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Family maintenance

 Slovenia

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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 an institution of family law based on one of the fundamental principles of family law, the principle of mutual assistance among family members, i.e. the principle of family solidarity. Maintenance allowances are generally paid voluntarily, primarily because of the personal ties between family members, but they may also be enforced through the courts.

In Slovenia, the term maintenance is used to refer to the maintenance of (former) spouses, children and parents. It means maintenance and support, as well as maintenance and support payments, which a court grants as a specific amount. It therefore covers everything that a person is legally obliged to devote to the living needs of their children or spouse. The term may also be used for the upkeep of parents who do not have sufficient funds to support themselves and whose children are therefore obliged to support them. The term can also refer to maintenance payments as monetary amounts allocated for maintenance.

Parents are obliged to support their children. (Article 183 of the Family Code (*Družinski zakonik*))

Adult children are obliged within their capacities to support their parents if the latter do not have sufficient means of support and are unable to acquire such means, but only for as long as the parents supported them. Adult children are not obliged to support a parent who failed to fulfil their maintenance obligations to that child without justification. (Article 185 of the Family Code)

Spouses or extramarital partners are obliged to support their spouse’s or extramarital partner’s children who live with them, unless that or another parent is capable of supporting the child.

This obligation ceases upon the cessation of the marriage or extramarital union with the mother or father of the child, unless the marriage or extramarital union ceases due to the death of the child’s mother or father. In that event the surviving spouse or extramarital partner is obliged to support the child of their deceased spouse or extramarital partner only if they lived with the child at the time the marriage or extramarital union was terminated. (Article 187 of the Family Code)

A spouse who has no means of support and is unemployed through no fault of their own may demand support from their spouse to the extent they are capable of providing. (Article 62 of the Family Code)

An unsupported spouse who has no means of support and is unemployed through no fault of their own may demand maintenance from the other spouse in divorce proceedings, and also in a separate lawsuit, which they must file within one year of the date that the divorce becomes final. (Article 100 of the Family Code)

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

Parents are obliged to support their children until adulthood, such that in accordance with their abilities they provide the living conditions necessary for the child's development.

Parents are also obliged to maintain a child who is enrolled in secondary school education after they reach adulthood, if they are engaged in regular education and are not employed, and if they are not registered as unemployed, i.e. until the first completion of secondary school studies or completion of the highest level of general or vocational education that can be obtained under the regulations on secondary education. The maintenance obligation ends when the child reaches the age of 26.

Parents are obliged to maintain a child who is enrolled in upper secondary vocational education if they are engaged in regular education and are not employed, and if they are not registered as unemployed, i.e. until the first completion of upper secondary vocational education in accordance with the provisions of the law governing upper secondary vocational education.

Parents are obliged to maintain a child who is enrolled in higher education if they are engaged in regular education and are not employed, and if they are not registered as unemployed, i.e. until the first completion of undergraduate studies or a Master's programme or integrated Master's programme in accordance with the provisions of the law governing higher education. If the study programme attended by the child lasts more than four years, the maintenance obligation is extended by the amount of time by which the study programme exceeds those four years.

The maintenance obligation ends when the child reaches the age of 26.

Parents are obliged to support children who have entered a marriage or are co-habiting in an extramarital union only if their spouse or extramarital partner is unable to support them.

Where parents do not maintain a child in their household, they must contribute a monthly maintenance payment to maintain the child. (Article 183 of the Family Code)

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

For a minor child, the Family Code provides that parents who do not live together or who intend to separate, and parents who live together, are to come to an agreement on the maintenance of the children they have together. If the parents fail to reach an agreement on the matter themselves, a social services centre (*center za socialno delo*) is to assist them in reaching an agreement. They may also request mediation. If the parents fail to reach an agreement on the maintenance of the children they have together, the matter is decided by a court. (Article 140 of the Family Code)

Proceedings for deciding on the maintenance of a child are commenced at the proposal of one or both parents, a child's guardian, a child who has reached the age of 15, provided the child is capable of understanding the meaning and legal consequences of their actions, or a social services centre. (Article 102 of the Non-Litigious Civil Procedure Act (*Zakon o nepravnem postopku*)) When the parents agree on the maintenance of a child, they may also propose that a court settlement be signed. If the court establishes that the agreement is not in the child's interests, it rejects the proposal.

The Family Code provides that the recipient and the liable party may sign an agreement on the maintenance that the parents are obliged to pay an adult child in the form of an enforceable notarial record. (Article 192 of the Family Code) In the case of a judicial decision, the Non-Litigious Civil Procedure Act provides that the procedure for safeguarding the child's interests as laid down in the Non-Litigious Civil Procedure Act is to be applied to the procedure on the maintenance of an adult child for as long as a maintenance obligation exists under the Family Code.

A spouse who has no means of support and is unemployed through no fault of their own has the right to request

maintenance from the other spouse in divorce proceedings, as well as by means of a special action that must be filed within one year of final termination of the marriage. (Article 100 of the Family Code)

Before filing an action or a proposal for divorce on the basis of an agreement, the spouses attend prior counselling at a social services centre, unless they have no children together over whom they exercise parental responsibility; one of the spouses is mentally incompetent; one of the spouses is of unknown residence or whereabouts; one or both of the spouses live abroad. If the spouses establish during the prior counselling that the marriage is no longer endurable for at least one of them, the official at the social services centre explains the mediation procedure and its purpose to them. With the consent of the spouses, the social services centre may arrange for prior counselling to be followed by a mediation procedure. The spouses may also take part in a mediation process provided by other providers. (Articles 200 and 202 of the Family Code)

The spouses may reach an agreement on maintenance in the event of divorce in the form of an enforceable notarial record drawn up upon marriage, during the marriage or upon divorce. A maintenance agreement of this type, particularly an agreement on termination of the right to maintenance, must not jeopardise the interests of the child. (Article 101 of the Family Code)

If maintenance is requested at the same time as divorce or the annulment of a marriage, the action is regarded as a proposal in non-litigious civil proceedings. In these cases, the Non-Litigious Civil Procedure Act is applied to the determination of maintenance, as stated in Article 217 of that act, or else maintenance is requested in a lawsuit filed in a civil procedure upon fulfilment of the conditions referred to above (Article 100 of the Family Code).

Regarding the content of a proposal in a matrimonial dispute (which includes a decision on maintenance, if requested at the same time as divorce or the annulment of a marriage), the Non-Litigious Civil Procedure Act provides that a proposal in a matrimonial dispute must also contain a specific request on which the court is to decide. A record from the social services centre on attendance at prior counselling must be enclosed with the proposal to terminate a marriage, if the Family Code provides that an applicant has to attend prior counselling before proceedings commence. (Article 82 of the Non-Litigious Civil Procedure Act)

In the case of a lawsuit filed in a civil procedure, that lawsuit must include a specific request setting out the main subject of the case and the ancillary claims, the facts supporting the plaintiff's request, evidence substantiating those facts, and other data that every application is obliged to contain (Article 180 of the Civil Procedure Act (*Zakon o pravdnem postopku*)). Applications must be comprehensible and must include everything required for the judicial hearing. In particular they must include: a reference to the court, the names and permanent or temporary residence or place of establishment of the parties, the names of the legal representatives or agents, if any, the subject of the dispute and the content of the statement. The applicant must sign the application, unless this is impossible due to the form of the application. The applicant's original signature is deemed to be their handwritten signature or their electronic signature (which is equivalent to a handwritten signature). If an applicant does not know how to write or is unable to provide a signature, they furnish the application with a fingerprint instead of a signature. If the court doubts the authenticity of an application, it may issue a decision ordering that an application be furnished with a certified signature. No appeal may be made against this decision. If the statement includes any request, the party must state in the application the facts to which they refer, and evidence where required. (Article 105 of the Civil Procedure Act)

A district court (*okrožno sodišče*) decides in the first instance in non-litigious civil proceedings on maintenance between parents and children and on maintenance requested upon divorce or the annulment of a marriage, and in a civil procedure on maintenance between spouses upon divorce or the annulment of a marriage. (Article 10 of the Non-Litigious Civil Procedure Act, Article 32 of the Civil Procedure Act)

In non-litigious civil proceedings and a civil procedure, court fees are paid in accordance with the Court Fees Act (*Zakon o sodnih taksah*).

Court fees must be paid upon filing a lawsuit. Court fees must be paid no later than by a deadline determined by the court in the order for payment of the court fees. (Article 105a of the Civil Procedure Act)

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

Requests for maintenance are submitted by the child's legal representative. Minor children are represented by their parents. If the child has been placed in foster care, the request is submitted by the child's guardian.

Proceedings for deciding on the maintenance of a child are commenced at the proposal of one or both parents, a child's guardian, a child who has reached the age of 15, provided the child is capable of understanding the meaning and legal consequences of their actions, or a social services centre. The court may also commence proceedings to decide on child maintenance *ex officio*. (Article 102 of the Non-Litigious Civil Procedure Act)

The court is to enable children who have reached the age of 15 and are able to understand the meaning and legal consequences of their actions to carry out their procedural actions independently as participants in proceedings. The child's legal representative may carry out actions in proceedings only until the child states that they will carry out those actions themselves. Children under the age of 15 or whom the court rules are not able to understand the meaning and legal consequences of their actions are represented by a legal representative. If the interests of the child and their legal representative conflict, the court assigns the child a special ('collision') guardian (*kolizijski skrbnik*). (Article 45 of the Non-Litigious Civil Procedure Act)

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

A district court decides in the first instance in non-litigious civil proceedings on maintenance between parents and children and on maintenance requested upon divorce or the annulment of a marriage, and in a civil procedure on maintenance between spouses upon divorce or the annulment of a marriage. (Article 10 of the Non-Litigious Civil Procedure Act, Article 32 of the Civil Procedure Act)

General territorial jurisdiction in non-litigious civil proceedings: Territorial jurisdiction is held by the court covering the area in which the person against whom the proposal has been filed has permanent residence or their place of establishment. When a court commences a procedure *ex officio*, territorial jurisdiction is held by the court covering the area in which the person in relation to whom the procedure is being conducted has permanent residence. If the participant does not have permanent residence in Slovenia, territorial jurisdiction is determined in line with their place of temporary residence. If in addition to permanent residence the participant also has temporary residence elsewhere and it can be assumed, owing to the circumstances, that they will live there for an extended period of time, the court covering the area in which they have temporary residence also has territorial jurisdiction. (Article 11 of the Non-Litigious Civil Procedure Act)

Special territorial jurisdiction in non-litigious civil proceedings: In proceedings to regulate relations between parents and children (including decisions on maintenance), the court covering the area in which the child has permanent residence also has territorial jurisdiction. If in addition to permanent residence the child also has temporary residence elsewhere and it can be assumed, owing to the circumstances, that they will live there for an extended period of time, the court covering the area in which they have temporary residence also has jurisdiction. If in proceedings regarding legal maintenance with an international element a court in Slovenia has jurisdiction because the applicant is a child with permanent residence in Slovenia, the court covering the area in which the applicant has permanent residence has territorial jurisdiction. (Article 13 of the Non-Litigious Civil Procedure Act)

General territorial jurisdiction in a civil procedure: The court covering the area in which the defendant has their permanent residence has general territorial jurisdiction. If a court in Slovenia has jurisdiction because the defendant has temporary residence in Slovenia, the court covering the area in which the defendant has temporary residence has general territorial jurisdiction. If in addition to their permanent residence the defendant also has temporary residence elsewhere and it can be assumed, owing to the circumstances, that they will live there for an extended period of time, the court covering the area in which the defendant has temporary residence also has general territorial jurisdiction. (Article 47 of the Civil Procedure Act)

Special territorial jurisdiction in a civil procedure: The court covering the area in which the defendant has their permanent residence has general territorial jurisdiction. If in a dispute over legal maintenance a court in Slovenia

has jurisdiction because the defendant has property in Slovenia from which maintenance could be paid, the court covering the area in which that property lies has territorial jurisdiction. (Article 50 of the Civil Procedure Act)

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?

Parties may carry out legal actions in person or via a proxy. In proceedings before a district court, the proxy may only be a lawyer or other person who has passed the state bar examination. (Articles 86 and 87 of the Civil Procedure Act)

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?

Yes, court fees must be paid upon the filing of a proposal or lawsuit. (Article 39 of the Non-Litigious Civil Procedure Act, Article 105a of the Civil Procedure Act)

In disputes over the right to legal maintenance or claims for individual amounts of legal maintenance, the court fees payable are assessed on the basis of the value of the matter at issue, calculated such that three months' contributions are added together, unless maintenance for a shorter period of time is requested. (Article 23 of the Court Fees Act)

However, if maintenance is sought as part of child custody proceedings, the court fee to be paid is a fixed sum of EUR 45 (heading 1212 of the schedule of fees under the Court Fees Act).

Yes, legal aid is available in order to cover the costs of the proceedings. The president of the district court decides on the allocation of legal aid. (Article 2 of the Legal Aid Act (*Zakon o brezplačni pravni pomoči*))

Waiving, deferment or payment by instalments of court fees must be requested separately, such request being submitted to the court handling the main proceedings (Article 12 of the Court Fees Act).

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 determined with due regard for the needs of the claimant and the material and earning capacities of the liable party. When calculating the maintenance due to a child, the court must act in the child's interests, setting a level that is adequate to ensure the child's successful physical and mental development. The maintenance must cover the child's living expenses, in particular the costs of accommodation, food, clothing, footwear, care and protection, education, schooling, recreation, amusement and other specific needs. (Articles 189 and 190 of the Family Code)

Maintenance is set as a monthly sum paid in advance, and may be claimed from the moment a maintenance suit or proposal is filed. (Article 196 of the Family Code)

The courts may, at the request or proposal of the recipient or liable party, increase, decrease or remove a maintenance requirement determined on the basis of an enforcement instrument if there is a change in the recipient's needs or the capacities of the liable party on the basis of which the maintenance was determined. If the parents agree on an increase or reduction in the child's maintenance determined by means of an enforcement instrument, they may request that a court settlement be signed. If the court establishes that the agreement is not in the child's interests, it rejects the proposal. Any increase, reduction or removal of the maintenance to be paid by parents to an adult child or by an adult child to parents may be agreed between the

recipient and the liable party in the form of an enforceable notarial record. (Article 197 of the Family Code)

The maintenance set by the enforcement instrument is adjusted once a year in line with the consumer price index in Slovenia. The adjustment is carried out in January using the cumulative rise in consumer prices from the month in which the maintenance was most recently determined or adjusted. The adjustment factor for maintenance is to be published in the Official Gazette of the Republic of Slovenia (*Uradni list Republike Slovenije*) by the minister responsible for families. The social services centre informs the recipient and liable party of each adjustment and the new amount of maintenance in writing. This notice from the social services centre, together with the court settlement, the final court decision or the enforceable notarial record, constitutes an enforcement instrument.

If the recipient is not in regular education after the age of 18 in the year in which the maintenance is adjusted, the social services centre is not required to notify the recipient and liable party of the adjustment in writing. After they reach the age of 18, the recipient must submit a certificate of enrolment to the social services centre within 30 days of acquiring pupil or student status, or inform the centre where they are involved in regular education. If the beneficiary fails to act in accordance with the preceding sentence, the social services centre does not adjust maintenance in that year. After a child reaches adulthood, the liable party may check with the social services centre to ascertain whether the child has pupil or student status. If the beneficiary does not have pupil or student status, the liable party is not obliged to pay maintenance, regardless of any notice of maintenance adjustment issued prior to the loss of pupil or student status. (Article 198 of the Family Code)

9 How and to whom will the maintenance be paid?

Child support is usually deposited on the bank account of the child's legal representative. Maintenance for adults is deposited on their bank accounts. How and to whom maintenance is paid is decided by the court.

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

If a person liable to pay maintenance fails to fulfil their obligation to pay maintenance voluntarily in accordance with the enforcement instrument (judgment, court order, enforceable notarial record, together with a notice of adjustment of maintenance), the recipient may submit an enforcement proposal to the court in accordance with the provisions of the Enforcement and Securing of Claims Act (*Zakon o izvršbi in zavarovanju*) in order to achieve the fulfilment of obligations.

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

The information is available via the e-justice portal: [Procedure for enforcing court decisions](#)

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

In procedures for acquiring/arranging maintenance, initial information about maintenance can be obtained from any social services centre.

District courts have subject-matter jurisdiction to determine maintenance. Parties to proceedings may apply for legal aid in the form of representation by counsel and an exemption from the payment of the costs of proceedings.

If the debtor fails to pay maintenance, a minor's legal representative or an adult maintenance recipient themselves may file an enforcement claim with the competent local court (*okrajno sodišče*). Assistance with completing the enforcement claim can be obtained from social services centres, local courts, lawyers and the Public Scholarship, Development, Disability and Maintenance Fund (*Javni študentski, razvojni, invalidski in*

preživninski sklad Republike Slovenije).

The Slovenian Supreme Court (*Vrhovno sodišče*) has published the revised forms for making maintenance claims, along with instructions on how to complete them, in the *Sodnikov informator* journal. These serve to assist users to make enforcement claims, and are available on the website of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (*Ministrstvo za delo, družino, socialne zadeve in enake možnosti*):

<https://www.gov.si teme/zaupanje-otroka-v-varstvo-in-vzgojo-dolocitev-stikov-in-prezivnine/>

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

If the debtor fails to pay maintenance, the child's legal representative or the adult maintenance recipient may claim a maintenance payment from the Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia, but only on the basis of a final and enforceable court decision or settlement setting out the maintenance amount, and on condition that the legal representative has either unsuccessfully attempted to enforce the payment of maintenance themselves or issued a duly completed claim for enforcing maintenance abroad.

The right to compensatory maintenance is held by children who are not yet 18 years of age, and by children between 18 and 26 years of age if they are engaged in regular education and are not employed or registered as unemployed and:

- are citizens of Slovenia with permanent residence in Slovenia;
- are foreign citizens with permanent residence in Slovenia, if so decreed in an international treaty or under conditions of reciprocity.

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. Help in enforcing maintenance decisions is provided by the Public Scholarship, Development, Disability and Maintenance Fund, designated as the 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 Public Scholarship, Development, Disability and Maintenance Fund has also been designated as the central authority under the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, and as the transmitting and receiving agency under the United Nations Convention on the Recovery Abroad of Maintenance.

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

The contact details are:

Javni štipendijski, razvojni, invalidski in preživninski sklad Republike Slovenije (Public Scholarship, Development, Disability and Maintenance Fund)

Dunajska cesta 20

1000 Ljubljana

Tel: + 386 1 4720 990

Fax: + 386 1 4345 899

Email: jpsklad@jps-rs.si

Website: <http://www.srips-rs.si/>

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. Under Article 55 of Regulation (EC) No 4/2009, applications for maintenance enforcement must be made through the central authority of the Member State where the applicant resides, after which that central authority forwards the application to the central authority of Slovenia, i.e. the Public Scholarship, Development, Disability and Maintenance Fund.

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

The Regulation does not provide for direct contacts between an applicant residing abroad and the Public Scholarship, Development, Disability and Maintenance Fund as the central authority.

The central authority of the applicant's Member State of residence handles communication. The central authority of the applicant's Member State of residence provides every assistance in submitting a correctly and duly completed application for the enforcement of maintenance in Slovenia, and forwards the application, with any annexes, to the Public Scholarship, Development, Disability and Maintenance Fund, which reviews the application, requests any additional information or corrections if necessary, and represents the applicant in enforcement proceedings before courts and other bodies in Slovenia.

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?

Legal aid is available in order to cover the costs of the proceedings. The president of the district court decides on the allocation of legal aid. (Article 2 of the Legal Aid Act)

Legal aid can be approved for legal advice, legal counsel and other legal services determined by law, for all forms of judicial protection before all courts of general competence and specialised courts in Slovenia, before the Slovenian Constitutional Court (*Ustavno sodišče*), and before all bodies, institutions and persons in Slovenia competent for extra-judicial settlement of disputes, and as waiving of the payment of the costs of the judicial procedure. (Article 7 of the Legal Aid Act)

Beneficiaries under this Act are: 1. citizens of Slovenia; 2. foreign citizens with permanent or temporary residence permits in Slovenia, and persons without citizenship (stateless persons) lawfully residing in Slovenia; 3. other foreign citizens under conditions of reciprocity or under conditions and in cases defined in international treaties binding on Slovenia; 4. non-governmental organisations and associations that operate on a non-profit basis and in the public interest, and that are entered in the corresponding register in accordance with the applicable legislation, in disputes connected with the performance of activities in the public interest or with the intention for which they were established; 5. other persons for whom the law or an international treaty binding on Slovenia prescribes an entitlement to legal aid. (Article 10 of the Legal Aid Act)

A person entitled to legal aid may request legal aid at any stage of the proceedings. In deciding on requests for legal aid, the applicant's financial status is established, as are other conditions defined in this act. (Article 11 of the Legal Aid Act)

Under Article 46 of the Regulation, such a waiver applies in all cases where the beneficiary's claim arises from Article 56 of the Regulation and relates to maintenance that results from the relationship between parents and children and is due to persons under the age of 21.

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?

No measures have been adopted to implement Article 51 of Council Regulation (EC) No 4/2009.

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