

Etusivu>Perhe- ja perintöoikeudelliset asiat>Elatusapu

Family maintenance

Romania

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

The legal obligation to provide maintenance is the requirement imposed by law on a person to provide another person with the necessary means of subsistence, including for the satisfaction of spiritual needs, and, in the case of parents' maintenance obligations to minor children, the means required for their upbringing, education and vocational training.

The maintenance obligation exists between spouses, relatives in the direct line, brothers and sisters and certain other persons specified by law (Article 516 of the Romanian Civil Code).

The maintenance obligation exists between former spouses (Article 398 of the Civil Code). It should not be confused with provision of compensation or damages.

A spouse who has contributed to the maintenance of the child of the other spouse has an obligation to provide maintenance for the child for as long as that child is a minor, but only if the child's natural parents are dead, missing or needy (Article 517(1) of the Civil Code). In turn, the child may be obliged to provide maintenance for the person who provided him or her with such maintenance for 10 years (Article 517(2) of the Civil Code).

The heirs of a person who was obliged to maintain a minor or who provided maintenance without having any legal obligation to do so are bound, depending on the value of the inherited assets, to continue to provide maintenance if the minor's parents are dead, missing or needy, but only for as long as the person receiving the maintenance is a minor.

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

The maintenance obligation between parents and children is regulated by Articles 499 and 525 of the Civil Code. Minors claiming maintenance from their parents are regarded as needy if they cannot support themselves on the basis of their work, even if they have assets. However, where the parents are not in a position to provide maintenance without endangering their own livelihood, the family court may agree to maintenance being provided through the sale of the child's assets, except for those that are strictly essential.

Parents are obliged to maintain a child who has reached the age of majority (18 years) but is continuing his or her studies, until the end of those studies but not beyond the age of 26.

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

The claimant creditor must apply to the court having jurisdiction in the place of his or her permanent address or that of the defendant debtor. The application claiming maintenance may be made either separately or in the course of proceedings for divorce, determining paternity, exercising parental authority over a minor child or determining a minor's residence. The court may order, by order of the president of that court, interim measures valid only until a decision has been issued regarding the substantive proceedings. The proceedings at first instance comprise several stages. At the written stage, the claim, the defence and the counter-claim are submitted; precautionary measures such as seizure or attachment may be ordered; and the parties are summoned and the procedural documents sent to them. The oral stage comprises the hearing, where procedural objections may be raised and evidence taken. This is followed by the deliberation stage and the issuing of the court's decision.

In the case of divorce by mutual consent, which can be declared by a notary public, the spouses may agree on all the ancillary matters of the divorce, including the determination of each parent's contribution to the cost of the children's upbringing, education, vocational training or studies.

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

In principle, the parties involved in maintenance allowance proceedings may be represented. However, where an application is filed for maintenance in conjunction with divorce proceedings, the spouses may be represented in the divorce petition only in certain cases specifically provided for by Article 920 of the Code of Civil Procedure.

Where a separate application is filed for the determination or an increase/reduction of the maintenance allowance, the parties may be represented in the conventional way by a lawyer or other representative; where representation is by a non-lawyer, the latter cannot deliver closing oral arguments in the trial.

The minor is represented by his or her legal representative (parent or, exceptionally, another person exercising parental authority). An application in respect of a child having reached the age of majority is lodged by that child on his or her own behalf.

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

The court with territorial jurisdiction (for the place of residence of either the defendant debtor or the claimant creditor) can be determined by reference to the Romanian judicial atlas, which is published on the website of the Ministry of Justice on the courts portal: <https://portal.just.ro/SitePages/acasa.aspx>.

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?

No, because it is not mandatory for the applicant to be represented or assisted by a lawyer.

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?

Applications for the determination or modification of the maintenance allowance are subject to a fee of RON 20 in accordance with Article 15(e) of Government Emergency Order No 80/2013 on judicial stamp duties. Representation by a lawyer is not mandatory. If the party concerned has insufficient income, he or she may request legal aid to cover the lawyer's fees or other costs of the trial.

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)?

Maintenance is granted according to the needs of the applicant and to the means of the person who is to pay it. In principle, maintenance is provided in kind so as to ensure the necessary means of subsistence. In the majority of cases, however, the courts in practice establish the maintenance allowance in cash terms, either as a fixed amount or as a percentage of the debtor's monthly income. (Article 530 of the Civil Code). By law, a maintenance allowance expressed as a fixed amount is adjusted for inflation on a quarterly basis.

Where maintenance is owed by a parent, it may amount to up to a quarter of that parent's net monthly income for one child, one third for two children and half for three or more children. By law, the amount of maintenance owed to children, combined with any maintenance owed to other persons, may not exceed half of the liable person's net monthly income (Article 529 of the Civil Code).

Where there is any change in the means of the person providing maintenance or the needs of the person receiving it, the family court may, in a new action, increase or reduce the maintenance allowance, or order that its payment be ended, as appropriate (Article 531 of the Civil Code).

9 How and to whom will the maintenance be paid?

The maintenance obligation is performed in kind, so as to ensure the necessary means of subsistence and, where appropriate, cover the costs of upbringing, education, vocational training or studies (Article 530 of the Civil Code). If the maintenance obligation is not fulfilled voluntarily, in kind, the family court orders that it be paid as a maintenance allowance in the form of cash. The maintenance allowance may be determined either as a fixed amount or as a percentage of the net monthly income of the person obliged to provide maintenance.

The maintenance allowance is paid in regular instalments on dates agreed between the parties or, in the absence of such agreement, on the dates determined by court decision. The parties may agree or, where there are sound reasons for its doing so, the family court may decide, that the maintenance allowance be paid in advance as a lump sum covering the maintenance needs of the person entitled to the maintenance for a longer period of time or for the entire period for which maintenance is due, provided that the debtor owing the maintenance has the necessary means to meet this obligation (Article 533 of the Civil Code).

A maintenance allowance established for a minor is paid to the minor's legal representative.

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

Since in most cases the maintenance allowance is established in cash terms, the most frequent method of enforcement is attachment of earnings (monthly income). Forced sale of the debtor's movable and immovable property is a less frequent method of enforcement.

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

As regards the recovery of maintenance, Article 728 of the Code of Civil Procedure provides that only up to half of the debtor's net monthly regular income may be subject to enforcement for amounts owed as maintenance. If there are several recovery procedures involving the same amount, the actually recoverable amount may not exceed half of the debtor's net monthly income, regardless of the nature of the claims.

Where a creditor simultaneously files applications for the seizure of several movable or immovable assets whose value clearly exceeds the claim to be paid, the court of enforcement may restrict enforcement to certain assets (Article 701 of the Code of Civil Procedure).

Enforced recovery shall end, for instance, when the obligation stipulated in the enforcement order has been met in full and the enforcement fees have been paid; where enforcement cannot be carried out or continued due to a lack of seizable assets or the impossibility of selling such assets; or where enforcement has been annulled (Article 702 of the Code of Civil Procedure).

The right to obtain enforcement is subject to a period of three years. An appeal against enforced recovery may be lodged with the court of enforcement. The competent court may suspend enforcement until a ruling is issued on the appeal (Article 719 et seq. of the Code of Civil Procedure).

Where an enforcement order or enforcement itself has been annulled, the party concerned is entitled to have enforcement reversed so as to restore the situation preceding it (Article 723 et seq. of the Code of Civil Procedure).

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

Not applicable.

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

Not applicable.

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?

Under Council Regulation (EC) No 4/2009, the Hague Convention of 2007 or the New York Convention of 1956, an applicant may submit his or her application for maintenance through the Romanian Ministry of Justice if the debtor resides in an EU Member State that is a contracting party to the Hague Convention of 2007 or the New York Convention of 1956.

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

Romanian Ministry of Justice

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Directorate for International Law and Judicial Cooperation (Direcția Drept Internațional și Cooperare Judiciară)

fax +40372041079 sau +40372041084, email ddit@just.ro

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?

No; the applicant must contact the transmitting Central Authority in his or her country, designated pursuant to Council Regulation (EC) No 4/2009, the 2007 Hague Convention or the 1956 New York Convention.

The transmitting Central Authority of the debtor's country may subsequently contact Romania's receiving Central Authority:

the Romanian Ministry of Justice, for applications filed under Council Regulation (EC) No 4/2009 and the Hague Convention of 2007, or the Bucharest Bar Association (Baroul București), for applications filed under the New York Convention of 1956.

The application is then submitted to the competent court.

A debtor abroad can address a request directly, in person or through a lawyer, to the Romanian court having jurisdiction at the place where the defendant's or the debtor's domicile is located.

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

A debtor applicant abroad can address a request directly, in person or through a lawyer, to the Romanian court having jurisdiction at the place where the defendant's or debtor's domicile is located. The contact details of the competent Romanian court can be found on the courts portal

<https://portal.just.ro/SitePages/acasa.aspx> on the basis of the place where the defendant's or debtor's domicile is located.

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

Yes; pursuant to Article 2612 of the Romanian Civil Code, the law applicable to maintenance obligations is determined under European Union law, i.e. in accordance with the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations.

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?

Pursuant to Law No 36/2012 on certain measures necessary for applying certain regulations and decisions of the Council of the European Union and instruments of private international law in the field of maintenance obligations, after receiving an application for maintenance or specific measures, the Ministry of Justice forwards it for settlement to the competent authority or body possessing the personal data, to the competent local bar association, to the Chamber of Judicial Enforcement Officers or, where applicable, to the competent court.

In the case of applications submitted through the Central Authority, pursuant to Article 46 of the Regulation, free and full legal aid may be granted to claimants of maintenance obligations who have not yet reached the age of 18 or who are continuing their studies, but not beyond the age of 21, and to claimants of maintenance obligations who are vulnerable persons.

The Ministry of Justice transmits applications received from abroad directly to the competent local bar association. The dean of the bar association issues as a matter of urgency a mandatory and ex officio decision designating a lawyer. The designated lawyer applies for the granting of legal aid, including in the form of payment of the judicial enforcement officer's fee.

Subsequently, after obtaining an enforcement order, the designated lawyer requests the court to grant legal aid in the form of payment of the judicial enforcement officer's fee. The lawyer submits the recovery request, the enforcement order and the decision of the dean of the bar association to the competent local judicial enforcement officer.

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?

Romania has adopted *Law No 36/2012 on certain measures necessary for applying certain regulations and decisions of the Council of the European Union and instruments of private international law in the field of maintenance obligations*.

The Ministry of Justice has been designated as Romania's transmitting Central Authority, which transmits the applications provided for in Articles 53 and 56 of the Regulation. On receiving the requisite supporting documents from a creditor or debtor, the Ministry of Justice fills in Part A of the application and may assist the creditor or the debtor in completing Part B.

The Ministry of Justice is the requested Central Authority designated to receive applications for specific measures and for maintenance. On receiving applications, it sends them for settlement to the competent authority or body possessing the personal data, the competent local bar association, the Chamber of Judicial Enforcement Officers or, where applicable, the competent court.

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Last update: 01/06/2023

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