

# The Parents' Maintenance Obligation towards the Minor Child and the Descendant over the Age of Majority Pursuing Their Studies in Romanian Law

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**ABSTRACT:** According to the provisions of the Romanian Civil Law, the child is entitled to a standard of living fostering their physical, mental, spiritual, moral and social development. The responsibility to ensure the best living conditions required for the child's growth and development rests with the parents or, as applicable, with the legal custodians. In this regard, the parents are bound to provide a dwelling for their child, as well as the conditions required for the growth, education, learning, professional training of the same, as well as a healthy living environment. The maintenance obligation rests with both parents, regardless of whether they are the biological, adoptive parents, or whether they are married, divorced or if they have children outside the marriage and it is granted to the minor up to the age of 18 (the majority age), and, if they are still pursuing their studies, up to graduation, without, however, exceeding the age of 26.

**KEYWORDS:** maintenance obligation, alimony, need state, pursuing of studies, parents, minor child, descendant over the age of majority

## Introductory notions on the maintenance obligation between parents and children

Whereas the former regulations and the current Civil Law do not define the notion of “*maintenance of the minor children*”, this task rested with the courts of law and the doctrine in the field. Thus, in a decision of our supreme court (Supreme District Court, decision no. 351/1980, published with “*Revista română de drept*” issue 9/1980, p. 60), ruled upon under the auspices of the currently repealed Family Code, it was held that *the maintenance of the minor child* is to be construed as “*the provision of all that is needed for the raising and education of the minor child, including a dwelling*”. Similarly, in the specialized literature (Avram 2016, 510; for a proper definition and further details, see Moloman 2012, 237-240) published after the adoption of the Civil Law in 2011, the *legal maintenance obligation* is construed as “a person's legal duty to provide to another person the required means of subsistence, both in material, and in spiritual terms” (for further definitions, with some nuances, see Florian 2018, 575; Lupașcu and Crăciunescu 2017, 630; Bodoașcă 2015, 471; Dogaru 1978, 12).

According to the provisions in art. 47(1) of the Law no. 272/2004 **on the protection and promotion of the child's rights**, republished (in the Official Gazette of Romania, Part I, issue 159 of 5 March 2014), the child is entitled to a living standard fostering their physical, mental, spiritual, moral and social development. The responsibility to ensure the best living conditions required for the child's growth and development rests with the *parents* or, as applicable, with the *legal custodians*. In this regard, the parents are bound to provide a dwelling for their child, as well as the conditions required for the growth, education, learning, professional training of the same, as well as a healthy living environment [art. 47(2) of the Law no. 272/2004, republished].

It should be highlighted that *the maintenance obligation rests with both parents*, regardless of whether they are the biological or adoptive parents, married, divorced or if they have children outside the marriage. This principle, according to which both parents are responsible for the raising of their children and in exerting their parental rights and obligations they should always consider *the higher interest of the child* and *should promote the material and spiritual wellbeing of the same*, is consecrated in art. 36 of the Law no. 272/2004 **on the protection and promotion of the child's rights**, republished.

Starting from this principle consecrated by the law, in a case (Drăgășani Law Court, Civil Decision no. 1856/2014, published at [www.portal.just.ro](http://www.portal.just.ro)), the court has shown that “the minor’s interest is to also receive alimony from the parent to whom he/she was not entrusted. In case the parent who is under an obligation to pay alimony does not obtain any revenue or holds no material means, but is able to work, in this case, the defendant cannot be exempted from the maintenance obligation because any person capable of work can obtain revenue from work. Hence, **the absence of revenue do not exonerate the debtor from the maintenance obligation, the defendant being bound to take the required steps in order to obtain revenue that is at least equal to the minimum domestic income.** The notion of “means” referred to in the Civil Law does not only encompass the material means, but also the capacity to work of the person bound to pay alimony, which is the source of the material means. Thus, through the application of this rule, encompassed in the notion of means, the court may presume that this revenue or other financial sources of the maintenance obligation debtor are available, because it would otherwise be impossible to explain how it is that the defendant provides for his own subsistence. Upon the calculation of the alimony amount, the provisions in art. 529(2) of the Civil Law are to be considered as well as the current minimum domestic income”.

At the same time, as stipulated in art. 510 of the Civil Law, “the loss of the parental rights does not exonerate the parent from the maintenance obligation towards the child”.

The Civil Law regulates the parents’ legal maintenance obligation towards their child in art. 499 and art. 525, and several peculiarities of the maintenance obligation between parents and children may be derived from the interpretation of these provisions, which we will illustrate and analyze herein below (for a review of the parents’ legal maintenance obligation towards their children, see Gabriela Frențiu 2019, 109-136; Axente in Avram, coord. 2018, 211-239).

### **The child’s need state**

According to art. 525(1) of the Civil Law, the minor requiring the parents’ maintenance *is in need* if they are unable to obtain the required subsistence means out of their own work. As it may be noticed, the child’s need state is appreciated in the light of the *impossibility to obtain revenue from work*, not in the light of the possibility to provide for their own maintenance out of their own assets.

For instance, in a case (Bucharest District Court, 4th Civil Division, civil decision no. 959 of 27 April 2009, unpublished, *apud* Roșu and Rădulescu, 141-143, case 63), having as subject-matter the increase of the alimony established in favor of a minor, the court ruled that “the minor is not in need, considering the estate she owns, as well as the income obtained by the mother, as well as the rent ad for the studio owned by the minor and the alienation of the ownership share of the property”.

If the minor has a source of income that *is not sufficient*, the parents are under *the obligation* to provide the required conditions for their raising, education and professional training [art. 499(2) of the Civil Law].

Regarding the minor's assets, even though, as stipulated in art. 525(1) of the Civil Law, they are not taken into consideration upon the assessment of the minor's need state, paragraph (2) of the same article stipulates that, in case the parents could not provide for the child's maintenance without endangering their own subsistence, the custody court may allow for the provision of the maintenance through the sale of the assets owned by the minor, except for the strictly required ones.

### **Subject-matter of the maintenance obligation**

According to art. 499(1) of the Civil Law, "the father and the mother are jointly bound to provide for the child's maintenance, ensuring everything that is required for the subsistence, education, learning and professional training of the same". At the same time, as stipulated in paragraph (2) of the same article, "if the minor does individually obtain an income, which is, however, insufficient, the parents are bound to provide the required conditions for the raising, education and professional training of the same".

Pursuant to the interpretation of the provisions in art. 499(1) and (2) of the Civil Law, it follows that *the subject-matter of the maintenance obligation* of the parents has a *complex nature*, because it does not only suppose the provision of the required means of subsistence (food, clothing, dwelling, medication, etc.), but also of the ones required for the education, learning and professional training of the child.

This has actually been confirmed by the rulings of our courts of law, both in the case-law prior to the Civil Law in force, and in the case-law subsequent to the adoption thereof. For instance, in a case (Timiș County District Court, Civil Division, decision no. 202 of 11 February 1971, published in "Revista română de drept", issue 8/1971, 159, *apud* Avram 2016, 532, footnote 1), ruled upon under the auspices of the currently repealed Family Code, the law held that "the maintenance obligation towards a child is of a complex nature, consisting of a number of maintenance-related obligations – comprising food, clothing, dwelling, personal hygiene, school stationery, etc. -, and not only the provision of the maintenance in terms of providing food and a dwelling. Hence, the fact that, pursuant to a decision ruling in this regard, the child stays with one of the parents one month per year (during the holidays) does not mean that this satisfies all the child's maintenance needs and, hence, the parent will not be entitled to claim, during such month, the suspension of the alimony paid for the child to the other parent to whom the minor is entrusted for raising and education".

In another case (Cluj Court of Appeal, 1st Civil Division, Civil Decision no. 209/R/2015, published at [www.curteadeapelcluj.ro](http://www.curteadeapelcluj.ro), *apud* Moloman and Ureche 2016, 72, available online at <http://studia.ubbcluj.ro/download/pdf/980.pdf>), ruled upon under the auspices of the current regulations in the field, the court has shown that "a child does not only need clothing, footwear and food, but they also need decent and optimum living conditions – which supposes a home that is suitable for the raising of a minor child, clean, furnished and properly equipped, bright and warm –, they need proper school training, toys, books suitable for their age and, what is most important, they need permanent and constant love and attention, they need someone to look after their permanent and constant education and care, someone to play with them, to spend time with them, to explain and teach them all that is required and everything the child desires to know, someone to read them bedtime stories, someone to take them to the nursery/school and bring them back home, or take them to extra-school activities, someone to help them with their homework, someone to stand by them and constantly support them".

### Amount of the maintenance obligation

As also shown by our courts of law (Iasi Court of Appeal, Civil Decision no. 48 of 4 February 2011, available online in summary at <https://www.jurisprudenta.com/jurisprudenta/speta-fi6fscn/>), “the amount of the alimony is calculated based on the parents’ income, and the law level thereof cannot be a cause for the debtor’s exemption from their obligation. The payment of the alimony to the minor child is regulated under the law; the parents may agree on the amount and fulfilment means of this obligation, as allowed under the law, notwithstanding the higher interest of the child, such an agreement being subjected to a review by the court of law.”

According to art. 529(2) of the Civil Law, if the parent is under a maintenance obligation, the amount of the same is established to up to a fourth of their net monthly revenue for one child, a third for 2 children and half for 3 or more children.

For instance, in a case (Câmpeni Law Court, Civil Decision no. 596 of 17 September 2018, available at [www.rolii.ro](http://www.rolii.ro)) having as subject-matter bidding the father to pay monthly alimony according to the obtained income, the court ruled that “the maintenance obligation is established according to the needs of the one requesting it and to the payment possibilities of the debtor thereof and, in case the alimony is due by one parent for two children, it can reach the fraction of one third of the net income obtained, according to art. 529 of the Civil Law. The maintenance obligation is subjected to amendment and termination according to the provisions in art. 531 of the Civil Code. In this case, it is noted that the income obtain by the parent who is the debtor of the maintenance obligation amounts to RON 1583 and, hence, the amount of the maintenance obligation for the two children can be established up to the maximum of one third of this income, i.e., the amount of RON 250 per month for BMI and the amount of RON 277 per month for BPI, as of 2.04.2018, the date on which the current petition was lodged, and up to the children’s graduation date, but not beyond the age of 26”.

It should be highlighted that, as stipulated in paragraph (3) of art. 529 of the Civil Law, the amount of the maintenance due to the children, alongside the maintenance due to other persons, according to the law, cannot exceed half of the debtor’s monthly income. For instance, in a case (Argeş District Court, Civil Decision no. 145/2016, published at [www.rolii.ro](http://www.rolii.ro)), having as subject-matter the establishment of the alimony according to the maximum level allowed under the law up to the graduation from the university by the claimant and requesting the application of the provisions in art. 529(2) and (3) of the Civil Law, the court appreciated that “the establishment of the alimony up to the maximum level allowed under the law was not justified. Thus, according to art. 529(1) of the Civil Code, the maintenance is due according to the needs of the one requesting it and to the means of the one who is going to pay for it, and the need state of the person entitled to maintenance, as well as the means of the debtor of the maintenance can be demonstrated through any means of evidence, according to art. 528 of the Civil Law. **The appellee has only justified the need state in the light of her status as a student, without submitting any evidence as to the expenditure required for such higher education or the other parent’s failure to contribute to her maintenance. It is only on the basis of such evidence that the court could conclude that the appellee’s need state justifies the establishment of the alimony up to a level according to the maximum cap stipulated under the law.** In reviewing the provisions in art. 528 of the Civil Law, it should be taken into consideration that the appellant did produce proof as to the fact that he had remarried and that, in addition to the maintenance obligation towards his other two children resulting from this marriage, he also had the obligation stipulated in art. 325(2) of the Civil Law to contribute to the marriage-specific expenditure. Or, the first law court has ignored the fact that the maintenance debtor also had family obligations. In the light of those obligations and of the matters held regarding the appellees need state, the

alimony should be established below the maximum cap stipulated under the law, so as to abide by the provisions in art. 529(1) of the Civil Law”.

In a case (Mangalia Law Court, Civil Decision no. 1147/26.06.2014, final and binding pursuant to the Decision no. 699/6 June 2016 of Constanța District Court, rejecting the appeals lodged as groundless, published at portal.just.ro, available online in summary at <https://www.legal-land.ro/cuquantumul-pensiei-de-intretinere-a-minorului-prezumptia-ca-parintele-realizeaza-venituri/>) having as subject-matter the amount of the alimony and the presumption that the parent does obtain income, the court has ruled that, in the case, “the claimant has not produce proof as to the fact that the defendant obtains income from work in the Bahamas or that he was employed when she lodged the petition (15.07.2013) or during the divorce trial, considering that the photos she submitted with the case file, where the defendant is wearing overalls on a naval site, in circumstances leading to the mere presumption that he carried out work-related activities, had actually been taken, as it follows from the photographic sheets submitted by the defendant with the case file, prior to the date of 01.06.2013, the date mentioned on the social media page from which they had been copied.

Nonetheless, considering that the defendant did work in the Bahamas for quite a long period of time and that he still resided in that country, which leads to the admissible presumption that he does obtain income, even if he is not employed on the basis of a work contract, because, otherwise, he would actually hold no material means of subsistence for himself, the court will order the defendant to pay to the claimant, in the favor of the minor, an alimony of USD 300 per month, payable either in the reference currency, or in the RON equivalent of the same according to the NBR exchange rate published on the payment date, starting the lodging date of the petition, i.e. 15.07.2013, and until the minor turns 18 years of age, and shall order the defendant to pay the alimony thus established on the 20th of each month”.

It should be highlighted that the parent owing the maintenance obligation cannot be forced to pay alimony on the basis of presumptions and that such alimony cannot be randomly calculated in the absence of certain proof that the same obtains income on the basis of a legal employment contract. Thus, in a case (Galați Court of Appeal, Civil Decision no. 544 of 9 November 2011, published at [www.portal.just.ro](http://www.portal.just.ro), *apud* <https://legeaz.net/spete-civil/obligatia-de-intretinere-calcularea-acesteia-544-2011>) where the claimant requested the court to order through its decision the dissolution of the marriage because of the defendant’s fault, that he be entrusted the minor for raising and education and that the defendant be ordered to pay alimony and resume her maiden name, the court has found that “the claimant-appellant had constantly claimed that he worked as a day laborer in Italy, without an employment contract, and that he had no stable workplace. As a matter of fact, the appellee did not submit any evidence as to the income obtained by the claimant in Italy either before the court on the merits or before the court of appeal, simply stating that he should be bound to pay alimony according to the minimum income applicable in that state. (...) The claimant cannot be ordered to pay randomly calculated alimony as long as no evidence has been submitted as to the certain income obtained in Italy, on the basis of an employment contract. In the absence of certain evidence based on which the actual income obtained by the claimant can be set, the amount of the alimony will be established based on the minimum domestic income” as on that date.

### **The date as of which the maintenance is due**

The maintenance obligation becomes due when all the requirements under the law are cumulatively fulfilled, i.e., *the creditors need state* and, at the same time, *the existence*

*of the debtor's material means.* In most cases, the child's maintenance is voluntarily provided by the parents, through the very fact of their cohabitation as part of the same family (Florian 2018, 607).

In the case of disagreements, the interested party addresses the custody court, the maintenance becoming due as of the date on which the writ of summons was lodged, according to art. 532(1) of the Civil Law.

For instance, in a case (Iași Court of Appeal, civil decision no. 416 of 14 October 2009, available online in summary, at <https://legeaz.net/spete-civil-3/obligatia-de-intretinere-a-k2b>) having as subject-matter the alimony, the court has ruled that “the alimony is granted, in principle, as of the date on which the writ of summons is filed, not as of the date of the ruling or the date as of which the same becomes final and binding. If, during the divorce trial, the defendant produces proof as to his contribution to the maintenance of the minors out of his own free will, or in case the alimony was established through a court order upon the dissolution of marriage, the court establishes the maintenance obligation as of the ruling date”.

### **The parents' maintenance obligation towards the descendant over the age of majority pursuing their studies**

According to the provisions in art. 499(3) of the Civil Law, the alimony is granted to the minor up to the date on which they turn 18 years of age (the majority age), and if they are pursuing their studies, up to graduation, without, however, exceeding the age of 26 (for further details, see Turianu 1992, 52-56). The provisions in art. 499(3) of the Civil Law should only be regarded as a derogation from the condition as to the child being a minor, and not as an exception from the general alimony obligation in the context of the relation between the parents and the children. In other words, it cannot be concluded that the mere continuation of the studies automatically leads to the parents' obligation to pay alimony. Quite on the contrary, as shown in a case (Maramureș Tribunal, Civil Decision no. 339/A of 6 June 2019, available online at <https://www.jurisprudenta.com/jurisprudenta/speta-15f6yj6m/>), “in addition to the double condition established under art. 499(3) of the Civil Law, respectively the maximum age of 26 and the continuation of studies, the creditor must equally produce proof as to the need state and the debtor's possibilities. The only exception from the general regime may only be deduced in the light of art. 525 of the Civil Law, which only stipulates the possibility to order the parents to pay alimony in the case of minors as well even if the creditor holds assets that could be sold in order to satisfy their own needs”.

With regards to the phrase “pursuing of studies”, in a case (Dolj District Court, Minors and Family Division, Civil Decision no. 26 of 26 February 2010, published at [portal.just.ro](http://portal.just.ro), *apud* Roșu and Rădulescu 2011, 151-152, case 69) having as subject-matter a petition for the suspension of alimony because his daughter had graduated from faculty and had registered for a second one, the court ruled that “it cannot be held that the claimant is no longer bound to pay alimony, because the phrase ‘pursuing of studies’ does not only refer to one faculty”.

As already mentioned, the maintenance obligation rests with both parents, whether biological or adoptive ones, even if they are actually separated, divorced or not married. Hence, as shown in a case (Bucharest District Court, 4th Civil Division, Civil Decision no. 959 of 27 April 2009, unpublished, *apud* Roșu and Rădulescu, 41-143, case 63) having as subject-matter a parent's petition to increase the alimony set in their favor, the court held that both parents were “bound to look after the health, physical development, education, learning and professional training thereof, being under an obligation to provide the required maintenance”.

At the same time, the right to maintenance exists regardless of whether the descendant over the age of majority is pursuing his/her studies in a state- or privately-owned institution. In this regard (The Supreme Court of Justice, decision noi. 1526/1992, published in “Dreptul” issue 7/1993, *apud* Turianu 2008, 339, case 3), in a case ruled upon under the auspices of the currently repealed Family Code, the court has shown that “the fact that the claimant is going to a private university and not to a legally regulated form of education cannot be taken into consideration as an argument in support of the fact that the parent does not hold maintenance duties, because the source of the maintenance obligation is the education and training obligation, regardless of the form thereof”. Moreover, in a case (Ploiești Court of Appeal, decision no. 76/1997 131, *apud* Turianu, 361-362, case 38) where the defendant, bound to pay alimony for his major daughter, pursuing her studies, has shown that she is able to obtain revenue from work because she was going to a faculty where attendance was not mandatory, the court decided that “the fact that the faculty attendance is but partly mandatory stays irrelevant considering that, even such type of attendance prevents the claimant from engaging in an income-generating activity, even the more so since she does not hold the professional qualification entitling her to apply for possible vacancies”. In another case (Bucharest City Tribunal, decision no. 1055/1993, *apud* Corneliu Turianu, 367) where the major child was a part-time student, the court decided that “nonetheless, considering the type of studies and the fact that the child is able to obtain income, he is not entitled to alimony; this is the case of the major child who is a part-time student and does not have to go to school every day”.

Finally, in a case (High Court of Cassation and Justice, Civil Division, decision no. 3799 of 20 May 2004, în [www.scj.ro](http://www.scj.ro), *apud* Roșu 2007, 107-109, case 41) having as subject-matter the granting of the alimony to the major child, who was in the 12th grade at a high school, and where the claimant was not recognized by his father, the court decided that “the appellant’s claimant that he had not recognized the claimant as being his child is of no relevance in the case, because the admission to paternity is not the only way of establishing the kinship towards the father, and the parent’s obligation to grant maintenance to his child exists, regardless of the manner in which the paternity was established”.

## Conclusions

To conclude, we could highlight that, in the Romanian law, *the maintenance obligation rests with both parents*, regardless of whether they are the biological or adoptive parents, married, divorced or if they have children outside the marriage. The parents are responsible for the raising of their children and the exertion of rights and the fulfilment of parental obligations should always take into consideration the *higher interest of the child and ensure the material and spiritual wellbeing thereof*. In other words, *the parents are bound to ensure the required subsistence means for their child*, both in material and in spiritual terms.

In this regard, in the Romanian law, the alimony is granted to the minor up to the date on which they turn 18 years of age (the majority age), and if they are pursuing their studies, up to graduation, without, however, exceeding the age of 26. These legal provisions in art. 499(3) of the Civil Law should only be regarded as a derogation from the condition as to the child being a minor, and not as an exception from the general alimony obligation in the context of the relation between the parents and the children. In other words, it cannot be concluded that the mere continuation of the studies automatically leads to the parents’ obligation to pay alimony. Quite on the contrary, as actually ruled by the courts of law as well, in addition to the double condition

established under art. 499(3) of the Civil Law, respectively the maximum age of 26 and the continuation of studies, the creditor must equally produce proof as to the *need state* and the *debtor's possibilities*. The only exception from the general regime may only be deduced in the light of art. 525 of the Civil Law, which only stipulates the possibility to order the parents to pay alimony in the case of minors as well even if the creditor holds assets that could be sold in order to satisfy their own needs.

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