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Family maintenance

 Slovakia

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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?

Maintenance allowances and obligations flow directly from Act No 36/2005 governing the family and amending certain other laws (‘the Family Act’). Under the Family Act, maintenance obligations take the following forms:

- a) the maintenance obligation of parents towards their children;
- b) the maintenance obligation of children towards their parents;
- c) the maintenance obligation between other relatives;
- d) the maintenance obligation between spouses;
- e) alimony;
- f) support paid to an unmarried mother to cover maintenance and certain expenses.

Theoretically, the concept of maintenance, in its broader sense, places family-law relations of an economic nature among areas specific to proprietary relations in family law. Their dependence on the existence of a personal family-law relationship is particularly evident here.

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

The maintenance obligation of parents towards their children is a legal duty that applies as long as the children are unable to support themselves. The fact that a child has completed compulsory schooling does not necessarily mean that it has acquired the capacity to provide for its own needs. Whether or not parents have a continued maintenance obligation towards their children will depend on the child’s abilities, opportunities and financial situation throughout the child’s training for a future job, e.g. as a full-time university student. Majority has no legal bearing on the duration of a maintenance obligation. The point in time when a child becomes legally ‘able to support itself’ varies from case to case, each considered individually, on its own merits, by a court. The ability to support oneself is interpreted in a broad sense as meaning the ability to provide for all needs or relevant costs of living on one’s own (i.e. using one’s own money). This ability must be sustainable. Occasional income cannot be regarded as establishing the ability to provide for one’s own needs.

In practice, courts rely on the fact that the parental maintenance obligation is elastic because blood relations are not limited in time and therefore this obligation may be renewed if, for instance, children decide to study later or if they are not admitted to university straight after secondary school. According to case law – bearing in mind the current dearth of employment opportunities for fresh graduates and school-leavers – additional courses

subsequently enabling them to find a job in a field other than that which they had been studying for up to that point can also be treated as a child's continued vocational training.

When a child starts earning a regular source of income from employment, a business venture, etc., the task of judging when a maintenance obligation has dissipated is made simpler. Given the situation on the labour market, the existence of many more forms of study and educational institutions, the need to learn languages for a child to be able to put his or her training into practice, retraining courses, continuing education, study stays abroad, and the need to become better qualified, it will be more difficult for the courts to establish the moment when a child is able to fend for itself. Some of these forms (of continuing training) may be warranted, in particular, if the paying parent has significant means. Parallel to this, the child's interests, reflected in his or her abilities and talents, must be taken into account so that the child picks up the right skills for future employment. Yet it is legitimate to demand that these skills be implemented early on so as to prevent parental maintenance abuses steeped simply in an aversion to work (manifested, for example, in children wilfully losing their jobs).

The age limit of 18 years takes on importance when we view it from a procedural perspective. Until a child's majority, the court can open proceedings for maintenance on its own motion; past that age, proceedings can only be initiated by application. An application, filed by an adult child, may be directed at one or both parents and must state the amount of the maintenance allowance sought and the time from which it is to be paid. The court must remain strictly within the confines of the adult child's application for maintenance to be adjusted, since such cases are not childcare proceedings under Section 111 et seq. of the Code of Non-contentious Civil Procedure.

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

If the party entitled and the party liable fail to reach agreement, a district court with due jurisdiction decides on the maintenance obligation. Except in cases involving a maintenance obligation of parents towards their minor children, the court commences proceedings further to an application brought by the party entitled (the applicant) against the party liable (the defendant). Proceedings on a minor child's maintenance may be initiated by the court on its own motion (*ex officio*) (Section 23 of the Code of Non-contentious Civil Procedure) because in these cases the court has a duty of care to minors.

Anyone may act before a court autonomously as a party to the proceedings (i.e. they have procedural standing) insofar as they have the capacity to acquire rights and assume obligations through their own acts. Natural persons not having the capacity to stand before a court on their own (e.g. minor children) must be represented by their legal guardian (Section 68 of the Code of Contentious Civil Procedure).

Besides statutory representation, the CSP and the Code of Non-contentious Civil Procedure also make a distinction between the representation of parties to proceedings under a power of attorney and representation further to a court decision.

A minor child cannot be represented by either parent in cases concerning legal acts which could prompt a conflict between the interests of the parents and those of the minor child or between the interests of multiple minor children represented by the same parent. In this situation, the court appoints what is known as a guardian *ad litem* to represent the child during proceedings or during a particular legal act.

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

See the answer to question 3.

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

Territorial jurisdiction is defined by Section 3 of the Code of Non-contentious Civil Procedure. Jurisdiction *in rem* is governed by Section 12 of the Code of Contentious Civil Procedure. District courts always have territorial

jurisdiction in the first instance. Generally, the court in whose jurisdiction the defendant resides (i.e. the person against whom the application is directed) is competent, i.e. the rule of territorial jurisdiction based on the defendant's ordinary court applies. The ordinary court having jurisdiction over the defendant is the court in whose jurisdiction the person resides or, if they are not resident, the court in whose jurisdiction the person is staying. The Code of Non-contentious Civil Procedure explicitly provides for special cases where this rule is not observed. The court in whose jurisdiction a minor child resides by arrangement of the parents or under a court order, or where the child resides on other relevant grounds, is competent to consider a maintenance application (this is called exclusive territorial jurisdiction under Section 112(1) of the Code of Non-contentious Civil Procedure).

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?

Cf. the answers to questions 3 and 4.

An applicant (beneficiary) who has procedural standing may lodge an application instituting proceedings directly, i.e. without being represented, to the court with due jurisdiction.

Section 127 of the Code of Contentious Civil Procedure lays down the general particulars of an application instituting proceedings: the recipient court, the person making the application, the case it concerns and what the applicant is seeking, and a signature.

Apart from the general particulars, an application instituting proceedings must provide certain specific information as set out in Sections 25 and 26 of the Code of Non-contentious Civil Procedure. An application instituting maintenance proceedings must also specify the amount of the maintenance allowance sought and the time from which it is to be paid.

Applications may be lodged in writing, either in paper form or electronically. An electronic application submitted without authorisation pursuant to the relevant special legislation must in addition be sent in paper form or electronically with authorisation pursuant to the relevant special legislation. Applications in maintenance cases may also be made orally and recorded in the minutes.

The requisite number of copies of an application, including enclosures, must be submitted so that the court keeps one original counterpart and each party receives one original copy, including enclosures as necessary. If a party fails to provide the required number of copies and enclosures, the court makes copies at the party's expense.

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?

Fees to be paid for the individual acts or procedures conducted by courts are governed by Act of the Slovak National Council No 71/1992 on court fees and copies of entries in the criminal records. The fees are charged by reference to a list of court fees. This legislation also provides for exemptions from court fees based on personal circumstances or on the subject matter.

In the context of maintenance, the following provisions are important:

Proceedings relating to judicial child protection are among those exempted based on the subject matter. This means that proceedings relating to maintenance claims for minor children are also exempted from court fees.

Under the personal circumstances criterion, court fee exemptions apply to:

- applicants in proceedings for a maintenance order, proceedings for an increase in a maintenance allowance, as well as proceedings for payment of late charges on maintenance allowances and proceedings for the recognition or declaration of the enforceability of a foreign maintenance order;

- unmarried mothers in proceedings for a maintenance allowance and for payment of certain expenses related to pregnancy and childbirth.

Item 8 on the List of Court Fees explicitly quotes the fees for proceedings relating to maintenance claims between spouses and to alimony claims:

Item 8

- | | |
|---|--|
| a) for applications seeking maintenance between spouses, alimony, and maintenance claims between other relatives, and for applications seeking an increase in a maintenance allowance | 2% of the price of the subject matter, no less than EUR 16.50 |
| b) for applications seeking a decrease or cancellation of maintenance between spouses, alimony or maintenance claims between other relatives | 2% of the price of the subject matter of the proceedings, no less than EUR 16.50 |

Where the list of fees does not stipulate a particular rate and the case falls neither within the personal circumstances category nor the subject matter category, the fees referred to under Item 1 of the List of Court Fees apply:

Item 1

For an application instituting proceedings, unless a specific rate is stipulated,

- | | |
|---|--|
| a) of the price (payment) of the subject matter of the proceedings or of the value of the subject matter of the dispute | 6%, no less than EUR 16.50, no more than EUR 16 596.50, in commercial cases no more than EUR 33 193.50 |
|---|--|

The court may, further to an application, award exemption from court fees if this is justified by the party's circumstances (Section 254 of the Code of Contentious Civil Procedure). The circumstances of the parties must be documented with a view to the court's decision on the application.

The mechanism for legal aid provision and the method of such provision by the Legal Aid Centre to natural persons who, suffering hardship, cannot use legal services in order to duly exercise and defend their rights, and the extent to which legal aid is provided, are governed by Act No 327/2005 on the provision of legal aid to persons suffering hardship and amending Act No 586/2003 on the legal professions and amending Act No 455/1991 on licensed trades (the Trading Act), as amended, as amended by Act No 8/2005. The above law also sets out the criteria for the provision of legal aid, the procedure to be followed by natural persons and by the competent authorities in the proceedings relating to legal aid applications and the institutional organisation of the provision of legal aid.

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)?

In Slovakia, the law does not specify the particular amount of a maintenance allowance.

In family matters, courts must always consider each case individually, based on the particular circumstances, and therefore the law does not specify any particular amount of maintenance. Indeed, in family matters, more than in any other area, a piece of legislation cannot neatly and explicitly package up the full diversity of life.

According to Section 75(1) of the Family Act, in determining the amount of maintenance the court takes into account the legitimate needs of the beneficiary, as well as the abilities, opportunities and financial situation of the party liable. The court also considers the abilities, opportunities and financial situation of the party liable in cases where, for no material reason, the party liable quits decent employment or a good job, or relinquishes a steady source of income; it also takes into account any unreasonable financial risks taken by the party liable.

As to parent-child maintenance, both parents must contribute to the maintenance of their children according to their abilities, opportunities and financial situation. A child has the right to share a parent's living standard. In determining the amount of maintenance allowances to be paid, the court takes into account which parent personally takes care of the child and to what extent. Where parents share custody of a minor child, the court

also takes into account the time of residence with each parent in determining the amount of maintenance allowances or, alternatively, the court may rule that as long as the child is in alternating residence with both parents no maintenance is to be granted.

Section 62(3) of the Family Act sets a minimum maintenance allowance (currently EUR 27.13): *Regardless of ability, opportunities and financial circumstances, each parent is obliged to meet the minimum maintenance obligation, which is 30% of the subsistence minimum for a dependent minor child or a dependent child as laid down in the relevant law.*

Under Section 78 of the Family Act, arrangements and court orders in respect of maintenance claims may be revised if circumstances change. Apart from the maintenance allowance for a minor child (cf. Section 121 of the Code of Non-contentious Civil Procedure), maintenance orders may only be altered or cancelled upon an application. If a maintenance allowance for a minor child is cancelled or reduced retroactively for a certain past period, any allowance spent is not refunded. When circumstances change, the cost of living is always taken into account.

9 How and to whom will the maintenance be paid?

Maintenance is generally paid by the party liable (debtor) to the party entitled (creditor).

According to Section 76 of the Family Act, maintenance allowances are to be paid in regular, recurrent amounts due a month in advance. Mutual claims may only be offset against maintenance claims by agreement. Claims involving maintenance allowances for minor children cannot be offset. If the party liable is late in the payment of a court-ordered maintenance allowance, the beneficiary is entitled to seek payment of late charges on the overdue amount under civil law provisions. Any payment made towards maintenance is first allocated to the principal amount and then, once the principal amount is covered in full, it is allocated to the late charges.

With maintenance allowances for minor children, the courts have established case law requiring the non-custody parent to pay maintenance allowances to the parent who takes care of the child personally and to do so by a set date each month.

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

Bailiffs are used to enforce maintenance payments. Enforcement proceedings commence upon a motion for enforcement. The procedure is governed by Act of the National Council of the Slovak Republic No 233/1995 on court officers and distraint activities (Execution Procedure Act) and amending certain other laws, as amended. Most often, maintenance liabilities are recovered by attachment of earnings or other income of the party liable. If an enforcement order is handed down that imposes the obligation to pay a sum of money, additional options apart from the attachment of earnings or other income are available to recover overdue maintenance allowances: a third party debt order, sale of movable property, sale of securities, sale of immovable property, sale of a business, or driving licence suspension order. The last mentioned option is particularly important in the context of maintenance recovery. The bailiff can order the suspension of the driving licence of anyone who does not comply with a court's maintenance order. The bailiff also delivers enforcement orders for driving licence suspension to the competent police body. Once the grounds for enforcement have been resolved, the bailiff immediately issues an order to reinstate the driving licence.

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

Section 77 of the Family Act provides that there is no prescription period for the recovery of maintenance claims. However, maintenance may only be granted from the date on which court proceedings are opened. Maintenance allowances for a minor child can be ordered for no more than three years retroactively from the date of the commencement of the proceedings, but reasons meriting special consideration must exist. Limitation periods apply to entitlement to various recurring maintenance payments.

Section 101 of the Civil Code (Act No 40/1964) sets out the limitation periods as follows:

(1) Where the entitlement was granted by a final decision of a court or other body, it shall lapse ten years from the date on which it was meant to be complied with. Where the entitlement was acknowledged by the party liable in writing as regards the grounds and the amount involved, it shall lapse ten years from the date on which acknowledgement was given; if the acknowledgement specified a compliance deadline, the limitation period shall run from the expiry of that deadline.

(2) The same limitation period applies to the individual payments specified in the decision or the acknowledgement of the entitlement; the limitation period for the individual payments runs from the date on which they fall due. Where the whole debt becomes due as a result of failure to meet one of the payments, the ten-year period of limitation shall run from the due date of the payment not made.

(3) The period of limitation for interest and recurring payments shall be three years; however, in the case of entitlements covered by a final judgment or acknowledged in writing, this limitation period shall apply only to interest and recurring payments that have fallen due after the judgment became final or after the acknowledgement.

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

There is no special authority intended to provide 'assistance' or help to recover maintenance in national cases.

In cases involving a foreign country, the Centre for the International Legal Protection of Children and Youth (*Centrum pre medzinárodnoprávnu ochranu detí a mládeže*) can help. The Centre helps to recover maintenance in cases where the person liable to pay maintenance for a child lives abroad while the beneficiary lives in Slovakia or vice versa, i.e. if the beneficiary lives abroad and is recovering maintenance from a party liable whose habitual place of residence is in Slovakia.

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

Act No 201/2008 on substitute maintenance and amending Act No 36/2005 on the family and amending certain laws, within the meaning of Decision No 615/2006 of the Constitutional Court of the Slovak Republic (*Ústavný súd*), provides for a mechanism whereby substitute maintenance can be advanced by the State (the Office for labour, social affairs and family – *úrad práce, sociálnych vecí a rodiny*) to beneficiaries. Substitute maintenance contributes to the maintenance of a dependent child in cases where the party liable fails to pay as ordered by a final court decision or under a court-approved arrangement.

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.

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

The Centre for the International Legal Protection of Children and Youth was set up by the Slovak Ministry of Labour, Social Affairs and the Family, which directly manages it as a state-funded organisation providing legal protection to children and young people where a foreign country is involved. The Centre covers the whole of Slovakia and has been in operation since 1 February 1993.

Under Act No 195/1998 on social assistance, as amended, the Centre has been classified as a governmental social assistance authority since 1 July 1998.

Contact details/Address:

Špitálska 8, P. O. BOX 57, 814 99 Bratislava,

E-mail: cipc@cipc.gov.sk, info@cipc.gov.sk,

Tel.: +421 2 2046 3208, +421 2 2046 3248,

Fax: + 421 2 2046 3258, non-stop telephone line (emergency only) + 421 915 405 954.

In the Slovak Republic, the Centre is a central authority under 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 (the 'Maintenance Regulation') and under the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

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?

You cannot address a request from abroad directly to the Centre. A person seeking payment of maintenance who resides in another country must contact the competent authorities in that country, who then refer the request to the Slovak Centre.

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

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

The Slovak Republic is bound by the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations.

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?

In cross-border maintenance cases, the provision of legal aid depends on the application of Article 44(3) of the Maintenance Regulation. The Central Authority for Slovakia is the Centre for International Legal Protection of Children and Youth. It provides its services free of charge, making it possible for the parties to ordinary proceedings determining or altering maintenance obligations in Slovakia to conduct these proceedings without needing legal aid.

Where the proceedings cannot be conducted without legal aid, it is provided free of charge for persons under the age of 21 in accordance with Article 46 of the Regulation. This legal aid is granted by the Legal Aid Centre in accordance with Act No 327/2005 governing the provision of legal aid to persons in financial need (the Legal Aid Act), as amended.

Where Article 46 of the Regulation does not apply, legal aid is granted free of charge under the Legal Aid Act to applicants who meet the criteria laid down therein.

Applicants who do not meet the criteria have to pay the court fees in accordance with Act No 71/1992 governing court fees and fees for extracts from the criminal register. Proceedings in cases involving the reciprocal

maintenance obligation between parents and children are exempt from the court fees laid down in this Act. Applicants in proceedings where maintenance is to be determined or increased are also personally exempted from paying the court fees. In addition, the parties to the proceedings pay the trial costs incurred by themselves and those of their representatives. Shared costs are paid by the parties in proportion to their involvement in the case and the proceedings. In the case of maintenance for an adult, the court awards the successful applicant the costs necessary for the proper enforcement or protection of the right against the losing party.

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 Central Authority within the meaning of Article 49(1) of the Maintenance Regulation is the Centre for International Legal Protection of Children and Youth, which was set up on 1 February 1993. As the Centre had already been operating as the transmitting authority and receiving authority for recovering maintenance under international agreements (in particular, the Convention on the Recovery Abroad of Maintenance of 20 June 1956) prior to the Maintenance Regulation, there was no need for special measures to be taken for the central authority tasks laid down in Article 51 of that Regulation. When the Maintenance Regulation took effect, the Centre only needed to make some minor organisational changes concerning personnel.

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