Family maintenance

Italia

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

In the Italian legal system, there are different names, conditions and amounts for family assistance depending on the relationship between the person liable and the beneficiary. In general, ‘maintenance’ is defined as the obligations justified by the hardship of the person to whom it is owed.

A. ‘**Obbligazione alimentare**’ is the provision of material assistance to a person who is unable to support themselves. It is payable by certain persons identified by law, as part of their duty of family solidarity.

The rules for this type of maintenance are set out in Sections 433 *et seq.* of the Civil Code. It must be paid where:

a) a specific legal relationship exists between the person liable to pay maintenance and the beneficiary;

b) the beneficiary, unable to earn their own living, is in a situation of need.

With respect to point a), those liable to provide maintenance are, in order:

1) the spouse;

2) children, including adopted children, or in their absence, direct relatives in the descending line;

3) parents, or in their absence, direct relatives in the ascending line; adoptive parents;

4) sons-in-law and daughters-in-law;

5) fathers-in-law and mothers-in-law;

6) brothers and sisters or half-brothers and half-sisters, with the former having precedence over the latter.

The closest relative according to the above ranking is liable to provide maintenance;

should there be more than one person at the same level, liability is divided between them according to their financial circumstances.

With respect to point b), the amount payable is proportional to the need of the person claiming maintenance and the financial circumstances of whoever has to pay it. However, this type of maintenance should not exceed the amount necessary to cover the basic vital needs of the person in financial need, having regard to their social status.

B. ‘**Assegno di mantenimento**’ is the provision of financial assistance by one spouse to another in the event of separation, and is designed to ensure that whoever receives it is able to maintain the living standard enjoyed during the marriage. ‘*Assegno di mantenimento*’ is not conditional upon the beneficiary being in need and may be claimed even if the beneficiary is working. It may be waived and it may be replaced by a single payment.

As this type of maintenance aims to ensure that the spouse maintains a similar living standard to the one enjoyed prior to the separation, it is usually a higher amount than ‘*assegno alimentare*’. However, ‘*assegno di mantenimento*’ is not payable to the spouse deemed responsible for the separation.

In the event of a divorce, the court may award ‘***assegno divorzile***’ to the spouse who lacks sufficient means or in any case is unable to procure them for objective reasons, taking account of the earnings made by both spouses, the reasons behind the decision, and the personal and financial contributions made by each spouse in managing the family and their assets, these factors being evaluated on the basis of the length of the marriage. The right to *assegno divorzile* ends when the beneficiary remarries or starts a new family. However, by way of judgment No 18287 of 11 July 2018, the Joint Chambers of the Supreme Court of Cassation (*Suprema Corte di Cassazione*) ruled out the possibility of *assegno divorzile* being solely maintenance-based in nature, after finding that this form of allowance needed to serve not only a support function but also, to the same extent, a compensatory/equalising function.

Consequently, in order for this allowance to be granted, a composite criterion needs to be adopted which, in the light of the comparative assessment of the respective financial/property statuses, places particular importance on the contribution made by the former spouse seeking the unification of joint and personal assets, in relation to the length of the marriage, potential future earnings and the age of the assignee.

Assegno di divorzio may be payable by one spouse to the other, and also by one civil partner to the other: in the latter case, the parties will have needed to have entered into a civil partnership (Law No 76 of 2016) that governs the formation of families by persons of the same gender.

C. The term ‘**assegno di mantenimento**’ also refers to the financial support that parents have to pay for their children when they separate, divorce or cease living together (Section 337-*ter* of the Civil Code). Children (whether born inside or outside marriage) have the right to be maintained by their parents in proportion to their respective means and in accordance with their ability to work professionally or at home. If two parents separate, divorce or cease living with each other, the court establishes that regular maintenance is to be paid and decides the amount in accordance with the child’s needs, the standard of living enjoyed by the child while living with both parents, the amount of time spent with each parent, the financial resources of both parents and the financial value of the domestic and care duties carried out by each parent.

D. Section 1(65) of Law No 76 of 20 May 2016 (regulation on civil partnerships between persons of the same gender and cohabitation) stipulates that, in the event of two partners ceasing to live with each other, the court shall establish the right of one partner to receive maintenance payments from the other partner when he or she is in financial hardship and is unable to earn their own living. In those cases, maintenance is awarded for a period of time that is commensurate with the amount of time that the partners lived with each other, and in accordance with Article 438(2) of the Civil Code. In order to determine the order of people obliged to pay maintenance as set out in Section 433 of the Civil Code, the obligation of a cohabiting partner to pay maintenance takes precedence over that of brothers and sisters.

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

Until they reach majority, children have the right to be maintained by their parents (see the section above). If a child has reached majority but is not yet financially independent, the judge may order one or both of the parents to pay regular maintenance, usually direct to the child. Once a child who has reached majority has become financially independent, if they again experience financial hardship, the parents shall not once again be required to pay maintenance, but shall instead be liable only for the ‘*assegno alimentare*’ (see letter A of section 1). If a child who has reached majority has a serious disability, the rules for children who are minors apply.

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

To obtain ‘*alimenti*’ a person must submit an application to the court where they live, enclosing any documentary evidence of their need.

Once the proceedings have begun, it is possible to ask the court to grant provisional maintenance before the final ruling is made.

Maintenance for children or a spouse may be applied for in separate proceedings or as part of proceedings involving two partners separating, divorcing or ceasing to live with each other. The maintenance may also be decided by the court in the first hearing of the proceedings.
In addition, the granting of maintenance for children, a spouse or a civil partner may constitute one of the issues forming the subject of an agreement reached following negotiations conducted in the presence of lawyers (Section 6 of Decree-Law No 132/2014): in such an agreement, the parties pledge to cooperate with each other in good faith and integrity in order to resolve amicably the dispute between them concerning their separation and custody over any children. The agreement reached following those negotiations conducted in the presence of lawyers must be sent, within ten days, to the Public Prosecutor at the competent court, who, if he or she deems the agreement to meet the best interests of the children, shall authorise it. The authorised agreement is equivalent to a judicial separation or divorce order.
By way of a circular dated 22 May 2018, the Ministry of Justice acknowledged as follows. If the agreement is concluded before a civil registrar, then the office of that registrar issues the certificate provided for by Section 39 of Regulation No 2201 of 2003. Conversely, as regards agreements reached following negotiations conducted in the presence of lawyers, it must be held that the certificate as set out in Section 39 cited above must be issued by the Public Prosecutor who authorised the agreement or who issued the authorisation, given that a lawyer cannot be classed as an 'authority' for the purposes of Regulation No 2201 of 2003, and also taking account of the fact that the agreement can only be made valid and effective, and therefore recognisable and enforceable abroad, by a definitive order issued by the Public Prosecutor. As a result, in the event that the Public Prosecutor has refused to authorise the agreement and the authorisation has been passed by the presiding judge of the court (pursuant to Section 6(2) of the Decree-Law), it will be down to the adjudicating judicial body to issue the certificate in question.

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

If the person in question is unable to appear in court (if he or she is not yet of age, or is an adult classed as incompetent), the judicial request for maintenance should be submitted by his or her legal representative (parents in the case of minors, guardians in the case of adults), who may also be a support administrator appointed in accordance with Sections 404 *et seq.* of the Civil Code.

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

In accordance with Regulation (EC) No 4/2009, in matters relating to maintenance obligations in Member States, jurisdiction lies with:
a) the court for the place where the defendant is habitually resident, or
b) the court for the place where the creditor is habitually resident, or
c) the court which, according to national law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, or
d) the court which, according to national law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.

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?

The document instituting proceedings concerning maintenance must be presented through a lawyer, who represents the party in court.
The assistance of a lawyer is not necessary if the decision about maintenance is included in the agreement between two spouses who are separating by mutual agreement. In that case, the agreement is submitted to the court, which checks and approves it (Section 711 of the Code of Civil Procedure).

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 person bringing a case to the civil courts must pay a registration fee (*contributo unificato di iscrizione a ruolo*). This fee varies depending on the type and value of the case.
The orders issued by the court are also subject to a registration fee.
However, neither of these registration fees is payable in cases concerning maintenance payments for children.
The parties must also pay the legal costs of the lawyers representing them in court. It is not possible to give an indication of the expected legal costs, since they vary depending on the level of complexity of the dispute.
Persons who lack sufficient resources may request the appointment of a lawyer to assist them free of charge, with the costs borne by the State (legal aid).
At the time of writing, in order for an applicant to be eligible for legal aid, he or she must have an annual taxable income, as shown on his or her most recent statement, of no greater than EUR 11 493.82 (Ministerial Decree of 16 January 2018, published in Official Gazette (*Gazzetta Ufficiale*) No 49 of 28 February 2018). This limit is updated periodically. If the person concerned lives with their spouse, civil partner or other family members, the total annual income will be calculated by adding together the incomes of all the family members, including the applicant.
If the person concerned lives with their spouse or other family members, the total annual income will be calculated by adding together the incomes of all the family members, including the applicant. In that case, the maximum income to qualify for legal aid is increased by EUR 1 032.91 for each family member with whom the applicant is living.
Applications for legal aid are made to the Bar Council (*Consiglio dell'Ordine degli Avvocati*) for the place where the court with jurisdiction in the case is located.
The application must state the grounds and the legal basis for the claim and must include documentary evidence. The Bar Council will not grant legal aid if the claims being brought to court are clearly unfounded.
If the Bar Council accepts the application, the person concerned may appoint a lawyer chosen from the list of authorised legal aid lawyers.
Some Bar Councils will themselves choose the lawyer to take the case.
An application for legal aid may be made at any stage and instance of the proceedings and is valid for all subsequent instances.
The income limit indicated above must not be exceeded during the entire duration of the proceedings.
If the application for legal aid is rejected, the person concerned may resubmit it to the court with jurisdiction in the case.

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 court order stating the amount of maintenance to be paid and ordering its payment is an executory ruling, and therefore constitutes an enforcement order.
A court order declaring entitlement to maintenance places a duty on the person liable to pay the beneficiary what they need to meet their basic vital needs (subsistence, accommodation and clothing costs and the costs of the minimum goods and services necessary to maintain a dignified life). When deciding how much maintenance should be paid, the court must also take account of the financial circumstances of the person liable for maintenance.
A court order stating the amount of maintenance to be paid to a separated spouse must also take account of their standard of living during the marriage.
A court order stating the amount of maintenance to be paid to children who are still minors, or to children who have reached majority but are not financially independent, must take account of their educational needs.

Maintenance is automatically adjusted in line with the ISTAT indices or any other parameters agreed by the parties or stated in the court order.
The amount of maintenance payable may be changed at a later date if the beneficiary or the person liable applies to the court with jurisdiction, which is usually the one that issued the original order.

9 How and to whom will the maintenance be paid?

The court lays down the payment arrangements.
In cases of legal separation, the court may order third parties required, including on a regular basis, to pay the person liable for maintenance (e.g. their employer) to pay some of the money direct to the separated spouse.
The maintenance must be paid to the person to whom it is owed.
Maintenance for children who are still minors is paid to the spouse who has custody of them.
Maintenance ordered by the court for children who have reached majority but are not financially independent is paid direct to those children, unless the court rules otherwise.

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 person ordered to pay maintenance does not pay it voluntarily, the usual means of enforcement of financial obligations are open to the beneficiary.
It is also possible to apply Section 614-*bis* of the Code of Civil Procedure, which provides incentives for the voluntary fulfilment of obligations to carry out a certain act: by way of a conviction order, the court may fix, at the request of a party (and provided that such a measure is not clearly unfair), a sum of money to be paid by the person liable for maintenance for every subsequent breach or failure to comply, or for every delay in implementing the order. The conviction order constitutes an enforcement order for the payment of the sums owed for every breach or failure to comply.

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

The entitlement to maintenance is not in itself subject to a prescription period. Any individual instalments that fall due but are not paid are subject to a five-year prescription period (Section 2948(2) of the Civil Code). Moreover, prescription is suspended between spouses and between whoever has parental responsibility for the persons receiving maintenance.

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

See the following section.

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

A State Fund has recently been set up for paying maintenance to spouses in financial hardship who are unable to earn their own living and to any minor children living with them, and also to any severely disabled adult children, when the other spouse required to pay maintenance fails to do so.
In order to be paid this maintenance (by the Ministry of Justice (*Ministero della Giustizia*)), the party concerned must submit an application to the court where they live.
The payments from the Ministry of Justice are made in advance. The Ministry of Justice then recovers the sums owed from the defaulting spouse.

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?

A person entitled to maintenance payments from someone living in another Member State may obtain assistance from Italy's Central Authority. They must submit an application for recognition and a declaration of enforceability and enforcement of the decision recognising their entitlement to maintenance, in application of the system of cooperation established by Chapter VII of Regulation (EC) No 4/2009 through the Central Authority in the Member State in which the person liable habitually resides.
The Department for Juvenile Justice and Communities at the Ministry of Justice (*Ministero della Giustizia - Dipartimento per la Giustizia Minorile e di Comunità*) is the Central Authority for Italy designated in application of Article 49 of Regulation (EC) No 4/2009 to recover maintenance in cross-border disputes in the European judicial area.

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

The contact details of Italy's Central Authority are as follows:
Ministero della Giustizia, Dipartimento per la Giustizia Minorile e di Comunità
Via Damiano Chiesa 24
00136 ROME
Tel. (+39) 06 68188 326-331-535
Fax (+39) 06 06.68808 323
E-mail: acitalia0409.dgmc@giustizia.it

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?

If a creditor is living in another Member State and wants to enforce in Italy a decision recognising their entitlement to maintenance, they may seek assistance from the Central Authority of the Member State in which they are living, and through that authority submit an application in accordance with Article 56, using the system of cooperation established in Chapter VII of Regulation (EC) No 4/2009.
A creditor living in another Member State may not directly seek assistance from Italy's Central Authority.

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

See the preceding section.

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?

As regards access to justice in cross-border cases, the scheme provided for in Chapter V of Regulation (EC) No 4/2009 is applied directly.
Thus, for cases concerning recognition or recognition and declaration of enforceability of a decision and concerning enforcement of a decision issued in the Member State or already recognised, if the applicant is a person under the age of 21, legal aid is automatically granted, regardless of income or whether the application appears to be well founded, as required by the general rules in force in Italy concerning access to legal aid.
For applications concerning maintenance for children aged 21 and over, and for applications that do not arise from parentage (so for applications submitted by a spouse or another person who is related to or has an affinity with the creditor), legal aid is granted if the normal conditions of income and the well-founded nature of the application are met, in accordance with Italian law (see section 7).
Using the system of cooperation set out in Chapter VII of Regulation (EC) No 4/2009, Italy's Central Authority sends the application for legal aid to the relevant Bar Council.

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?

Italy's Central Authority uses the following methods to handle cooperation requests sent in application of Chapter VII:
it encourages amicable solutions by sending debtors an invitation to meet their maintenance obligation voluntarily;
it asks debtors to contact the Central Authority to agree the procedures for settling the case;
it locates the debtor by accessing the database of the national register of Italian municipalities (*Indice nazionale dei comuni italiani*) and that of the prisons administration (*Amministrazione penitenziaria*), or by contacting local population registry offices;
it collects information about the income and assets of the debtor, with the assistance of the tax police (*polizia tributaria*);
it facilitates the obtaining of documentary evidence as stated in Article 51(2)(g) of the Regulation, in cooperation with the judicial authorities;
it facilitates the provision of legal aid as explained in sections 7 and 18 above.

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