

## Uz sākumlapu&gt;Ģimenes lietas un mantojums&gt;Uzturētāzskāģimenes locekļiem

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## Family maintenance

Igaunija

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

Under the Estonian Constitution (*põhiseadus*), a maintenance obligation is a family's duty to provide for its members who need assistance.

A maintenance allowance is an amount to be paid for maintenance, which is generally remitted periodically in the form of money. At the request of an entitled person, a court may in some cases order a maintenance obligation to be paid as a one-time sum. A person obliged to pay a maintenance allowance to a minor child may, if there is a valid reason, demand to be allowed to perform the maintenance obligation in a non-monetary manner.

Generally, the obligation to pay a maintenance obligation to a person needing assistance rests on a person's ascendants and descendants of the first degree – in other words, an adult child and parent are mutually bound to provide for each other. A person's ascendants of the second degree have a maintenance obligation towards their minor descendants. Spouses are also obliged to mutually maintain their family by means of their work and property, which includes activities aimed at covering the costs of a joint household and at satisfying the usual and extraordinary needs of either spouse and their children. The obligation to provide a maintenance allowance for a person who needs assistance may also extend to a divorced spouse or a person to whom the person is not married but with whom he or she has a child.

Maintenance is paid in the form of an allowance by a parent of a minor child, particularly if the parent does not live with the child or is not involved in raising the child. The divorced spouse of a person who needs assistance is obliged to provide maintenance primarily if, after the divorce and owing to the responsibility of caring for a child, the person is not capable of providing for himself or herself or if he or she needs assistance due to age or a health condition. A person who has a child with a person who needs assistance is obliged to provide maintenance for 8 weeks before and 12 weeks after the birth of the child and also later, if the person needs assistance as a consequence of a health problem caused by raising the child, pregnancy or childbirth.

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

The age of majority is 18, and a person under the age of 18 is a minor. A minor child is entitled to benefit from a maintenance allowance, and it is primarily the child's parents who bear equal responsibility for supporting their child. A child who has turned 18 and is continuing to study under a basic or secondary school curriculum at a basic school, upper secondary school or vocational educational institution or completing a higher education degree at a university is also entitled to benefit from a maintenance obligation, but only until he or she turns 21. The basis for calculating the maintenance allowance for minors differs from that for adult children. When calculating the maintenance allowance for adult children, the extent of the maintenance is determined on the basis of the entitled person's needs and usual way of life, but it is assumed that adults are capable of earning at least part of their maintenance themselves. A person becomes entitled to claim maintenance only if, having reached the age of majority, they do not have the means to support themselves and, on account of studies or any other valid reason, they cannot be expected to secure an income to meet their needs.

Adult children must independently apply to the courts once again if they wish the allowance to continue to be paid after they have reached the age of majority and if the obligation to pay the allowance has been terminated on the basis of a prior court judgment.

Other ascendants or descendants who are not capable of supporting themselves are entitled to receive maintenance if it is determined that they need assistance.

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

A parent of a minor child can be required to perform a maintenance obligation. If the parent does not voluntarily pay maintenance, an application can be lodged with a court for a maintenance allowance to be paid. To apply for maintenance, either a petition for application of the expedited procedure in matters of a payment order regarding the maintenance allowance for the child (*maksekäsu kiirmenetluse avaldus lapse elatistõudes*) or a statement of claim (*hagiavaldus*) (maintenance allowance action (*elatishtagi*)) should be submitted to the court. No state fee is charged for these when claiming a maintenance allowance for a minor child.

The expedited procedure in matters pertaining to a payment order is a simplified procedure where payment of a maintenance allowance can only be ordered if the allowance is claimed for a minor child, the name of the parent obliged to pay maintenance appears on the child's birth certificate, the allowance does not exceed 1.5 times the minimum maintenance rate (see question 8) per month and the other parent does not challenge the payment of the maintenance allowance. If the conditions for submitting the payment order are not met, a statement of claim must be filed with the county court (*maakohus*) of the residence of the child to obtain a maintenance allowance.

More details about the expedited procedure in matters of a payment order in a claim for a maintenance allowance for a minor child are available [here](#). The form for a statement of claim for payment of child maintenance is available [here](#).

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

Minor children are entitled to receive maintenance. Insofar as minors have limited active capacity, the legal representative of the child – the parent with legal custody – is the one who files the statement of claim with the court on behalf of the child. If the child has been appointed a legal guardian, the action is to be filed by the child's guardian in the capacity of the child's legal representative.

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

Petitioning a court to compel a parent to perform a maintenance obligation with regard to a minor child is dealt with as a maintenance matter. In a maintenance matter, the statement of claim must be submitted to the county court of the residence of the child. If the child does not reside in Estonia, the action is filed according to the respondent's residence. If the respondent does not reside in Estonia, the action is filed according to the claimant's residence. Maintenance may also be requested under the expedited procedure in matters pertaining to a payment order (see the reply to question 3).

**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?**

To seek child maintenance in a court, it is necessary to file an action for which professional legal aid or the services of an intermediary are not necessarily required. The court orders the payment of maintenance as of the date on which the action was filed, but the court may also, on the basis of the action, order that maintenance be paid retroactively up to one year before the action was filed.

The form for a statement of claim for payment of child maintenance is available [here](#).

**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?**

No state fee is charged for an action filed to enforce a maintenance obligation with respect to a minor child or for review of a petition for application of the expedited procedure in matters of a payment order in a claim for child maintenance.

It is possible to seek state legal aid or procedural aid to cover procedural costs.

In the case of state legal aid, a person is appointed a lawyer by the Estonian Bar Association (*Eesti Advokatuur*). The role of the lawyer is to represent and provide advice to the person in the proceedings. State legal aid is available to persons who due to their financial status are unable to pay for expert legal services at the time that they need the legal aid or are able to do so only in part or in instalments, or whose financial status would make it impossible to subsist after paying for the legal services. Receiving state legal aid does not release the person from the obligation to bear other procedural expenses. More detailed information regarding state legal aid is available [here](#).

Applications for state procedural aid to cover procedural costs may be made by persons who are unable to pay those costs due to their financial status or who are only able to pay them in part or in instalments. There must also be sufficient reason to presume that the planned participation in the proceedings will be successful.

The application form for procedural aid for a natural person and the notice regarding the personal and financial status of the applicant and family members is available [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)?**

A court may order that a fixed or variable amount be paid as a maintenance allowance to a minor child, specifying the basis for calculating the amount of maintenance. Courts generally order that the maintenance be paid as monthly payments.

Up until the end of 2021, the minimum maintenance was dependent on the minimum wage. The monthly maintenance for one child could not be less than half of the minimum monthly wage set by the Government of the Republic (the minimum allowance was thus EUR 250 per child in 2018, EUR 270 in 2019, and EUR 292 in 2020 and 2021).

As of 1 January 2022, the amount of the minimum maintenance no longer depends on the minimum wage in force. The amount of maintenance is determined by the court according to the needs of the child, the financial capacity of the parents, any benefits received, and the number of minor children who are part of the family. The amount used as the basis is one half of a child's average monthly maintenance cost (the base amount of the maintenance is EUR 209.20, which is adjusted on 1 April each year in the light of the change in the consumer price index over the previous year).

The amount of maintenance is determined taking into account the following circumstances: **Income of the obligated parent.** As a rule, 3% of the average monthly gross wage in Estonia for the preceding calendar year is added to the base amount. The amount to be added is recalculated on 1 April each year.

**Number of children receiving maintenance in the same family.** Taking into account the fact that raising several children at a time can result in modest cost savings (re-use of furniture, clothes, toys, etc.), the amount of maintenance, starting from the second child, is 15% lower than the amount of maintenance for the first child. The amount of maintenance is not reduced in the case of multiple-birth children or in the case of children born more than three years apart.

**Family allowances.** Child allowance and, in accordance with the version of the Family Law Act (*perekonnaseadus*) which entered into force on 1 February 2023, half of the allowance for families with many children are taken into account when determining the amount of maintenance. If these allowances are received by the person claiming maintenance, one half of the allowance is deducted from the amount of maintenance for each child. If these allowances are received by the person paying maintenance, however, this amount is added to the maintenance. When issuing the maintenance order, the allowance for families with many children is also calculated in accordance with the amendment, even if it is not paid solely for common children of the same spouses.

Therefore, in the case of a blended family with two children from a previous relationship and a parent has had more children from the new relationship, as a result of which the family becomes entitled to receive an allowance for families with many children, half of that allowance is taken into account when calculating the maintenance allowance. This is split equally between the parent claiming maintenance and the parent paying the maintenance and further divided by the total number of children in the family for which the family is paid the allowance for families with many children.

**Shared residence of the child.** If a child stays with the parent paying maintenance for at least seven twenty-four hour periods per month on average over a year, the amount of maintenance is reduced in proportion to the time spent with the obligated parent. Thus, if the child stays with each parent for an equal period of time, maintenance can be claimed only on the grounds of the child's greater needs, a significant difference in the parents' income or an unequal distribution of child-related costs between the parents.

More detailed information and a maintenance calculator are available [here](#).

Amounts set by court decisions made before 1 January 2022 do not decrease automatically. If, pursuant to a court decision, a parent is obliged to pay maintenance to a minor child at the current minimum rate or at one half the minimum monthly wage, that amount will be 'frozen' at the level of 2021 (i.e. EUR 292 per month) and, as a consequence, the amount of maintenance will no longer increase in the event of a further increase in the minimum wage.

If, pursuant to a court decision handed down prior to 1 February 2023, a parent is obliged to pay a variable amount of maintenance to a minor child and the amount of maintenance depends on fluctuations in the amount of the allowance for families with many children, the amount of maintenance determined on the basis of the court decision is calculated on the basis of Section 101(5) of the version of the Family Law Act in force as of 1 February 2023.

A court may increase and, if there is a valid reason to do so, also reduce the amount of the minimum maintenance. The minimum maintenance calculated by means of a formula laid down in law may be increased on the basis of:

the actual needs of the child;

the income of each parent;

the actual distribution of child-related costs between the parents.

If the obligated parent's income is higher than the average, the base amount of maintenance may be increased by, for example, 3% of the actual income of the obligated parent instead of the average monthly gross wage. Maintenance can be reduced only for a valid reason. Valid reasons may include a parent's incapacity for work or a situation where a parent has another child who would be financially less secure than the child receiving maintenance if minimum maintenance were ordered.

If a change is made to the amount of maintenance, this generally takes effect only as of the decision being taken – i.e. outstanding maintenance arrears cannot be changed.

The obliged person may, if there is a valid reason, demand to be allowed to provide maintenance in some other manner. Parents may by mutual agreement come to a detailed arrangement as to how the maintenance obligation with respect to a child is to be performed, and determine how and at what intervals maintenance is to be provided.

#### **9 How and to whom will the maintenance be paid?**

In general, maintenance is paid as a periodic sum of money. The person obliged to perform a maintenance obligation in respect of a minor child may, if there is a valid reason, demand to be allowed to provide maintenance in some other manner. Maintenance is paid in the form of a maintenance allowance by a parent of a minor child, particularly if the parent does not live with the child or is not involved in raising the child. Maintenance is paid in advance for each calendar month. Although the recipient of the maintenance is the child, the maintenance must generally be paid to the other parent. Maintenance may be paid directly to the child if the parents have so agreed or there is a court decision to this effect.

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

If a court judgment ordering maintenance has entered into force or is subject to immediate execution but the other parent fails to comply, a bailiff should be contacted. If the debtor does not make the payments indicated in the judgment at the required time, the bailiff will, on the basis of petition by the person who took measures to secure the action, arrange for the debtor's assets to be seized. Seizure of the debtor's assets requires that the court judgment be submitted to the bailiff accompanied with an application for enforcement. Information about the debtor and if possible his or her assets (residence, contact details, known information regarding assets) should be indicated in the application for enforcement. If the petitioner wishes that the bailiff use all opportunities set out in legislation for collecting the debt, it should be noted in the application for enforcement that the petitioner is making a claim for payment on the debtor's registered immovable property, movable property and rights of claim. In enforcement proceedings, child maintenance has priority over other claims, and in order to satisfy a claim for maintenance it is possible to seize assets in greater amounts and indefinitely suspend by a court ruling the following rights and the validity of the following authorisations: hunting rights, the right to drive power-driven vehicles, weapons permits and acquisition permits for weapons, the right to drive recreational craft and personal water craft, fishing cards.

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

Persons are released from a maintenance obligation to the extent they are unable, in light of their other obligations and their property status, to provide maintenance to another person without harming their own usual maintenance. In spite of the above, parents are not released from the maintenance obligation in respect of their own minor children. A court may also release an obliged person (debtor) from a maintenance obligation, limit the time period for performing the obligation or reduce the amount of maintenance if it is extremely unfair to demand that the obligation be performed, for example if the person entitled to receive maintenance has developed a need for assistance due to their own ill-advised actions.

Compensation for damage due to non-payment of maintenance and failure to perform an obligation can be demanded retroactively for up to a maximum of one year before a maintenance suit is filed in court. The limitation period for payment of maintenance as a maintenance obligation is ten years for each individual obligation. The limitation period begins at the end of the calendar year in which the claim corresponding to the obligation becomes collectible. A maintenance obligation is a personal obligation that expires on the death of the entitled or obliged person; exceptions apply with regard to advances and offset amounts.

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

In the case of cross-border maintenance disputes, the central authority, i.e. the International Judicial Cooperation Division (*rahvusvahelise justiitskoostöö talitus*) of the Criminal Policy Department (*kriminaalpoliitika osakond*) in the Ministry of Justice (*Justiitsministeerium*), can provide assistance.

**State legal aid** can be applied for when filing a maintenance claim with a court. There are no separate organisations or authorities that provide assistance in the case of domestic maintenance claims.

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

As of 1 January 2017, a parent raising a child has the right to apply for a state maintenance allowance for the duration of judicial proceedings and enforcement procedures from the Social Insurance Board (*Sotsiaalkindlustusamet*). This maintenance allowance is temporary aid from the state for a parent who is raising and providing for a child alone. The state pays maintenance on behalf of the parent who is not paying maintenance, recovering the money from the non-paying parent at a later date. The condition for receiving the state maintenance allowance is that the person must petition a court for payment of maintenance either under the expedited procedure in matters of a payment order or in an action.

The maintenance allowance guarantees a child up to EUR 100 per month.

More information on applying for the allowance is available [here](#).

#### **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?**

In order to obtain maintenance under Council Regulation (EC) No 4/2009, assistance can be obtained from the International Judicial Cooperation Division of the Ministry of Justice.

To apply for maintenance in another country, an application for initiating a maintenance matter should be submitted to the International Judicial Cooperation Division at the Estonian Ministry of Justice and to the competent authority of the other country. A copy of the child(ren)'s birth certificate or court judgment establishing paternity should be appended. If paternity has not been established, this should be noted in the application sent to the other country.

The application form is available [here](#).

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

The International Judicial Cooperation Division at the Estonian Ministry of Justice can be contacted by telephone at +372 6 208 183 and +372 7153443 or by e-mail at [central.authority@just.ee](mailto:central.authority@just.ee) and [keskasutus@just.ee](mailto:keskasutus@just.ee).

#### **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?**

A claim from an applicant residing in another country will receive best consideration by contacting the appropriate authority in the country of residence, which in turn will contact the central authority at the Estonian Ministry of Justice.

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

See the reply to question 14.1.

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

The Hague Protocol of 2007 has been ratified by the European Union, of which Estonia has been a Member State since 1 May 2004.

#### **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?**

See the reply to question 16.

#### **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?**

In cross-border cases within the European Union involving applications for maintenance, state legal aid and state procedural aid is available under the Regulation. This ensures that the person is represented in the proceedings by someone with appropriate legal expertise and that the person has access to justice by way of covering procedural costs. The rules governing state legal aid and procedural aid note that national law is applied unless stipulated otherwise in Council Regulation (EC) No 4/2009.

In principle, the same guarantees that apply to persons residing in Estonia also apply to persons living in other EU Member States. In the case of cross-border maintenance cases, legal aid and advice as well as state legal aid and procedural aid are available from the central authority, i.e. the International Judicial Cooperation Division of the Ministry of Justice, in accordance with Council Regulation (EC) No 4/2009 and, as regards the parts not covered by the Regulation, on the basis of national law.

#### **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?**

A central authority has been established for cross-border judicial cooperation – the International Judicial Cooperation Division of the Ministry of Justice. Therefore to obtain maintenance under Council Regulation (EC) No 4/2009, assistance can be obtained from the International Judicial Cooperation Division of the Ministry of Justice, which conducts proceedings concerning international applications for legal aid.

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