Family maintenance

Áustria

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

Maintenance serves to cover all appropriate, that is, necessary and customary, material needs, taking account of individual circumstances. In particular, it covers food, clothing, accommodation (including heating and electricity), medical care and hygiene, the payment of additional contributions to social insurance, leisure and recreational activities, culture and sports, communications and mass media (telephone, radio, TV, internet), and 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 have to do with 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 through 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 apply for an interim injunction for provisional maintenance, in the context of maintenance proceedings: in such cases, the court decides following an attestation procedure. Minors may also 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 the establishment or enforcement of maintenance for minors can be made by the legal representative, that is, the person who has custody. 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 Court Jurisdiction Act [JN, Jurisdiktionsnorm], the guardianship court [Pflegschaftsgericht] also has jurisdiction over statutory maintenance claims of minor children; 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 of the Court Jurisdiction Act [JN], the court responsible for issues concerning maintenance of spouses or registered partners is the court where divorce or dissolution proceedings are pending. If no such proceedings are pending, the competent court depends on the defendant’s general place of jurisdiction (Sections 65-71 of the 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, there is an absolute requirement to have legal counsel.

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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 the entitlement is granted for a period shorter than one year, the total amount is to be used as the basis of assessment (Note 1 to TP 7 Court Fees Act [Gerichtsgebührengesetz, GGG] for child maintenance proceedings; Section 15(5) GGG for maintenance proceedings for spouses or registered partners).

As regards 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.

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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). The fee is payable by the maintenance debtor (i.e. the person who owes maintenance payments). 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 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 15.00. 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.
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. To illustrate this point, the fees applicable according to fee item 1 GGG (as at 4 May 2023) are shown below:
Value of the claim in dispute - applicable fee
Up to and including EUR 150 – EUR 25
Over EUR 150, up to and including EUR 300 – EUR 48
Over EUR 300, up to and including EUR 700 – EUR 68
Over EUR 700, up to and including EUR 2 000 – EUR 114
Over EUR 2 000, up to and including EUR 3 500 – EUR 182
Over EUR 3 500, up to and including EUR 7 000 – EUR 335
Over EUR 7 000, up to and including EUR 35 000 – EUR 792
Over EUR 35 000 up to and including EUR 70 000 – EUR 1 556
In civil proceedings, pursuant to Sections 63 to 73 of the Code of Civil Procedure (ZPO), legal aid must be granted on request if a party is unable to pay the costs for conducting the proceedings without risking what he or she needs for 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 maintenance, 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. 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 appeal proceedings) 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 provides 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 their assigned lawyer, in so far and as soon as they are able to do so without risking the resources required for their subsistence. Once three years have passed since the end of the proceedings, the obligation to repay these amounts 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 parents' ability to contribute and on the child's needs, and is determined case by case. Based on the percentage method developed in case-law to provide guidance, the person required to pay maintenance must pay a certain percentage of his or her monthly (net) income:
16% for children under 6 years of age;
18% for children aged between 6 and 10;
20% for children aged 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 involving more than one child are 1% for each additional child under 10 years of age, 2% for each additional child over 10, 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, as of 1 January 2023, it amounts to the following per month for children:
Basic needs amount
according to Danninger (in ÖA 1972, 17), calculated by the Landesgericht für Zivilrechtssachen Wien
(Amounts in EUR)

Years	from 0 years on	from 3 years on	from 6 years on	from 10 years on	from 15 years on	from 19 years on from 2022: from 20 years on
1 January 2023 to 31 December 2023	320	320	410	500	630	720
1 January 2022 to 31 December 2022	290	290	370	450	570	650
1 July 2021 to 31 December 2021	219	282	362	414	488	611
1 July 2020 to 30 June 2021	213	274	352	402	474	594

1 July 2019 to 30 June 2020	212	272	350	399	471	590
1 July 2018 to 30 June 2019	208	267	344	392	463	580
1 July 2017 to 30 June 2018	204	262	337	385	454	569
1 July 2016 to 30 June 2017	200	257	331	378	446	558
1 July 2015 to 30 June 2016	199	255	329	376	443	555
1 July 2014 to 30 June 2015	197	253	326	372	439	550
1 July 2013 to 30 June 2014	194	249	320	366	431	540
1 July 2012 to 30 June 2013	190	243	313	358	421	528
1 July 2011 to 30 June 2012	186	238	306	351	412	517
1 July 2010 to 30 June 2011	180	230	296	340	399	501
1 July 2009 to 30 June 2010	177	226	291	334	392	492
1 July 2008 to 30 June 2009	176	225	290	333	391	491
1 July 2007 to 30 June 2008	171	217	281	322	378	475
1 July 2006 to 30 June 2007	167	213	275	315	370	465
1 July 2005 to 30 June 2006	164	209	270	309	363	457
1 July 2004 to 30 June 2005	160	204	264	302	355	447
1 July 2003 to 30 June 2004	157	200	258	296	348	438

The amounts from 1972 to 2002 are set out in this table: Regelbedarf 1972-2002

Maintenance for spouses or registered partners while they are still married or registered as partners will also depend on both the maintenance 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 Civil Code (Allgemeines bürgerliches Gesetzbuch – ABGB); Section 70 of the Marriage Act (Ehegesetz); Section 22(1) of the 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 income corresponding to the minimum subsistence level (unattachable allowance). The minimum subsistence level, which depends on several factors, is redefined annually. 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 payments must be in proportion 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 30 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 2014]).

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 the authorities' and courts' opening hours; the central authority also provides advice by telephone and e mail.

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 [Auslandsunterhaltsgesetz]).

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 Foreign Maintenance Act, Federal Law Gazette (BGBl.) 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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