

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 is the duty and right of parents and children, spouses and extramarital partners, lineal relatives, and stepchild and step-parents where provided for by the Family Act (*Obiteljski zakon*). These persons contribute to their mutual maintenance according to their own capacities and the needs of the person maintained, in line with this Act.

It is first of all up to the *parents* to support a child who is a minor. Parents who are capable of work cannot avoid their duty of care to their child. If a parent does not support a minor child, the *grandparents* on that parent's side must support the child. A *step-parent* must support a minor stepchild if the stepchild cannot obtain maintenance from their parent.

Parents must support an adult child who attends a secondary school or who attends university or vocational studies in accordance with special regulations, or who attends elementary or secondary adult education, and who regularly and duly fulfils their obligations, up to a maximum age of 26.

Parents must support an adult child who has completed education, but is unable to find employment for one year after the completion of the education, provided the child has not turned 26. The duty to support an adult child ceases before the expiry of one year from completion of education at the moment the child turns 26.

Parents must support an adult child who is unfit for work due to severe and permanent illness, or disability, for as long as such incapacity exists.

An *adult child* must support a parent who is unfit for work and does not have sufficient means for living or is unable to obtain such means from their own assets. An *adult stepchild* must support their step-parent if the step-parent is unfit for work, and does not have sufficient means for living or is unable to obtain such means from their own assets, and if they have supported or looked after the stepchild over a long period of time. An *adult grandchild* must support their grandparent if the grandparent is unfit for work, and does not have sufficient means for living or is unable to obtain such means from their own assets, and if they have supported or looked after the grandchild over a long period of time.

A *spouse* who lacks sufficient means for living or is unable to obtain such means from their assets, while being unfit for work or unable to find employment, is entitled to maintenance by the other spouse if that spouse has enough means and possibilities to provide such maintenance. The rules concerning maintenance of spouses apply accordingly to maintenance of *extramarital partners* for the duration of extramarital union.

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

It is first of all up to the parents to support a child who is a minor. If a parent does not support a minor child, the grandparents on that parent's side must support the child. A step-parent must support a minor stepchild if the stepchild cannot obtain maintenance from their parent.

Parents must support an adult child who attends a secondary school or who attends university or vocational studies in accordance with special regulations, or who attends elementary or secondary adult education, and who regularly and duly fulfils their obligations, up to a maximum age of 26.

Parents must support an adult child who has completed education, but is unable to find employment for one year after the completion of the education, provided the child has not turned 26. The duty to support an adult child ceases before the expiry of one year from completion of education at the moment the child turns 26.

Parents must support an adult child who is unfit for work due to severe and permanent illness, or disability, for as long as such incapacity exists.

An adult is a person who has reached the age of 18.

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

A social welfare centre and a court should be contacted.

Maintenance may be regulated by the *mandatory counselling* procedure. Mandatory counselling is carried out before instituting divorce proceedings in case there is a joint minor child, and before instituting other judicial proceedings relating to parental care and personal relations with the child. The provisions of the Family Act on mandatory counselling prior to starting divorce proceedings if there is a joint minor child also apply to mandatory counselling before the start of proceedings on parental care and personal relations with the child if the child's parents separate. Mandatory counselling is initiated when one party files a request with a social welfare centre. If the parents have not made an arrangement regarding a plan on joint parental care, the social welfare centre will advise them to try making an arrangement within the scope of family mediation, in accordance with the provisions of the Family Act.

Maintenance may be settled via *family mediation*, in which parties attempt to resolve family issues by agreement with the assistance of family mediators.

Family members take part in family mediation voluntarily, and only the first family mediation meeting must be attended before starting divorce proceedings.

The main purpose of family mediation is to decide on joint parental care and other arrangements concerning the child. The plan for joint parental care or other arrangements made during family mediation become enforceable if approved by court in extra-judicial proceedings at the request of the parties. Family mediation can be carried out independently of judicial proceedings, before starting judicial proceedings, during them or after their completion.

The amount of maintenance which the parent with whom the child does not live must pay can be also regulated by the *Plan on Joint Parental Care*, which the parents can prepare by themselves during mandatory counselling, as well as during family mediation. If a plan on joint parental care is submitted to the court in extra-judicial proceedings for verification it then becomes enforceable, in accordance with the Family Act.

A child can lodge a claim for maintenance in *simplified extra-judicial proceedings for determination of maintenance*. The parties in these proceedings are the child and the parent not living with that child. The child in the maintenance proceedings is represented by the parent with whom the child lives. The court with jurisdiction in simplified proceedings on maintenance matters may be, in addition to the court with general territorial jurisdiction, the court of the child's domicile or residence.

Judicial decisions on maintenance claims are made in marital disputes, cases to determine maternity or paternity, and parental care cases, in accordance with the Family Act.

In case of divorce, the spouses may make a maintenance agreement setting the amount of maintenance, how to fulfil this obligation, and the duration of the maintenance obligation. The spouses may conclude the maintenance agreement in a writing and bring it before court for approval in extra-judicial proceedings, which makes it an enforceable agreement.

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

The parties to child maintenance proceedings are the child and the person required to support the child under the Family Act. The child is represented by the parent with whom the child lives. If the parent with whom the child lives agrees, the social welfare centre represents the child in the maintenance proceedings. In addition to the social welfare centre, the parent with whom the child lives remains authorised to act in proceedings. In the case of conflict of actions undertaken by the social welfare centre and those of the parent with whom the child lives, the court will take into consideration all the circumstances, and particularly the child's well-being, and assess whether to take into account the action of the social welfare centre or the child's parent.

A social welfare centre must act on behalf of the child and institute and conduct the proceedings on maintenance or to increase the maintenance amount if the parent with whom the child lives has not exercised that right for unjustified reasons for over three months after the child acquired the right. The social welfare centre represents the child in maintenance proceedings if the child is in the care of another natural or legal person. In such cases, the child's parents are not authorised to act in proceedings on behalf of the child alongside the social welfare centre and their authority to represent the child ceases when the social welfare centre files an action on the child's behalf.

In accordance with the provisions of the Civil Procedure Act (*Zakon o parničnom postupku*), only a lawyer may represent a party as their attorney, unless stipulated otherwise by law. A party may be represented by a lineal blood relative, a brother, sister or spouse acting as an attorney in fact – if they have full capacity and are not illegally practising law.

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

In case of disputes over statutory maintenance, in which the applicant is a person seeking such maintenance, jurisdiction – in addition to the court of general territorial jurisdiction – also lies with the court on whose territory the applicant has domicile or residence. If, in disputes over statutory maintenance with an international element, a court in Croatia has jurisdiction because the applicant has domicile in Croatia, territorial jurisdiction lies with the court on whose territory the applicant has domicile. If a court in Croatia has jurisdiction because the respondent has property in Croatia from which maintenance may be collected, territorial jurisdiction lies with the court on whose territory this property is located.

Jurisdiction to approve a plan on joint parental care lies with the court that has general territorial jurisdiction over the case involving the child.

Jurisdiction to approve a child maintenance agreement lies with the court that has general territorial jurisdiction over the case involving the child.

Jurisdiction to approve a spousal maintenance agreement lies with the court on whose territory spouses have common domicile. If the spouses do not have common domicile, jurisdiction lies with the court on whose territory the spouses had their last common domicile. If a court in Croatia has jurisdiction to approve a spousal maintenance agreement because the spouses had their last common domicile in Croatia, jurisdiction lies with the court on whose territory the spouses had their last common domicile.

Jurisdiction for ruling in simplified proceedings on maintenance lies, in addition to the court of general territorial jurisdiction, with the court at the place where the child has their domicile or residence.

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?

Under Article 89a of the Civil Procedure Act, parties may undertake action in the course of the proceedings personally or through their attorney, but the court may invite a party represented by an attorney to appear before court in person to make a declaration on the facts to be established in litigation. Only a lawyer may represent a party as their attorney, unless stipulated otherwise by law. Under Article 89a(3), a party may be represented by a lineal blood relative, a brother, sister or spouse acting as an attorney in fact – if they have full capacity and are not illegally practising law.

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?

Under Article 1 of the Court Fees Act (*Zakon o sudskim pristojbama*), court fees must be paid for any proceedings conducted in court. The amount of the fee is determined by the Tariff of Court Fees.

Article 16 of the Court Fees Act stipulates that children, as parties in proceedings brought for maintenance or in proceedings related to claims stemming from that right, are exempt from court fees.

Under Article 172 of the Civil Procedure Act, the manner in which the right to the exemption from the payment of court costs and the right to professional legal aid are exercised and the conditions under which it is done are set out in a separate legal act regulating free legal aid. Under Article 176, if a party has exercised the right to the exemption from court costs on the basis of the special regulation on legal aid and if, in the course of the proceedings, the court determines that the party is able to pay the court costs or fees, the court will immediately notify the competent public authority.

The Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*) defines the purpose, beneficiaries and kinds of free legal aid, legal aid providers, the conditions and the procedure for the provision of legal aid, trans-border legal aid, financing of legal aid and supervision of the implementation of the Act. The Free Legal Aid Act does not apply if legal aid has been provided in line with special regulations.

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)?

Child maintenance is always set as a specific sum of money.

The parent with whom the child lives participates in their share of the child maintenance obligation by providing daily care to the child, whereas the parent not living with the child fulfils the child maintenance obligation by covering child's material needs in the form of financial support.

The total material needs of the child determined by the court in the course of litigation relate to the costs for housing, food, clothing, hygiene, upkeep, education, healthcare, and other similar costs concerning the child. The total material needs of the child are set in accordance with the living standard of the parent who is obligated to pay for maintenance.

The child may have increased material needs if in need of constant intensified care due to the child's medical condition, which must be taken into consideration when setting the maintenance amount in civil proceedings.

The total abilities of the parent who is the maintenance debtor, which the court determines in civil proceedings, relate to the income and financial standing of the parent obligated to pay maintenance at the moment the maintenance amount is set.

Once a year and until 1 April of the current year at the latest, the Minister in charge of social welfare determines the minimum pecuniary amounts representing the minimum amount of the total material needs required for the monthly minor child maintenance in the Republic of Croatia, to be paid by the parent not living with the child.

The minimum amounts are set as a percentage of the average net monthly salary per person employed by legal persons in the Republic of Croatia for the previous year, as follows:

1. for a child of up to 6 years of age, 17% of the average salary;
2. for a child between 7 and 12 years of age, 20% of the average salary; and
3. for a child between 13 and 18 years of age, 22% of the average salary.

By way of exception, a lower amount may also be set for the child maintenance needs, however not lower than half of the statutory minimum:

1. if the maintenance debtor must support two or more children, or

2. if the child contributes to their maintenance by earning their own income.

Once a year and until 1 April of the current year at the latest, the Minister in charge of social welfare will establish tables concerning the average needs of a minor child in line with the child's age, income of the parent obligated to pay maintenance as specified in paygrades, and the average costs of living in the Republic of Croatia.

The maintenance creditor and the maintenance debtor may petition the court to increase or reduce the amount of maintenance, decide to terminate maintenance or change the manner of maintenance established by a prior enforceable title, if the circumstances have changed.

Maintenance claims are not subject to indexation in the Republic of Croatia.

9 How and to whom will the maintenance be paid?

Maintenance will be paid in a manner and to the person established in the court decision.

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

If the maintenance debtor fails to pay maintenance voluntarily, enforcement proceedings are instituted and conducted.

Enforcement by attachment of salary and other regular income and monetary funds on the account, for the purpose of collecting the child maintenance claim, will be carried out before the enforcement of any other claims irrespective of the time when they are incurred.

The maintenance debtor may have their consent entered in the minutes of the hearing before court or in a special notarized document stating that their salary, pension or similar pecuniary income may be seized entirely or partially for the collection of a claim made by the maintenance creditor, and that the payments are made directly to the maintenance creditor as set out in that document. Such a document is issued in one copy and has legal effect of a definitive writ of execution.

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

The parent not living with the minor child and who has not paid maintenance for their minor child must pay compensation to the child for the maintenance withheld which is calculated from the day the right to maintenance was established until the day when the action was brought. The child's claim against a parent who has failed to maintain the child is subject to a statute of limitations of five years from the day on which such obligation was incurred.

Under Article 226 of the Civil Obligations Act (*Zakon o obveznim odnosima*), claims for periodic payments due annually or at shorter intervals, irrespective of whether they are additional claims such as interest, or claims in which the right itself has expired, such as maintenance claims, are subject to a statute of limitations of three years from the date on which each payment is due.

Under Article 233 of the Civil Obligations Act, claims established by a final court decision, a decision of another competent public authority, a settlement reached in court or before another competent authority or by a notarial act are subject to a statute of limitations of ten years, including those in respect of which a shorter statute of limitations is stipulated by law.

Under Article 235 of the Civil Obligations Act, the statute of limitations does not start to apply between parents and children until the expiry of parental rights. Under Article 172 of the Enforcement Act (*Ovršni zakon*), the following assets may not be subject to enforcement: income received as statutory maintenance, compensation for impaired health or reduced or lost work capacity and compensation for maintenance lost due to the death of the maintenance creditor; income from physical disability benefits granted in accordance with the disability insurance regulations; income from social welfare benefits; income from temporary unemployment benefits; income from child benefit, unless stipulated otherwise by a special regulation; income from scholarships and student support; remuneration paid to convicts for work performed, with the exception of claims for statutory maintenance and claims for the compensation of damage caused by a criminal offence committed by the convict; income deriving from citations and rewards; maternity and parental support payments, unless otherwise stipulated by a special legal act; other income exempted from enforcement under special regulations.

Article 173 of the Enforcement Act limits enforcement as follows:

(1) If the salary of the enforcement debtor is subject to enforcement, an amount set at two thirds of the average net salary in the Republic of Croatia is exempt from enforcement. If enforcement is carried out to collect on a statutory maintenance claim, or a claim to compensate for the damage caused by impaired health or a reduction or loss of work capacity and to compensate for the loss of maintenance due to the death of the person who has provided maintenance, the amount is set at half the average net salary in Croatia, except when enforcement is carried out in order to forcibly collect money due as child maintenance. In such cases, the amount exempt from enforcement is a quarter of the average net salary (for employees of legal persons in Croatia in the previous year).

If the enforcement debtor has a salary that is lower than the average net salary for Croatia, the amount of two-thirds of salary is exempt from enforcement. If enforcement is carried out in order to collect on a statutory maintenance claim, or a claim to compensate for the damage caused by impaired health or a reduction or loss of work capacity and to compensate for the loss of maintenance due to the death of the person who provided maintenance, the amount is set at half the debtor's net salary.

(3) The term 'average net salary' within the meaning of paragraph 1 of this Article is the average amount paid as a monthly net salary per person employed by legal persons in Croatia in the period between January and August of the current year, which shall be determined by the Croatian Bureau of Statistics (*Državni zavod za statistiku*) and published in *Narodne novine* (NN; Official Gazette of the Republic of Croatia) not later than on 31 December of the current year. The amount set in this manner shall be applicable in the following year.

(4) The provisions in paragraphs 1 and 2 of this Article also apply to enforcement when any compensation paid in lieu of salary, compensation for reduced working time, compensation for reduced salary, pension, military service personnel pay and pay received by persons in the reserve force while they are in military service and any other regular pecuniary income paid to civilian and military personnel are subject to attachment, with the exception of the income referred to in paragraphs 5 and 6 of this Article.

(5) Enforcement by attachment of income received by disabled persons as a monetary benefit for physical disability and as care allowance may be carried out only to collect on a statutory maintenance claim, or a claim to compensate for the damage caused by impaired health or a reduction or loss of work capacity and to compensate for the loss of maintenance due to the death of the person who has provided maintenance, in which case the amount shall be set at half of such income.

(6) Enforcement by attachment of income received under a lifelong support contract and a lifelong annuity payment contract, as well as income received under a life insurance contract may only be carried out on the portion of income which exceeds the principal amount used to calculate the amount of the support for maintenance.

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

Social welfare centres must keep records of all the decisions and court settlements concerning maintenance for a minor child.

When a social welfare centre receives a final court decision or a court settlement concerning child maintenance, it must send a written notice on the rights and obligations to the parent with whom the child lives and to the parent who must pay maintenance or to another person referred to in Article 288 of the Family Act who must pay maintenance under the court decision or the court settlement.

In this notice the social welfare centre notifies the parent with whom the child lives of the following:

1. warns the parent that they must inform the social welfare centre if the maintenance debtor fails to fulfil their obligation regularly and in full; and
2. sets out the conditions under which the child is entitled to interim maintenance in line with special regulations governing interim maintenance.

In the notice the social welfare centre warns the parent who must pay maintenance or another person referred to in Article 288 of the Family Act who must pay maintenance under the court decision or the court settlement of the following:

1. that it will file a criminal complaint against a maintenance debtor who fails to fulfil their maintenance obligation within fifteen days from the day it learns that the maintenance obligation is not fulfilled regularly and in full; and
2. that the Republic of Croatia is entitled to recover the amounts for interim maintenance paid in line with a special regulation governing interim maintenance.

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

When a social welfare centre receives a final court decision or a court settlement concerning child maintenance, it must inform the parent with whom the child lives on the conditions under which the child is entitled to interim maintenance in line with a special regulation governing interim maintenance. Under the conditions stipulated in the Interim Maintenance Act (*Zakon o privremenom uzdržavanju*), NN No 92/14), a child who is a Croatian citizen and has a domicile in Croatia is entitled to interim maintenance. According to that Act, a child means a person who has not yet reached the age of 18 and who has to be maintained by a parent based on an enforceable order.

The child is entitled to interim maintenance if the parent not living with the child fails, in part or in full, to fulfil their maintenance obligation, and if it appears probable that the grandparents on that parent's side do not contribute to child's maintenance at least in the amount set out in the Act as the interim maintenance amount.

The right to interim maintenance extends until the maintenance debtor resumes the payment of maintenance at least in the amount set out in the Act as the interim maintenance amount.

The child is entitled to interim maintenance for a maximum of three years in total.

Interim maintenance is set at 50% of the statutory maintenance minimum. Interim maintenance cannot be more than the maintenance amount determined by the enforceable order.

By paying interim maintenance amount, the Republic of Croatia takes the legal position of the child, and the rights to claim maintenance in the amount of paid interim maintenance, in addition to any other incidental rights, are transferred to it. In proceedings for the collection of the claim referred to in Article 25 of that Act, the Republic of Croatia is represented by the relevant prosecutor's office.

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?

Yes. Pursuant to the Act implementing Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, the central authority for implementation of Council Regulation (EC) No 4/2009 is the ministry responsible for social welfare.

The bodies responsible under Council Regulation (EC) No 4/2009 are courts and social welfare centres, in line with the stipulated remit and jurisdiction of those bodies.

If a party seeking to collect maintenance is located in Croatia, and the debtor has domicile in another Member State, the party may call upon the assistance of the Ministry of Demography, Family Affairs, Youth and Social Policy (*Ministarstvo za demografiju, obitelj, mlade i socijalnu politiku*) which is established as the central authority of the Republic of Croatia.

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

They can contact the central authority and the bodies competent to act within the scope of Council Regulation (EC) No 4/2009.

Contact details of the central authority:

Ministry of Demography, Family Affairs, Youth and Social Policy (*Ministarstvo za demografiju, obitelj, mlade i socijalnu politiku*)

Trg Nevenke Topalušić 1

10000 Zagreb

Website: <http://www.mspm.hr/>

Email: ministarstvo@mdomsp.hr

Tel.: +385 1 555 7111

Fax: + 385 1 555 7222

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

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

No. Article 55 of Council Regulation (EC) No 4/2009 stipulates that when the debtor is located at the territory of the Republic of Croatia, the application should be sent to the central authority of the Republic of Croatia via the central authority of the state where the applicant is located, all pursuant to Article 55 of Council Regulation (EC) No 4/2009.

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

The central authority of the state where the applicant is located sends the application to the Ministry of Demography, Family Affairs, Youth and Social Policy which is the central authority of the Republic of Croatia for the implementation of Council Regulation (EC) No 4/2009.

Contact details of the central authority:

Ministry of Demography, Family Affairs, Youth and Social Policy (*Ministarstvo za demografiju, obitelj, mlade i socijalnu politiku*)

Trg Nevenke Topalušić 1

1000 Zagreb

Website: <http://mdomsp.gov.hr>

Email: ministarstvo@mdomsp.hr

Tel.: +385 1 555 7111

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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?

The applicant contacts the central authority of the Member State, and legal aid is provided on the territory covered by Council Regulation (EC) No 4/2009 in accordance with Articles 44 to 47, and, where necessary, the provisions of the Free Legal Aid Act apply.

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 Act implementing Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations has been adopted (NN No 127/2013), and the Ministry of Demography, Family Affairs, Youth and Social Policy has been established as the central authority for the implementation of Council Regulation No 4/2009.

For further information consult:

1. Family Act (*Obiteljski zakon*), NN No 103/15
2. Enforcement Act (*Ovršni zakon*), NN Nos 112/12, 25/13, 93/14
3. Conflicts of Laws Act (*Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima*) (NN Nos 53/91, 88/01)
4. Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*), NN No 143/2013
5. Act Implementing Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (*Zakon o provedbi Uredbe Vijeća (EZ) br. 4/2009 u području nadležnosti, mjerodavnog prava, priznanja i izvršenja odluka te suradnji u stvarima koje se odnose na obveze uzdržavanja*), NN No 127/2013
6. Civil Procedure Act (*Zakon o parničnom postupku*), NN Nos 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14
7. Interim Maintenance Act (*Zakon o privremenom uzdržavanju*), NN No 92/14

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