of the Judicial Code).
Since 1 September 2014, claims between parties who are (or have been) married or are (or have been) legal cohabitants and claims for maintenance obligations relating to children of both parties or children whose relationship to only one of the parents has been established must in principle be made to the court already dealing with a claim (see Article 629 bis (1) of the Judicial Code). That is the court for the domicile of the minor (or, failing that, for their habitual place of residence) for claims relating to maintenance obligations towards a minor who is competent. If the parties have several children, the first court seised has jurisdiction for all the claims (Article 629 bis (2) of the Judicial Code).
If the maintenance obligations relate to other maintenance creditors, the case is brought before the court for the defendant's domicile or the place of the last matrimonial or joint home (Article 629 bis (4) of the Judicial Code).

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?

See question 4. Depending on the action brought, the claim is submitted by bailiff summons or by petition. It is not compulsory for a lawyer to be involved.

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?

The legal proceedings must be paid for. It is not possible to determine the total costs; they will depend on the proceedings brought, the legal costs and the defence costs if a lawyer is involved. Ordinary law rules apply to payment of the costs of proceedings from legal aid (see Legal aid - Belgium).

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)?

Form of assistance:

The assistance takes the form of maintenance. In some cases the maintenance may be capitalised (Article 301(8) of the Civil Code). In exceptional cases it may be paid in kind (Article 210 of the Civil Code).

Assessment and indexing of assistance

There is no scale. Maintenance is only awarded in proportion to the need of the claimant and the financial circumstances of the person liable for payment (Articles 208 and 209 of the Civil Code).
The obligation of fathers and mothers (Article 203 of the Civil Code) is determined in proportion to their means and must cover the housing, upkeep, health, supervision, education and training and development of the children (until they have completed their education and training). That maintenance takes the form of a flat-rate monthly contribution to the parent 'with custody'.
The father and mother may each act in their own name to claim from the other a contribution towards the costs of housing, upkeep, etc. (Article 203 bis (2) of the Civil Code).
The amount of maintenance payable by a person who has had a relationship with the child's mother during the conception period is determined by the child's needs and the means, possibilities and social circumstances of the debtor (Articles 336, 339 and 203 bis of the Civil Code).
The law expressly authorises couples going through divorce proceedings to come to an agreement at any time on the award of any maintenance, its amount and the arrangements for reviewing the agreed amount (Article 301(1) of the Civil Code, and first paragraph of Article 1256 and Article 1288(4) of the Judicial Code). However, the court hearing the case may refuse to approve these if they are obviously contrary to the children's interests (second paragraph of Article 1256, second and fifth paragraphs of Article 1290 of the Judicial Code).
In the event of a judicial settlement, the court that decides *in concreto* on the amount of maintenance must, however, apply calculation criteria and limits. The maintenance must in principle cover at least the 'needs' of the beneficiary (first paragraph of Article 301(3) of the Civil Code).
In any event, the amount of the maintenance may not exceed one third of the income of the liable spouse (second paragraph of Article 301(3) *in fine* of the Civil Code). The duration of the maintenance order is limited to the duration of the marriage. In exceptional circumstances the duration of the maintenance order may be extended by the court (Article 301(4) of the Civil Code).

Indexing is automatic in the case of divorce due to irretrievable breakdown and parental contributions to upkeep. In principle the reference index is the consumer price index, but the law allows the court to apply a different system of adjustment to the cost of living (first paragraph of Article 301(6) and Article 203 quater (1) of the Civil Code) and the parties may derogate from that by agreement (Article 203 quater (1) of the Civil Code).
The law allows the maintenance to be increased, reduced or cancelled at the request of one of the parties, on the general grounds set out in the first paragraph of Article 301(7) of the Civil Code and the first paragraph of Article 1293 of the Judicial Code.

9 How and to whom will the maintenance be paid?

The maintenance is paid to the creditor or their representative in the form of a monthly payment. In certain cases it may be capitalised (see question 8).

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

A creditor with an enforcement order may have their claim enforced. Subject to certain conditions, an attachment may be placed on the movable or immovable property of a maintenance debtor who fails to comply with the decision setting the maintenance (Article 1494 of the Judicial Code). A garnishee order may even be made for a third party, such as the debtor's employer (Article 1539 of the Judicial Code). Furthermore, in certain circumstances maintenance creditors who do not yet have an enforcement order may arrange for a distraint order to safeguard their rights to future maintenance cover (Article 1413 of the Judicial Code).
A simplified enforcement mechanism has been put in place, namely assignment, in which the creditor is authorised to receive the debtor's income or any other sum payable by a third party direct, up to certain limits. Assignment applies to legal maintenance obligations between spouses or ex-spouses (Articles 220(3), 221, 223 and 301(11) of the Civil Code and 1280 of the Judicial Code), to obligations for the upkeep, education and training of children - including the proceedings between father and mother provided for by Article 203 bis of the Civil Code - and to the legal maintenance obligations between ascendants and descendants (Article 203 ter of the Civil Code).
Finally, the Penal Code contains an article on desertion of the family (Article 391 bis of the Penal Code), under which any person who has been ordered by the court to pay maintenance and has deliberately failed to do so for more than two months may be prosecuted.

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

Article 2277 of the Civil Code provides that arrears of maintenance are time-barred after five years.
Maintenance awarded by the courts is subject to a ten-year limitation (Article 2262 bis of the Civil Code).
It is suspended between spouses during the marriage (Article 2253) and interrupted by the service of a court summons, an order to pay or a seizure (Articles 2244 and 2248) and by the filing of legal submissions by the creditor and a payment by the debtor.
In principle, under Articles 7 and 8 of the Mortgage Act of 16 December 1851, debtors are required to fulfil their commitments in regard to all their assets. However, according to Article 1408 of the Judicial Code certain tangible items of personal property necessary for the daily life of the debtor and his family, the pursuit of his occupation or continued training or study by the debtor or dependent children living under the same roof are exempt from claims by creditors.
Under Article 1409(1) of the Judicial Code, income from employment and other activities is partly exempt from assignment and seizure.
Article 1412 of the Judicial Code nevertheless provides, firstly, that the rules of immunity from seizure cannot be enforced against a maintenance creditor and, secondly, that that person has absolute priority over the debtor's other creditors. However, if assignment is claimed against a person whose debts are already assigned or attached, the court may consider the overall position of the debtor and the needs of his creditors, particularly in regard to maintenance, and divide the sums assigned or seized equally between them (fifth paragraph of Article 1390 bis of the Judicial Code).
Debtors who are insolvent are eligible for collective debt settlement (Articles 1675/2 et seq. of the Judicial Code). In that context the court may decide, if appropriate, to waive the debts, including arrears of maintenance payments but not relating to maintenance debts.
An attachment may be imposed in order to secure payment of the maintenance in advance as it falls due (second paragraph of Article 1494 of the Judicial Code).

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

If maintenance creditors are unsuccessful in obtaining payment despite the above remedies, they may apply to the Maintenance Claims Department (*Service des créances alimentaires*) (in the Federal Public Service Finance), which is responsible for granting advances on one or more specific maintenance instalments and collecting or recovering the advances granted and the balance and arrears of maintenance debts payable by debtors.

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

The Maintenance Claims Department may act for debtors and pay the maintenance or part of the maintenance in their place. The Department requires debtors to pay the maintenance and the arrears simultaneously. Debtors either pay the maintenance to the Department voluntarily or recovery is enforced. In the latter case, the result cannot of course be guaranteed. It is dependent on the financial circumstances of the debtor.

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 Central Authority designated under the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance, Council Regulation No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations and the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance is the:
Federal Public Service Justice (*Service public fédéral Justice*)
Department of International Judicial Cooperation in Civil Matters
(*Service de coopération judiciaire internationale en matière civile*)
Boulevard de Waterloo, 115
1000 Brussels

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

The claimant or his legal adviser may contact that department by post, telephone (+32 (0)2 542 65 11), fax (+32 (0)2 542 70 06) or email aliments@just.fgov.be or alimentatie@just.fgov.be).

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?

Claimants resident in a country other than Belgium must contact the Central Authority for their country with responsibility for implementing the above Conventions or the Regulation. They may not contact a Belgian body or authority direct.

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

Reply negative (see above).

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?

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 a claim is referred to the Central Authority, it will verify the location of the debtor and/or his assets in Belgium and, where appropriate, pass the case on to the Legal Aid Office with territorial jurisdiction. Where a claim for child maintenance is made through the Central Authorities, legal aid will be granted without means testing the beneficiary. The aid covers lawyer's fees and the costs of the proceedings.

In other cases, claimants requiring legal aid should apply to the Central Authority, in accordance with Directive 2002/8/EC.

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?

The primary role of the Central Authority is to provide information on the functioning of the Regulation, both in its own system and in the requested State. The Central Authority has resources which enable it to locate the debtor or creditor directly or indirectly and to obtain relevant information on the income and/or assets of the debtor or creditor.

An effort to reach an amicable settlement is made in conjunction with the court proceedings in the exchange of observations by the two parties and more particularly in regard to the requested party during hearings by the judicial authorities. If necessary the Central Authority provides follow-up in order to promote the continued enforcement of the maintenance decisions.

The Central Authority may assist in the collection of documentary evidence and the transmission and service of documents by providing information on the provisions of domestic law applicable and on the rules for implementation of the international instruments in force.

Necessary interim measures designed to ensure the success of a pending maintenance claim may be taken under the power conferred by the Central Authority on the claimant's representative in the Belgian courts.

If necessary, the Central Authority can provide the requesting party with information on the procedures to be followed in establishing the child's paternity in regard to the putative father.

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