

Summary of main findings

This study, which has been commissioned by the Research and Documentation Centre (WODC), concerns the question whether the current maintenance law is still valid today. It examines the 'acceptance' of maintenance by parties, the extent to which it meets the demands of today's society – consider, for example, the position of unmarried cohabitants – and possible alterations of laws and regulations, partly with the aim of preventing legal proceedings. The answer to the aforementioned research question is provided on the basis of four sub-topics. The research into these sub-topics was conducted according to a fixed pattern of four steps: 1. collecting of existing data, 2. generating new data (i.e. conducting a questionnaire survey and interviews), 3. analysing the data and 4. testing the findings during expert meetings (triangulation). This summary presents the study's most important findings.

The basis for spousal maintenance is solidarity. This solidarity entails various approaches with different implications:

- Solidarity that marriage implies and that leads to a reciprocal duty of care during and after the marriage in order to be able to continue to live as much as possible at the same level of prosperity despite being separated;
- Solidarity that marriage implies and that leads to the contribution to the recovery of care-related loss of earning capacity during the marriage in order to build economic independence after marriage;
- Solidarity that marriage implies and that leads to compensation for unpaid work in the household or in the business during the marriage;
- Solidarity that (also) implies that the duty of care is not being passed onto society.

A fixed, concrete and thus clear basis has as a drawback that it can become outdated and as a consequence no longer contributes to the acceptance of maintenance. For this reason, a broad concept of the basis of solidarity, which accommodates its various approaches, is to be preferred over a narrowly formulated basis. There is no need for the law to be amended to integrate all these different approaches in the *Trema standards (Tremanormen)*. This is only necessary if case law of the Supreme Court in particular shows that the statutory provisions contain obstacles to a broad and flexible interpretation that may include all these approaches of the solidarity concept.

For child maintenance, the legal basis is provided by the responsibility for the care and upbringing of minor children; there is hardly any discussion about this, with the exception of stepparent maintenance. Partly in view of the increased number of patchwork families, stepparent maintenance is in need for reconsideration. This at least requires a normative assessment of the basis for the maintenance obligation for the various maintenance debtors with respect to children. Child maintenance for young adult persons should also be reconsidered. On the one hand, we recommend restricting this type of maintenance to young adults who are following education or studies (for others the requirement of need applies), while on the other hand, we suggest extending child maintenance for young adult persons until the age of twentyfour, when the young adult can be considered to have completed the education or study.

Economic independence of both ex-partners is the best remedy to avoid any maintenance having to be paid. However, the social developments show that it is utopian to assume that such independence will be achieved across the board in the coming decades. Although progress has been made regarding the education and labour participation of women, their economic position after a divorce still lags behind that of men. This is mainly due to the role allocation during marriage, the level of education and cultural background. Maintenance law will have to continue to take this into account for the coming decades.

Maintenance is a topic on which opinions are divided on many points. The primary reason for this is the fact that maintenance debtors and recipients often have conflicting interests. The various experts are involved in maintenance from different perspectives as well. Consequently, they assess the various elements of the system of partner and child maintenance in different ways. Whether an element contributes to the acceptance of maintenance or whether it rather decreases the acceptance rate can therefore not be answered uniformly for all parties involved. Only on few aspects does there exist a significant unanimity, one example being the basis for child maintenance.

However that may be, partner and child maintenance obligations are generally properly observed and the number of legal proceedings concerning maintenance has been declining for years. This already shows that both partner and child maintenance are accepted, even though people do not agree with certain elements of the system. A low degree of acceptance therefore does not automatically mean a high degree of readiness to start legal proceedings and vice versa. There are many other reasons for people to institute legal proceedings, such as a difficult preliminary process, rising emotions or a change in circumstances that, with or without the help of their experts, the ex-partners cannot resolve.

The Trema standards form a successful instrument that contributes to the predictability of the law and its uniform application in the Netherlands. They are, however, in need of revision. This revision may include increasing the readability and accessibility, drawing up guidelines for frequently occurring situations, filling existing gaps, and providing criteria to determine which guidelines can be applied to which situation.

When revisiting the Trema standards, greater account should be taken of the different approaches of solidarity as a basis for spousal maintenance, so that the standards are brought more in line with social views and developments. The insight is gaining ground that a divorce brings with it a change in income position and that adhering to marriage-related prosperity, the disposable family income, is not (any longer) the most obvious starting point for determining the need.

With a thorough revision, the application and manageability of the Trema standards can be extended or improved. New concepts such as care maintenance, the child bank account (*kinderrekening*) but also (more) fixed sums and flat rates for partner maintenance, including the (amended) court of appeal standard (the so-called *Hofnorm*), and room for co-parenting will then increase the palette of tools for the courts, legal aid providers and, last but not least, the parties involved to take appropriate measures. Many calculation problems will be eliminated once maintenance is being fully exempted from taxes. Redemption of maintenance should be determined by the court upon request.

More calculation methods should be developed within the Trema standards that can be applied in various standard situations. One can take as a basis a single comprehensive model with more fixed sums and flat rates, from which the different variants for the various standard situations can be derived. In that case, criteria also need to be established that indicate in which cases these variants can be applied. Deviations from the modals and fixed sums and flat rates are of course always possible if special circumstances demand this, but it is then necessary to make clear on what grounds this is justified. Changes in maintenance should only be allowed if these result in a determination that differs more than a certain percentage from the original amount. Such thresholds prevent minor adjustments from triggering legal proceedings.

There is a great disagreement concerning the answer to the question whether maintenance obligation should also exist for informal cohabitants. Seeing the social developments, it may be worth considering introducing such a *lex specialis*. The maintenance arrangement could be the same as that for married persons, with the addition of an opt-out option. This opt-out option would in any case mean that cohabitants to whom the maintenance obligation would apply can jointly choose not to have this obligation apply to them. Unmarried persons qualify for this new arrangement when they 'live together as if they were married' in the sense of article 1:160 Dutch Civil Code during a specific period of time, or if they have one or more children together.