Topic 12. Maintenance obligations

Topic 12 of 16 · Semester 1

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Chapter

Maintenance (alimony) obligations constitute one of the most vital and socially significant institutions of family law. They serve to secure the property rights of needy family members, especially minor children, disabled parents, and other relatives in need. In this lesson, we will examine the concept of maintenance, the grounds for its arising, and its specific characteristics. During the lesson, child maintenance for minors, the obligation to support parents, the rights of spouses and former spouses, and the maintenance obligations of other relatives will be analysed in detail. Furthermore, the procedure for concluding an agreement on the payment of maintenance, its notarial form and legal effect, the judicial recovery of maintenance, the calculation of arrears, and liability for non-payment will be considered. At the end of the lesson, by exploring foreign practice, we will comparatively analyse the peculiarities in our national legislation. This knowledge will serve as an essential foundation in practice for ensuring the priority of the child's best interests and correctly resolving family disputes.

AT A GLANCE

- 18 years — Age of majority of child (Family Code and Law on Guarantees of Child Rights)
- 26.5 per cent — Minimum maintenance for one child (Share of the minimum wage)
- 3 years — Recovery period for past time (Maximum period prior to applying to court)
- 0.1 per cent — Penalty for delayed day (For each day on the unpaid maintenance sum)

12.1 Concept and Grounds of Maintenance Obligations

Maintenance (from Latin alimentum – food, support, maintenance) is material support that one person is obliged by law to provide to another person in cases specified by statute. In family law, maintenance obligations occupy a central place in securing the property rights of family members and former family members. The grounds for the arising of maintenance obligations are established imperatively in law,

comprising blood relationship, incapacity to work, and neediness. An agreement on the payment of maintenance also constitutes a ground creating an obligation. Maintenance obligations possess distinct legal characteristics. Firstly, they are of a personal nature; that is, they terminate upon the death of the maintenance payer or recipient and do not pass to other persons by succession. Secondly, maintenance obligations are gratuitous; that is, even if recovered by mistake (with the exception of instances involving false information or forged documents), maintenance cannot be reclaimed. Thirdly, this obligation is of a continuous nature and is recovered on a monthly basis from the date of claiming. In accordance with the Family Code of the Republic of Uzbekistan, maintenance relations arise not only between parents and children, but also between spouses, former spouses, and other relatives such as grandparents, grandchildren, and siblings. The proper determination and enforcement of these obligations serve to ensure social justice in society and safeguard the interests of vulnerable strata of the population, particularly minor children and incapacitated persons. Hypothetical example: Citizen Anvar and his spouse divorced. Anvar has a minor child. Paying maintenance for his child is Anvar's statutory obligation. If Anvar dies, this obligation does not pass to his heirs, because maintenance is of a personal nature and is a duty that must be performed solely by Anvar himself. This rule clearly demonstrates the personal nature of maintenance.

- Maintenance obligations are imperatively established by law or arise by virtue of an agreement.
- Maintenance is of a personal nature and does not pass to other persons by succession.
- Maintenance obligations are gratuitous and cannot be reclaimed even if recovered in error (Family Code, art. 143).

> **KEY INSIGHT**
> Because maintenance is an obligation of a strictly personal nature, it cannot be assigned to other persons and cannot be set off against other cross-claims.

12.2 Maintenance for Minor Children

Parents are obliged to maintain their minor children. This rule is one of the most vital guarantees for protecting child rights. In the absence of an agreement between the parents, maintenance is recovered by a court as a specific share of the parent's monthly wages and other income: one quarter for one child, one third for two children, and one half for three or more children. The amount of maintenance recovered for each child must not be less than 26.5 per cent of the minimum wage established by legislation (Family Code, art. 99). If the income of the maintenance payer is fluctuating, if income is received in kind, or if there is no official income, the court may determine maintenance in a fixed monthly sum of money (Family Code, art. 102). Furthermore, in the event of a child's serious illness or other exceptional circumstances, parents are obliged to participate in additional expenses (Family Code, art. 103). Parents are also obliged to maintain adult children who are incapacitated and in need of assistance, which is determined in a fixed sum of money (Family Code, arts. 100, 101). Hypothetical example: Citizen Botir works in seasonal construction work and does not have an official monthly salary. He has two minor children. When his former spouse applied to court, because Botir's income was variable, the court ordered him to pay maintenance in a fixed monthly sum of money. In addition, when one of the children fell seriously ill, the court also imposed on Botir the obligation to cover additional expenses for medical treatment.

• Parents are obliged to maintain their minor children (Family Code, art. 96).

• Amount of maintenance: 1/4 of income for 1 child, 1/3 for 2 children, 1/2 for 3 or more children (Family Code, art. 99).

• If income is fluctuating, maintenance is determined in a fixed sum (Family Code, art. 102).

• In exceptional circumstances, parents are obliged to participate in additional expenses (Family Code, art. 103).

EXAM FOCUS

In the examination, calculating the amount of maintenance will be asked. Remember: the amount of maintenance for each child cannot be less than 26.5 per cent of the minimum wage.

COMMON PITFALL

A common pitfall: assuming that the absence of formal employment exempts one from paying maintenance. In reality, in such cases maintenance is calculated in a fixed sum or on the basis of the average monthly wage.

12.3 Obligation to Support Parents

In family law, it is strictly established that not only must parents support their children, but children must also support their parents. Able-bodied adult children are obliged to maintain and care for their incapacitated parents who are in need of assistance (Family Code, art. 109). If children evade providing voluntary assistance, the amount of maintenance is determined by the court in a fixed sum of money, taking into account the familial and material status of the children. When determining the amount of maintenance, the court takes into account all able-bodied adult children, irrespective of whether the claim was brought against all of them or only one of them. The amount of maintenance recovered for parents must not be less than 11.75 per cent of the minimum wage (Family Code, art. 110). In addition, children are obliged to participate in additional expenses necessitated by the illness of their parents. However, if the court establishes that the parents previously evaded the performance of their parental duties, it may release the children from the obligation to maintain their parents (Family Code, art. 113). Hypothetical example: Citizen Karim's parents are of retirement age and need assistance due to serious illness. Although Karim enjoys a substantial income, he refused to provide them with financial support. His parents applied to the court. The court examined Karim's financial situation and ordered him to pay maintenance in a fixed monthly sum in favour of his parents. If it had been proven that the parents did not care for Karim during his childhood and evaded paying maintenance, the court would have released Karim from this obligation.

• Able-bodied adult children are obliged to maintain their needy parents (Family Code, art. 109).

• The amount of maintenance must not be less than 11.75 per cent of the minimum wage (Family Code, art. 110).

• Parents who failed to perform their parental duties cannot claim maintenance from their child (Family Code, art. 113).

COMPARE

> Whilst maintenance for children is determined as a percentage or share of income, maintenance for the support of parents is always determined in a fixed sum.

12.4 Maintenance Obligations of Spouses and Former Spouses

Spouses are obliged to provide material support to each other. If such support is not provided voluntarily, the law grants the right in certain cases to claim maintenance through the courts. These include: an incapacitated spouse in need of assistance; a wife during pregnancy and for three years from the birth of a common child; a needy spouse caring for a common child with a disability until the child reaches 18 years of age or caring for a common child with a Group I disability since childhood (Family Code, art. 117). The same rights may also be claimed from a former spouse who possesses sufficient means (Family Code, art. 118). The court determines the amount of maintenance in a fixed sum of money payable monthly, and this sum must not be less than 11.75 per cent of the minimum wage. The court may release a spouse from the duty of maintenance in cases of short duration of the marriage, unworthy behaviour, or alcohol abuse (Family Code, art. 120). Hypothetical example: Citizens Dilnoza and Jasur dissolved their legal marriage. Dilnoza is pregnant and is unable to work for three years after the child's birth. Dilnoza has the right to claim maintenance from Jasur in a fixed sum through the court for her own support, irrespective of her earning capacity or neediness. This rule is a striking example of the state's protection of motherhood and childhood.

- A pregnant wife and a mother until the child reaches 3 years of age are entitled to receive maintenance from the husband (Family Code, art. 117).
- A former spouse may also claim maintenance under certain conditions (Family Code, art. 118).
- Unworthy behaviour or a marriage of short duration may serve as grounds for exemption from maintenance (Family Code, art. 120).

> **CASE LINK**
> Practical situation: When a wife claims maintenance during pregnancy and until the child reaches 3 years of age, proof of her incapacity to work or neediness is not required. This is her absolute right.

12.5 Maintenance Obligations of Other Relatives and Persons

In family law, maintenance obligations are not confined solely to parents, children, and spouses. Legislation also provides for second-order (subsidiary) maintenance obligations. If minor or incapacitated persons cannot obtain maintenance from their parents or children, this obligation may devolve upon other relatives. For instance, the duty to support grandchildren who have no parents may be imposed on grandparents who possess sufficient means (Family Code, art. 123). Similarly, adult grandchildren are obliged to maintain needy grandparents (Family Code, art. 124). A mutual maintenance obligation likewise exists between brothers and sisters (Family Code, art. 125). In addition, the law provides that stepfathers and stepmothers must maintain stepchildren raised by them, and stepchildren must maintain needy stepparents (Family Code, arts. 127, 128). Persons who were in actual upbringing on a permanent basis may also maintain their actual educators. In all instances, the amount of maintenance is determined in a fixed sum of money (Family Code, art. 129). Hypothetical example: Minor Umid's parents tragically died. The obligation to pay

maintenance for his support was judicially imposed upon his grandparents, who had sufficient means. Had Umid had an adult brother with an income, the obligation to pay maintenance would have fallen primarily upon the brother. These rules ensure family solidarity and the protection of relatives in need.

- Grandparents may maintain grandchildren who have no parents (Family Code, art. 123).
- A mutual maintenance obligation exists between brothers and sisters (Family Code, art. 125).
- Maintenance obligations may also arise between stepparents and stepchildren (Family Code, arts. 127, 128).
- Maintenance recovered from other relatives is determined in a fixed sum (Family Code, art. 129).

> **KEY INSIGHT**
> The maintenance obligation of other relatives is of a subsidiary (supplementary) nature; that is, it arises only in the absence of first-priority persons (parents, children, spouses) or when it is impossible to obtain funds from them.

12.6 Agreement on the Payment of Maintenance

The payment of maintenance is effected voluntarily or judicially. The most reliable form of voluntary arrangement is an agreement on the payment of maintenance. This agreement must be concluded in writing between the person obliged to pay maintenance and the recipient of maintenance, and must be notarially certified. An agreement that is not notarially certified is void (Family Code, art. 131). The most significant aspect is that a notarially certified agreement has the force of a writ of execution, meaning it can be directly submitted for compulsory enforcement. The amount of maintenance payable under the agreement cannot be less than the amount children would have been entitled to receive had it been recovered judicially (Family Code, art. 133). The agreement may establish modalities for paying maintenance in shares of income, in a fixed sum of money, in a lump sum, or through the transfer of property. Unilateral termination or variation of the agreement is not permitted. Hypothetical example: Citizen Rustam, going abroad for long-term work, concluded a notarial agreement with his former spouse for the maintenance of their minor child. Under the agreement, in lieu of periodic maintenance, Rustam transferred an apartment registered in his name into the ownership of the child. This is a lawful and voluntary method that fully secures the child's interests and prevents future disputes.

- The agreement must be concluded in writing and notarially certified (Family Code, art. 131).
- A notarial agreement has the force of a writ of execution (Family Code, art. 131).
- The amount under the agreement cannot be less than the minimum amount established by law (Family Code, art. 133).
- Maintenance may also be paid by means of the transfer of property (Family Code, art. 134).

> **EXAM FOCUS**
> In the examination, the form and force of the agreement will be tested. Remember: it must be in writing, notarially certified, and it is equated in legal force to a writ of execution.

12.7 Judicial Recovery of Maintenance

If there is no agreement on the payment of maintenance, the person entitled to maintenance has the right to apply to court at any time. Maintenance is recovered from the moment of application to the court. If measures were taken prior to applying to court but the debtor evaded payment, maintenance may be recovered for a past period within a three-year limitation (Family Code, art. 136). The employer is obliged to withhold maintenance from the employee's wages on the basis of a court decision or agreement and remit it within three days (Family Code, art. 137). Maintenance arrears are levied against all income and property of the debtor. If the debtor is not working, arrears are calculated based on the average monthly wage in Uzbekistan (Family Code, art. 140). If the debt is not paid in due time, a penalty (liquidated damages) of 0.1 per cent is payable for each day of default (Family Code, art. 142). Wilful evasion of maintenance payments incurs administrative and criminal liability. Hypothetical example: Citizen Sanjar, despite a court decision, wilfully failed to pay maintenance for 4 months and concealed his workplace. The Compulsory Enforcement Bureau calculated his arrears on the basis of the average wage and levied execution upon a motor vehicle registered in his name. Furthermore, for evading maintenance payments, Sanjar may be subjected to administrative liability and, if continued, criminal liability.

- Maintenance is recovered from the date of application to court, and as an exception may be recovered for the preceding 3 years (Family Code, art. 136).
- Arrears of an unemployed debtor are calculated on the basis of the average wage (Family Code, art. 140).
- A penalty of 0.1 per cent is calculated for each day of delay (Family Code, art. 142).
- Reclaiming maintenance paid is not permitted (Family Code, art. 143).

> **COMMON PITFALL**
> Many believe that being unemployed excuses them from paying maintenance. In fact, arrears for periods of unemployment are calculated based on the average monthly wage in the republic, which often results in a debt higher than actual earnings.

12.8 Practice of Foreign Countries

The legal regulation of maintenance obligations takes distinctive forms in foreign jurisdictions. In countries belonging to the Romano-Germanic legal family, various approaches exist. For example, in the German Civil Code (BGB), family law is set forth as a separate book, wherein the concepts of maintenance and support are applied in the same sense. In France, the determination of maintenance is considerably more flexible. According to Article 271 of the French Civil Code, the court takes numerous factors into account when fixing maintenance: the recipient's ability to earn independent income, each spouse's vocational qualifications, the standard of living of the family during the marriage, the duration of the marriage, age, and health. In the Civil Code of the People's Republic of China (2021), although maintenance is not designated as a separate institution by name, the support of needy family members by able-bodied members is enshrined as a traditional duty. Hypothetical example: Whilst in Uzbekistan maintenance is predominantly fixed on a rigid percentage basis (1/4, 1/3), in France the primary criteria during judicial proceedings are the family's previous standard of living and the circumstances to which the child was accustomed. That is, so that

the child does not suffer a decline in customary well-being after parental divorce, the court determines maintenance not by reference to a fixed percentage of income, but on the basis of actual need and lifestyle. This practice is of great significance for refining our national legislation.

- In Germany, the concepts of maintenance and support are used synonymously.
- French legislation takes into account the standard of living during marriage and professional qualifications when determining maintenance.
- In China, supporting family members is incorporated into civil legislation as a traditional duty.

> **COMPARE**
> Whilst in Uzbekistan maintenance is determined mainly as a fixed share of income, courts in countries such as France evaluate specific factors in each case (age, profession, standard of living) and render flexible decisions.

KEY TAKEAWAYS

1. Maintenance is an obligation of a personal nature, does not pass by succession, and cannot be set off against other claims.
2. Parents are obliged to maintain their minor children; this obligation cannot be waived under any circumstances.
3. A notarial agreement on the payment of maintenance has the force of a writ of execution, and it may also stipulate the payment of maintenance through property.
4. A pregnant wife and a mother until the child reaches 3 years of age have an absolute right to receive maintenance from the husband.
5. Unemployment does not exempt one from paying maintenance; arrears are calculated based on the average monthly wage in Uzbekistan.
6. Wilful non-payment of maintenance gives rise to administrative and criminal liability, as well as a penalty of 0.1 per cent for each day of default.

Summary

Maintenance obligations constitute one of the most vital institutions of family law, aimed at the social and material protection of needy family members. According to legislation, maintenance relations arise not only between parents and minor children, but also between adult children and parents, spouses, former spouses, and other relatives (grandparents, grandchildren, siblings). Maintenance is recovered voluntarily through a notarially certified agreement or compulsorily under a court judgment. While maintenance for minor children is recovered as a fixed share of income (1/4, 1/3, 1/2), in all other instances it is determined in a fixed sum of money. Legislation provides strict measures for evading maintenance payments, including penalties, administrative and criminal liability, as well as foreign travel bans. Through this lesson, students will thoroughly master the legal nature of maintenance obligations and the procedures for their calculation and recovery.

KEY PRINCIPLES

1. Priority of the child's interests and equal obligations of parents.
2. Personal nature of maintenance obligations and non-transferability to other persons.
3. Status of a notarially certified agreement on the payment of maintenance as an enforcement document.
4. Inclusion of all types of income when calculating maintenance.
5. Unemployment or lack of income does not exempt from paying maintenance.
6. Inevitability of liability for evading the payment of maintenance.

> KEY TERMS
> Maintenance · Agreement on the payment of maintenance · Fixed sum · Share recovery · Penalty (liquidated damages) · Indexation · Subsidiary obligation · Writ of execution · Compulsory enforcement

EXAM CHECKLIST

- Can I state precisely the statutory shares of maintenance for minor children?
- Do I know the conditions under which spouses and former spouses may claim maintenance?
- Can I explain the form and legal effect of an agreement on the payment of maintenance?
- Do I know how maintenance is calculated for an unemployed debtor?
- Can I explain when the maintenance obligations of other relatives (e.g. grandparents) arise?
- Do I know the amount of penalty payable for delaying maintenance payments?

Cases (IRAC)

Case 1 · Official Salary and Concealed Income

> FACTS
> Farrux pays maintenance for his two children. Officially, he receives a salary close to the minimum wage, but in practice he also derives income from passenger transport, online commerce, and letting his house. The children's mother submitted bank transfer statements, rental advertisements, and online sales page details, requesting that maintenance be determined in a fixed monetary sum. Farrux, however, stated that these inflows were not income, but loans and funds from acquaintances. One of the children requires regular, expensive medical treatment.

> ISSUE
> What are the legal grounds for determining maintenance in a fixed monetary sum and recovering additional expenses for the child's medical treatment when the father possesses informal income alongside his official salary?

RULE

Under art. 99 of the Family Code, in the absence of an agreement between the parents, maintenance for two children shall be recovered judicially in the amount of one-third of the parents' earnings and/or other income. Pursuant to art. 102, if the parent's earnings and/or other income are fluctuating and irregular, if they receive part of the income in kind, or if they have an income that is not officially determined, maintenance may be established in a fixed monetary sum. Article 104 strictly stipulates that maintenance shall be withheld from all types of income. Furthermore, according to art. 103, parents are obliged to participate in additional expenses necessitated by extraordinary circumstances, including serious illness or injury of the child. Such expenses may be recovered partially in a fixed monetary sum.

ANALYSIS

1) In order to establish maintenance in a fixed monetary sum, it is material that the payer's income is fluctuating or informal. Although Farrux's official salary is close to the minimum wage, he also derives income from other activities, such as passenger transport and renting out property. In such circumstances, recovering maintenance as a fractional share of income does not guarantee adequate maintenance for the children. Proceeding from the principle of the priority of the child's best interests, it is appropriate for the court, having assessed all income, to determine maintenance in a fixed monetary sum (Family Code, art. 102). 2) Electronic data and banking transactions serve as modern means of proving income. Farrux must prove that the bank transfers constitute loans; otherwise, they will be treated as income and included in the base for recovering maintenance. Under the legislation, maintenance must be withheld from all types of income (Family Code, art. 104). An attempt to conceal income sources during court proceedings is regarded as an infringement of the child's rights. 3) The child's need for regular and expensive medical treatment constitutes an extraordinary circumstance. The mother, having submitted medical certificates and receipts confirming these expenses, is fully entitled to claim the recovery of additional expenses from Farrux in a fixed monetary sum. These expenses are recovered independently and separately from regular monthly maintenance (Family Code, art. 103).

CONCLUSION

Due to the existence of Farrux's informal and fluctuating income, the court may determine maintenance in a fixed monetary sum. Furthermore, it is lawful for the additional expenses incurred owing to the child's illness to be recovered from Farrux in a separate fixed monetary sum over and above regular maintenance.

DISCUSSION QUESTIONS

1. Which circumstances are significant when determining maintenance as a fractional share of income or in a fixed monetary sum?
2. What evidentiary issues arise in identifying sources of income through electronic data and banking transactions?
3. On what grounds can additional expenses incurred for a child's medical treatment be claimed separately from maintenance?

Family Code of the Republic of Uzbekistan (30.04.1998) — https://lex.uz/docs/104720

Case 2 · Maintenance in Exchange for an Apartment and Maintenance of Other Family Members

FACTS

Upon divorce, Shahlo and Behzod concluded a notarised maintenance agreement specifying the transfer of Behzod's share in an apartment to their child as future maintenance payments. Subsequently, the child required long-term rehabilitation. Shahlo, pointing out that she was unable to work because the child had not reached the age of three, also requested funds for her own maintenance. Behzod claimed that the transfer of the apartment had extinguished all maintenance obligations. At the same time, his incapacitated mother, who was in need of assistance, also claimed maintenance from him.

ISSUE

Does a maintenance agreement concluded by transferring property extinguish obligations regarding additional expenses for the child, the former wife's own maintenance, and the maintenance of an incapacitated mother?

RULE

Under art. 134 of the Family Code, maintenance based on an agreement on the payment of maintenance may be paid by way of transferring property. Pursuant to art. 103, under extraordinary circumstances (serious illness of the child), parents must participate in additional expenses, which are recovered separately. According to arts. 117 and 118, a former wife has the right to receive maintenance from her former husband during a period of three years from the date of birth of their common child. In addition, pursuant to art. 109, adult able-bodied children are obliged to maintain and care for their incapacitated parents who are in need of assistance.

ANALYSIS

1) An agreement on the payment of maintenance by transferring property is concluded on the basis of voluntary consent and is notarially certified. However, it is strictly required that the value of the property transferred under this agreement must not be less than the amount the child could have received if recovered through judicial proceedings, and must not contravene the child's interests (Family Code, art. 133). Judicial supervision verifies that the agreement has not restricted the child's rights.
2) The transfer of the apartment covers only the child's regular monthly maintenance. The additional expenses arising from the child's long-term rehabilitation constitute an independent obligation, and the agreement on transferring property does not extinguish it (Family Code, art. 103). Furthermore, Shahlo is entitled to claim separate maintenance from Behzod independently for her own support until the child reaches the age of three (Family Code, art. 118). This claim is entirely distinct from child maintenance.
3) Behzod's incapacitated mother also has the right to claim maintenance from him (Family Code, art. 109). Where multiple claims are brought against a single individual, the court considers the grounds for each obligation separately. Taking into account Behzod's material and family circumstances and all of

his obligations, maintenance is determined in a fixed monetary sum for each claimant (former wife and mother).

CONCLUSION

The agreement concluded by transferring the apartment does not relieve Behzod from his obligations to participate in the child's additional expenses, or to provide maintenance to his former wife caring for a child under three years of age and to his incapacitated mother.

DISCUSSION QUESTIONS

1. How are the content and conformity with the child's best interests of an agreement on the payment of maintenance by transferring property verified?
2. How does such an agreement affect the child's additional expenses and the former wife's independent maintenance claim?
3. How are the grounds for each obligation and financial capacities assessed when claims are brought against one individual by a child, a former wife, and an incapacitated mother?

Family Code of the Republic of Uzbekistan (30.04.1998) — https://lex.uz/docs/104720

Case 3 · A Father Departing Abroad and Advance Payment of Maintenance

FACTS

Nodir plans to depart for a foreign state for permanent residence. He has a 7-year-old son with his former wife, Malika. Before departing abroad, in order to resolve the maintenance issue, Nodir proposed to Malika either paying maintenance in advance or transferring a motor car belonging to him into the child's name. Malika, stating that the car would not meet the child's daily needs, demanded the advance payment of 11 years of maintenance (until the child reaches 18 years of age) exclusively in monetary form. Nodir, however, stated that he did not currently have that amount of cash.

ISSUE

What is the procedure for an advance payment of maintenance or the transfer of property by a person departing abroad for permanent residence, and how is the dispute resolved if no agreement is reached?

RULE

Under art. 145 of the Family Code, a person departing abroad for permanent residence or for a period exceeding three months is obliged to conclude an agreement on the payment of maintenance with the recipients of maintenance. If no agreement is reached, an interested person is entitled to apply to court with a claim for maintenance to be paid as a lump sum, by transferring property, or in another manner. Pursuant to art. 135, it is lawfully permissible for maintenance to be paid in advance for the period until the child reaches the age of majority, or to be paid by way of transferring movable or immovable property.

ANALYSIS

1) Because Nodir is departing abroad for permanent residence, he is obliged under the law to conclude a notarised agreement on the payment of maintenance with Malika. This rule is necessary to guarantee the child's interests and prevent the risk of being left without maintenance while the payer is abroad (Family Code, art. 145). 2) The legislation permits the advance payment of maintenance both in monetary form and by transferring movable property such as a car (Family Code, art. 135). It is Malika's right to reject the car and demand cash, since the property might not directly satisfy the child's daily needs. However, Nodir's financial capacity, in particular his lack of cash, must also be taken into account. 3) If the parties fail to reach a voluntary agreement, Malika may apply to court to claim a lump-sum maintenance payment. The court, assessing all circumstances of the dispute, including Nodir's lack of cash and ownership of a car, may, based on the child's best interests, order maintenance to be paid by transferring property or by recovering it partly in money and partly through property.

CONCLUSION

Nodir is obliged to resolve the maintenance issue by agreement before departing abroad. If no agreement is reached, the court, taking into account the circumstances of the dispute, including Nodir's lack of cash and ownership of a car, may order maintenance to be paid by transferring property.

DISCUSSION QUESTIONS

1. How is the maintenance obligation of a person departing abroad regulated?
2. How is maintenance implemented by means of advance payment or the transfer of property?
3. How is the dispute resolved if no agreement is reached between the parties?

Family Code of the Republic of Uzbekistan (30.04.1998) — https://lex.uz/docs/104720

Quiz

MULTIPLE CHOICE

1. What is the basis of parents' obligation to maintain a minor child?

- A. Solely on the subsistence of the marriage
- B. Solely on cohabitation with the child
- C. On the legally established legal relationship between the parents and the child
- D. Solely on a notarised contract

CORRECT: C

The obligation of parents to maintain their minor children is based on their blood relation and the fact of the child's minority. The dissolution of marriage or the parents living apart does not extinguish this obligation. The child's interests are paramount, and parents are obliged to maintain them (Family Code, art. 96). The other options are incorrect because maintenance does not depend solely on an agreement or cohabitation.

2. As a general rule, what proportion of earnings is recovered as maintenance for one minor child?

- A. One-quarter
- B. Two-thirds
- C. In full
- D. One-tenth

CORRECT: A

According to the legislation, in the absence of an agreement between the parents, the court recovers maintenance for one minor child in the amount of one-quarter (1/4) of the parent's monthly earnings and other income (Family Code, art. 99). The other options contravene the law, as two-thirds or the full amount is not prescribed by statute, and one-tenth is deemed insufficient for the child's needs.

3. As a general rule, what amount of maintenance is recovered for two minor children?

- A. One-half of earnings
- B. One-quarter of earnings
- C. Three-quarters of earnings
- D. One-third of earnings

CORRECT: D

If there is no agreement between the parents on the payment of maintenance, maintenance for two minor children is recovered through the court in the amount of one-third (1/3) of the parents' income (Family Code, art. 99). One-half of income is established for three or more children, and one-quarter for one child. This rule aims to satisfy the material needs of the children.

4. As a general rule, what amount of maintenance is recovered for three or more minor children?

- A. One-fifth of earnings
- B. One-half of earnings
- C. One-third of earnings
- D. One-quarter of earnings

CORRECT: B

Pursuant to statutory requirements, maintenance for the support of three or more minor children is recovered in the amount of one-half (1/2) of the parent's earnings and other income (Family Code, art. 99). This rule is designed to protect the interests of children in large families. One-fifth or one-third is incorrect for this circumstance.

5. Which circumstance may serve as a ground for determining maintenance in a fixed monetary sum?

- A. The child achieving good grades at school
- B. The parents having different surnames
- C. The maintenance payer having fluctuating or irregular income
- D. The loss of the marriage certificate

CORRECT: C

If the earnings of the parent obliged to pay maintenance are fluctuating, if they receive income in kind, or if they have no official income, the court may determine maintenance in a fixed monetary sum payable monthly (Family Code, art. 102). Circumstances such as school grades, difference in surnames, or loss of a document do not affect the form of maintenance.

6. How is an agreement on the payment of maintenance formalised?

- A. Drawn up in writing and notarially certified
- B. Solely by an oral promise
- C. With the certification of a school headteacher
- D. By an oral agreement in the presence of mahalla witnesses

CORRECT: A

An agreement on the payment of maintenance must necessarily be concluded in writing and notarially certified. Failure to comply with this form entails the invalidity of the agreement. A notarially certified agreement has the force of a writ of execution (Family Code, art. 131). An oral promise or mahalla certification has no legal effect.

7. What is the correct rule regarding the amount of maintenance in a maintenance agreement for a minor child?

- A. Any symbolic sum may be established
- B. Only the amount desired by the payer is established
- C. Child maintenance may be completely waived
- D. It must not be less than the amount that could be recovered through judicial proceedings

CORRECT: D

The amount of maintenance specified in an agreement on the payment of maintenance must not be less than the statutory amount the child could receive judicially (for instance, 1/4 share for one child). This rule serves as a guarantee protecting the child's property rights and interests (Family Code, art. 133). Establishing a nominal sum or waiving maintenance altogether is impermissible.

8. Who may participate in necessary additional expenses caused by a child's serious illness?

- A. Only the father or mother residing with the child
- B. Both parents, on the basis of statutory conditions
- C. Only grandparents
- D. Only the medical institution

CORRECT: B

When extraordinary circumstances arise, such as serious illness or injury of the child, both parents are obliged to participate in additional expenses. If the parents cannot reach a voluntary agreement, the

court, taking into account their financial and family status, decides to recover additional expenses in a fixed monetary sum (Family Code, art. 103). Other persons are not compelled.

9. In which circumstance may an adult child claim maintenance from their parents?

- A. Only when they do not wish to work
- B. In any event solely because they are studying in higher education
- C. When they are incapacitated and in need of assistance
- D. Only when their parents divorce

CORRECT: C

Parents are obliged to maintain only those adult children who are incapacitated and in need of assistance (Family Code, art. 100). For example, this includes children with Group I or II disabilities. Reluctance to work or merely being a university student does not provide statutory grounds for claiming compulsory maintenance from parents.

10. What becomes of the obligation to pay child maintenance of a person deprived of parental rights?

- A. It is retained
- B. It terminates automatically
- C. It is retained only if the child consents
- D. It is determined at the discretion of the mahalla

CORRECT: A

Deprivation of parental rights does not relieve a parent of the obligation to maintain their child. The child's material interests are paramount, and the person deprived of rights must nevertheless pay maintenance in accordance with statutory procedures (Family Code, art. 79, art. 116). The obligation does not terminate automatically and is not subject to other conditions.

11. Citizen Anvar works in seasonal construction, and his monthly income is not regular. His former spouse Nargiza wishes to recover maintenance for their 5-year-old child. Given that Anvar lacks an official and regular salary, in what form may the court establish maintenance?

- A. Suspends the recovery of maintenance until Anvar finds permanent employment
- B. Determines maintenance in a fixed monetary sum payable monthly because Anvar's income is fluctuating
- C. Establishes symbolic maintenance amounting to only one-tenth of the minimum wage
- D. Issues a decision to cover the child's maintenance at the state's expense

CORRECT: B

If the earnings or other income of the parent obliged to pay maintenance are fluctuating and irregular, or if they have no officially determined income, the court may determine maintenance for the support of a minor child in a fixed monetary sum payable monthly (Family Code, art. 102). This ensures that the child's interests are consistently protected.

12. The parents of 12-year-old Rustam died in a car accident. He has insufficient funds for his maintenance. Rustam has a grandfather and grandmother who possess sufficient financial means. Under the legislation, how is the issue of Rustam's maintenance resolved?

- A. The grandfather and grandmother may only assist voluntarily; they cannot be compelled
- B. Rustam must immediately be transferred to an orphanage and placed on state support
- C. In the absence of parents, the obligation to maintain their grandchild may be imposed on grandparents who have sufficient funds
- D. Rustam's maintenance is assigned to the local municipality

CORRECT: C

Under the legislation, the obligation to maintain minor grandchildren who have no parents or cannot receive maintenance from them may be judicially imposed on grandparents possessing sufficient means (Family Code, art. 123). This rule serves to ensure family care and the priority of the child's interests.

13. Former spouses Sanjar and Malika intend to conclude an agreement regarding the maintenance of their 8-year-old child. Instead of paying monthly sums, Sanjar proposed to discharge maintenance fully in advance by transferring an apartment registered in his name to the child. Under family legislation, is it permissible to pay maintenance in such a manner?

- A. No, maintenance must be paid solely on a monthly basis in cash or by transfer to a bank card
- B. No, transferring immovable property towards maintenance is strictly prohibited by law
- C. Yes, maintenance for the support of a minor child may be paid in advance for the period until the child reaches the age of majority by transferring immovable property
- D. Yes, but transferring property is permitted only after the child reaches 16 years of age

CORRECT: C

Pursuant to family legislation, maintenance for the support of minor children may be paid in advance for the period until the child reaches majority, including by transferring immovable or movable property or other valuable items (Family Code, art. 135). This agreement must be notarially certified.

14. Karim ota, a 65-year-old pensioner and person with a Group I disability, is in need of material assistance. His 30-year-old son, Botir, who is able-bodied and earns a good income, refuses to provide material aid to his father. If Karim ota applies to court seeking the recovery of maintenance, what decision will the court render?

- A. Dismisses the claim citing that Botir has his own family

- B. Orders the recovery of maintenance in a fixed monetary sum from Botir for his father's support, since Botir is an adult, able-bodied child
- C. Refuses to satisfy the claim, explaining that maintenance is paid only for minor children
- D. Issues a decision to place the father in a residential home for the elderly

CORRECT: B

Adult able-bodied children are obliged to maintain and care for their incapacitated parents who are in need of assistance. If they fail to provide assistance voluntarily, the court, taking into account their family and material circumstances, delivers a judgment recovering maintenance in a fixed monetary sum (Family Code, arts. 109 and 110).

OPEN QUESTIONS

15. If the maintenance payer has a low official salary but derives income from digital platforms, leases, and informal entrepreneurship, how should their actual ability to pay be determined and adequate maintenance for the child secured?

MODEL ANSWER

In cases where the maintenance payer has a low official salary and receives income from informal or digital platforms, art. 102 of the Family Code is applied to guarantee adequate maintenance for the child. Pursuant to this article, if the parent's income is fluctuating or not officially determined, the court is entitled to establish maintenance in a fixed monetary sum. In determining the actual ability to pay, the court takes into account all evidence, including bank statements, inflows into electronic payment systems, and profits derived from letting property (Family Code, art. 104). The burden of proof rests on the parties: the maintenance recipient must present evidence confirming the existence of informal income, while the payer must prove that these funds do not constitute income. As an alternative approach, if proving the exact amount of informal income proves impossible, the court may determine maintenance in a fixed monetary sum corresponding to a specific portion of the minimum monthly wage established by legislation. Furthermore, if the payer continues to avoid working and conceals their income, the law provides that arrears shall be calculated on the basis of the average monthly wage in the Republic of Uzbekistan (Family Code, art. 140). These mechanisms ensure the priority of the child's interests and protect them from financial hardship.

16. If a serious illness of the child is diagnosed after concluding an agreement to pay future maintenance by transferring immovable property to the child, how is the conflict between the stability of the agreement and satisfying the child's changed needs resolved?

MODEL ANSWER

A maintenance agreement concluded by transferring immovable property is intended to cover regular monthly maintenance, and its stability is protected by law. However, when extraordinary circumstances arise, such as a child's serious illness, the issue is approached on the basis of the principle of the priority of the child's best interests. In accordance with art. 103 of the Family Code, parents are obliged to participate in additional expenses necessitated by extraordinary circumstances (serious illness or injury

of the child). This obligation operates independently of regular maintenance payments, including an agreement concluded through the transfer of property. In resolving the conflict, the court does not invalidate the agreement, but delivers a decision to recover additional expenses in a fixed monetary sum to satisfy the child's changed needs. As an alternative approach, under art. 132 of the Family Code, where material or family circumstances of the parties have changed materially, an interested party may apply to court seeking modification of the agreement. If the transferred immovable property fails entirely to meet the child's needs due to the illness, the court, having regard to the child's best interests, may amend the terms of the agreement and establish supplementary monthly payments. In either case, the law places the provision for the child's health and needs first.

17. If a person obliged to pay maintenance deliberately refuses to work and possesses no property, how do the mechanisms for guaranteeing child maintenance and holding the payer liable operate?

MODEL ANSWER

When a person obliged to pay maintenance deliberately refuses to work and has no income, the legislation provides for a series of strict mechanisms to guarantee child maintenance. Firstly, under art. 140 of the Family Code, if the debtor does not work or fails to submit documents confirming their income, maintenance arrears are calculated based on the average monthly wage in the Republic of Uzbekistan. This prevents the debtor from evading the obligation by artificially claiming to have no income. Secondly, if the person fails to pay maintenance without valid reasons, administrative and criminal liability measures are applied against them. Pursuant to art. 116 of the Family Code, evasion of the execution of a court decision may lead to criminal liability or deprivation of parental rights. As an alternative approach, one may point to the mechanism of the Maintenance Payments Fund introduced into the legislation of Uzbekistan. If the debtor is held criminally liable and recovering arrears from them is impossible, child maintenance is covered by the state out of this fund. The state enforcement officer subsequently recovers these funds from the debtor through compulsory enforcement. This system directly protects the child's interests and prevents them from remaining without material support.

Glossary

MAINTENANCE

Material support that family members, including parents, are legally obliged to provide to their minor or needy children, as well as by other relatives to one another pursuant to law.

Example: According to a court decision, Sardor pays maintenance every month for his minor child.

Related: Support, Maintenance arrears

AGREEMENT ON THE PAYMENT OF MAINTENANCE

A contract concluded in writing and notarially certified between the person obliged to pay maintenance and the recipient of maintenance, establishing the amount, terms, and procedure for the payment of maintenance.

Example: Malika and Anvar, having divorced, signed an agreement on the payment of maintenance through a notary regarding the child's support.

Related: Notary, Compulsory enforcement

MINOR CHILD
A person under eighteen years of age who is a legal subject entitled to special care and full material maintenance from the state and parents.

Example: It is guaranteed by law that a minor child has the right to receive maintenance from their parents.

Related: Child rights, Maintenance

FIXED MONETARY SUM
A specific sum of money determined by a court where the maintenance payer's income is fluctuating, where they have no official salary, or where recovery as a fractional share of income is impossible.

Example: Because Nodir's official salary was not regular, the court established maintenance in a fixed monetary sum payable monthly.

Related: Amount of maintenance, Indexation

ADDITIONAL EXPENSES
Expenses necessitated by extraordinary circumstances, such as serious illness or injury of the child, and required for their support, recovered in addition to regular maintenance.

Example: The mother applied to court in order to cover additional expenses incurred for the child's surgery.

Related: Maintenance, Support

INDEXATION
The process of increasing the amount of maintenance established in a fixed monetary sum in proportion to the minimum monthly wage determined by legislation.

Example: The maintenance amount established by the court in a fixed monetary sum was indexed in accordance with legislative amendments.

Related: Fixed monetary sum, Amount of maintenance

MAINTENANCE ARREARS
Accumulated monetary funds not paid on time by the person obliged to pay maintenance pursuant to a court decision or notarised agreement.

Example: The state enforcement officer calculated the amount of maintenance arrears and levied execution against the debtor's property.

Related: Default penalty, Compulsory enforcement

> **DEFAULT PENALTY**
> A fine (one-tenth of one per cent) paid by the defaulting party for each day of delay for failing to perform the obligation to pay maintenance in due time pursuant to a court decision or agreement.

Example: A father who delayed maintenance payments by three months was obliged to pay a default penalty in addition to the principal debt.

Related: Maintenance arrears, Liability

> **STEPPARENTS**
> Persons who have raised and maintained the child of their spouse (stepson or stepdaughter) who is not their own biological child.

Example: The stepmother undertook the obligation to maintain the minor stepdaughter under her care.

Related: Maintenance, Relatives

> **PLEDGE CONTRACT**
> An agreement concluded between a debtor and a creditor to secure a maintenance obligation, providing for execution to be levied against the pledged property if the debt is not paid in time.

Example: Before departing abroad, the maintenance payer concluded a pledge contract over his motor car to secure his obligation.

Related: Agreement on the payment of maintenance, Compulsory enforcement

Timeline

Legal Development of the Institution of Maintenance Obligations

> **1989 · ADOPTION OF THE CONVENTION ON THE RIGHTS OF THE CHILD**
> An international instrument was adopted by the UN guaranteeing the rights of the child, including their right to maintenance and an adequate standard of living.

Significance: International standards were established ensuring the priority of the best interests of the child.

1998 · ADOPTION OF THE FAMILY CODE OF THE REPUBLIC OF UZBEKISTAN

The primary legislative act governing the maintenance obligations of family members, including parents and children, spouses, and other relatives, was enacted.

Significance: Statutory and contractual foundations of maintenance recovery were enshrined in national legislation.

2003 · DETERMINATION OF MAINTENANCE UNDER MULTIPLE JUDGMENTS

Article 115 of the Family Code was amended to establish the procedure for reducing the aggregate amount of maintenance recovered under multiple court decisions if it exceeds the statutory ceiling.

Significance: The rights of the maintenance payer and equitable distribution of shares were guaranteed.

2008 · LAW ON GUARANTEES OF THE RIGHTS OF THE CHILD

The right of the child to an adequate standard of living for their physical, intellectual, and social development was guaranteed by the state.

Significance: The social significance of child maintenance and maintenance obligations was enhanced.

2018 · ADVANCE PAYMENT OF MAINTENANCE AND PLEDGE AGREEMENTS

Provisions allowing advance payment of maintenance or the conclusion of a pledge agreement to secure the obligation were introduced into the Family Code.

Significance: The property interests of maintenance recipients were granted additional safeguards.

2021 · LINKING MAINTENANCE AMOUNT TO THE MINIMUM WAGE

The minimum amount of maintenance recovered for each child was strictly established at no less than 26.5 per cent of the minimum wage.

Significance: Child maintenance was protected amid inflation and economic fluctuations.

2022 · REFINEMENT OF SPOUSAL MAINTENANCE RULES

The rights to receive maintenance of a spouse caring for a disabled child were clarified, and corresponding amendments were made to the Family Code.

Significance: The rights of parents in need of social protection were expanded.

Mind map

Maintenance obligations

- Concept and grounds: Juridical facts giving rise to maintenance obligations
- — Statutory grounds: Consanguinity and circumstances established by law

- — Contractual grounds: Agreement on the payment of maintenance
- — Judicial decision: Judicial act where obligation is not performed voluntarily
- Child maintenance: Parents' maintenance of minor and disabled children
- — Fractional share: 1 child - 1/4, 2 children - 1/3, 3+ children - 1/2 share (FC art. 99)
- — — Minimum amount: 26.5 per cent of the minimum monthly wage
- — Fixed monetary sum: Established when income fluctuates (FC art. 102)
- — Additional expenses: In extraordinary circumstances such as illness (FC art. 103)
- — Adult children: When incapacitated and in need of assistance (FC art. 100)
- Maintenance of parents: Children's obligation to care for parents
- — Condition of obligation: Children must be of full age and able-bodied (FC art. 109)
- — Determination in fixed sum: Determined by court taking family status into account
- — — Minimum amount: 11.75 per cent of the minimum monthly wage
- — Exemption: If they failed to perform parental duties (FC art. 113)
- Spousal maintenance: Maintenance obligations of spouses and former spouses
- — Period of pregnancy: Pregnancy and until the child reaches 3 years of age (FC art. 117)
- — Caring for disabled child: When caring for a child under 18 or with Group I disability
- — Persons of pensionable age: Upon reaching pensionable age within 5 years after divorce
- — Limitation of obligation: Due to brief marriage or unworthy conduct (FC art. 120)
- — — Remarriage: Obligation terminates upon the recipient entering into a new marriage
- Other relatives: Chapter 16 of the Family Code
- — Grandparents and grandchildren: When maintenance cannot be obtained from parents (FC art. 123)
- — Brothers and sisters: When possessing sufficient funds (FC art. 125)
- — Stepparents and stepchildren: Based on the fact of having raised and supported
- — De facto educators: Having provided permanent upbringing for at least 5 years (FC art. 126)
- Maintenance agreement: Voluntary payment of maintenance (FC Chapter 17)
- — Written and notarised: Failure to comply with form causes invalidity (FC art. 131)
- — — Enforcement force: Notarised agreement has the force of a writ of execution
- — Methods of payment: By fractional share, fixed sum, or transfer of property
- — Modification: Modified judicially if mutual consent is absent
- Judicial recovery: Procedure for compulsory recovery of maintenance
- — Time limit for claim: At any time; can also be recovered for past 3 years
- — Calculation of arrears: Calculated from average wage if no income (FC art. 140)
- — Liability: Default penalty for days of delay (FC art. 142)
- — Indexation: Increasing fixed sum in line with legislation (FC art. 144)

Walkthrough and diagram

Process of Maintenance Recovery and Legal Consequences

RELATIONSHIPS IN THIS DIAGRAM

- Need for maintenance ’Voluntary procedure ’Mutual agreement
- Mutual agreement ’Certification ’Notary
- Notary ’Upon non-performance ’Compulsory enforcement
- Need for maintenance ’In absence of agreement ’Existence of dispute
- Existence of dispute ’Statement of claim ’Court
- Court ’In absence of dispute ’Court order
- Court ’Upon fluctuating income ’Fixed sum
- Court order ’Transmission for enforcement ’Compulsory enforcement
- Fixed sum ’Transmission for enforcement ’Compulsory enforcement
- Compulsory enforcement ’Upon failure to pay on time ’Arrears and liability

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