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### Family maintenance

#### Hungary

#### 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 maintenance obligation generally makes direct relatives liable towards each other:

- the parent has a maintenance obligation towards the child, and the child has a maintenance obligation towards the parent;
- if a child entitled to maintenance has no parent obliged to pay maintenance, his or her maintenance will be passed on to more distant relatives;
- if a person entitled to maintenance has no children, more distant descendants will be liable for his or her maintenance (Section 4:196(1) to (4) of the Civil Code).

Minors having no direct relative who may be obliged to pay maintenance must be supported by their elder sibling, provided the elder sibling can fulfil the maintenance obligation without putting his or her ability to support him- or herself, his or her spouse or cohabiting partner and his or her dependent direct relatives at risk (Section 4:197 of the Civil Code).

Spouses living together are obliged to support in their household the dependent minors of the other spouse (stepchild) brought into the common household by the other spouse with the consent of the supporting spouse (Section 4:198(1) of the Civil Code).

Stepchildren have a maintenance obligation towards their stepparent dependent on maintenance if the stepparent provided for their maintenance for a prolonged period of time (Section 4:199(1) of the Civil Code).

Foster children have a maintenance obligation towards the person who took care of them in his or her household for a prolonged period of time without requesting financial compensation, and who is not the child's biological, adoptive or stepparent (foster parent) (Section 4:199(2) of the Civil Code).

Maintenance allowance may be demanded by a spouse from the other spouse in the case of legal separation, or from the former spouse in the case of divorce, if the spouse is unable to support him- or herself through no fault of his or her own (Section 4:29(1) of the Civil Code).

In the case of legal separation, the former partner unable to support him- or herself through no fault of his or her own may demand maintenance allowance from the other former partner, provided the relationship lasted at least one year and resulted in a child being born (Section 4:86(1) of the Civil Code).

There are two forms of “maintenance”: in kind or in cash (maintenance allowance).

In the case of a minor, “maintenance obligation” means that the parent of the child is entitled and liable to care for his or her child in a family, to raise the child and provide the conditions required for the child's physical, cognitive, emotional and moral development – especially housing, nutrition and clothing – as well as the child's access to education and healthcare.

The parent looking after and living in the same household as the child meets the child's needs in kind, while the parent living separately (or within the same household but not contributing to the child's maintenance) provides for the child mainly by paying maintenance allowance.

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

All minors (under the age of 18) are entitled to maintenance under the presumption of need established by law. Children below the age of 20 are also entitled to maintenance, provided they are in secondary education.

Children of working age (18 years or over) pursuing further education are entitled to maintenance irrespective of the presumption of need if they require maintenance to be able to pursue their studies within a reasonable period of time. The child must inform the parent of his or her intention to pursue his or her studies without delay (Section 4:220(1) of the Civil Code).

Studies include any course or training required to obtain a qualification in preparation for a career as well as studies in a bachelor's or master's programme of higher education or in higher vocational education, pursued on a continuous basis.

Where exceptionally justified, parents may be obliged to provide for the maintenance of a child aged 25 or over (Section 4:220(5) of the Civil Code).

However, parents do not have a maintenance obligation towards a child of adult age pursuing his or her studies if the child is regarded as undeserving of maintenance, fails to fulfil his or her educational and exam obligations through a fault of his or her own, or if providing maintenance would put the parent's ability to provide for his or her own maintenance, or that of the parent's under-age child, at risk. An adult child is also regarded as undeserving of maintenance if, for no legitimate reason, he or she does not maintain relations with the parent obliged to support him or her (Section 4:220(3) and (4) of the Civil Code).

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

In relation to the amount and form of maintenance, the agreement between the person entitled to maintenance and the person obliged to pay maintenance (in the case of the child maintenance allowance, the parents) is applicable. In the absence of an agreement, the person entitled to maintenance may request a court decision on maintenance. In the absence of an agreement between the parents, the court will decide on the child's maintenance allowance.

For maintenance due to a minor, the guardianship authority, and for maintenance due to a parent – subject to his or her consent – the competent district authority, may bring a legal action. Relatives having a maintenance obligation who provide for the maintenance or take care of the person entitled to receive maintenance may bring a legal action in their own right against the other parties having a maintenance obligation.

The parent or other legal representative of the child entitled to receive maintenance allowance may request the advance payment of the maintenance allowance from the guardianship authority, provided the maintenance allowance could not be recovered for at least the previous six months.

The request must state that there are no grounds for refusal of the advance payment, as well as the reasons and facts justifying the request.

The following documents must be attached to the request: the appropriate income statements; the final court decision establishing the maintenance allowance for the child or the document proving enrolment in full-time secondary education, as applicable; and a report dated not more than six months earlier on the seizure of property, stating the suspension of enforcement proceedings, or the document proving that proceedings have been initiated to recover the maintenance allowance due.

The guardianship authority must ascertain that the maintenance allowance was temporarily – for at least six months prior to submission of the request – irrecoverable.

Advance payment of the maintenance allowance may be granted if the person entitled to receive maintenance has requested enforcement of the maintenance allowance established in the decision of the court, and enforcement from the wages, other regular income or other assets of the debtor has

failed, or enforcement has been suspended, or if the partial amount paid or the sum recovered does not exceed 50 % of the amount of the maintenance allowance established by the court.

Should the need arise, the guardianship authority will request information on the outcome of the enforcement proceedings initiated by the applicant from the court or the independent court bailiff. If necessary in order to clarify the facts, the guardianship authority will request details on attachment from the employer. In the notification on initiation of the proceedings, the guardianship authority will call on the debtor to pay the maintenance allowance without delay and to make a statement to that effect.

The guardianship authority will notify its decision to the employer of the debtor, to the enforcement court, the independent court bailiff, the prosecutor's office with jurisdiction over the address of the creditor and the debtor, the notary with jurisdiction over the address of the debtor, as tax authority, and the Budapest or county government office providing advance payment of the maintenance allowance.

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

Yes, the parent or other legal representative of the child entitled to maintenance allowance may request advance payment of the maintenance allowance from the guardianship authority.

Relatives having a maintenance obligation who provide for the maintenance or take care of the person entitled to receive maintenance may bring a legal action in their own right against the other parties having a maintenance obligation.

For maintenance due to a minor, the guardianship authority, and for maintenance due to a parent – subject to his or her consent – the competent district authority may bring a legal action.

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

Based on the general rules of jurisdiction, the court in the territory of which the defendant (debtor) lives has jurisdiction.

In the absence of an address in Hungary, jurisdiction will be governed by defendant's place of residence. If the defendant's place of residence is unknown or is abroad, his or her last domicile in Hungary will be taken into account. If such domicile cannot be established or if the defendant did not have one, jurisdiction will be established on the basis of the claimant's domicile or, failing that, his or her place of residence.

If the defendant's place of employment and domicile are not located in the same area, the court will, acting on a request by the defendant lodged no later than the first hearing in the case, refer the matter to the court with jurisdiction over the defendant's place of employment, in order to conduct the hearing and deliver a judgment (Section 29 of the Code of Civil Procedure).

A legal action to obtain maintenance may also be brought before the court with jurisdiction over the claimant's domicile (Section 34(1) of the Code of Civil Procedure).

The competent courts can be consulted [here](#).

#### **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 applicant does not have to go through an intermediary to bring the case to court. The applicant may bring a case directly to court (without the obligation to use a representative) (see Questions 3, 4 and 5).

#### **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?**

Irrespective of their income and financial situation, the parties – unless they are exempt from payment of the material costs of the proceedings by law, under a directly and generally applicable act of the European Union or an international agreement – will be entitled to deferral of the material costs of proceedings brought for statutory maintenance, including those involving the recovery of maintenance allowance from the body paying the remuneration of the debtor or from another person, cancelling or changing the amount of the maintenance allowance, terminating or limiting enforcement of the maintenance allowance and, in the case of a cross-border maintenance case, obtaining the personal data of the debtor.

In the case of a deferral of material costs:

- (a) the State pays for the costs incurred in the proceedings (fees of witnesses and experts, the interpreter, the administrator and the advocate, the costs of the trial and inspection conducted at the scene, etc.), with the exception of costs not covered by the deferral and therefore payable in advance by the party;
- (b) the party is granted a deferral of payment of the court fees.

Even in the absence of an international agreement or reciprocity, foreigners are also entitled to a deferral of material costs.

If, in the case of a deferral of material costs, the court orders the party to bear the costs of the proceedings, the party must bear all costs paid in advance by the State and all recorded fees to the State.

The fee for proceedings is 6 %, or a minimum of HUF 15 000 and a maximum of HUF 1 500 000. In the case of proceedings for maintenance claims, the base of the fee is the maintenance allowance still due, but no more than one year's maintenance allowance.

If the party does not have sufficient financial means to pay the costs of the proceedings, the party may lodge an application for exemption with the court.

To facilitate the enforcement of their rights, natural persons (including interveners) who are not in a position to bear the cost of the proceedings based on their income and financial situation will be fully or partially exempted, upon request, from payment of these costs.

If a party's income (wage, pension or other regular financial allowance) does not exceed the current minimum amount of retirement pension determined on the basis of the number of years spent in active employment, and the party has no assets – except for the usual household necessities, fixtures and furniture – the party must be granted an exemption from the payment of costs. Exemption from the payment of costs must be granted – without examination of their income and financial situation – to parties entitled to benefits granted to people of working age or living with a close relative in the same household who is entitled to benefits granted to people of working age.

Exemption from the payment of costs includes the following benefits:

- (a) an exemption from the payment of court fees;
- (b) an exemption from the payment of costs incurred in the procedure (fees of witnesses and experts, the interpreter, the administrator and the advocate, the costs of the trial and investigation conducted at the scene, etc.) in advance and – unless otherwise provided by the applicable law – their payment in general;
- (c) an exemption from the obligation to lodge a deposit for the costs of the proceedings;
- (d) a request for approval of representation by an advocate, if permitted by law.

Exemption from the payment of costs will be approved by the court, upon request, and the court will also decide on the withdrawal of such exemption.

#### **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 the absence of an agreement between the parents, it is the court that decides on maintenance allowance.

When determining the amount of the maintenance allowance, the following must be taken into consideration:

- (a) the justified needs of the child (regular expenditure required to meet the costs of the child's subsistence, medical care, upbringing and education);
- (b) both parents' income and financial situation;

- (c) the other children living in the same household with the parents (be it their own children, stepchildren or foster children), and the children towards whom the parents have a maintenance obligation;
- (d) the child's own income, and
- (e) the child-protection, family-support, social-insurance and welfare benefits provided for the child and the parent for raising the child (Section 4:218(2) of the Civil Code).

The maintenance allowance must be paid as a fixed amount. The court may decide that the amount of the allowance payable must be adjusted automatically each year, in accordance with the increase in the consumer price index published annually by the Hungarian Central Statistics Office, from 1 January of the following year (Section 4:207 of the Civil Code). The amount of the maintenance allowance payable per child is fixed in general at 15-25 % of the average income of the person obliged to pay maintenance. In general, when determining the average income of the person obliged to pay maintenance, the person's total annual income in the year preceding the institution of proceedings for maintenance must be taken into consideration (Section 4:218(4) of the Civil Code). If a change in the parties' agreement or in the circumstances that formed the basis of the court judgment on the amount of the maintenance allowance would put at risk a vital legal interest of either of the parties if that party were to continue paying maintenance under the same conditions, such party may request a change in the amount or the terms of payment. A change in the agreed maintenance allowance may not be requested by a party who should have anticipated a change in his or her circumstances when entering into the agreement on maintenance or who is personally responsible for such change.

#### **9 How and to whom will the maintenance be paid?**

The person obliged to pay maintenance must pay the maintenance allowance to the person entitled to receive maintenance, periodically (e.g. monthly), in advance.

#### **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 debtor fails to pay the maintenance allowance voluntarily, the creditor may bring his or her claim before the court, and the court may order its enforcement. A maintenance claim dating back more than six months can be enforced with retroactive effect if the creditor had good reason for being late with his or her application for enforcement. Maintenance claims dating back more than three years cannot be enforced in court (Section 4:208(3) of the Civil Code).

For maintenance due to a minor, the guardianship authority, and for maintenance due to a parent – subject to his or her consent – the competent district authority may bring a legal action (Section 4:208(1) of the Civil Code).

Relatives having a maintenance obligation who provide for the maintenance or take care of the person entitled to receive maintenance may bring a legal action in their own right against the other parties having a maintenance obligation (Section 4:208(2) of the Civil Code).

In its decision obliging the person in receipt of a wage to pay maintenance allowance, the court will, at the creditor's request, call on the employer directly to deduct the amount stated in the decision and to pay it to the creditor.

If there was no direct call issued by the court, but later, a party files an application for enforcement based on the judgment of the court or the agreement of the parties approved by a decision of the court, the court will order enforcement of the maintenance allowance by issuing an attachment order, provided the wages deducted cover the amount concerned.

The deducted amount cannot exceed 50 % of the employee's wages. From the unemployment allowance (unemployment benefit, pre-pension unemployment benefit, income supplement and jobseeker's allowance) a maximum of 33 % may be deducted as maintenance allowance.

If the debtor has no regular income or the amount to be deducted from his or her income does not cover the amount due, the court will order enforcement by issuing the document providing for enforcement. In this case, the enforcement covers not only wages, but also other assets as laid down in the Act on Enforcement.

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

Please visit the page containing information on [Procedures for enforcing a judgment](#).

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

See the answer to Question 10 above.

The parent or other legal representative of the child entitled to the maintenance allowance may request advance payment of the maintenance allowance from the guardianship authority, provided the maintenance allowance could not be recovered for at least the previous six months.

In the notification on initiation of the proceedings, the guardianship authority will call on the debtor to pay the maintenance allowance without delay and to make a statement to that effect.

The guardianship authority will notify its decision to the employer of the debtor, to the enforcement court, the independent court bailiff, the prosecutor's office with jurisdiction over the address of the creditor and the debtor, the notary with jurisdiction over the address of the debtor, as tax authority, and the Budapest and county government office providing advance payment of the maintenance allowance.

Failure to pay the maintenance allowance is a criminal offence. Anyone who fails to fulfil his or her statutory maintenance obligation established in the enforceable decision of an authority through a fault of his or her own will be sentenced to two years in prison.

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

Yes (see Question 3).

#### **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?**

The Hungarian Ministry of Justice provides help at the request of applicants living in Hungary pursuant to Council Regulation (EC) No 4/2009 and international agreements, continuously liaising with the central authority responsible for maintenance matters in the other Member State concerned. The applicant may request that the decision on maintenance allowance payment handed down by the Hungarian court be enforced abroad and – in the absence of such a decision – that the obligation to pay maintenance allowance be established abroad, or that the amount of the maintenance allowance to be paid abroad be increased. The formal request is received not by the Ministry of Justice, but by the district court determined according to the applicant's domicile, place of residence or place of employment, or by the district court that handed down the first-instance decision for which enforcement is requested. No lawyer is required in order to lodge a request or for the proceedings abroad. Rather, the court will assist a party with no legal representative with lodging his or her request. The court will forward the request and the required attachments to the Ministry of Justice. The Ministry of Justice will send the translated request to the central authority responsible for maintenance matters in the other Member State. The central authority will take the measures required to initiate proceedings against the debtor. The Ministry of Justice will inform the applicant continuously of the development of proceedings, based on the information received from abroad.

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

Ministry of Justice, Department of International Private Law (*Igazságügyi Minisztérium, Nemzetközi Magánjogi Főosztály*)  
Address: 1051 Budapest, Nádor utca 22.

Postal address: 1357 Budapest, Pf. 2.

Phone number: +36 1 795-5397, +36 1 795-3188

Fax number: +36 (1) 550-3946

E-mail: [nmfo@im.gov.hu](mailto:nmfo@im.gov.hu)

Web: <http://igazsagugyiinformaciok.kormany.hu/nemzetkozi-gyermekekviteli-es-tartasdiijal-kapcsolatos-ugyek>

**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, the request must be lodged via the central authority responsible for maintenance matters in the Member State of residence of the applicant.

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

The central authorities of the Member States can be found [here](#).

**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?**

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**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 relation to the requests received, the Ministry of Justice will contact the competent service providing legal aid in order to assign an advocate to the applicant living abroad. In the case referred to in Article 46 of Council Regulation (EC) No 4/2009, full exemption from costs is guaranteed, and the fees of the advocate will also be paid by the State. In the cases referred to in Article 47, the parties are entitled to deferral of the material costs under Hungarian law. Under this right, the State pays the costs incurred in the proceedings (e.g. court fees, the advocate's fee) in advance, irrespective of the financial standing of the party concerned, but if the party loses the case, the court may order it to pay those costs. If the applicant proves that due to his or her financial situation, he or she is entitled to full personal exemption from costs under Hungarian law, the applicant will not have to pay the costs even if he or she loses the case.

**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 application of the Maintenance Regulation in Hungary is governed by [Act LXVII of 2011](#).

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