

## Maintenance claims - Poland



Please note that the original language version of this page [\[pl\]](#) has been amended recently. The language version you are now viewing is currently being prepared by our translators.

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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?**

In accordance with Article 128 of the Family and Guardianship Code, a ‘maintenance obligation’ is an obligation imposed on lineal blood relatives and siblings to provide means of subsistence (including clothes, food, accommodation, fuel and medicines) and, where necessary, means of upbringing (including care for physical and mental development and provision of access to education and culture).

‘Maintenance’ is an allowance in cash or in kind. In the case of children, it also covers personal input into their upbringing and work in a common household in compliance with a maintenance obligation.

‘Maintenance claim’ is the right of one person to claim the fulfilment of a maintenance obligation towards him or her by another person.

As a rule, a maintenance obligation arises from various kinds of family relationships. Depending on the kind of family relationship, Polish law distinguishes the following types of maintenance obligations:

1. a maintenance obligation between relatives (child maintenance is a specific form of this obligation): In the case of relatives, only persons in financial difficulties are entitled to maintenance. Parents are obliged to pay maintenance to children who are not yet able to provide for themselves, unless income from the child’s property is sufficient to cover the costs of his or her maintenance and upbringing. Children over the age of 18 are no longer entitled to maintenance unless they wish to continue their education and their results to date justify this choice or the maintenance obligation should be maintained due to the children’s health or personal situation. Furthermore, parents are not obliged to pay maintenance to children who are over the age of 18 and, while being prepared for employment, take up studies and then neglect them, do not make satisfactory progress, do not obtain pass marks and do not pass exams within prescribed deadlines and, for these reasons, fail to complete their studies within the duration specified for their programme of study.

If it is impossible to obtain maintenance or if obtaining it entails excessive difficulties, other relatives may be ordered to pay maintenance (e.g. the child’s grandparents who are the parents of a debtor who is in hiding);

2. an obligation arising from adoption: If adoption solely creates a relationship between the person adopting and the adopted person, the maintenance obligation of the person adopting towards the adopted person takes precedence over the maintenance obligation of the relatives in the ascending line and siblings of the adopted person towards that person, while the maintenance obligation of the adopted person towards his or her relatives in the ascending line and siblings comes last. Otherwise, the rules laid down in point 1 apply to the adopted person;

3. an obligation between persons related by affinity (stepmother, stepfather, stepchildren): Only persons in financial difficulties are entitled to maintenance provided that, in the situation concerned, the imposition of a maintenance obligation is in line with the principles of social interaction. Under Polish legislation and jurisprudence, ‘financial difficulties’ mean inability to satisfy one’s reasonable needs from one’s own resources and by one’s own efforts;

4. an obligation between the spouses during the marriage: – family members may claim the right to an ‘equal standard of living’ for all family members. In accordance with Article 27 of the Family and Guardianship Code, both spouses are required, according to their abilities and their earning and financial capacities, to help satisfy the needs of the family they have established through their relationship. This obligation may also be deemed to be met in full or in part in the form of personal efforts to bring up children and look after the common household;

5. an obligation between the spouses after the marriage has ended: If one of the spouses has been found to be solely responsible for the break-down of the marriage and the divorce entails a substantial deterioration in the financial situation of the other spouse, the latter may demand that his or her reasonable needs be satisfied, even if that person is not in financial difficulties. In other cases, a spouse in financial difficulties may claim maintenance from his or her former spouse in proportion to his or her reasonable needs and the earning and financial capacities of the former spouse. The maintenance obligation towards a spouse expires when that spouse remarries. However, where a divorced spouse who has not been found to be responsible for the break-down of the

marriage is obliged to pay maintenance, the maintenance obligation also expires five years after the divorce decree, unless the court extends the specified five-year period, at the request of the person entitled to maintenance, due to exceptional circumstances;

6. an obligation of the father of a child born out of wedlock towards the child's mother: A father who is not the mother's husband must contribute according to his circumstances to the costs associated with the pregnancy and childbirth and the costs of three months' maintenance of the mother during childbirth. Where there are important reasons, the mother may request that the father contribute to her maintenance costs for a period longer than three months.

## **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 pay maintenance to children who are not yet able to provide for themselves. As children are obliged to continue education until the age of 18, they are usually entitled to maintenance until they reach the age of maturity or even until they complete master's degree studies or higher vocational studies.

Allowances from the State maintenance fund are paid to persons entitled to receive them until they reach the age of 18. Such persons are entitled to the allowances until they reach the age of 25 if they continue their education at schools or higher education institutions, and for an indefinite period of time if they have been certified as severely disabled.

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

Yes, the following situations are possible:

1. the person required to pay maintenance fulfils the maintenance obligation voluntarily,
2. a settlement on a maintenance obligation is reached by the parties,
3. if the person required to pay maintenance fails to fulfil his or her obligation, maintenance is sought before the district court (sąd rejonowy) having jurisdiction over the place of residence of the person entitled to maintenance (Article 32 of the Code of Civil Procedure) or the defendant (Article 27(1) of the Code of Civil Procedure), or such a request is made during divorce or separation proceedings before a regional court (sąd okręgowy).

A petition is exempt from the court fee. However, it should meet the requirements for a pleading, i.e. it should include the name of the court with which it is filed; the names and surnames of the parties, their statutory representatives and attorneys; the type of pleading; a clear description of the request; the value of the claim; a description of the facts justifying the request and, where necessary, justifying also the jurisdiction of the court; the signature of the party or its statutory representative or attorney (the power of attorney must be enclosed); a list of annexes; the places of residence or the registered offices of the parties, their statutory representatives and attorneys; and a description of the claim. Subsequent pleadings must contain the file number.

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

The following persons may file a petition for maintenance on behalf of the person entitled to receive it:

- an attorney (apart from a lawyer and a legal advisor, the following persons may serve as an attorney: the parents, spouse, siblings, relatives in the ascending line or persons linked to the person entitled to maintenance by adoption, as well as a person who manages the property of the person entitled to maintenance);
- a representative of a local government authority responsible for social assistance (under the Act of 12 March 2004 on social assistance (Journal of Laws (Dziennik Ustaw) 2004, No 64, item 593), such representatives are managers of municipal social assistance centres or district family support centres);
- Article 61(1)(1) of the Code of Civil Procedure states that non-governmental organisations may, within the framework of their statutory duties, initiate maintenance proceedings subject to the written consent of a natural person;
- a public prosecutor where this is required in order to uphold the rule of law and public interest.

Statutory representatives act on behalf of minors entitled to maintenance. However, after reaching the age of maturity, children must act on their own.

Unless a cohabitee or an acquaintance of the person entitled to maintenance is one of the persons listed above, he or she cannot act on behalf of the person entitled to maintenance.

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

In accordance with the Code of Civil Procedure, district courts have subject matter jurisdiction in cases regarding maintenance. Local jurisdiction is determined according to the place of residence of the person entitled to maintenance or the place of residence of the defendant. Courts having jurisdiction over specific municipalities are specified in the Regulation of the Minister for Justice of 28 December 2018 on the determination of seats and jurisdiction of courts of appeal, regional courts and district courts and the scope of their competence (Journal of Laws 2018, item 2548).

Regional courts have jurisdiction in cases concerning the recognition of decisions of courts of EU Member States in Poland (Article 1151<sup>1</sup>(1) of the Code of Civil Procedure) if a decision had been issued before the State in which it was given became bound by the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations (OJ L 331, 16.12.2009, p. 17).

In accordance with Article 1153<sup>14</sup> of the amended Code of Civil Procedure, the following enforceable titles exist in the Republic of Poland:

- 1) judgments handed down by the courts of EU Member States and settlements and official documents issued by those states caught by Regulation No 1215/2012 if they are enforceable;
- 2) judgments handed down by the courts of EU Member States, settlements and official documents issued by those states certified as a European Enforcement Order;
- 3) European Payment Orders handed down by the courts of EU Member States whose enforceability was declared in those states under Regulation No 1896/2006;
- 4) judgments handed down by the courts of EU Member States in the European Small Claims Procedure and certified in those states under Regulation 861/2007;
- 5) decisions on maintenance matters handed down in EU Member States party to the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations (OJ L 331, 16.12.2009, p. 17), as well as settlements and official documents on maintenance matters from those states caught by Regulation No 4/2009;
- 6) judgments handed down in EU Member States comprising the protection measures caught by Regulation No 606/2013 if they are enforceable.

**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?**

Representation by a lawyer is not required in cases regarding maintenance. Parties may act on their own behalf or through professional representatives.

Cf. points 7 and 20 for detailed information on the possibility of having a lawyer appointed ex officio to act on behalf of the party entitled to 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?**

Under Polish law, the party seeking maintenance and the defendant in a case concerning a reduction in maintenance are exempt from court costs (Article 96(1)(2) of the Act of 28 July 2005 on court costs in civil cases (Journal of Laws 2005, No 167, item 1398, as amended)). Such persons are exempt in full, which means that they do not incur any court costs, appeal costs or enforcement costs.

In addition, the party benefitting from the exemption from court costs may apply for legal aid in the form of a lawyer appointed ex officio. If the application for a lawyer is accepted, the lawyer's fees are covered by the opponent of the party for whom the lawyer is appointed. Where that person loses the case, the lawyer's fees are borne by the State Treasury.

The rights of Member State nationals in this regard are governed by the Act of 17 December 2004 on the right to assistance in civil proceedings conducted in the Member States of the European Union and on the right to assistance with a view to amicable resolution of a dispute before bringing civil proceedings (Journal of Laws 2005, No 10, item 67).

**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 amount of maintenance depends on the earning and financial capacities of the person required to pay it and on the reasonable needs of the person entitled to maintenance. Reasonable needs of the person entitled to maintenance include everything required for his or her subsistence, in the sense of both material and non-material (cultural and spiritual) needs. The

needs of minors also include the costs of their upbringing. When assessing the earning and financial capacities of persons required to pay maintenance, it is not the income which they actually earn but the income which they could earn if they made full use of their earning capacity that is taken into account. This means that even an unemployed person who does not earn a regular income can be ordered to pay maintenance and payments will be enforced.

Where there is a change in circumstances, a change to a court decision or a maintenance agreement may be requested. Either party to a maintenance relationship may request such a change. Depending on the factual circumstances, a party may request that the maintenance obligation be cancelled, or the amount of maintenance be increased or reduced. The amount of the allowance may be changed if the reasonable needs of the person entitled to maintenance or the earning capacity of the person required to pay maintenance have increased or decreased.

There is no fixed amount of maintenance in Poland and maintenance is not calculated as a fixed percentage of the earnings of the person required to pay it. In 2014, the minimum wage amounted to PLN 1 680 (approx. EUR 400) gross. In 2013, the average remuneration was PLN 3 650 (approx. EUR 900) gross a month. In 2015, the minimum wage amounted to PLN 1 750 gross, in 2016 – PLN 1 850 gross, and in 2019 it amounts to PLN 2 250 gross. In practice, in most cases the amount of maintenance awarded by courts ranges from PLN 300 to PLN 1 000 a month per one child. The amount of maintenance is not subject to automatic indexation depending on the age of the child or the level of inflation.

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

The person named as the debtor in an enforcement order is required to pay maintenance. As a rule, maintenance awarded in Poland is payable in Polish zlotys to the statutory representative of a minor (in cash or by bank transfer) every month, usually by the 10th day of the month. In the event of delay in payment, judgments provide for statutory interest (at the rate of 13% per year since 2008) on the outstanding amount (cf. the information provided by Poland on statutory interest).

Thus, as a rule, a maintenance obligation is borne exclusively by the person required to pay maintenance. If that person does not pay voluntarily, the person entitled to maintenance may apply for the initiation of enforcement proceedings to the competent enforcement authority (usually a bailiff). Enforcement may also be initiated ex officio at the request of the court of first instance that issued the decision establishing the amount of maintenance. The person entitled to maintenance may also submit the enforcement order to the debtor's workplace or to the institution paying the debtor's pension and request that the maintenance due be deducted from the amounts paid to the debtor. Such a request is binding on the paying agency.

Execution against the debtor's real estate requires a separate application.

### **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 person required to pay maintenance fails to fulfil the maintenance obligation voluntarily, he or she may be forced to do so (cf. point 9).

Furthermore, under Article 209 of the Criminal Code (Journal of Laws 1997, No 88, item 553), persistent failure to pay maintenance is an offence punishable by a fine, noncustodial measures or imprisonment of up to two years. The offence is prosecuted at the request of the victim, a welfare institution or a body responsible for taking action against a maintenance debtor. If the victim was granted appropriate family benefits or allowances payable in the event of failure to enforce the payment of maintenance, prosecution is undertaken ex officio.

Article 5(3b)(2)(5) of the Act of 7 September 2007 on assistance for persons entitled to maintenance (Journal of Laws 2007, No 192, item 1378) provides that the competent authority may apply for the suspension of the debtor's driving licence.

If enforcement is unsuccessful, a bailiff may apply for the debtor to be entered into the register of insolvent debtors.

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

In accordance with Article 1083(2) of the Code of Civil Procedure, outstanding maintenance payments may be covered in full through the attachment of a bank account.

In accordance with Article 833(1) of the Code of Civil Procedure, remuneration for employment is subject to enforcement to the extent specified in the Labour Code. As a rule, 60% of the salary may be attached. Up to three fifths of amounts awarded by the State Treasury for special purposes, especially grants and support, may also be attached (Article 831(1)(2) of the Code of Civil Procedure).

Additionally, pursuant to Article 829 of the Code of Civil Procedure, the following cannot be subject to enforcement:

- 1) household articles, bedding, underwear and everyday clothing strictly necessary for the debtor and dependent family members, as well as clothing strictly necessary in order to perform service or professional work;
- 2) food and fuel stocks strictly necessary for the debtor and dependent family members for one month;
- 3) one cow or two goats or three sheep strictly necessary to feed the debtor and dependent family members, together with stocks of feedstuff and bedding material until the next harvest;
- 4) tools and other objects strictly necessary for the debtor to perform gainful employment and raw materials strictly necessary for production for a period of one week, excluding motor vehicles;
- 5) in the case of debtors undertaking periodic permanent employment, an amount of money corresponding to the non-enforceable part of salary for the period to the next due date, and in the case of debtors with no regular salary – an amount of money strictly necessary for the subsistence of the debtor and dependent family members for a period of two weeks;
- 6) objects necessary for studies, personal papers, decorations, objects used for religious practice and everyday objects which could only be sold significantly below their value but are useful to the debtor;
- 8) medicinal products within the meaning of the Pharmaceutical Act of 6 September 2001 (Journal of Laws of 2008, No 45, item 271 as amended), strictly necessary for the functioning of the healthcare institution within the meaning of the legal provisions on healthcare for a period of three months and medicinal products strictly necessary for its functioning within the meaning of the Medicinal Products Act of 20 May 2010 (Journal of Laws, No 107, item 679 and Journal of Laws of 2011, No 102, item 586 and No 113, item 637);
- 9) articles strictly necessary in view of the disability of the debtor or their family members.

The Minister for Justice in consultation with the Minister for Agriculture and the Minister for Finance will specify, by way of an ordinance, which objects belonging to a farmer cannot be subject to enforcement (Article 830).

Furthermore, Article 831 of the Code of Civil Procedure provides that in particular social assistance benefits within the meaning of the Act of 12 March 2004 on social assistance (Journal of Laws of 2013, item 182 as amended) and receivables due to the debtor from the State budget or the National Health Fund (Narodowy Fundusz Zdrowia) for the provision of healthcare within the meaning of the Act of 27 August 2004 on healthcare benefits financed from public funds (Journal of Laws of 2008, No 164, item 1027, as amended) before such benefits have been provided, up to 75% of each payment, are not subject to enforcement, unless these are receivables of the debtor's employees or service providers referred to in Article 5(41)(a) and (b) of the Healthcare Benefits Financed from Public Funds Act of 27 August 2004.

Article 137(1) of the Family and Guardianship Code provides that maintenance claims are subject to a limitation period of three years.

Article 121(1) of the Civil Code provides that a limitation period does not begin to run and, if it has begun to run, it is suspended for children's claims against parents throughout the duration of parental authority.

If the debtor questions the validity of the maintenance obligation towards an adult child, a bailiff may request the claimant to provide a certificate confirming that he or she is continuing his or her education, has no earnings or is undergoing medical treatment and, therefore, still requires the debtor's financial support.

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

As mentioned in point 4, a petition for maintenance may be filed on behalf of the person entitled to maintenance by, inter alia, managers of social assistance centres, certain social organisations, representatives of local government authorities responsible for social assistance and, in some cases, also public prosecutors. These entities may also support the claimant by participating in maintenance proceedings which are already underway. Their role is then to support the person entitled to maintenance in proceedings before a court.

Regional courts help persons entitled to maintenance to submit applications for the recovery of maintenance abroad.

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

The Act of 7 September 2007 on assistance for persons entitled to maintenance (Journal of Laws 2009, No 1, item 7, as amended) lays down the rules for State assistance for persons entitled to maintenance in cases where enforcement is unsuccessful.

Allowances from a maintenance fund may be obtained only if the family income per capita does not exceed PLN 725 (approx. EUR 170) a month – from 1 July 2019 this will be PLN 800 (Article 9(2)). An application is submitted in the municipal or town office having jurisdiction over the place of residence of the person entitled to maintenance.

If, however, the person entitled to an advance on maintenance lives in an institution providing round-the-clock maintenance (e.g. a social assistance centre, an educational care facility, a youth detention centre or a remand centre) or with a foster family, has married or has a child and is entitled to a family benefit, the advance will not be awarded to that person.

This Act is applicable only if the person entitled to maintenance resides in Poland during the period in which advances are awarded.

More information can be found at <http://www.mpips.gov.pl/wsparcie-dla-rodzin-z-dziecmi/fundusz-alimentacyjny/swiadczenia-z-funduszu-alimentacyjnego/>

**14 If I am in this Member State and the debtor has his/her residence in another country:**

If the debtor has his or her residence abroad and the person entitled to maintenance resides in Poland, the regional court having jurisdiction over the place of residence of the person entitled to maintenance helps that person to submit an application for maintenance. The help consists in providing him or her with all the information and assistance necessary in order to complete the required documents and by checking whether the application is formally correct.

**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?**

Part A of an application submitted 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 is filled in by a regional court.

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**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?**

Article 55 of 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 does not require that applications be made through the central authority of the State in which applicants reside. Applications may be sent directly to the competent Polish court (the formal requirements laid down in Chapters IV and VI of the Regulation and in the Code of Civil Procedure are thus fulfilled).

Details of transmitting agencies are available at:

<http://bip.ms.gov.pl/pl/ministerstwo/wspolpraca-miedzynarodowa/alimenty/>

The transmitting agencies of foreign countries specified in the declarations annexed to the Regulation provide the person entitled to maintenance with all the necessary information, help him or her to complete the required documents, check whether that person's application is formally correct and transmit it abroad.

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

If a court has awarded maintenance and the case falls within the scope of application of Regulation (EC) No 4/2009, a claimant residing abroad may use the procedure provided for in this Regulation and apply to the competent transmitting agency of the country in which he or she resides or submit an application for a declaration of enforceability of a foreign decision to the competent court (cf. point 5). Applications for enforcement are submitted to the office of any court bailiff.

If Poland and the country in which the claimant resides are parties to a convention or a bilateral agreement concerning the recognition and enforcement of judgments in cases regarding maintenance, such assistance is provided to the extent specified in that agreement. As a rule, bilateral agreements provide for direct application to a Polish court or application to such a court through a court of the country which issued the judgment. In the latter case, applications are transmitted through central authorities, which are most frequently the Ministry of Justice or authorities falling under the New York Convention:

<http://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XX/XX-1.en.pdf>

Details of courts are available at:

<http://bip.ms.gov.pl/pl/rejstry-i-ewidencje/lista-sadow-powszechnych/>

while details of bailiffs are available at: <http://komornik.pl/>

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

Yes, since 18 June 2011.

#### **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?**

Not 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?**

The rules applicable in Poland are the provisions of the Act of 17 December 2004 on the right to assistance in civil proceedings conducted in the Member States of the European Union (Journal of Laws 2005, No 10, item 67, as amended) and Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ L 26/41, 31.1.2003, p. 90), which supplement the provisions of the Code of Civil Procedure and the Act on court costs in civil cases. The party which hopes to obtain a specific form of assistance (e.g. appointment of a lawyer, translation of documents, reimbursement of travel costs) should clearly inform the court about this using an EU form [https://e-justice.europa.eu/content\\_legal\\_aid\\_forms-157-pl](https://e-justice.europa.eu/content_legal_aid_forms-157-pl).

#### **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 Act amending the Code of Civil Procedure and other acts (Act of 28 April 2011 amending the Code of Civil Procedure, the Act on the right to assistance in civil proceedings conducted in the Member States of the European Union and on the right to assistance with a view to amicable resolution of a dispute before bringing civil proceedings and the Act on assistance for persons entitled to maintenance – Journal of Laws of 2011, No 129, item 735), under which the Polish central authority may order the authority with jurisdiction over the debtor to conduct a maintenance inquiry, was adopted on 28 April 2011.

If the debtor or participant cannot be located, the Ministry of Justice consults central and local registers and records (and may consult the PESEL.SAD database) in order to determine which court or bailiff has jurisdiction or to give a reply to a request for specific measures. At present, no changes to statutory bases, financing and personnel of the central authority are planned with a view to ensuring the functioning of the activities described in Article 51.

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