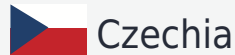


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Family maintenance



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European Judicial Network
(in civil and commercial
matters)

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 concept ‘maintenance’ means the sum of what one person gives another to satisfy all their legitimate needs. A key prerequisite for the formation and duration of maintenance obligations under the Civil Code is the existence of family or similar relationship, whether marital, ex-marital or kinship in a direct line, or a relationship between registered partners or former registered partners of the same sex.

The Civil Code specifies the groups of people required to provide and authorised to receive maintenance as follows:

- maintenance between spouses: this arises when the marriage is concluded and ends on its termination. The spouses have a maintenance obligation to an extent that ensures both the same material and cultural standard, arising from the equal status of a man and a woman in the marriage. The maintenance obligation between spouses takes precedence over the maintenance obligation between parents and children.
- alimony between divorced spouses: this arises if one of the divorced spouses is incapable of supporting themselves and this incapability originates in connection with the marriage and it can legitimately be requested of the former spouse, particularly in view of the age or state of health of the divorced spouse at the time of the divorce or the termination of care of a child common to the divorced spouses. It terminates on the marriage of the supported spouse or on expiry of the period for which alimony was set for the divorced spouses (a maximum of 3 years).
- maintenance between parents and children: this arises on the birth of the child and terminates when the child is able to support himself or the maintenance obligation is transferred to another (e.g. through marriage or denial of paternity). The amount of maintenance is determined to ensure that the standard of living of the child is substantially identical to the standard of living of the parents. A child is also obliged to provide his parents with a fair maintenance, according to his/her means, and the parents’ standard of living does not have to be identical to the standard of living of the child.
- maintenance between relatives in a descending and ascending line: this arises between ancestors and descendants. The maintenance obligation of parents to their children precludes the maintenance obligation of grandparents and other relatives in an ascending line to the children. More distant relatives have a maintenance obligation if this cannot be met by closer relatives.
- support paid to a single mother to cover maintenance and other expenses: this arises if the child’s mother is not married to the child’s father. In this case, the father is required to provide maintenance for a period of two years after the birth of the child and to make a reasonable contribution towards the costs associated with pregnancy and childbirth.

The maintenance obligation is also regulated by the Act on Registered Partnership. This provides for:

- a reciprocal maintenance obligation between partners. The scope of the maintenance obligation is

- established to ensure that the material and cultural standard of both partners is basically the same;
- a maintenance obligation after dissolution of cohabitation of partners – a former partner who is unable to support him/herself may request the former partner to contribute a reasonable amount of support, in relation to his/her abilities and financial situation. If one of the former partners, who did not contribute to the permanent breakdown of the partnership, is caused serious harm by the termination of the partnership, he/she may be awarded maintenance for a period of three years in the same amount as the maintenance obligation that would have arisen in the event the partnership had not been terminated.

The maintenance obligation for one person to provide support for another person is laid down in the law and cannot be transferred, substituted or surrendered in advance.

One of the pre-requisites for granting a maintenance obligation, which is applied in all cases where a maintenance obligation is fulfilled, is consistency with public morality.

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

Maintenance may be granted if the beneficiary is not realistically able to support him/herself. The ability to support oneself is traditionally interpreted exclusively as the ability to satisfactorily meet all one's needs (material, cultural, etc.). If a child is not able to support him/herself and is reliant on support from the maintenance payer, the maintenance obligation will not lapse even when he/she reaches adulthood (e.g. if the child continues with his/her studies), and in exceptional cases the maintenance obligation may continue throughout the life of the child and the parents (e.g. if a child is fully disabled and will never be able to support him/herself). In contrast, the maintenance obligation may lapse even before the child reaches adulthood if the child becomes able to support him/herself earlier. There is therefore no specific age limit.

Attaining adulthood is important in terms of procedure (e.g. a court may rule on maintenance for a minor child even without a petition, but a court will only grant maintenance for adult children on the basis of a petition).

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

Only a court may rule on maintenance, on the basis of a petition, while a court may decide on maintenance for a minor child even without a petition.

In addition to the general particulars, the petition must contain the name, surname and address of the parties, a depiction of the critical facts, a designation of the evidence submitted by the claimant and this must clearly show what the claimant is claiming.

The petition must be filed with the locally competent court. See question no. 5.

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

A parent who has custody of a child is entitled to apply on the child's behalf for maintenance from the other parent. He/she may also act on behalf of the child as guardian or trustee. A child who has acquired full legal capacity must apply for maintenance in his/her own name.

An application may not be filed in the name of a relative, except in cases where the person does not have full legal capacity and the court appoints a guardian from among the person's relatives.

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

International jurisdiction (authority) over proceedings on matters relating to maintenance obligations are assessed in accordance with Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable

law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ('Regulation on Maintenance Obligations'): <https://eur-lex.europa.eu/legal-content/CS/TXT/?qid=1409302593149&uri=CELEX:02009R0004-20130701>. This Regulation shall not prejudice the application of international treaties to which the Czech Republic is a party and which relate to matters governed by the Regulation on Maintenance Obligations. However, these treaties only apply to relations with non-EU Member States (this particularly concerns bilateral treaties on legal assistance concluded with non-EU Member States or the international Convention on Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano, 30.10.2007) in relation to Norway, Switzerland and Iceland); in relations between European Union Member States, the Regulation on Maintenance Obligations takes precedence over international treaties.

In the Czech Republic, district courts decide in proceedings relating to maintenance obligations in the first instance.

Jurisdiction is mainly determined by the Regulation on Maintenance Obligations, which takes precedence over the Czech legislation. According to Article 3 of the Regulation on Maintenance Obligations, the claimant (plaintiff) may, as he/she chooses petition a court

- a) in the place where the defendant is habitually resident, or
- b) in the place where the creditor is habitually resident.

Otherwise, based on the application of Article 3 (c) and (d) of the Regulation on Maintenance Obligations, proceedings in the Czech Republic may be brought to the court which has jurisdiction to entertain proceedings to determine paternity or the court which has jurisdiction to entertain proceedings concerning parental responsibility, unless that jurisdiction is based solely on the nationality of one of the parties.

According to Article 5 of the Regulation on Maintenance Obligations, jurisdiction can also be established on the basis of an appearance of the defendant at a court provided the defendant does not later contest the jurisdiction of the court as his/her first subsequent legal act.

The Czech legal rules for determining jurisdiction, which only apply in cases where jurisdiction is not determined on the basis of the Regulation on Maintenance Obligations (i.e. for example in a case where the international jurisdiction of the Czech court is based on Articles 6 and 7 of the Regulation on Maintenance Obligations (subsidiary jurisdiction, forum necessitatis) or on an international treaty with a non-EU Member State), are as follows: for proceedings concerning maintenance for a minor child, the general court of the minor child has jurisdiction, i.e. the court in whose district the minor child is resident, on the basis of an agreement between the parents or a decision of the court or other deciding facts. In other cases, the competent court is the general court of the defendant. The general court of a natural person is the district court in whose district he/she has his/her residence and, if he/she has no residence the court in whose district he/she sojourns. A residence is understood to be a place where the person resides with the intention of staying there permanently (it is also possible that there are a number of such places, in which case the general court is all these courts). If a defendant, who is a citizen of the Czech Republic, has no general court, or does not have one in the Czech Republic, the competent court is the one in whose district he/she had the last known residence in the Czech Republic. Property rights may be applied against a person who has no other competent court in the Czech Republic at the court in whose district he/she owns property.

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?

The law does not require that a petitioner be represented. However a petitioner may take the decision to be represented before the court on the basis of a power of attorney granted to a representative of his/her choice, for example a lawyer.

A natural person who cannot appear independently before a court must be represented by a legal representative or guardian. In the case of a minor child, the legal representatives are his/her parents.

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?

Proceedings on matters concerning mutual maintenance obligations between parents and children are completely exempt from court fees. In other proceedings to determine maintenance, including its increase, the petitioner is exempt from court fees. This exemption also applies to enforcement proceedings or execution proceedings.

If the petitioner is represented by a lawyer he/she must – unless otherwise agreed – pay remuneration according to the lawyer's tariff rate (which can be downloaded in English from the Czech Bar Association website: <http://www.cak.cz/scripts/detail.php?id=2239>). If justified by the social and financial status of the petitioner, and provided the case is not arbitrary or a manifestly unsuccessful application or obstruction of rights, the court may appoint a representative free of charge or for a reduced fee if this is absolutely necessary in order to protect the interests of the petitioner; under certain conditions a lawyer will be appointed as this representative.

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)?

Maintenance is paid for the most part in cash – in regularly recurring monthly instalments, always payable one month in advance (unless the court decides otherwise, or the creditor agrees on different conditions with the liable parent), although it may also be provided in some other form, such as by providing housing, by payment in kind, etc.

In addition to laying down conditions binding on the liable parent, the maintenance obligation to the child also determines property relations and the reasonable needs of the child, which primarily depends on his/her age and state of health. It also takes into account the manner in which the child is preparing for his/her future career, extracurricular activities, hobbies, etc. However, the principle is that the standard of living of the child should be identical to that of the parents. If the financial situation of the liable person so allows, the laying down of savings may also be considered to be reasonable needs of the child. When determining the scope of the maintenance obligations of the parents, the parent who is caring for the child and the extent to which that care is being provided is also taken into consideration.

Maintenance between spouses is granted in an amount that will ensure the same material and cultural standard for both parties, arising from the equal status of a man and a woman in the marriage.

Maintenance between divorced spouses is granted when a divorced spouse is incapable of supporting his/herself and this incapability originates from the marriage or in connection with it and it can legitimately be requested of the former spouse, particularly in view of the age or state of health of the divorced spouse at the time of the divorce or the termination of care of a child common to the divorced spouses. Maintenance is granted in a reasonable amount. When deciding on the amount, the length of the marriage prior to the divorce is taken into account, along with other requirements required under the law.

Maintenance for a pregnant mother is granted to cover the reimbursement of costs associated with the pregnancy and birth in a reasonable amount.

The court will grant maintenance for a registered partnership on the basis of a petition, taking into account requirements for the care of the common household. The amount of the maintenance obligation is determined to ensure that the material and cultural standard enjoyed by both partners is basically equal.

The maintenance obligation on dissolution of cohabitation of partners of the same sex may be determined on petition by a former partner who is not capable of supporting him/herself. He/she may petition the former partner to contribute reasonable maintenance depending on his/her abilities, possibilities and property owned. Should they fail to agree, the court shall determine maintenance on the basis of a petition by one of them. If one

of the former partners, who did not contribute to the permanent breakdown of the partnership, is caused serious harm by the termination of the partnership, the court may award maintenance from the other former partner for a period of up to three years from the dissolution of the cohabitation in the same amount as the maintenance obligation that would have arisen in the event the cohabitation had not been dissolved.

Czech law does not recognise what is referred to as objectivised maintenance using tables, percentages etc. and neither is it bound by minimum or maximum maintenance. When making its decision the court will take into account the uniqueness of each specific case, such as the possibility of more than one maintenance obligation, increased costs for a handicapped child, etc. The Ministry of Justice only issues a table of recommended amounts: <http://portal.justice.cz/Justice2/MS/ms.aspx?o=23&j=33&k=6223&d=315516>.

Court decisions on maintenance are issued subject to changes in the situation. They can therefore be modified if the situation of the creditor or the liable party changes significantly.

9 How and to whom will the maintenance be paid?

Maintenance is paid in regular, recurring, monthly amounts, which are always payable one month in advance, unless otherwise decided by the court or unless the person liable for the maintenance agrees otherwise with the creditor. In very exceptional cases (e.g. where the liable parent only receives a seasonal income, is engaged in a high-risk business, etc.) the court may order that a sum of money be laid down (a deposit) to cover future maintenance. The court will then take further measures to ensure that individual payments, equivalent to the monthly maintenance payments, are made to the child from this sum. Maintenance must be paid either to the creditor or to the person who has the care of the creditor.

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

Under Czech law, a petition can be submitted to the competent court for judicial enforcement or a proposal can be filed with the bailiff for execution proceedings. In general, the procedure for judicial enforcement or execution (including information on the particulars to be entered in the petition) is set out in the information document entitled 'Procedures for the enforcement of judicial decisions'. Some specific details concerning the recovery of maintenance are provided below.

Judicial enforcement

The general court of a minor child (see the response to question no. 5 for the definition of the general court of a minor child) is competent to regulate and enforce a maintenance ruling for a minor child. The general court of the liable party (see the response to question no. 5 for the definition of the general court of the liable party) is competent to decide on other types of maintenance obligation, including maintenance for adult children.

In cases of enforcement of maintenance for a minor child, on a petition by one of the parties, the court will provide assistance in identifying the residence of the liable party. The court may also provide additional assistance to the creditor before ordering enforcement of the decision – for example by asking the liable person to provide information on whether and from whom he/she receives a wage or any regular income, or in which bank or payment institution he/she has his/her accounts and the numbers of these accounts, or by requiring the liable party to declare his/her assets. The court may also provide this assistance for types of maintenance obligation other than maintenance for a minor child.

Execution proceedings

A petition to commence enforcement proceedings may be filed with any Czech bailiff. A list of bailiffs is available from the website of the Chamber of Executors of the Czech Republic: <http://www.ekcr.cz/seznam-exekutoru>. When enforcing payment of maintenance for a minor child, the bailiff has no right to request that the creditor pay a reasonable advance for the costs of the execution. One of the possible methods of execution, in cases concerning the enforcement of maintenance payments for a minor child, is the suspension of the driving licence of the liable party.

If the maintenance obligation has not been fulfilled, in addition to the methods of enforcing maintenance

referred to above, criminal charges may also be filed for suspicion of the criminal act of failing to pay mandatory maintenance. In the case of the crime of failure to pay mandatory maintenance, the Criminal Code states that a criminal act is committed by a person who fails, either intentionally or through negligence, to comply with his/her legal obligation to maintain or care for another for a period longer than four months. In such a case, criminal charges may be filed at any police station.

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

General information on judicial enforcement or execution (including information on which assets can be subject to judicial enforcement or execution and on remedial measures available) can be found in the information document entitled 'Procedures for the enforcement of judicial decisions'.

The Civil Procedure Code states that unless rights are enforced within the limitation period they will become statute barred and the debtor will be under no obligation to make payment. However, if the debtor made payment after expiry of the limitation period, he/she may not demand reimbursement of monies paid. The right to maintenance is not limited but rights to recurrent performance may be subject to limitation. The length of the limitation period is generally set at three years. However, if rights have been recognised by a ruling by a public authority (for example, a court), the statutory bar will apply ten years after the date on which the ruling required performance. The right to maintenance does not expire after a specific period of time.

Maintenance may only be awarded from the date on which the judicial proceedings commence. However, child maintenance may also be awarded for a maximum period of three years prior to this date. Maintenance for an unmarried mother and reimbursement of costs associated with pregnancy and birth may also be awarded retrospectively, but not more than two years after the date of birth.

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

Entities for the social and legal protection of children in the municipal authority of a municipality with extended powers are required to provide assistance in submitting claims on behalf of a minor child for maintenance and for enforcement of maintenance, including assistance in submitting a petition to the court.

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

The law does not recognise such an option.

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?

A creditor may submit an application for assistance in the recovery of maintenance payments to the Office for International Legal Protection of Children in Brno (<http://www.umpod.cz/>).

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

The applicant may contact the organisation using the details set out below:

Office for International Legal Protection of Children
Šilingrovo náměstí 3/4
602 00 Brno
Czech Republic

Tel.: +420 542 215 522

Fax: +420 542 212 836

E-mail: podatelna@umpod.cz

When first contacting the Office, the applicant should provide his/her full name and contact details (telephone or e-mail) as well as the name and date of birth of the child to which the question or request refers.

If the applicant is requesting the Office's assistance in the recovery of maintenance from abroad, an informal written request for assistance in the recovery of maintenance must first be submitted to the Office, along with a completed questionnaire, which can be downloaded in Czech from the Office's website: <http://www.umpod.cz/vyzivne/postup-pri-vymahani-vyzivneho/>. The request should include basic information concerning the child and the liable person and basic facts to explain why the applicant is requesting the recovery of maintenance. Copies of any documents, in particular court rulings establishing a maintenance obligation, should be attached to the request. The Office will then assess the possibility of recovering maintenance for the specific case and, if necessary, will send detailed instructions on how to proceed further in the matter.

Should the Office so request, additional documentation may have to be provided. Generally the judgement providing for a maintenance obligation will have to be submitted, together with a notarised translation into the language of the state from which the maintenance will be recovered, including orders for finality of judgement and execution. In cases where maintenance is to be recovered from a European Union Member State, the court will prepare an extract from the decision in accordance with Article 56 of the Regulation on Maintenance Obligation. A power of attorney for the government authority abroad, a certificate of study for the creditor, if he/she is over 15 years of age, or a certificate of living are also generally required. The local court for the place of residence of the applicant should assist him/her in obtaining a translation of the documents (normally the court that decided the matter in the first instance). The court will either give the completed documents to the applicant, or will send them directly to the Office. The Office will examine the documentation received and, provided all the requirements have been met, will submit a proposal to the foreign court or refer the matter for further proceedings to the competent foreign authority or organisation. The Office will inform the applicant at regular intervals of its actions, as well as the progress and outcome of the proceedings.

In the event maintenance is recovered, either by legal means or through voluntary payments by the liable person to the account of a foreign partner, these payments are generally sent to the Office's account once a month (for administrative, accounting and quantitative reasons) through an aggregate transfer payment. The Office's Economic Department forwards the payments to the creditor within one month, as requested by the creditor. In the event the creditor receives direct payments from the liable person abroad, he/she is required immediately to inform the Office of such payments. He/she is also required to inform the Office of any changes that might affect the proceedings (change of address, change in the care of the child, completion of the child's education, etc.).

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

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

An applicant for maintenance who lives abroad should contact the competent authority in that country, which will contact the Office for International Legal Protection of Children (see above for the Office's contact details).

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

On receipt of an application from another country, the Office for International Legal Protection of Children will take the following steps:

1. Consider whether the application meets all the requirements of the EU regulations and international agreements, or ask for additional documents.
2. Send a written appeal to the liable person in the Czech Republic and ask him/her to pay the maintenance debt and the regular maintenance amounts voluntarily.

3. If the liable person does not respond, the Office finds out his/her financial situation and files a motion for the recognition and enforcement of the order to the competent court in the Czech Republic. The Office represents the applicant (the creditor living abroad) in the proceedings and takes all the necessary actions to obtain the maintenance payments and to secure the transfer of the amounts recovered to the foreign country. The Office and the transferring authority abroad inform each other of the measures taken, as well as of the progress and outcome of the enforcement of the maintenance decision.

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?

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?

Proceedings on matters concerning mutual maintenance obligations between parents and children are completely exempt from court fees. In other proceedings to determine maintenance, including its increase, the petitioner is exempt from court fees. This exemption also applies to enforcement proceedings or execution proceedings. The petitioner is not required to be represented by a lawyer in proceedings relating to a maintenance obligation. The services of the Office for International Legal Protection of Children are provided free of charge. The office will represent the petitioner (the creditor living abroad) in court proceedings, will take all actions necessary to secure payment of maintenance in his/her name and will ensure the transfer of the amounts recovered abroad.

If justified by the social and financial status of the petitioner, and provided the case is not arbitrary or a manifestly unsuccessful application or obstruction of rights, the court may exempt a party partly or wholly from the payment of court fees. If a representative has been appointed for a party who has been exempted from the payment of court fees, this exemption also applies, in the scope in which it was granted, to the cash expenses of the representative and to the cost of the representation. A party who has been exempted from the payment of court fees cannot be obliged to pay a deposit towards the costs of evidence or obliged to reimburse the state for costs it has incurred (i.e. witnesses, expert witnesses, interpreting, etc.). Costs incurred in connection with the fact that a party appears before the court speaking in his/her native language or communicates using communication systems for deaf or deaf-blind persons are borne by the state and no compensation may be sought for such costs.

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?

According to Act No. 359/1999 Coll., on the social and legal protection of children, as amended, when providing social and legal protection with respect to foreign countries, the Office for International Legal Protection of Children, which is the central body for the Czech Republic, will carry out the following tasks:

- § perform the tasks of the central government body in accordance with the Regulation on Maintenance Obligation
- § perform the role of the child's guardian
- § require reports on the situation of children who are citizens of the Czech Republic but do not permanently reside in the territory thereof, from relevant bodies and other legal entities and individuals upon the request of parents living in the Czech Republic or the social and legal protection authorities
- § mediate the delivery of personal documents and other deeds to foreign countries and provide

documents and other deeds from foreign countries

- § cooperate with government authorities or other organisations of a foreign country similar to the Office, if they are duly authorised to perform social and legal protection activities in their country, and with other authorities, facilities and legal entities, where useful
- § assist in searching for the parents of a child, if the parent(s) live(s) abroad, family members and persons with a maintenance obligation, investigate the material and financial situation to determine maintenance, mediate the filing of motions aimed at enforcing the maintenance obligation, namely motions to regulate the maintenance obligation and upbringing and to determine paternity
- § provide for the translation of deeds needed to exercise competence in social and legal protection pursuant to international treaties and the directly applicable regulations of the European Union

For the purpose of exercising the Office's competence, the relevant bodies and other individuals and legal entities are required to provide the Office with any assistance requested in the necessary scope; the provisions of the Enforcement Regulations concerning mandatory assistance by third parties will apply appropriately. Mandatory assistance in the scope required will also be provided, for example, by the courts, the Police of the Czech Republic, banks, social security institutions, Labour Offices, operators of postal services, electronic service providers, insurance companies, the Ministry of Interior as regards the provision of information from records of residents and foreigners, etc.

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