

Pagna ewlenija>Kwistjonijiet tal-familja u wirt>Manteniment tal-familja
Family maintenance

Awstrija

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 purpose of maintenance allowance is to cover all appropriate, i.e. necessary and usual, material needs of the beneficiary, taking account of the circumstances in each case. This includes in particular food, clothing, accommodation (including heating and electricity), medical care and hygiene as well as the payment of additional contributions to social insurance, leisure and recreational activities, culture and sports, communications and mass media (telephone, radio, TV, internet), as well as education and training. Maintenance does not include contributions to wealth accumulation or private pension schemes.

A maintenance obligation is the obligation to pay maintenance as appropriate. The amount of maintenance payable will depend on the specific needs of the person entitled to maintenance, as well as on the ability to pay of the person obliged to make maintenance payments.

Maintenance must be paid by:

parents to their children and grandchildren

children to their parents and grandparents

spouses and registered partners to each other

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

There is no age limit. Children are entitled to maintenance until they are able to support themselves.

The main differences between a minor's and an adult's entitlement to maintenance arise in terms of its legal enforcement.

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

Maintenance claims must be asserted by judicial process.

In contentious civil proceedings, spouses and registered partners must assert their claims by way of legal action. The court - in practice, a judge - decides the case by means of a judgment following a procedure of taking of evidence. In addition, spouses and registered partners may also seek an interim injunction concerning the provisional payment of maintenance in connection with maintenance or divorce/dissolution proceedings. In these cases, the court decides following an attestation procedure.

Child maintenance must be claimed in non-contentious proceedings - this will also apply in the case of children above the age of majority. The guardianship court [*Pflegschaftsgericht*] - in practice, a *Rechtspfleger* [a higher official of the Austrian judicial organisation with the authority to deliver judgments] - rules by means of a decision following a procedure of taking of evidence. In addition, a child may seek an interim injunction concerning the provisional payment of maintenance in connection with maintenance proceedings; a court decides on the case following an attestation procedure. Minors may request the provisional payment of maintenance irrespective of maintenance proceedings.

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

The application for determination or enforcement of maintenance for minors can be made by the legal representative, i.e. the person who has custody of the child. With the consent of this person, the child and youth welfare service [*Kinder- und Jugendhilfeträger*] may also act as the child's representative.

In all other cases, claimants may only be represented by someone who has power of attorney or by special legal representation (*Erwachsenenvertreter*).

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

Jurisdiction in maintenance matters is defined by law.

Under Section 114 of the Austrian Standard of Jurisdiction [*Jurisdiktionsnorm*, JN], the guardianship court [*Pflegschaftsgericht*] is also competent in decisions on the legal maintenance claims of minors; legal maintenance claims of other relatives in the ascending or descending line fall within the competence of the court in whose area of jurisdiction the entitled person's general place of jurisdiction for disputes is located. This will depend on the place where the person is domiciled or habitually resident.

Under Section 76a JN, the competent court for maintenance matters of spouses or registered partners is the court where divorce or dissolution proceedings are pending. If no such proceedings are pending, the competent court will depend on the general place of jurisdiction of the defendant (Sections 65 to 71 JN).

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?

Child maintenance: the parties do not need to be represented in the first instance. However, if they wish to be represented, in cases involving money or a monetary value in excess of EUR 5 000, this can only be done by a lawyer (relative legal counsel requirement, Section 101(1) of the Austrian Act on Non-contentious Proceedings [*Außerstreitgesetz*, AußStrG]). In the case of appeal procedures, an absolute legal counsel requirement will apply.

Maintenance of spouses or registered partners: the parties do not need to be represented in the first instance. However, if they wish to be represented, in cases involving money or a monetary value in excess of EUR 5 000, this can only be done by a lawyer (relative legal counsel requirement, Section 29(1) of the Austrian Code of Civil Procedure [*Zivilprozessordnung*, ZPO]). In the case of appeal procedures, an absolute legal counsel requirement will apply.

7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?

The fees payable for bringing a maintenance case to court vary depending on the value of the maintenance awarded. Hence, the basis of assessment for maintenance claims that have already been awarded in the past is the amount awarded. Where the case concerns future maintenance, the amount to be used as the basis of assessment is one times the annual maintenance amount. If maintenance is awarded for a period of less than one year, the overall amount is to be taken as the basis of assessment (note 1 to fee item 7 of the Austrian Court Fees Act [*Gerichtsgebührengesetz*, GGG] for child maintenance proceedings; Section 15(5) GGG for proceedings concerning maintenance for spouses or registered partners).

With regard to the actual fee amount, a distinction is made between child maintenance in non-contentious proceedings and cases concerning maintenance for spouses or registered partners.

For cases concerning **child maintenance**, applicants who are minors (under 18) do not have to pay fees.

For adult applicants, the flat-rate fee for decisions and settlements concerning maintenance claims is 0.5% of the value of the maintenance claim awarded (fee item 7, GGG). If, as a result of a new application, a maintenance amount is increased which had already been awarded by final judgment or by settlement, the difference between the awarded amount and the amount previously payable should be taken as the basis of assessment.

For example: a future monthly maintenance payment of EUR 250.00 is awarded.

The flat-rate fee is EUR 15.00 (EUR 250 * 12 * 0.05).

If an adult owing maintenance payments applies for a reduction of the maintenance amount, the (fixed) flat-rate fee is EUR 14.40. This fee will be waived if the applicant is wholly successful in his request for a reduction in the maintenance amount payable (note 3 to fee item 7 GGG).

Fee item 1 GGG must be applied in proceedings concerning the **maintenance of a spouse or registered partner**. The flat-rate fee will only be charged for the complaint - as the request instituting the proceedings - and this will be payable on a sliding scale depending on the basis of assessment. In order to illustrate this point, the fees applicable according to fee item 1, GGG (as at 1 December 2018) are shown below:

Value of the claim in dispute - applicable fee

up to and including EUR 150 - EUR 23

over EUR 150 up to and including EUR 300 - EUR 45

over EUR 300 up to and including EUR 700 - EUR 64

over EUR 700 up to and including EUR 2 000 - EUR 107

over EUR 2 000 up to and including EUR 3 500 - EUR 171

over EUR 3 500 up to and including EUR 7 000 - EUR 314

over EUR 7 000 up to and including EUR 35 000 - EUR 743

over EUR 35 000 up to and including EUR 70 000 – EUR 1 459

In civil proceedings, pursuant to Sections 63 to 73 ZPO, legal aid must be granted on request to the extent that a party is unable to pay the costs for conducting the proceedings without risking his or her necessary subsistence. Pursuant to Section 7(1) AußStrG, these provisions must be applied accordingly in non-contentious proceedings (such as in proceedings concerning child maintenance).

The necessary subsistence, in abstract terms, is set at a level between the statistical average income of an employee and the minimum subsistence level.

This amount is deemed at risk if the party and his or her family entitled to maintenance would not even be able to lead a modest existence, taking into account any usable assets or the possibility of accumulating savings in the course of proceedings that continue over a longer period of time. Partial legal aid may also be granted.

Legal aid should only be provided where the intended legal action or defence does not appear to be obviously wilful or futile. Legal aid may be given to either natural or legal persons. The party's nationality is irrelevant in this respect.

Legal aid includes in particular a provisional exemption from the payment of court fees and fees for witnesses, experts and interpreters, as well as the payment of the parties' travel costs where they have to appear in person. If representation by a lawyer is required by law (i.e. in cases where the sum in dispute exceeds EUR 5 000 or in proceedings before regional courts) or if it is deemed necessary in the particular circumstances of a case, then an Austrian lawyer should be appointed provisionally at no cost to the party. The lawyer's work also includes pre-litigation advice regarding an out-of-court settlement. Section 71 ZPO stipulates that parties granted legal aid must be obliged to repay part or all of the amounts from which they were provisionally exempted and that have not yet been repaid, as well as to pay the fees payable under the pay scale to the assigned lawyers in so far and as soon as they are able to do so without risking their necessary subsistence. After a period of three years following the conclusion of the proceedings, the repayment obligation can no longer be imposed. The court may request the party to provide - within an appropriate period of time stipulated by the court - a new summary of assets, including reasonable documentary evidence, in order to verify that the preconditions for repayment are met.

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 determines maintenance as a monetary benefit. The parent who runs the household where he or she cares for the child contributes to the child's maintenance in this way. The other parent is obliged to make payments.

The amount of maintenance to be paid for the child depends on the parent's ability to contribute and on the child's needs and will be determined on a case-by-case basis. Based on the percentage method developed in case-law to provide guidance, the maintenance debtor must pay a certain percentage of his or her monthly (net) income, i.e. 16% for children under 6 years of age, 18% for children aged between 6 and 10, 20% between 10 and 15 and 22% for children over 15. If a person is obliged to pay maintenance for several children, this will be taken into account by reducing the percentages accordingly. The percentage points to be deducted in a case where more than one child is concerned are 1% for each additional child under 10 years of age, 2% for each additional child over 10 years of age and 0 to 3% for a spouse entitled to maintenance, depending on the spouse's own income. Based on case-law, payments for maintenance claims have an upper limit (known as the '*Luxusgrenze*' [luxury limit]), which is two to three times the average basic needs amount [*Regelbedarf*] also developed in case-law. This is adjusted annually and, since 1 July 2018, it amounts to the following per month for children

up to 3 years' old: EUR 208

from 3-6 years' old: EUR 267

from 6-10 years' old: EUR 344

from 10-15 years' old: EUR 392

from 15-19 years' old: EUR 463

from 19-25 years' old: EUR 580

Maintenance for spouses or registered partners while they are still married or registered as partners will also depend on both the debtor's ability to pay and the entitled person's needs and must be established on a case-by-case basis. Based on the percentage method developed in case-law to provide guidance, the maintenance claim of the party with the lower income is calculated at a rate of 40% of the family income (net income of both spouses/partners) minus the claimant's own income. If one party has no income of their own and is only in charge of the household, he or she is entitled to a third (33%) of the breadwinner's net income. Other care responsibilities must be taken into account (by deduction of percentage amounts).

9 How and to whom will the maintenance be paid?

Maintenance must be paid in advance at the beginning of the relevant month (Section 1418 of the Austrian Civil Code [*Allgemeines bürgerliches Gesetzbuch*, ABGB]; Section 70 of the Austrian Marriage Act [*Ehegesetz*]; Section 22(1) of the Austrian Registered Partnership Act [*Eingetragene Partnerschaft-Gesetz*, EPG]). Payments must be made to the entitled person or their representative (parent, special legal representative [*Erwachsenenvertreter*]).

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

After the amount of maintenance has been determined in the original proceedings, enforcement (compulsory execution) may be conducted against the debtor according to the general rules.

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

The debtor (in enforcement proceedings: obliged party) must retain a minimum amount (i.e. an amount which cannot be seized) that is equal to the minimum subsistence level [*Existenzminimum*]. The minimum subsistence level is redefined on an annual basis and will depend on several factors. Under Section 291b of the Austrian Enforcement Code [*Exekutionsordnung*, EO], the obliged party may retain only 75% of the minimum subsistence level in a case of enforcement based on a legal maintenance claim. From the difference between this reduced minimum subsistence level and the standard minimum subsistence level, any current legal maintenance claims must be satisfied first, irrespective of the order of priority of the pledge established for these claims and commensurate to the current monthly maintenance payment. In this respect, maintenance creditors have priority over other creditors.

Any (outstanding) claims that have been awarded by enforceable judgment [*Judikatschulden*] have a limitation period of thirty years and can therefore be enforced by law within this period of time.

There are no special limitation periods in relation to the enforcement of maintenance claims.

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

If written consent has been obtained from a minor's other legal representative, the child and youth welfare service can act as the child's representative to establish or enforce the minor's maintenance claims.

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

The purpose of paying maintenance in advance is to ensure that minors receive maintenance payments if one parent fails to pay regularly or fails to meet his or her payment obligations altogether. The advance payment of maintenance will be granted by the government upon request. The request must be filed with the court in the name of the child by the parent who is authorised to represent the child.

Minors entitled to maintenance are those who are habitually resident in Austria,

have Austrian citizenship or are citizens of another EU/EEA Member State or are stateless and are not living in the same household as the maintenance debtor.

The advance payment of maintenance is granted from the beginning of the month when the request is filed for a maximum of five years; payments are made in advance by the Higher Regional Court on the first day of each month to the person entitled to maintenance.

14 If I am in this Member State and the debtor has his/her residence in another country:

If the maintenance debtor lives abroad and if he or she has no enforceable assets in Austria, enforcement must take place abroad. Applications for this can be made via the Central Authority [*Zentrale Behörde*] (Section 8 of the 2014 Austrian Foreign Maintenance Act [*Auslandsunterhaltsgesetz*]).

14.1 Can I obtain the assistance of an authority or private organisation in this Member State?

The child and youth welfare service (district authorities or magistrates) and the district courts will support maintenance creditors in asserting or enforcing their claims. The Central Authority will forward the applications to the foreign country.

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

During consultation hours at the authorities and courts; advice is provided by telephone and e mail by the Central Authority.

15 If I am in another country and the debtor is in this Member State:

As soon as the creditor's applications have been received by the competent court, he or she will generally be treated in the same way as if he or she lived in Austria.

Applications will be forwarded to the court by the Central Authority. The court will grant legal aid, where applicable, and will arrange for the Austrian Chamber of Lawyers to appoint a lawyer to assist with legal aid. Acting as the foreign creditor's representative who is familiar with Austrian law, this legal aid lawyer will be responsible for filing all further applications, transferring maintenance payments received and reporting on these activities (Section 9 of the 2014 Austrian Foreign Maintenance Act).

15.1 Can I address a request directly to such an authority or private organisation in this Member State?

As the principle of cooperation between two central authorities applies, it is primarily the responsibility of the authorities in the Member State of residence to provide this support.

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

Not applicable.

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?

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?

Until 1 August 2014, only the provisions of this Chapter were applicable; since then, access to justice in cross-border cases has also been effectively governed by Sections 10 et seq. of the 2014 Austrian Foreign Maintenance Act, BGBl [Federal Law Gazette] I 34/2014.

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?

Establishing simplified bureaucratic procedures through the 2014 Austrian Foreign Maintenance Act to enable Department I 10 of the Federal Ministry of Justice to process an increasing number of cases with the same amount of staff.

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