

## Maintenance claims - Portugal



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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 understood to be everything which is essential for the sustenance, housing and clothing of a person. Maintenance also includes the education and instruction of the person if he or she is a child under age.

According to the law, the following are required to pay maintenance in the order indicated:

- spouse or former spouse
- descendants
- ascendants
- siblings
- uncles and aunts, during the minority of the person maintained
- stepfather and stepmother of stepchildren under age who are or were under their care at the time of the spouse's death,.

In addition to the aforementioned cases in which the maintenance obligation is legally imposed, maintenance obligations may also result from a bequest (maintenance bequest left in a will) or a contract.

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

A child may benefit from maintenance until his or her majority, which is reached at 18 years of age. Between the ages of 16 and 18, children may be emancipated by marriage.

If, after a child reaches majority or is emancipated, they decide to continue their education or instruction, they may bring maintenance proceedings against their parents. In this case, maintenance covers the costs of their education and training in addition to their sustenance, housing and clothing. The duration of the payments is determined by agreement or decision. That decision sets the appropriate duration for a reasonable period of training or education.

There are differences between the rules of substantive law applying to child and adult maintenance: adult maintenance only covers the costs of sustenance, housing and clothing, while child maintenance also covers the costs of education and instruction. In the exceptional situation described above in which an adult child is continuing their training, adult maintenance includes the costs of training and education.

The rules of civil procedure which apply to the setting and enforcement of child and adult maintenance also differ in some cases. The differences in the applicable procedural rules are referred to in the replies to the questions *“Para obter uma pensão de alimentos, devo recorrer a uma autoridade competente ou um tribunal? Quais são os elementos principais deste processo?”* and *“Se a pessoa em causa (devedor) não pagar voluntariamente, quais os meios disponíveis para a coagir a efectuar o pagamento?”*.

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

The reply to this question varies depending on the situations outlined below.

#### **Setting the amount of child maintenance and of maintenance between spouses in the event of an initial agreement**

The person required to pay maintenance and the person entitled to receive it may agree on the amount to be set. In the case of child maintenance or maintenance between spouses, the parties may request that the agreement be approved before the court or before the Public Registrar, depending on whether the following circumstances apply.

In the event of contested divorce, the court must be requested to approve the child maintenance agreement in the proceedings to regulate the exercise of parental responsibility. The following subheading outlines the main elements of these proceedings.

In the event of divorce by mutual consent, the Public Registrar is requested to approve the agreement on maintenance between spouses and/or for minor children in the divorce proceedings by mutual consent. The Registrar has sole jurisdiction for these proceedings, which may be brought in any Civil Registry. As regards agreements on child maintenance, the Public Prosecutor at the court in the area of the Civil Registry where the proceedings were brought must give his prior opinion. If the agreement is approved, the divorce is decreed. If the agreement is not approved, the divorce proceedings by mutual consent are referred to the court where they will be heard. In this case, the court is responsible for assessing and approving agreements regarding child maintenance or maintenance between spouses.

The same rules apply in the event of legal separation, declaration of nullity or annulment of marriage.

### **Setting maintenance when there is no initial agreement**

#### **Maintenance from parents to minor children**

In the event of contested divorce, the setting of child maintenance must be requested under the protective court proceedings to regulate the exercise of parental responsibility. The parents may later request approval of the agreement on parental responsibilities. Failing such an agreement or if it is not approved, the Public Prosecutor requests the regulation of the exercise of parental responsibility. The procedure is conducted in court. The parents are summoned to a meeting. In the event that an agreement cannot be reached at the meeting, the parents are notified to submit pleadings. This is followed by disclosure, trial and judgment.

The same rules apply in the event of legal separation, declaration of nullity or annulment of marriage.

#### **Maintenance from parents or others obliged to pay child maintenance**

Child maintenance may also be set by protective child maintenance proceedings where, for example, proceedings need to be brought against persons other than the parents who are obliged to pay maintenance. Maintenance that was previously set can also be amended in these proceedings. The proceedings take place in court and begin with an application accompanied by the following items: certificates proving the degree of kinship or affinity existing between the child and the respondent; where applicable, a copy of the judgment which previously set the maintenance arrangements; a list of witnesses. The respondent is summoned. A meeting is then called with a view to reaching an agreement between the parties. If no agreement is reached, contestation, disclosure, trial and judgment ensue.

#### **Maintenance for an adult or emancipated child**

The procedure for setting maintenance for an adult or emancipated child may be brought before any Civil Registry upon submission of an application indicating the pleas of fact and law. The application must be accompanied by documentary evidence and must indicate all other evidence. The respondent is summoned. If he does not object, the application is upheld and maintenance is set by decision of the Registrar. If he does object, the Registrar attempts to reconcile the parties. If this proves impossible, the case is prepared by the Registrar and referred to the competent court for trial.

If a court case already exists during which child maintenance was set, the application to set maintenance for a child who has, in the meantime, reached adulthood or been emancipated is joined to the pre-existing case and heard in this court and not in the Civil Registry.

#### **Between spouses and former spouses**

When there is no initial agreement, the procedure for setting maintenance between spouses and former spouses must be brought before the court. The procedure takes the form of a declaratory action, with an identical procedure to that outlined below for adult maintenance.

#### **Adult maintenance**

Other than in the aforementioned cases, the procedure for setting adult maintenance is brought before the court. The procedure takes the form of a condemnatory declaratory judgment. It begins with the initial application being submitted to court.

In this request, the instigating party must designate the court in which the action is being brought, identify the parties, indicate their names, places of residence or offices and, where possible, their occupations and places of work, set out the form of proceedings, explain the facts and legal reasons forming the grounds for the action, make the request and declare the amount involved in the case. At the end of the application, the list of witnesses is submitted and the other evidence requested. Documents showing evidence of prior payment of the initial court fee and power of attorney must be attached to the request if the party is represented by a lawyer. Alternatively, a document proving that legal aid has been granted may be attached.

If a lawyer is appointed, the initial application is submitted electronically via a form available at <https://citius.tribunaisnet.mj.pt/> in accordance with the procedures and instructions specified therein. If the party is not represented by a legal representative, they may submit the initial request at the court registry offices in one of the following ways: in person; by registered post; or by sending a fax.

The respondent is summoned. If no agreement is reached during proceedings, the following mandatory stages ensue: defence, conclusive opening order, disclosure, trial and judgment.

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

In the case of child maintenance, the request may be made by the child's legal representative, by the Public Prosecutor, by the person to whom custody has been granted or by the director of the educational or care establishment to which the minor is entrusted. Anyone may notify the Public Prosecutor of the need to set child maintenance.

In the case of maintenance for incapacitated adults, proceedings may be brought by their legal representatives.

Other than in these cases of incapacity, maintenance proceedings for adults or emancipated children must be brought by the adults or emancipated children themselves, by a legal representative appointed by them or by an attorney to whom they have conferred power of attorney to bring the proceedings.

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

##### **Child maintenance**

The District Court, Central Instance, Family and Children's Court [*Tribunal de Comarca, Instância Central, Secção de Família e Menores*] has jurisdiction over matters involving protective proceedings to regulate the exercise of parental responsibility and set child maintenance. In the absence of a Family and Children's Court, the case will, in principle, be heard before the District Court, Local Instance, General Jurisdiction Court [*Tribunal de Comarca, Instância Local, Secção de Competência Genérica*].

To understand which of the aforementioned courts have territorial jurisdiction, the following rules apply. In principle, the court competent for the place in which the child is resident at the time the proceedings are started has jurisdiction.

If the residence of the child is unknown, the court competent for the place of residence of the holders of paternal responsibility has jurisdiction.

If the holders of paternal responsibility are resident in different places, the court with jurisdiction is the court competent for the place of residence of the person to whom custody of the child has been granted or, in the case of joint custody, the person with whom the child lives.

If any of the proceedings relate to two or more children who are children of the same parents and resident in different districts, the court competent for the place of residence of the greatest number of such children has jurisdiction. All other things being equal, the court in which the maintenance was requested in the first instance has jurisdiction.

If, when the proceedings are started, the child does not live in Portugal, the court competent for the place of residence of the applicant or the respondent has jurisdiction; if they also live abroad and the Portuguese court has jurisdiction internationally, the case is heard by the District Court of Lisbon, Central Instance, First Family and Children's Court [*Tribunal da Comarca de Lisboa, Instância Central, 1ª Secção de Família e Menores*], as this court has territorial jurisdiction for the municipality of Lisbon.

##### **Maintenance for adult children**

Any Civil Registry has jurisdiction for maintenance proceedings regarding adult children. The only exception is if a court case under which child maintenance was set already exists; in that case an application to set maintenance for a child who has, in the meantime, reached majority or been emancipated is joined to the pre-existing case and heard in the court in question.

##### **Maintenance for spouses or former spouses**

The procedure for setting maintenance between spouses and former spouses is brought before the District Court, Central Instance, Family and Children's Court competent for the place where the respondent resides. In the absence of a Family and Children's Court, the case will, in principle, be heard in the District Court, Local Instance, General Jurisdiction Court.

##### **Adult maintenance**

Apart from in the aforementioned cases, the procedure for setting adult maintenance is brought before the District Court: Central Instance, Civil Court (if the value of the action exceeds €50 000.00); in the Local Instance, General Jurisdiction Court, and in particular in the Civil Section, where there is one (if the value of the action does not exceed €50 000.00) From a territorial point of view, the court competent for the place of residence of the respondent has jurisdiction.

### **Maintenance enforcement**

The courts shown below have jurisdiction when it comes to bringing special maintenance enforcement proceedings in the event of late payment.

If proceedings in which maintenance was set were heard before the *District Court, Central Instance, Family and Children's Court*, the special maintenance enforcement proceedings will be heard before that court as part of the respective case, to which the enforcement application must be joined.

If the proceedings in which maintenance was set were heard before the District Court, Central Instance, Civil Court [*Tribunal de Comarca, Instância Central, Secção Cível*], the court competent for the special enforcement of maintenance is the Enforcement Court [*Secção de Execução*] which would be competent if the proceedings were not within the jurisdiction of that court of Central Instance because of their monetary value.

Where there is no Enforcement Court, the *Civil Court of Central Instance where the respective declaratory action was heard* has jurisdiction for the special maintenance enforcement and, in this case, enforcement takes place as part of those proceedings.

If the proceedings in which maintenance was set took place at the *District Court, Local Instance, General Jurisdiction Court or Civil Court*, enforcement takes place in this procedure if the Central Instance does not have an Enforcement Court. If the Central Instance has an Enforcement Court, the Enforcement Court (whose territorial jurisdiction covers the area in which the court of Local Instance, General Jurisdiction or Civil Court where the condemnatory action was heard is located) will have jurisdiction for the special enforcement of maintenance.

With regard to the enforcement of court judgments, even if the enforcement does not take place in the court in which the enforceable judgment was handed down, the enforcement application is submitted in the declaratory proceedings where that judgment was handed down. In this case, when the Enforcement Court of Central Instance has jurisdiction, the sentencing court will urgently forward a copy of the sentence, the application that gave rise to the enforcement and accompanying documents to the Enforcement Court.

The same rule applies in cases where there is no Enforcement Court and the Local Instance, General Jurisdiction or Civil Courts have jurisdiction with regard to the enforcement proceedings.

If the proceedings in which maintenance was set were not heard before the court but rather before the Civil Registry, territorial jurisdiction for the special maintenance enforcement is governed by the following principles:

- The enforcement proceedings must be brought before the court of the area where the maintenance debtor is resident; however, the maintenance creditor may opt for the court in which the obligation is to be fulfilled if they reside in the metropolitan area of Lisbon or Porto and the maintenance debtor resides in the same metropolitan area;
- When enforcement is to be brought in the area where the maintenance debtor is resident, and they are not resident in Portugal but do have assets there, the court for the place where those assets are located has jurisdiction.

With regard to the substantive jurisdiction for maintenance enforcement based on the decision of the Registrar, the following rules apply:

The *District Court, Central Instance, Family and Children's Court* has jurisdiction to prepare and judge maintenance enforcement proceedings between spouses and former spouses, for children, and for adult and emancipated children. As in this case, however, the respective declaratory action was not heard in the Family and Children's Court but rather in the Civil Registry, the courts may decide that the *District Court, Central Instance, Enforcement Court* has jurisdiction.

If there is no Enforcement Court, the Local Instance, General Jurisdiction Court, and in particular the respective Civil Court, has jurisdiction for special maintenance enforcement.

### **Note:**

*The aforementioned rules on jurisdiction are subject to fluctuations in the interpretation of the national courts.*

**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 not necessary to appoint a lawyer for child maintenance proceedings, except at the appeal stage. Adult or emancipated applicants (e.g. the child's guardian) may appear on their own in court.

For other maintenance proceedings, the general principles set out below apply.

It is necessary to appoint a lawyer: in cases within the jurisdiction of courts with a value limit, in which ordinary appeal is admissible; in cases where appeal is always admissible, regardless of the value; in appeals and cases brought before the higher courts.

Currently, in 2014, ordinary appeal is only admissible when the value of the case exceeds the limit of the court before which the appeal is brought and the decision challenged is unfavourable to the appellant by an amount also exceeding half of the limit of that court. In the event of doubts concerning the value of the loss, only the value of the action will be taken into account. This legal principle has various exceptions laid down therein and in other specific legal provisions. In 2014, at the time of writing of this factsheet, in civil matters the limit of the courts is as follows: Court of Appeal [*Tribunal da Relação*] – €30 000.00; Court of First Instance [*Tribunal de Primeira Instância*] – €5 000.00.

Although it is necessary to appoint a lawyer, trainee lawyers, solicitors and the parties themselves may make applications which do not raise questions of law.

### **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?**

The response to this question varies depending on whether the procedure to set maintenance was heard in court or in the Civil Registry and depending on whether the parties benefit from legal aid or not. Costs are due in the courts. Fees are due in the Civil Registry Office.

#### **Costs in cases within the jurisdiction of the courts**

##### **Exemptions**

Minors are exempt from costs when they are represented by the Public Prosecutor or by a court-appointed lawyer in cases heard in court and are exempt from fees in cases that take place at the Civil Registry Office.

Minors or their legal representatives are also exempt from costs in appeals against decisions relating to the application, amendment or termination of maintenance, handed down in juvenile court proceedings. The juvenile court proceedings in which maintenance can be set are usually child maintenance proceedings and proceedings to regulate parental responsibility, provided for in the Organisation of Care for Minors [*Organização Tutelar de Menores*]. These are special, non-contentious cases.

Parties in juvenile court proceedings are exempt from the prior payment of court fees, including in proceedings in which maintenance is set. In these cases, instead of paying the court fee up-front, the party is requested to pay it within a ten-day period after a sentence has been handed down in the main proceedings. This is the case even if the sentence has not been rendered final.

Outside the cases mentioned above, costs are due in principle. This will only not be the case if the party benefits from legal aid and /or if chapter V of Council Regulation (EC) No 4/2009 of 18 December, which will be referred to below, applies to the proceedings in question.

##### **Recovery of costs**

Except for the exceptions noted above, an initial court fee is due in order to bring an action aimed at setting maintenance. The initial court fee corresponds to an advance on the final costs.

The costs include the court fee, charges and the costs of the party.

##### **Court fee**

To determine the amount of the court fees due, it is essential to know the value of the action, as the court fee is calculated on the basis of this amount in accordance with one of the tables annexed to the Regulation on Procedural Costs.

For the purposes of applying the aforementioned tables:

- the value of definitive maintenance proceedings is equal to five times the annuity requested in the application, i.e. the value of these proceedings corresponds to the sum of the requested monthly payment multiplied by sixty.

- the value of precautionary provisional maintenance proceedings corresponds to the requested monthly payment multiplied by twelve.
- the value of divorce proceedings and proceedings to regulate the exercise of parental responsibility, which are concerned with other intangible interests aside from maintenance, is at least the limit of the Court of Appeal plus one cent (in 2014: €30 000.01).

*Table I – A* of the Regulation on Procedural Costs applies in the following cases: cases of definitive maintenance for adults or adult or emancipated children that follow the common form; special procedures (divorce or juvenile court) in which maintenance is set, where applicable, for the spouses, minor children or adult or emancipated children. The court fee due is expressed in Uc (unit of account).

In 2014 (at the time of writing of this factsheet) the value of 1 Uc is €102.00. This value is usually updated every year and it is therefore necessary to consult the updated national legislation. In 2014, the value of the court fee due, according to Table I-A of the Regulation on Procedural Costs, is as follows, depending on the value of the action:

- Up to € 2000.00 – 1 Uc
- From €2 000.01 to €8 000.00 – 2 Uc
- From €8 000.01 to €16 000.00 – 3 Uc
- From €16 000.00 to €24 000.01 – 4 Uc
- From €24 000.01 to €30 000.00 – 5 Uc
- From €30 000.01 to €40 000.00 – 6 Uc
- From €40 000.01 to €60 000.00 – 7 Uc
- From €60 000.01 to €80 000.00 – 8 Uc
- From €80 000.01 to €100 000.00 – 9 Uc
- From €100 000.01 to €150 000.00 – 10 Uc
- From €150 000.01 to €200 000.00 – 12 Uc
- From €200 000.01 to €250 000.00 – 14 Uc
- From €250 000.01 to €275 000.00 – 16 Uc.

Over €275 000.00, the value of the court fee increases by 3 Uc per €25 000.00 or part thereof.

In the cases of precautionary proceedings to set provisional maintenance, of pre-enforcement hearings to recover maintenance due to minors, and of special maintenance enforcement, Table II - A, annexed to the Regulation on Procedural Costs, applies. The following values can be taken as an example (2014):

- The value of the court fee due in precautionary proceedings to set provisional maintenance, depending on its value, is as follows:
  - Up to €30 000.00 – 3 Uc
  - Equal to or greater than €30 000.01 – 8 Uc
  - If the precautionary measures are extremely complex – 9 to 20 Uc.
- The value of the court fee payable in pre-enforcement hearings to recover child maintenance ranges from 0.5 to 5 Uc.
- The value of the court fee payable for bringing special maintenance proceedings is as follows:

(In the case of enforcement measures being carried out by a bailiff)

- Up to €30 000.00 – 2 Uc
- Equal to or greater than €30 000.01 – 4 Uc

(In the case of enforcement proceedings carried out by an enforcement solicitor)

- Up to €30 000.00 – 0.25 Uc
- Equal to or greater than €30 000.01 – 0.5 Uc.

In the aforementioned cases in which the court fee is variable, the party initially pays the minimum amount and only pays the outstanding amount at the end, if applicable.

In declaratory action in which maintenance is set, the court's final judgment must rule on costs. If the proceedings are partially successful, the costs are paid by both parties in proportion to their respective loss. If one of the parties loses completely, they are ordered to pay all the costs. In the event of a court-approved agreement between the parties, as a rule the costs are borne by both parties in equal proportion.

In the case of special maintenance enforcement, the costs are taken from the proceeds of the seized property.

### **Charges**

The following rules apply to the charges:

With regard to expenses and charges arising from investigations (payment to experts, reporting, etc.), the rule is that each party pays the expenses and charges to which it has given rise.

If the investigation proves to be manifestly unnecessary or dilatory, the party that requested it bears the respective charge regardless of the deadline or ruling on costs.

When all parties have an interest in the investigations or the expenditure, when they both gain equal advantage, or when it is not possible to determine who is the interested party, the charges are borne equally by the parties.

### **Costs of the parties**

With regard to the costs of the parties, the rule is as follows: the costs of the successful party are borne by the losing party in proportion to their loss.

The costs of the parties include court fees paid in advance, the costs actually incurred by the party, the fees paid to the enforcement agent and their expenditure, the fees paid to the legal representative and their expenditure.

### **Costs account**

Except in the cases noted above, in which the parties are exempt from the advance payment of court fees, in principle, the secretariat only prepares the costs account after the judgment has been rendered final and unappealable, and in accordance with the respective sentence. The parties are notified of the account.

If there are no appeals or claims regarding the account or these have been resolved, this gives rise to the payment of what is due by the losing party and/or the reimbursement of the successful party for the amount advanced.

The costs of the parties are paid directly by the losing party to the party owed. If the losing party has legal aid, the payment of the sums in questions to the party owed is made by the State (in 2014, at the time of writing of this factsheet, payment is made by the Institute of Financial Management and Justice Infrastructure IP [*Instituto de Gestão Financeira e das Infra Estruturas da Justiça IP*]).

### **Legal aid in cases within the jurisdiction of the courts**

If the applicant does not have the means to pay for the proceedings, they may obtain legal aid. According to national legislation, legal aid may only be granted to natural persons or not-for-profit legal persons.

Legal aid for individuals may be granted in various forms: legal advice; exemption from court fees and charges; phased payment of court fees and charges; appointment and payment of the legal representative's fees; appointment and phased payment of the legal representative's fees; assignment of an enforcement agent.

The Portuguese legal aid system, in all the terms laid down therein, applies to all courts and to any form of proceedings.

Applications for legal aid are to be submitted via a form. This must be delivered in person or mailed to any Institute of Social Security IP [*Instituto da Segurança Social IP*] customer service centre. The forms and instructions for completing them are provided by that entity. The general response period is thirty days.

When bringing an action, the applicant must attach to the initial application documentary evidence of prior payment of the court fee due or of the granting of legal aid in the form of exemption from prior payment of the aforementioned fee. When legal aid is granted in the form of phased payment of court fees, evidence of this must be attached along with payment of the outstanding amount.

### **Fees in cases within the jurisdiction of the Civil Registry Office**

Minors are exempt from fees when they are represented by the Public Prosecutor or by a court-appointed lawyer in cases that are heard before the Civil Registry Office.

The fees due for cases within the jurisdiction of Civil Registry Offices are set out in the Fee Regulations for Registry Offices and Notaries.

For example, in 2014 the fees charged in cases within the jurisdiction of Civil Registry Offices are as follows:

- Divorce proceedings or legal separation by mutual consent (without property settlement) including decisions approving agreements regarding maintenance between spouses or for minor children – €280
- Process of granting maintenance for adult or emancipated children – €120
- Process for amending maintenance agreements – €100.

These amounts are in effect in 2014, at the time of writing of this factsheet. They may be reviewed and it is therefore necessary to consult national legislation on a case-by-case basis.

### **Legal aid in cases within the jurisdiction of the Civil Registry Office**

Legal aid only applies in two situations to cases heard before the Civil Registry Office: appointment and payment of the legal representative's fees; appointment and phased payment of the legal representative's fees.

Furthermore, in Civil Registry Offices, certain acts are free of charge for individual applicants who are able to prove limited financial means.

Limited financial means may be proved by a document issued by the competent administrative authority, or a statement issued by a public social welfare institution where the individual is resident.

In these cases, the following acts are free of charge: acts of civil registry or nationality; processes and statements relating to these; documents required and procedures relating to their supply; certificates required for any purpose.

The same rule applies to cases within the jurisdiction of the Civil Registry Office in which maintenance was set.

### **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)?**

As a rule, maintenance is set as monthly payments, except where there is an agreement or legal provision to the contrary or where there are reasons to justify exceptional measures. If, for example, the person required to pay maintenance shows that he or she cannot pay it as an allowance but only in the form of his or her house and company, this may be ordered.

#### **Maintenance calculations**

Maintenance will be proportional to the means of the maintenance debtor and the needs of the maintenance creditor. In setting maintenance, the possibility of the latter supporting himself or herself will also be examined.

The needs of the maintenance creditor depend on whether he or she is a child, an adult child continuing their training or education, or simply an adult. These were already mentioned in the reply to the question '*Qual o significado dos conceitos de «alimentos» e «obrigação de prestação de alimentos» na prática? Quais as pessoas que devem pagar uma pensão de alimentos a outra pessoa?*'

As for the maintenance debtor's means, it is worth mentioning the specific criteria to be taken into account depending on whether the maintenance is being set for children or former spouses.

#### *Maintenance set for children*

The duty of child maintenance is a fundamental duty of the parents. It is based directly on Article 36(5) of the Constitution of the Portuguese Republic.

Maintenance due to children must be proportional to the means of the person required to pay the maintenance.

In accordance with the case-law principle of the Portuguese Supreme Court [*Supremo Tribunal de Justiça*], in order to calculate the amount of maintenance due to a child the court must consider not only the current amount of the income currently earned by the debtor, but also, in a comprehensive and general manner, their social status, their ability to work, the duty to actively strive for a profession that enables them to at least fulfil their fundamental duty towards the child, and the entire range of assets which they own.

### *Maintenance set for former spouses*

In determining the amount of maintenance due to former spouses, the court must take into account the duration of the marriage, the contribution made towards the family finances, the age and state of health of the spouses, their professional qualifications and employment possibilities, the time they will have to devote to bringing up joint children, their earnings and income, remarriage or cohabitation and, in general, all circumstances affecting the needs of the spouse receiving the maintenance and the possibilities of the spouse paying it.

According to majority national case-law, the creditor spouse has no right to demand that the standard of living they enjoyed during marriage be maintained.

Maintenance set by judicial decision is due from the date on which the action was brought. Maintenance set by agreement of the parties and approved by decision of the court or the Registrar is due from the date on which the debtor is in default. The debtor is in default on the date set for payment or, failing that, when payment is demanded.

### **Amendments to maintenance that has been set**

If there is a change in circumstances after maintenance has been set, maintenance may be amended or terminated.

If there is no pending special maintenance enforcement, the application to amend or terminate maintenance is brought alongside the condemnatory action. If there is a pending special maintenance enforcement, the application to amend or terminate maintenance is joined to the enforcement procedure.

The person paying maintenance may request that maintenance be lowered or terminated if, for example, there is a decrease in their financial means, an improvement in the maintenance creditor's means, the maintenance creditor reaches majority, or the maintenance creditor becomes able to contribute to their sustenance.

The person receiving maintenance may request that the amount be increased if, for example, their economic situation worsens, their family circumstances change, their needs increase, or the cost of living increases and this increase can and should be supported by the maintenance debtor (because, for example, their salary has also increased).

### *Automatic updating*

To cope with the rising cost of living, the decision setting the maintenance amount may provide that the arbitrated amount undergo a regular (usually annual) automatic update.

The update may be based on the increase in the rate of inflation published annually by the National Institute of Statistics [*Instituto Nacional de Estadística*] or on an increase of a certain interest rate indicated by the court. It may also consist, however, of a fixed annual increase of a certain amount as stipulated in the decision.

The judge is responsible for determining this automatic update and choosing the appropriate means of achieving it, according to their discretion. The automatic update may also be determined by an approved agreement between the parties.

### **Provisional maintenance**

In addition to definitive maintenance, provisional maintenance may also be set.

If definitive maintenance has not yet been set, the court may, at the request of the maintenance creditor or *ex officio*, if the latter is a minor, grant provisional maintenance which will be determined at the court's discretion. Provisional maintenance is never refunded. It is due while the main proceedings to set the amount of definitive maintenance are pending. Definitive maintenance is due once it has been set.

In the event that contested divorce proceedings are pending, the judge may set provisional maintenance for one of the spouses or the children while the proceedings are pending. While proceedings to regulate parental responsibility are pending, the judge may also set provisional maintenance for minor children. In the aforementioned cases, provisional maintenance may be set during a hearing within the process itself.

Alternatively, provisional maintenance may be set during precautionary proceedings that will be joined to the main proceedings in which definitive maintenance is set.

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

Maintenance will be paid under the terms and to the person indicated in the court decision or in the court-approved agreement.

As a rule, if the beneficiary is an adult not subject to incapacity, or an emancipated child, the maintenance will be paid to him or her directly.

If he or she is an adult subject to incapacity, the maintenance will be paid to the party that is under the legal obligation to exercise their financial rights on their behalf (guardian, trustee or judicial property administrator); even an institution may receive the maintenance.

If the beneficiary is a minor, the allowance will be paid to the person who has custody, who may be one of the parents, another relative, a third party (foster family), or the director of an institution to which the minor has been entrusted.

The law does not impose fixed methods of payment and the parties may agree on how payment is to be made. If there is no agreement, the courts decide on the most practical and least costly method for either the person paying or the person receiving the maintenance.

Generally, the monthly maintenance payment is paid in monies and must be delivered to the creditor at the beginning of the month to which it relates.

The time and place of payment are set out in the agreement or decision setting the maintenance. If these have not been set out, the standard rules of the Civil Code apply. These rules state, in principle, that where not stipulated:

- maintenance paid in monies is to be paid at the place where the creditor is residing at the time the payment is due.
- as the payments correspond to the months of the Gregorian calendar, the creditor may request payment at any time from the first day of the month in question.

The most common methods are bank transfer, deposit into an account opened at a bank, sending of a postal order or cheque, or the personal delivery of cash.

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

In the event that the maintenance debtor defaults, the maintenance creditor may resort to civil and criminal enforcement measures.

#### **Civil enforcement measures**

##### **Pre-enforcement hearing**

In the case of child maintenance determined in maintenance enforcement proceedings or proceedings to regulate parental responsibility, the law gives the maintenance creditor the option of a pre-enforcement hearing.

The child beneficiary of maintenance may call on a pre-enforcement hearing as laid down in the Organisation of Care for Minors provided the following conditions apply: non-payment or delay in payment of maintenance; the maintenance debtor receives regular income from employment or a pension.

The application is joined to the proceedings to regulate the exercise of parental responsibility or the proceedings for setting child maintenance, which are heard before the court. The maintenance debtor is notified to pay maintenance within ten days of the date when it became payable. If the maintenance debtor fails to attach documentary evidence of payment, the maintenance payments will be deducted on a monthly basis from their wages, salary, pension, subsidies or other income of which they are in receipt. To this effect, the bodies responsible for payment will be notified to process the monthly deduction and deposit it directly into the bank account specified by the maintenance creditor.

Once they have been notified, all persons or entities who are responsible for processing or paying the aforementioned income thereby assume the role of approved depositaries of the amounts deducted as maintenance. As a result, if they fail to deduct the agreed amount, enforcement will be brought against them as part of the ongoing proceedings.

The amounts deducted do not cover maintenance accrued before the notification for the maintenance debtor to make payment. Maintenance payments which will become due are covered, however. To recover maintenance accrued prior to the notification laid down in this hearing, the maintenance creditor will need to bring enforcement proceedings. Thus, when maintenance is due to minors, nothing prevents the creditor from simultaneously bringing both pre-enforcement hearings (for the payment amounts to become due) and special maintenance enforcement (for the payment of overdue amounts).

It is not necessary to have a pre-enforcement hearing before resorting to enforcement. It just offers a simpler and cheaper alternative to enforcement. Opposition is not permitted, but the maintenance creditor has more limited means at their disposal than in enforcement, as the maintenance creditor may only request deductions from salaries, wages, pensions, subsidies or periodic income (they may not request the seizure of property, deposits or credit rights).

If maintenance is due to minors, the maintenance creditor may, alternatively, just bring special maintenance proceedings, as laid down in the Code of Civil Procedure. Thus, in a single action, they may recover in full the amounts due or to become due. During enforcement proceedings, the maintenance creditor may resort to broader means of enforcement such as seizure and the pledge of income. The process involved in these proceedings is explained below.

### **Non-compliance hearing**

In the case of child maintenance set in proceedings to regulate parental responsibility, the law also gives the maintenance creditor the option of a non-compliance hearing.

This hearing may also be used in the event of failure to pay maintenance set in the context of the regulation of parental responsibility. At the hearing the court is requested to order the necessary steps to enforce compliance and to sentence the defaulter to a fine. With the request joined to proceedings, the court summons the parents to a meeting or notifies the respondent to plead as they deem appropriate within ten days.

The parents may agree to amend the regime set. Failing agreement, the judge orders an investigation and reaches a decision.

### **Special maintenance enforcement**

In any of the cases where there is a delay in the payment of maintenance, the maintenance creditor may bring special maintenance enforcement proceedings in accordance with the Code of Civil Procedure. This rule applies whether the maintenance is due to children or adults, and whether it is definitive or provisional.

During special maintenance enforcement, the applicant may request the adjudication of a proportion of the amounts, salaries or pensions of which the other party is in receipt, or the pledge of income belonging to the maintenance debtor.

This adjudication or pledge takes place independently of seizure and is intended to cover the payment of both overdue amounts and amounts that will become due.

When the applicant requests the adjudication of amounts, salaries or pensions, the body responsible for paying these or for processing the respective payrolls will be notified that it is to pay the adjudicated part directly to the applicant. The amount adjudicated must be deposited monthly in the bank account of the applicant, who must give the account number in the initial application.

If the applicant requests a pledge of income, they must specify the property to which this relates and the enforcement agent will order that the property considered sufficient to meet maintenance that is overdue and will become due be pledged. The respondent may be heard for this purpose.

If once the pledge has been made it transpires that the income pledged is insufficient, the applicant may specify other property. If, on the other hand, it transpires that the income is excessive, the applicant must reimburse the excess to the respondent as and when the excess is received. The respondent may also ask for the pledge to be limited to part of the property or transferred to other property.

The amounts adjudicated or the value of the pledge of income should be sufficient to cover overdue payments, the interest on arrears when the maintenance creditor requests it, payments to become due, and automatic updates if these have been set.

The maintenance creditor may still request the seizure of the maintenance debtor's property. Seizure may involve movable and immovable property, bank deposits, credit rights, commercial establishments or shares.

If the seized property is sold to pay off a maintenance debt, the return of the excess to the maintenance debtor should not be ordered unless the payment of maintenance that will become due is ensured to the extent that the judge considers appropriate, unless a security or other suitable guarantee is provided.

The maintenance debtor should only be summoned after the seizure/adjudication/pledge of income has taken place. The maintenance debtor's opposition to the enforcement or seizure does not stay the enforcement.

In the case of a request to amend or terminate maintenance payments while the special maintenance enforcement is pending, the request for amendment or termination is joined to the enforcement.

### **European enforcement order**

In the event of non-compliance with a decision to set maintenance obtained by agreement, in an undisputed process, the maintenance creditor may call upon Regulation (EC) No 805/2004 of 21 April 2004 which lays down a European Enforcement Order [Article 4(3)(b) of the aforementioned Regulation] in order to enforce it in another Member State of the European Union. It is only in Denmark that this Regulation does not apply.

## **Criminal enforcement measures**

Article 250 of the Penal Code provides for and punishes the crime of violating maintenance obligations with imprisonment of between one month and two years or a fine of up to two hundred and forty days, according to the cases laid down therein.

Criminal proceedings require a complaint to be lodged.

If the obligation is then fulfilled, the court may waive or set aside in full or in part the period of the sentence not served.

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

In principle, all the debtor's seizable property that is liable for the enforcement debt in accordance with substantive law may be subject to enforcement. Seizure is limited to the assets required to pay the enforcement debt, and the foreseeable enforcement costs.

In addition, the law lays down the limits on seizure and limitation periods of maintenance obligations mentioned below.

### **Limits on seizure**

There are certain kinds of property that may not be seized under any circumstances (absolutely unseizable property), others that may be seized only in certain circumstances (relatively unseizable property) and others that may only be partially seized (partially seizable property).

#### *Absolutely unseizable property*

In addition to goods exempt from seizure by special provision, the following are absolutely unseizable:

- Inalienable objects or rights
- Assets in the public ownership of the State and of other public legal persons
- Objects whose seizure would be offensive to good manners or would not make economic sense because their market value is insignificant
- Objects specifically intended for the exercise of public worship
- Tombs
- Instruments and objects which are essential for the disabled and for treating the sick.

#### *Relatively unseizable property*

The following property is relatively unseizable:

- Except where the enforcement is for payment of a debt with a real guarantee, the assets of the State and other public legal persons, those of entities holding public works or public service concessions or those of legal persons of public utility which are specially allocated to purposes in the public interest, are exempt from seizure.
- The maintenance debtor's working tools and objects essential for the exercise of their profession or professional training are also exempt from seizure, unless the maintenance debtor specifies that they may be seized, if the enforcement is for the payment of their purchase price or the cost of their repair or if they are seized as elements incorporated in a commercial establishment.
- The assets which are indispensable for any household economy in the house where the debtor resides, except if the enforcement is for the payment of the items themselves or the cost of their repair, are also exempt from seizure.

Cash or bank deposits resulting from the settlement of unseizable credit cannot be seized, in the same terms in which the credit existed originally.

When a maintenance claim is recovered, the aforementioned rules on absolute and relative seizability apply.

As a rule, when it comes to property partially seized during maintenance enforcement, the amount that can be seized is higher than in enforcement founded on other claims, as will be explained below.

#### *Partially seizable assets*

Two-thirds of the net salaries, wages, periodic amounts received as retirement pension or any other social benefits, insurance, accident indemnity, annuity, or payment of any kind that ensure the maintenance debtor's sustenance are unseizable.

This unseizability has a maximum limit equivalent to three national minimum wages at the time of each seizure and a minimum limit, when the maintenance debtor has no other income, equivalent to one national minimum wage. Furthermore, when the outstanding debts are for maintenance, the law lays down that only an amount equivalent to a full non-contributory pension cannot be seized.

When seizing money or bank balances, the amount equivalent to the national minimum wage is unseizable or, in the case of maintenance obligations, the amount equivalent to a full non-contributory pension.

The unseizability laid down for salaries, wages or periodic payments cannot be combined with the unseizability laid down for money or bank balances.

In 2014, at the time of writing of this factsheet, the value of a non-contributory pension is €199.53 and the value of the national minimum wage is €505.00.

If the aforementioned rules on attachment are not observed, the maintenance debtor may object to the seizure.

### **Prescription**

The Portuguese Civil Code lays down a limitation period of five years for overdue maintenance payments. This means that five years after the due date of the maintenance payments, the right to the payments is prescribed due to non-use. The limitation period is interrupted by summons for legal proceedings concerned with maintenance payments. The maintenance debtor may waive the limitation after the expiration of the statute of limitations.

In the case of child maintenance, the limitation period does not start or elapse while the child does not have a representative. Even if the child has a representative, the limitation period does not come to an end earlier than one year from the date on which the child reached majority.

Portuguese civil procedural law does not lay down a limitation period after which the maintenance creditor can no longer bring maintenance enforcement proceedings. Prescribed maintenance payments may therefore be subject to enforcement. In this case, the court may not be aware, *ex officio*, of the prescription. In order to be effective, the prescription must be invoked by the maintenance debtor, who may object to the enforcement on that basis.

### **Opposition to seizure**

The general deadline for opposing seizure is ten days from notification of the seizure to the maintenance debtor. The general deadline for opposing enforcement is twenty days from service of the order on the maintenance debtor.

In the case of special maintenance enforcement, the order is served on the maintenance debtor only after the seizure, adjudication or pledge of income has taken place. Along with the service of the order, they are notified of the seizure that has already taken place.

In the case of a pre-enforcements hearing in a juvenile court, the maintenance debtor is notified before being ordered to pledge income but is unable to oppose. He or she may only provide documentary evidence of payment.

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

In the case of child maintenance, the Public Prosecutor is entitled to bring the respective proceedings in order to set maintenance. Anyone may notify the Public Prosecutor of the need to set or amend child maintenance. As such, the Public Prosecutor has a public consultation service in every Court.

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

Yes, in the case of child maintenance. It is known as the Guarantee Fund for Maintenance due to Minors [*Fundo de Garantia de Alimentos a Menores* (hereinafter called the Fund)]. The Fund is managed by the Social Security Financial Management Institute IP [*Instituto de Gestão Financeira da Segurança Social IP*].

The Fund is responsible for ensuring the payment, up to a particular limit, of maintenance due to minors. The payment is made by order of the competent court.

#### **Requirements**

The requirements to set the Fund's guarantee in motion are as follows:

- The minor must be resident in Portugal
- Maintenance payments must have been set by a court judgment (the Civil Registrar's judgments setting maintenance in the cases under their jurisdiction produce the same effects as legal judgments)
- The maintenance debtor must be in default
- The pre-enforcement hearing laid down in Article 189 of the Organisation of Care for Minors must have previously been set in motion (under national law, subject to fluctuations, this requirement may also be fulfilled by an application giving rise to a hearing for non-compliance with maintenance as laid down in Article 181 of the Organisation of Care for Minors or special maintenance enforcement proceedings)
- The child's gross income must not exceed the social support reference rate (IAS - *Indexante dos Apoios Sociais*)
- The child must not benefit from the person to whom their custody has been granted having an income greater than the IAS (this occurs when the per capita income of the minor's household does not exceed the IAS)

In 2014, at the time of writing of this factsheet, the IAS is €419.22. Updates to the IAS value have been suspended since 2009, but in principle it is updated annually. The relevant national legislation should therefore always be consulted for the IAS amount applicable.

#### Limits on payment

If the above requirements are verified, the State guarantees monthly maintenance payments up to the limit shown below.

For each maintenance debtor, the monthly maintenance payments granted may not exceed 1 IAS, regardless of the number of minor children.

Within this limit, the value of the payments to be guaranteed by the Fund must be set by the court. In setting this value, the Court takes into account the economic capacity of the household, the amount of the maintenance set and the specific needs of the child.

The Fund does not guarantee overdue payments. Payments guaranteed by the Fund are due from the first day of the month following that in which the court's decision set the guaranteed value.

Payment is guaranteed until the maintenance debtor begins to effectively comply with the obligation.

Payments from the Fund cease when the child reaches eighteen.

Children admitted to public or private non-profit social support institutions, financed by the State, by legal persons under public law, private law or public utility, educational guardianship centres and detention centres are not entitled to maintenance payments guaranteed by the Fund.

#### Processing

Applications for setting the amounts payable by the Fund must be submitted to the court during non-compliance proceedings. The Public Prosecutor or the maintenance creditor is responsible for submitting the application.

The judge orders an inquiry based on the child's needs and then makes their decision to set the payments to be made by the Fund within the limits indicated above.

In cases where maintenance is urgently due, the judge may set provisional maintenance to be guaranteed by the Fund until a final decision is reached.

The maintenance creditor must prove each year that they still meet the requirements to guarantee these payments from the Fund, otherwise they will come to an end.

The child's legal representative or the person to whom their custody has been granted has a duty to inform the court or the Fund of any changes to, or the ending of, the situation of non-compliance or the child's situation.

The Fund is subrogated to the rights of the child, up to the limit paid by it, for the purposes of claiming reimbursement from the maintenance debtor.

### **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?**

If the maintenance creditor is in Portugal and wishes to recover maintenance in another Member State of the European Union, he must submit the application to the Directorate-General of Justice Administration [*Direcção Geral da Administração da Justiça*], which is a public entity. National legislation does not provide for the intervention of a private organisation for such purposes.

The Directorate-General of Justice Administration is the Portuguese central authority for the purposes of applying 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 (hereinafter also referred to as Regulation).

This Regulation enables the cross-border recovery of maintenance. The Regulation applies to decisions handed down in Member States of the European Union (also known as Member State) and decisions handed down in non-Member States of the European Union (also referred to as third State). It applies not only to maintenance decisions made after its entry into force, on 18 June 2011, but also to decisions made before this date. It covers the recovery of overdue payments and payments that will become due, automatic updates set by the decision and interest on arrears. Under the Regulation, maintenance set by court order or by decision of another competent authority may be recovered.

The application for recovery of maintenance in another Member State is submitted to the Directorate-General of Justice Administration by completing and adjoining the appropriate forms annexed to the Regulation. The lender must attach certain documents and information to the forms, which can be, as appropriate: a certificate of the judgment or decision setting the definitive maintenance along with notice that the decision/judgment has been rendered final and unappealable, which should consist of the form contained in Annex I to the Regulation; document showing that they benefited or are in a position to benefit from legal aid or free proceedings; bank details for deposit of the amounts recovered; birth certificates of minor children; school attendance certificates for their adult children; the power of attorney granted to the central authority; a list of the amounts due.

The form or forms to be completed and the documents and information to be attached by the maintenance creditor are found on instructions that can be obtained from the Directorate-General of Justice Administration. The contact details of this body are listed in the reply to the question, "*Em caso afirmativo, como posso contactar essa autoridade ou organização privada?*"

The type of proceedings that can be requested of the Directorate-General of Justice Administration are covered in the reply to the question: "*Em caso afirmativo, como posso contactar essa autoridade ou organização privada e que tipo de ajuda posso obter?*"

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

The contact details of the Portuguese central authority are as follows:

Direcção-Geral da Administração da Justiça  
Av. D. João II, nº 1.08.01 D/E- Pisos 0 e 9º ao 14º  
1990-097 LISBON Portugal

Telephone: (351) 21 790 62 00-(351) 21 790 62 23

Fax No: (351)211545100/16

Email: [✉ correio@dgaj.mj.pt](mailto:correio@dgaj.mj.pt); [✉ cji.dsaj@dgaj.mj.pt](mailto:cji.dsaj@dgaj.mj.pt)

Website: [✉ http://www.dgaj.mj.pt/](http://www.dgaj.mj.pt/); [✉ http://www.cji-dgaj.mj.pt/](http://www.cji-dgaj.mj.pt/)

#### **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?**

In its role as the Central Authority under the aforementioned Council Regulation (EC) No 4/2009 of 18 December 2008, the Directorate-General of Justice Administration will provide the necessary support as described in the reply to the question "*Se eu me encontrar neste Estado-Membro e o devedor residir noutra país: posso obter ajuda de uma autoridade ou organização privada neste Estado-Membro?*".

If the maintenance creditor is in another Member State and wishes to request the application of one of the proceedings laid down in the Regulation, they should file the application with the central authority appointed by the Member State where they are based. This central authority, in turn, forwards the request to the Portuguese central authority who passes it on to the competent national court.

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

If the applicant is in another Member State, he should be able to contact the Directorate-General of Justice Administration via the central authority of the Member State where he is based.

The following assistance may be provided:

For the recovery of maintenance set by a decision handed down in another Member State, the Regulation lays down three different sets of rules:

- (i) rules applying to decisions handed down in a Member State bound by the 2007 Hague Protocol (as is the case with Portugal);
- (ii) rules applying to decisions handed down in a Member State not bound by the 2007 Hague Protocol;
- (iii) rules applying to decisions handed down in all Member States.

The decisions laid down in the section referred to in (i)

- are recognised in the requested Member State without any possibility of opposition;
- benefit from the abolition of *exequatur*; are immediately enforceable in the requested Member State;
- enable the maintenance creditor to bring precautionary measures laid down in the legislation of the requested Member State.

As regards the decisions laid down in the section referred to in (ii):

- they are recognised in the requested Member State except if any of the grounds for refusal of recognition laid down in the Regulation are proven to exist;
- if they are enforceable in the Member State of origin, the maintenance creditor may request that the court or competent authority of the requested Member State recognises its enforceability in accordance with the procedure laid down in the Regulation;
- the recognition of enforceability may only refer to part of a decision.

As regards the decisions laid down in the section referred to in (iii):

- they may be provisionally enforceable if the Member State of origin guarantees that any appeal against the decision will have a non-suspensive effect.
- if the maintenance creditor invokes the decision in the requested Member State, they must prove its authenticity by completing the forms and requirements laid down in the Regulation;
- if necessary, the maintenance creditor must attach a translation of the decision;
- enforcement of the judgment takes place according to the law of the requested Member State;
- under no circumstances can the judgment be subject to substantive review in the requested Member State;
- the costs of applying the Regulation do not take precedence over the recovery of outstanding maintenance.

Article 56 of the Regulation sets out the procedures that are available to maintenance creditors. In some cases these procedures cover not only decisions of the Member States but also decisions of third States.

Specifically, the maintenance creditor may:

- request from a Member State the recognition and declaration of enforceability of a decision handed down in another State;
- bring an action to set maintenance in the requested Member State;
- combine with this action an application to establish parentage;
- bring an action to set maintenance in the requested Member State when it proves impossible to obtain recognition or enforcement of a judgment handed down in another State;
- request modification of a decision handed down in the requested Member State;
- request modification of a decision handed down in a State other than the requested Member State.

These procedures are governed by the law and rules of jurisdiction of the requested Member State, unless other arrangements are laid down in the Regulation. In such cases, the maintenance creditor is aided and represented by the central authority or other public authority, body or person appointed by the requested Member State.

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

Yes, Portugal is bound by the 2007 Hague Protocol. As such, the following rules of Council Regulation (EC) No 4/2009 of 18 December 2008 shall apply to maintenance judgments handed down in Portugal: Articles 8, 13 and 17 to 22.

**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?**

The answer to this question is not necessary because of the affirmative reply to the previous question.

**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?**

Portuguese national law contains rules which provide legal aid comparable to that set out in chapter V of Council Regulation (EC) No 4/2009 of 18 December of 2008.

With regard to natural persons, the following are entitled to legal aid, provided that they are able to prove their economic insufficiency:

- Portuguese citizens and EU citizens.
- Foreigners and stateless persons with a valid residence permit in a Member State of the European Union.
- Foreigners without a valid residence permit in a Member State of the European Union – if the laws of their countries of origin give the same right to Portuguese citizens.
- Persons who are domiciled or habitually resident in a Member State of the European Union other than the Member State where the case will be heard (cross-border disputes).

National legislation provides for the application of the following criteria for assessing the economic insufficiency of natural persons:

- Applicants whose household has a relevant income for the purposes of legal aid equal to or less than three-quarters of the social support reference rate are not in a position to bear any amount relating to the costs of a process, and should also benefit from the assignment of an enforcement agent and free legal consultation (in 2014, the social support reference rate was €419.22).
- Applicants whose household has a relevant income for the purposes of legal aid of greater than three-quarters and equal to or less than two and a half times the social support reference rate are in a position to bear the costs of legal advice subject to prior payment of a fee, but are not in a position to promptly meet the costs of proceedings and, therefore, benefit from legal aid in the form of phased payment and the assignment of an enforcement agent.
- Applicants whose household has a relevant income for the purposes of legal aid of greater than two and half times the social support reference rate are not considered to be economically insufficient.
- The relevant income for the purposes of legal aid is the amount resulting from the difference between the value of the full net household income and the value of the relevant deduction for legal aid (the criteria for calculating these values are set by law).
- Persons living in the same household as the applicant for legal aid are considered to belong to the same household.
- If the applicant or any member of their household hold credits deposited in bank accounts and securities admitted to trading on a regulated market that amount to more than 24 times the social support reference rate, it is considered that the applicant is not economically insufficient, regardless of the value of the household's relevant income for the purposes of legal aid.
- The applicant may request, exceptionally and on duly justified grounds, that the assessment of economic insufficiency only takes into account their income, assets and own ongoing expenses or those of some of the members of their household.
- In the event of a dispute with one or more household members, the assessment of economic insufficiency only takes into account the income, assets and ongoing expenses of the applicant or of the applicant and some members of their household, if so requested.
- If, in a certain case, the chief of the social security services responsible for the decision to grant legal aid understands that the application of the criteria laid down in the preceding paragraphs would lead to a manifest denial of access to the law and to the courts they may, by reasoned order, make a different decision to that which would have resulted from application of the aforementioned criteria.

Legal advice enables the party to consult a lawyer in order to obtain technical information on a specific dispute before bringing or contesting an action in court.

Legal aid, in turn, may be granted in the following terms:

- exemption from court fees and other costs involved in proceedings; phased payment of court fees and other costs involved in proceedings;
- appointment and payment of legal representative's fees;
- appointment and phased payment of legal representative's fees;
- assignment of an enforcement agent to carry out enforcement measures (for example, seizure).

Legal aid covers the specific costs resulting from the cross-border nature of the dispute.

Thus, in the case of an application for legal aid submitted by a citizen from another Member State for an action in which the Portuguese courts have jurisdiction, legal aid comprises the costs of translation, interpretation and travel expenses of persons who are to appear in Court when their presence is required and/or the Court considers that they could not otherwise be heard.

In the case of an application for legal aid requested by a Portuguese citizen in order to bring an action for which the courts of another Member State have jurisdiction, legal aid covers the pre-litigation support until the proceedings have been instituted in another Member State, and the costs of translating the requirements and other documents.

If the recipient of legal aid loses the action, the system for reimbursing advance payments and expenses paid by the successful party is the same for all categories of individual beneficiaries indicated above, without discrimination between them.

However, rules exist in national law that provide less extensive legal aid than that provided for in chapter V of the Regulation and therefore must be supplemented by this.

Internally, minors are exempt from fees when they are represented by the Public Prosecutor or by a court-appointed lawyer.

Minors or their legal representatives are also exempt from costs in appeals against decisions relating to the application, amendment or termination of maintenance, handed down in juvenile court proceedings.

Parties in juvenile court proceedings and actions against the status of a person are exempt from prior payment of court fees. According to national legislation, majority is reached at the age of eighteen.

However, prior payment of court fees cannot be demanded in proceedings brought in Portuguese courts to which the Regulation applies. This is the case whether these proceedings relate to children or to adults, whatever the form of the process and whether or not a maintenance request overlaps with a request on the status of persons (Article 44 of the Regulation).

In such proceedings, if the applicant does not qualify for legal aid or free proceedings, the court fee may only be demanded at the end. Moreover, the proceedings laid down in Article 56 of the Regulation where the obligation of parents to provide maintenance for a child under twenty-one years of age is concerned (Article 46 of the Regulation) should be completely free.

The aforementioned rules of the Regulation are directly applicable and extend, internally, the scope of legal aid afforded by national legislation.

### **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?**

In accordance with the aforementioned Article 51 of Council Regulation (EC) No 4/2009 of 18 December 2008, the Directorate General of Justice Administration, as the Portuguese central authority, provides assistance in the proceedings laid down in the Regulation and shall take all appropriate measures to that end.

In particular, its responsibilities are:

- To transmit and receive such applications;
- To initiate or facilitate the institution of proceedings in the competent Court;
- Where circumstances require, to provide or facilitate the provision of legal aid;
- To help locate the debtor;
- To help obtain relevant information concerning the income and assets of the debtor;
- To encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
- To facilitate the ongoing enforcement of maintenance decisions, including any arrears;
- To facilitate the collection and expeditious transfer of maintenance payments;

- To facilitate the obtaining of documentary or other evidence;
- To provide assistance in establishing parentage where necessary for the recovery of maintenance;
- To initiate or facilitate the institution of proceedings to obtain any necessary provisional measures to secure the outcome of a pending maintenance application;
- To facilitate the service of documents.

To achieve these goals, the Portuguese State, and in particular the Directorate General of Justice Administration, as the central authority, has implemented the following measures:

- Reinforced the number of legal and administrative staff to receive and transmit orders made under the Regulation;
- Taken on a family mediator;
- Created an area on its *website* dedicated exclusively to international judicial cooperation in civil and commercial matters, where information can be found relating to maintenance obligations, instructions on the documents and forms necessary to bring proceedings laid down in the Regulation and to complete a standard form specifying the amount in arrears
- When requested, forwards the application for legal aid to the competent authorities;
- Forwards applications to the competent national courts;
- Translates the documents required for bringing claims when Portugal is the requested State;
- Requests information and evidence from the national police, administrative and tax authorities and Immigration and Border Control on the whereabouts and property of the maintenance debtor;
- With regard to reconciliation, when the maintenance debtor is summoned to appear or make contact with the central authority, he will be made aware of the application for setting, amending or recovering maintenance and presented with the possible scenarios, particularly those that are most beneficial for both parties, in order to encourage voluntary payment.

#### **Disclaimer**

The Contact Point, the courts or other entities and authorities are not bound by the information contained in this factsheet. The legal texts in force should still be consulted. These are subject to regular updates and evolutionary interpretation of case-law.

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