

## Family Relations after Divorce

### Child Support after Divorce

Upon childbirth, each parent must support the child until he/she is capable of self-alimentation. (i.e. including students older than 18) (Section 85(1) of Act no. 94/1963 Coll., on Family). The child may actively participate in raising the parents' life standard (Section 85(2) of the Family Act). The law further stipulates that both parents must contribute to their child's alimentation according to their abilities, possibilities and financial standing. This includes personal care and care of the household (i.e. not only by means of financial amounts).

If one of the parents believes the alimentation duty is not fulfilled sufficiently, he/she may address a court and request remedy. Alimony payments are not restricted to cases of divorce, but may be ordered if one of the married parents does not voluntarily fulfil his/her alimentation duties.

### Alimony Payable to Children of Majority

The parents must support the child **until the child is capable of self-alimentation** (Section 85(1) of the Family Law), i.e. **until the child is capable of generating and sustaining income**.

Alimony payments to minors (children aged under 18) may be ordered by the court without a petition, but after the child's 18<sup>th</sup> birthday, the alimony proceedings may be launched only on the basis of a petition by the recipient. Therefore, if a child pursues due daily studies at a university, the parents must pay the alimony until the studies are completed. On the other hand, **if a child** becomes an employee or **starts another economic activity** allowing for his/her alimentation, but later **suspends the activity to study** in order to acquire the qualification for another profession, **the alimentation duty does not renew**.

### Amount of Alimony Payments

The court determines the amount of alimony payments in consideration of the justified needs of the recipient and the possibilities, income and property owned by the payer. Each case is assessed separately; therefore, **the minimum or maximum alimony cannot be set generally**.

**The amount of alimony payments may be adjusted (increased or reduced) in the future**, depending on new needs of the child (e.g. health problems, studies) or on deteriorated financial standing of the parent (due to illness or birth of other children in another relationship).

**In assessing** the possibilities and financial standing of the payer, the **court will investigate** whether the payer has given up, without an obvious reason, a better job, source of income or property benefits, or whether he/she does not run inappropriate property risks (Section 96 (1) of the Family Act).

Where admissible in light of the payer's financial standing, **savings may be included in the justified needs of a child**, in particular if the savings are aimed at preparing the child for future profession (Section 85a(2) of the Family Act).

### Notice for Parents – Businessmen!

A parent generating taxable income from other activities than employment must document his/her income to the court, and present evidence for assessing his/her property conditions and

allow the court to find out other facts necessary for a decision by disclosing otherwise protected information (e.g. by presenting his/her bank account statements).

**Should the parent fail to fulfil this obligation, his/her average monthly income is deemed to be fifteen times the amount of the minimum wage** necessary to provide for alimentation and other necessities **of this parent** under the Minimum Wage Act (Section 85a(1) of Act no. 94/1963 Coll., on Family).

### **What is the scope of Child Support?**

Alimony for the (minor) child should cover all the life essentials necessary for universal physical and psychological development.

### **How is alimony paid?**

Alimony is paid in regular instalments (monthly advances) (Section 97(1) of the Family Act); in cases worthy of special attention (e.g. the parent lives abroad, disposes with his/her property in an ill-advised manner etc.), the court will order that the parent deposit a monetary amount payable in the future (for a certain period), adopting measures to secure that monthly instalments of the alimony be paid regularly (from the deposited amount) (Section 97(2) of the Family Act).

### **Can you claim alimony for past periods?**

**Yes.** The right to alimony is not lapsable. However, it may be awarded (for minors) for the period **of no more than three years from the day the court proceedings were launched** (Section 98(1) of the Family Act). The title to the individual alimony payments is lapsable.

## **Relations with and Upbringing of the Child**

A marriage may not be divorced until the court decision on relations with minors after the divorce has become legally effective. Before **the court** awards a decision on divorce of parents of a minor, it will address their rights and obligations towards their child after the divorce and **determine into whose custody the child will be placed and what will the parents contribute to the child's alimentation.**

If both parents are capable of upbringing the child and are interested, the court may place the child in a **joint or rotational custody of both parents**, if it is in the child's interest and if all his/her needs are accommodated.

Decision on the assumption of parental responsibilities – the contacts of a parent with his/her child may be substituted by a parents' agreement that does not need to be approved by the court. If the parents are unable to reach an agreement and if it is necessary for the child's upbringing and parental ties, the relations between the parents and the child will be set by the court (Section 26(1) through (3) of the Family Act).

The court may:

- ◆ change the child's custody due to repeated and unreasonable interference in the authorised contact between the child and his/her parent
- ◆ restrict the parent's contact with the child
- ◆ prohibit the parent's contact with the child
- ◆ provide for grandparent's contact with a minor grandchild
- ◆ provide for sibling's contact with a minor child
- ◆ prohibit grandparent's (or sibling's) contact with a minor
- ◆ change the provisions on the minor's upbringing (change in the parents' rights and obligations)

**In deciding on the child's placement in the parents' custody, the court acts primarily in the child's interest, considering his/her character, skills, talents and development opportunities, as well as the parents' life standards.** The court respects, above all, the child's right to care by both parents, to regular personal contact with the parents, and the right of the parent who will not live with the child to be continuously informed of the child's development. In adopting its decision, the court assesses the emotional orientation of the child, the educational abilities and responsibility of the parents, the ability to settle educational issues with the other parent, the stability of environment, the child's emotional bonds to his/her siblings, grandparents and other relatives, the financial standing of the parent, including housing issues. The court will consider who took additional care of the child and contributed to his/her emotional, cognitive moral development. (Section 26(4) and (5) of the Family Act). The Czech courts usually place the child in the mother's custody. However, fathers entrusted with the care of their children and rotating custody of the parents has ceased to be an exception.

### **Assumption of Maiden Name**

A spouse having assumed the surname of the other spouse may **notify to the Registry Office within one month** of the legal effect of the court decision that he/she assumes his/her previous surname or that he/she ceases to use the spouse's surname next to the previous surname (Section 29 of Act no.94/1963 Coll., on Family, as amended).

### **Alimony Payable to a Divorced Spouse**

A divorced spouse (man and woman) **incapable of self-alimentation** may require his/her ex-spouse to pay for his/her appropriate alimentation according to the ex-spouse's possibilities and financial standing. If the spouses do not reach an agreement, the issue will be settled by a court (Section 92(1) of Act no. 94/1963 Coll., on Family) .This duty takes preference over the alimentation duty of children towards their parents (Section 92(2) of Act no. 94/1963 Coll., on Family, as amended).

The appropriate alimentation of a divorcee must be provided for. The court may order that a spouse pay alimony to the other spouse not having disrupted the marriage by breaching his/her matrimonial duties and having suffered serious damage as a result of the divorce **for the maximum period of three years from the divorce.**

The right to alimony expires if the recipient re-marries or if the payer dies. The right to alimony also expires upon the payment of a single amount under a written agreement (Section 94 of Act no. 94/1963 Coll., on Family). This means that the payer of the alimony may pay the alimony in one payment and thus be released from the alimentation duty.

### **Settlement of Joint Property**

**The joint property of the spouses ceases to exist upon a divorce, death of a spouse or after a spouse is declared to be dead** (Section 149(1) of Act no. 40/1964 Coll.).

If the joint property of spouses ceases to exist, it will be distributed between the spouses; the **shares of both spouses** in the joint property are deemed **equal**. (The same applies to liabilities arisen in the marriage.) In settling the joint property, a special attention will be paid to **who has contributed to the acquisition and maintenance of the joint property** (and thus the final shares of the spouses may not be equal) and **to what extent did the spouses take care of the family, in particular of minor children and the household.** The care of children and

household is deemed equal to the economic activity by the second spouse. Each of the spouses may claim compensations for his/her contributions to the joint property, and must pay what has been incurred from the joint property for his/her private property (Section 149(2) and (3) of Act no. 40/1964 Coll.).

The joint property of spouses may be settled:

- ◆ by agreement,
- ◆ by a court decision,
- ◆ by the expiry of a three-year period.

The agreement on settlement of joint property of spouses must be concluded in writing. If the joint property of spouses includes real estate, the agreement becomes legally effective upon its registration with the Real Estate Register. (Section 149a of Act no.40/1964 Coll.).

If the property issues are not settled by way of agreement, it will be settled by a court upon a petition by any of the spouses (Section 150(3) of Act no. 40/1964 Coll.). The proceedings on joint property settlement is launched by one of the spouses filing a petition. The petition must be filed within three years following the extinction of the joint property of spouses.

If the joint property of spouses is not settled within three years of its extinction by an agreement or if a petition for settlement is not filed with a court within the same term, the **movables** will be settled according to **their use** by the spouses **for their own needs**, for the needs of their families and household. Therefore, movables will be owned by the spouse that uses them to accommodate his/her own needs or the needs of his/her family at the end of the three-year period. Other **movable and immovable property is deemed to be co-owned**, with the co-owners shares in the property being equal; the same applies to other property rights, receivables and joint liabilities of the spouses (Section 150(4) of Act no. 40/1964 Coll.).

**Note:** The joint property of spouses is also settled after one of the spouses dies. One half of the joint property or a part of the property identified in compliance with the above-mentioned Civil Code principles will be kept by the surviving spouse and the second half or the remaining part is subject to inheritance proceedings, together with the property owned solely by the deceased spouse.