

Home>Family matters & inheritance>Family maintenance

Family maintenance

Greece

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 term ‘maintenance’ refers to the direct human needs for survival, mainly food. In fact, however, the term maintenance covers all living requirements, whether they relate to the upkeep, or to the education, culture or leisure activities of a person.

Maintenance obligations involve the payment of benefits - in principle cash - which meet the living requirements of the beneficiary.

The following persons are required to provide maintenance by order of kinship:

[a] the spouse, even if he/she is divorced [if there is a maintenance obligation after divorce];

[b] descendants over ascendants in the order of intestate succession;

[b] ascendants [parents, grandparents: in the case of absence or incapacity of parents] over their unmarried children (biological or adopted), in principle, while they are minors;

[b] siblings against siblings, and

special cases of maintenance are:

[c] maintenance paid in case of separation and after divorce or marriage annulment and

[d] maintenance paid to an unmarried mother for a child born out of wedlock prior to recognition.

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

The child is entitled in principle to receive maintenance from its ascendants [parents or grandparents] until adulthood, i.e. until he/she attains the age of 18 years.

Children are also entitled to receive maintenance in adulthood, while they are studying or attending a higher education or vocational training course, and they are unable to work due to their studies and have no personal assets from which they can meet their maintenance requirements.

A person is entitled to maintenance only if he/she is unable to support himself/herself by means of his/her own assets or through work appropriate to his/her age, state of health and living conditions generally, having regard, among other things, to any educational needs he/she may have; minors, even if they have assets of their own, are entitled to maintenance from their parents in so far as the income from their own assets or work is not sufficient to maintain them.

However, a person is not obliged to provide maintenance if, in view of his/her other obligations, he/she is not in a position to do so without jeopardising his /her own maintenance; this rule does not apply to the maintenance of a minor by a parent, unless the minor is entitled to be maintained by some other person, or can be supported by his/her own assets.

In the case of former spouses:

A former spouse who cannot maintain himself or herself by his or her own income or assets is entitled to claim maintenance from the other: (1) if, at the time the divorce is pronounced, the age or state of health of the spouse making the claim is such that he or she cannot be required to take up or continue to carry on a suitable occupation in order to support himself or herself, (2) if the spouse making the claim has care of a minor, and is thereby prevented from carrying on a suitable occupation, (3) if the spouse making the claim cannot find appropriate regular employment, or needs vocational training; in either of these cases, the entitlement lasts no more than three years from the time the divorce is pronounced, or (4) in any other case where the award of maintenance at the time the divorce is pronounced is necessary on equitable grounds.

However, maintenance may be denied or restricted for important reasons, especially if the marriage has lasted a short time, or if the spouse who might be entitled to maintenance is to blame for the divorce or has voluntarily brought about his or her own poverty.

Each of the former spouses is required to provide the other with accurate information regarding assets and income in so far as they may be relevant to the amount of maintenance. Upon application by either of the former spouses, transmitted through the competent public prosecutor, any employer, administrative department or tax collector must supply any relevant information they may have on the assets of the other spouse and in particular his or her income.

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

Normally, a person entitled to receive maintenance must apply to the court to seek maintenance from the person liable.

If the New York Convention on the recovery abroad of maintenance (Legislative Decree 4421/1964) is applicable, the delegation responsible for transmitting a maintenance claim from a person entitled who is resident in a State party to the Convention shall request the delegation responsible for receiving such claim in the respective State party to the Convention where the debtor resides, specifically the Ministry of Justice in Greece, to take all the measures required for recovery of maintenance by the person entitled. In practice, the Ministry of Justice entrusts an attorney to provide for the recognition of the right or the enforcement of a judgment rendered by a foreign court in favour of the alien beneficiary, who may exercise all relevant legal remedies before the Greek courts.

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

For minors who cannot under the law [Article 63 CCP] present an application themselves in court for recovery of maintenance against the person liable, such action may be brought by the person that has been given parental responsibility [a natural person: a parent or another person or a legal entity, for instance, an institution].

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

The court with jurisdiction in actions for maintenance brought by a person entitled against a person liable is the Single-Member Court of First Instance [Articles 17(2) and 681B of the Code of Civil Procedure].

The court with territorial jurisdiction is the court of the place of domicile or residence of the party entitled to maintenance [Article 39A CCP] or of the defendant maintenance debtor, if the application is combined with matrimonial disputes or disputes between parents and children, or the court of the last joint habitual residence of the spouses.

If there is urgency or imminent danger, the person entitled to maintenance may ask the Single-Member Court of First Instance that has territorial jurisdiction to grant an injunction awarding him or her maintenance on a temporary basis, until a final judgment is rendered on the entitlement in an ordinary proceeding.

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?

It is necessary to appoint a lawyer with power of attorney to bring an action for maintenance.

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?

In an application for maintenance, the defendant must make a down payment for the plaintiff's court expenses, which may not exceed EUR 300 [Article 173 (4) CCP]. In proceedings of this kind, if the defendant does not produce proof of payment to the court clerk before the hearing of the case, the defendant will be deemed to have failed to appear, which means that a default judgment may be delivered against him or her [Article 175 CCP].

The plaintiff may request legal aid under Law 3226/2004, if his or her income is very low, by submitting evidence to that effect with an application for a separate injunction before the Single-Member Court of First Instance.

8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?

The court sets maintenance for two years, taking account of the requirements of proper living conditions and the education of the person entitled, and the financial capacity of the person liable. After two years, either party, i.e. the person entitled or the person liable, may apply to have a new level of maintenance set and, in the event of a change in the circumstances that the court had taken into consideration, either party may apply to have the judgment reviewed and the level of maintenance altered.

9 How and to whom will the maintenance be paid?

In principle, maintenance is paid in advance to the person entitled on a monthly basis.

The amount of maintenance is not allowed to be paid as a lump sum, except in cases of maintenance after divorce [Article 1443(b) of the Civil Code].

If the person entitled is a minor, or is under court assistance, maintenance is paid to his or her parent or representative or, respectively, to his or her court-appointed provider who obviously will perform the relevant actions on behalf of the person entitled.

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

If the maintenance debtor refuses to pay maintenance, the person entitled will try to enforce the claim against the assets of the person liable, if he/she has any.

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

Entitlement to maintenance comes to an end if the conditions on which it was granted cease to exist, or if the person entitled or the person liable dies; the claim of the person entitled against the person liable is subject to a five-year prescription, starting from the time that the claim was lodged.

Claims from persons [i.e. an institution] who paid maintenance to a person entitled against the person originally liable are subject to a five-year prescription [Article 250(17) of the Civil Code].

An unmarried mother is entitled to claim the childbirth costs and maintenance from the child's father for a limited period [two months before birth and four months, but no more than one year [in exceptional cases], after birth, if paternity is established by court order and the mother is in poverty. An unmarried mother's claim is prescribed three years after birth, and is also brought against the father's heirs.

Seizure of up to 1/2 of the payable salary of a person liable for a maintenance claim is allowed and is also applicable on deposits with credit institutions [Article 982(2)(d) and (3) CCP].

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

No, except in the case of foreign beneficiaries who may have recourse to the Ministry of Justice to help them in exercising their relevant rights [see reply to question 3. above].

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

Not in Greece.

[Except where an institution or a public or private legal entity has care of a minor; in this case, the maintenance obligation rests upon it, in general, and it is therefore subrogated ex officio [Article 1490 of the Civil Code] to the rights of the person entitled to maintenance. However, under no circumstances may a maintenance claim, even if recognised by a court, be required to be paid in advance to a minor entitled to maintenance owed to him or her by another person liable.

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?

Under the provisions of Articles 51 and 56 of the above Regulation, the central authority of the Member State of a person who is applying for maintenance: (a) shall cooperate with the central authority of the Member State of the person liable in forwarding and receiving the relevant applications; (b) shall initiate or facilitate the initiation of proceedings in relation to those applications. For such applications, the central authorities shall take all appropriate measures to: (a) provide or facilitate the provision of legal aid, when circumstances require so; (b) facilitate the identification of the person liable or the person entitled, in particular by application of Articles 61, 62 and 63 of the Regulation; (c) facilitate access to relevant information concerning the income and, if necessary, the financial situation of the person liable or the person entitled, including the identification of their assets, especially pursuant to Articles 61, 62 and 63; (d) encourage amicable settlements with the aim of voluntary payment of maintenance, as appropriate, through mediation, conciliation or similar procedures; (e) facilitate further implementation of decisions on maintenance obligations, including default interest; (f) facilitate the collection and rapid transfer of maintenance payments; (g) facilitate access to documents or other evidence, without prejudice to Regulation (EC) No 1206/2001; (h) provide assistance in establishing parentage, where necessary, for the recovery of maintenance; (i) initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application; (j) facilitate the communication or service of documents subject to Regulation (EC) No 1393/2007.

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

You may contact the Central Service of the Ministry of Justice located at 96 Mesogeion Ave., Athens - Greece, PC 11527, tel. +30.

210.7767322 civilunit@justice.gov.gr

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?

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?

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?

Greece is bound by the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations. According to the Protocol, maintenance obligations are governed by the law of the Member State of the habitual residence of the person entitled to maintenance, so if the person entitled to maintenance resides in Greece, Greek law is applicable.

18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?

Chapter V of Council Regulation EC No 4/2009 provides the right to legal aid, including legal advice with a view to reaching a settlement prior to bringing judicial proceedings, legal assistance in bringing a case before a judicial or other authority and representation in court, exemption from or assistance with the costs of proceedings and the fees to persons mandated to perform acts during the proceedings. In Member States in which an unsuccessful party is liable for the costs of the opposing party, if the recipient of legal aid loses the case, this includes the costs incurred by the opposing party, if such costs would have been covered had the recipient been habitually resident in the Member State of the court seized, interpretation, translation of the documents required by the court or by the competent authority and presented by the recipient of legal aid which are necessary for the resolution of the case, travel costs to be borne by the recipient of legal aid where the physical presence of the persons concerned with the presentation of the recipient's case is required in court by the law or by the court of the Member State concerned and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means.

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 shall have, *inter alia*, regular contact with the competent authorities in order: (a) to facilitate the identification of the maintenance debtor or creditor; (b) to obtain relevant information concerning the income and, if necessary, other financial circumstances of the maintenance debtor or creditor, including the location of assets, and (c) to encourage voluntary payment of maintenance.

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Last update: 16/12/2020

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