Family maintenance

Finnország

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 (Finnish) Act on Child Maintenance (704/1975) lays down provisions on child maintenance.

According to this Act, a child has a right to adequate maintenance. This means addressing the material and psychological needs of children at their various stages of development and covering the costs of their care and education, as required, as well as other related expenses.

A child has a right to receive maintenance from its parents, who are responsible for this, according to their ability. If a parent neglects his or her role in maintenance in respect of a child, or if a child does not live permanently with his or her parent, that parent may be ordered to pay a maintenance allowance in respect of the child.

Parents have no right to receive maintenance from their child.

The (Finnish) Marriage Act (234/1929) lays down provisions on maintenance payable to a spouse.

In a marriage, each spouse has a role to play in the family’s common household expenses and the maintenance of the other spouse, according to their ability. If a spouse neglects his or her obligation to pay maintenance or if spouses live separately, one may be ordered to pay maintenance to the other.

Following a divorce, one party is obliged to pay maintenance to his or her former spouse if the parties have entered into an agreement regarding this and the local authority social services department has endorsed it. If a couple divorces, a court may also order one party to pay maintenance to the party requiring it. In Finnish case-law, however, it is rare for a party to be ordered to pay maintenance to their spouse. In general, after a divorce the parties support themselves.

A spouse’s entitlement to receive maintenance from their previous partner ends if the party receiving maintenance remarries.

What is enacted in the law concerning spouses also applies to the relevant parties in a registered partnership.

Parties have no obligation to pay maintenance in respect of one another in the context of any other personal relationships.

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

A child’s right to receive maintenance from its parents ends when the child reaches the age of 18.

Parents are also liable for the costs of their children’s education after children have reached the age of 18 if that is considered reasonable. This is, however, a rare phenomenon in Finnish case-law.

See also question number 1.

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

Both the party entitled to maintenance and the party with an obligation to pay maintenance may contact the Municipal Board of Social Welfare, which can assist in drawing up an agreement relating to a maintenance allowance. An agreement approved by the Municipal Board of Social Welfare is directly enforceable, as with a court judgment.

Section 8(a) of the Child Maintenance Act states that, even if a child or a party with an obligation to pay maintenance has no domicile in Finland, the Municipal Board of Social Welfare may endorse a maintenance agreement if a court in Finland has jurisdiction in the case within the meaning of Articles 3 or 6 of Council Regulation (EC) No 4/2009 and if the parties have agreed that the laws of Finland should govern the obligation regarding maintenance in accordance with Article 7 of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

If a case of maintenance is in dispute, the party entitled to maintenance or the party with an obligation to pay maintenance may bring the matter before a court by means of an application for a summons.

Spouses may draw up an informal written agreement on maintenance and ask the local authority social services department to endorse it. If requested to, the authority will help the parties draw up the agreement.

A maintenance case involving two spouses may be brought before a court by means of an application for a summons.

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

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

Council Regulation (EC) No 4/2009 and its rules on jurisdiction apply to cross-border cases relating to maintenance.

In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

the court for the place where the defendant is habitually resident, or

the court for the place where the creditor is habitually resident, or

the court which, according to its own law, has jurisdiction to determine 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

the court which, according to its own law, has jurisdiction to determine 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.

If the case has no cross-border connection, the rules on jurisdiction can be found in the (Finnish) Code of Judicial Procedure (4/1734).

Under Chapter 10, Section 1 of the Code of Judicial Procedure, the venue for the investigation of a claim against a natural person is the District Court in whose jurisdiction that person has his or her domicile or permanent place of residence. Under Chapter 10, Section 9, a claim for maintenance may also be investigated by the District Court in whose jurisdiction the party claiming or receiving maintenance has his or her domicile or permanent place of residence. Where a case concerns divorce or the end of cohabitation, there may be claims regarding an agreement on maintenance, child custody or access rights or any other claim connected with the divorce or end of cohabitation. In such a case, the court with jurisdiction is the divorce court.

If a claim for maintenance is made in connection with proceedings relating to custody of a child or establishment of paternity, the lawsuit regarding maintenance may also be dealt with by the court where proceedings are to be brought in respect of the first-mentioned matter.

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?

An applicant has the right to bring proceedings without an assistant (attorney). However, a party in legal proceedings usually needs expert assistance, so it is advisable to use an assistant or attorney.
In cross-border maintenance cases, the parties concerned may refer matters to a central authority.

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?

Bringing a case to court is subject to a fee. The court charges the fee, and the amount concerned (EUR *86-200*) depends on the court and the need to consider the case. (Fees charged by District Courts).
The (Finnish) Legal Aid Act and (Finnish) Act on the Central Authority in Finland in Certain International Matters Relating to Maintenance (1076/2010) lay down provisions on an applicant's entitlement to legal aid. An applicant living abroad may also receive legal aid in maintenance cases on the basis of a special reciprocal agreement. There are such agreements between Finland and certain states in the United States and certain provinces in Canada.
More information on legal aid in Finland can be found 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)?

The Act on Child Maintenance (704/1975) lays down provisions on child maintenance payable in respect of a child.
As a general rule, maintenance allowances are payable in cash monthly in advance, unless otherwise agreed or stipulated. As an exception, maintenance may be ordered to be paid in a lump sum, or paid in the form of moveable or immovable assets.
In Finland, the amount of maintenance payable in respect of a child is not determined according to a table. Each case is decided individually. Under Section 1 of the Act, a child has a right to adequate maintenance. This means addressing the material and psychological needs of children at their various stages of development and covering the costs of their care and education, as required, as well as other related costs. Under Section 2, parents are responsible for the maintenance of their children, according to their ability. When assessing this ability, account is taken of their age, ability to work, their chances of obtaining gainful employment, the assets and funds they hold and other aspects of their legal responsibility for maintenance. In assessing the extent of the responsibility that parents have for maintenance, account is also taken of the child's ability and opportunities to take responsibility for his/her own maintenance and factors owing to which parents cannot be expected to incur the expenses of child maintenance or the expenses involved are made minimal.
The amount of the maintenance allowance payable is automatically increased periodically in accordance with the rise in the cost of living. Further provisions on the automatic increase are enacted in the (Finnish) Act on the Linking of Certain Maintenance Payments to the Cost of Living Index (583/2008).
The amount for a maintenance allowance and its method of payment can be changed by an agreement or a judgment of a court, if there have been such fundamental changes to the circumstances prevailing when the allowance was approved as to consider the change reasonable, given the situation with respect to the child and the parent paying maintenance.
The Marriage Act lays down provisions on maintenance payable to a spouse. In Finnish case-law, however, it is rare for a party to be ordered to pay maintenance to their spouse. In general, after a divorce the parties support themselves.
A maintenance allowance in the form of cash can be ordered to be paid either indefinitely or until such time as the fixed period for payment, as contained in an agreement, decision, or judgment, expires. However, maintenance can be ordered to be paid as a lump sum, if the personal finances of the party with the obligation to pay maintenance and other factors justify this. Maintenance can also be ordered to be paid in the form of moveable or immovable assets.
To reflect the rise in the cost of living, the maintenance allowance payable is periodically increased automatically. Further provisions on the automatic increase are enacted in the (Finnish) Act on the Linking of Certain Maintenance Payments to the Cost of Living Index (583/2008).
A decision or judgment given by a court, or an agreement entered into by the two marriage partners, may be amended if that is considered to be justified owing to altered circumstances. A decision, judgment or agreement in which maintenance has been ordered to be paid as a lump sum, however, may not be changed after the allowance has been paid. An agreement concerning maintenance entered into by the two marriage partners may be changed if the agreement is held to be untenable. Under the law, the obligation to pay maintenance on a periodic basis lapses if the party entitled to maintenance remarries.

9 How and to whom will the maintenance be paid?

A maintenance allowance in respect of a child is paid to the child's guardian (into their bank account).
A maintenance allowance in respect of a spouse is paid to the spouse her/himself (into their bank account).
As a general rule, maintenance allowances are payable in cash monthly in advance, unless otherwise agreed or stipulated. As an exception, maintenance may be ordered to be paid in a lump sum, or paid in the form of moveable or immovable assets.

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

A party entitled to a maintenance allowance or, where certain conditions are met, the Social Insurance Institution of Finland (Kela) (see section 12), has the right to take action to enforce payment of maintenance, if the party with the obligation to pay maintenance does not pay an allowance ordered by a court or contained in an agreement.
A party entitled to a maintenance allowance may request a bailiff to enforce a maintenance agreement or decision, as provided in the (Finnish) Enforcement Act. The local authority social services department can also provide advice in matters relating to family law.
If a spouse with an obligation to pay maintenance fails to do so in breach of an agreement endorsed by the local authority social services department or a decision or judgment given by a court, the party entitled to maintenance may request a bailiff to enforce the agreement or decision/judgment, as provided in the Enforcement Act.

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

Enforcement and the rules on debtor protection
Where a case is referred to an enforcement agency, the debtor is first sent a notice of proceedings and a payment reminder. Normally, the debtor must be given an opportunity to make payment in response to a reminder.
If a debtor fails to pay in response to a reminder or does not voluntarily contact an enforcement agency regarding payment, the enforcement agency will embark on an investigation of the debtor's income and assets by consulting registered data.
Action taken to investigate a debtor's income and assets and any subsequent investigations are tightly regulated.
In most cases, the debtor's income and bank account funds are seized. In general, one-third of the debtor's salary, pension, unemployment benefit or maternity allowance may be seized. Holiday bonuses, fringe benefits, commissions, fees, honoraria and other pay awards also count as income. The amount seized is calculated from net earnings. Social assistance and welfare payments such as housing and child benefit are not eligible. As an alternative to seizing income on a periodic basis, a payment plan may also be agreed.

Enforcement actions and payment plans always take into account the portion of the debtor's assets that is protected by law: in other words, the sum left over to enable him or her to survive. This protected portion is revised to correspond to the National Pensions Index. The agreed protected portions with example cases can be found here.

A debtor has the right of appeal, although the debt recovery process will not cease unless a court orders this separately.

Statute of limitation with regard to a maintenance debt

Section 16(c) of the Act on Child Maintenance states that a maintenance allowance paid periodically and any interest on arrears calculated with respect to it must be recovered from the party with the obligation to pay maintenance within a period of five years from the start of the year following that in which the payment falls due. Otherwise, the entitlement to payment is forfeited. Maintenance paid as a lump sum and any interest on arrears with respect to it must, on the other hand, be recovered within a period of five years from the time when the allowance falls due and, at the latest, within a period of five years following the time when the recipient of the allowance has come of age.

Similarly, the Social Insurance Institution must recover any child maintenance benefit it pays from the party with an obligation to pay maintenance within a period of five years from the start of the year following that in which the maintenance allowance, for which the benefit has been paid owing to default, falls due. Otherwise, the entitlement to payment is forfeited (Child Maintenance Benefit Act 580/2008, Section 22).

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

If a party with an obligation to pay maintenance fails to pay maintenance as agreed, the entitled party must request a bailiff to recover the outstanding sum. The enforcement agency will provide guidance on how to make such a request. The local authority social services department can also provide advice in matters relating to family law. See sections 13 and 14. An enforcement agency will not charge for recovery of maintenance payments. Further details on the procedure can be found here.

If a party entitled to maintenance receives child maintenance benefit from the Social Insurance Institution of Finland (Kela) owing to a failure to pay the maintenance allowance, that party may not take action to recover maintenance payments. If Kela is paying a child maintenance benefit, it will assume the right to the maintenance allowance, equivalent to the portion it has paid in child maintenance benefit (*right of recourse*) (Child Maintenance Act 580/2008, Section 19). If the agreed maintenance allowance is a larger sum than the child maintenance benefit paid by Kela, and the party with the obligation to pay maintenance fails to pay maintenance, Kela will pay the full child maintenance benefit and recover the unpaid maintenance allowance in its entirety from that party. If the outcome is successful, Kela will pay the difference between the maintenance allowance and the child maintenance benefit to the parent having custody of the child following recovery of the debt.

In cross-border cases concerning the recovery of maintenance payments, the parties concerned may refer matters to the Ministry of Justice in its capacity as central authority.

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

If a party with an obligation to pay maintenance fails to pay what is owing according to a maintenance agreement or a decision in respect of a child residing in Finland, the child has a right to receive child maintenance benefit from the Social Insurance Institution of Finland (Kela). Information on the size of child maintenance benefits paid by Kela is available on its website ((Act on the Linking of Certain Maintenance Payments to the Cost of Living Index (583/2008)). It is also possible to obtain child maintenance benefit if a child maintenance allowance has been established under a maintenance agreement or in a decision at a sum smaller than the amount for child maintenance benefit payable currently, owing to financial hardship on the part of the spouse with the obligation to pay maintenance. In such cases, Kela will pay the difference between the child maintenance benefit and the maintenance allowance. In addition, the child will receive from the debtor the allowance specified in a maintenance agreement or a decision. If the party with the obligation to pay maintenance is unable to pay the allowance, the sum involved may also be set at EUR 0. In such cases, Kela will pay the child maintenance benefit in full.

The Child Maintenance Act (580/2008) lays down provisions on the requirements governing receipt of child maintenance benefit. Child maintenance benefit is granted on application from a child's guardian or legal representative, or someone having bona fide care of the child. A child who has reached the age of 15 may also apply if he or she lives independently. Payment of child maintenance benefit makes no difference to the obligation of the party concerned to pay the maintenance allowance in full. When Kela decides to pay child maintenance benefit owing to a failure to pay the maintenance allowance, it will have the right – and be under an obligation – to recover all outstanding maintenance payments from the party concerned.

A spouse entitled to maintenance may receive a maintenance allowance only from his or her 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?

The Ministry of Justice is the central authority in Finland with respect to international arrangements for the recovery of maintenance (see, for example, Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, and the Hague Convention of 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance). The duties of the central authority extend to the receipt of applications for maintenance, forwarding them to the competent authorities, and bringing proceedings relating to applications.

If a party with an obligation to pay maintenance resides in a country where the international arrangements for the recovery of maintenance are in effect, the applicant may contact the Ministry of Justice for recovery of maintenance in that foreign country. If necessary, applicants are encouraged to contact their local legal aid office or a private solicitor (for example, regarding how to prepare the application documents). The local authority social services department can also provide advice in matters relating to family law.

If a party entitled to maintenance is being paid child maintenance benefit by Kela owing to a failure to pay the maintenance allowance, Kela will assume the right to the maintenance allowance, equivalent to the portion it has paid in child maintenance benefit (*right of recourse*) (Child Maintenance Act 580/2008, Section 19). Kela will, in such a case, recover the outstanding maintenance payments on behalf of the party entitled to the allowance, who in such circumstances may not take action to recover the debt. If the agreed maintenance allowance is a larger sum than the benefit paid by Kela, Kela will pay the full child maintenance benefit and recover the unpaid maintenance allowance in its entirety from the party with the obligation to pay maintenance. If the outcome is successful, Kela will pay the difference between the maintenance allowance and the child maintenance benefit to the parent having custody of the child following recovery of the debt.

A spouse entitled to maintenance may receive a maintenance allowance only from his or her spouse. A spouse entitled to maintenance may receive a maintenance allowance only from his or her spouse. A spouse entitled to maintenance may contact a bailiff and try to find out whether a spouse resident abroad has assets in Finland that could be seized under the Enforcement Act. They may also ask the Ministry of Justice for assistance in the recovery of maintenance abroad.

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

The contact details for the Ministry of Justice (central authority) are:

Address: Ministry of Justice
PO BOX 25,
00023 Government
Phone: +358 29516001
Fax: +358 9 1606 7524
Email: maintenance.ca@om.fi
The Ministry of Justice website can be found here.
The contact details for the Social Insurance Institution of Finland (Kela) are:
Address: Kansaneläkelaitos,
Perintäkeskus
PO BOX 50,
00601 Helsinki
Phone: +358 20 634 4940 (individuals), +358 20 634 4942 (authorities)
Fax +358 20 635 3330
Email address: maintenance@kela.fi
The Kela website can be found here.
The websites of legal aid offices can be found here.
The contact details for local authority social services departments can be found in the telephone directory or by calling Finnish directory enquiry services. When calling, it needs to be stated what local authority social services department is required. Finland has around 320 local authorities (municipalities).

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?

An applicant in another country is best served by contacting the competent central authority in that country, which will then contact the Finnish Ministry of Justice. (See sections 13, 14 and 15).
An applicant may also contact the Finnish authorities directly.

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

See the replies to question 15.
If a party entitled to maintenance (a child or spouse) and the party with the obligation to pay it live in separate countries, the Ministry of Justice may assist either party in the matter as well as the competent authorities in the foreign country. The applicant (the eligible child or spouse) may ask the Ministry to ensure that a judgment, decision or approved agreement on maintenance given/made in a foreign country is enforced in Finland and that maintenance obtained through enforcement by distraint is paid into a bank account indicated by the eligible party. The Ministry of Justice cannot, however, pay maintenance on behalf of the debtor.
Various international arrangements in place mean that functions of the Ministry of Justice as the central authority also extend, for example, to assistance in discovering the whereabouts of a debtor or creditor, the acquisition of information regarding the income of a debtor or creditor, and assistance in establishing parentage, if required in the recovery of maintenance.

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?

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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?

If the Ministry of Justice or a person authorised by it, by virtue of its functions as a central authority within the framework of the various international arrangements in place, represents an applicant before a court or another authority in Finland, the applicant is provided legal aid for free, notwithstanding the provisions on the prerequisites for legal aid elsewhere in the law.
This applies to matters that concern:
establishing that a maintenance decision issued in a foreign state is to be recognised or may be enforced in Finland;
establishment of paternity;
ordering a parent to pay maintenance to his or her child;
a change to a maintenance allowance agreed for a child if the applicant is a child or the child's representative.
What is enacted in paragraphs 2-4, however, only applies if the child is under 21 years of age when proceedings are brought.
If the Ministry of Justice or a person authorised by it, by virtue of its task as a central authority within the framework of the various international arrangements in place, represents an applicant in the enforcement of a maintenance decision, the applicant is not liable for any costs of enforcement.
In other cases, an applicant may seek public legal aid. Legal aid means that the applicant may obtain the services of an assistant (attorney) to resolve a legal matter entirely or partly funded by the state. Legal aid covers all legal matters. Generally, it is restricted only to cases heard in Finland. It may be applied for at any of the Public Legal Aid Offices in the country, regardless of where the applicant resides. It is most practical to file the application at the nearest office. Applicants must present a breakdown of their earnings, expenditure claimed, and assets and debts. There also needs to be a description of the case for which legal aid is being sought and details of any legal expenses insurance held by the applicant. Further information here.
The Finnish enforcement authorities do not charge for maintenance enforcement.

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 Ministry of Justice has been designated the central authority, pursuant to Article 51 of the Regulation. There is also additional national legislation on its functions in the Act on the Central Authority in Finland in Certain International Matters Relating to Maintenance (1076/2010).

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