

**GROUND FOR DIVORCE AND MAINTENANCE BETWEEN
FORMER SPOUSES**

BULGARIA

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A. GENERAL

1. What is the current source of law for divorce?

The current source of substantive divorce law in Bulgaria is the Bulgarian Family Code, which was enacted in 1985. The relevant provisions are contained in Articles 99-107, where the grounds and consequences of divorce are regulated. The source of procedural divorce law is the Bulgarian Code of Civil Procedure, which was enacted in 1952 and was last revised and amended in 2001. Articles 256-270 of the Bulgarian Code of Civil Procedure provide for special procedures for matrimonial cases.

2. Give a brief history of the main developments of your divorce law?

(a) Early history – matrimonial canon law.

Until 1945, matrimonial canon law applied in Bulgaria and no secular law existed. The matrimonial rules for Orthodox Christians were adopted from the Exarchic Statute, whereas, those for other religious denominations (Catholics, Evangelicals, Muslims, Jews and Armenian Christians) were based on their respective denominational statutes and by-laws. This lack of uniformity is evidence of the chaos that dominated the field of divorce and matrimonial law.

The Exarchic Statute was drafted by the Church Council held in Constantinople in 1871 as a special statute regulating the governance of the Church. Articles 94 (e) and 98 (g) and (h), invested in the clergy the power to deal with matters concerning the cancellation of

engagements and the ending and dissolution of marriages, which it treated as spiritual matters. This solution was in keeping with the spirit of the then Turkish law, which also treated these matters as spiritual. The Exarchic Statute did not contain any substantive provisions regarding matrimonial law. Canon law was therefore implemented in accordance with other Church literature as well as local customary law.¹

Marriage had been a civil legal act under Bulgarian customary law, which applied until the adoption of Christianity and up to the 11th century. From then until 1945 the Church gradually took over the governance of marriage from the civil authorities and the law and regulated it as a sacrament.

This situation was preserved even after the liberation from the Ottoman Empire and the restoration of the independent Bulgarian State in 1878. Under the temporary rules, which regulated the organisation of the judiciary from 1878 onwards, spiritual (church) courts were legitimised and given authority over the matters referred to in Article 94(e) and Article 98(g) and (h) of the Exarchic Statute. In 1892, the Exarchic Statute was approved by the National Assembly and entered into force as a law. Two subsequent revisions of the Statute did not contain any regulations on matrimonial matters.²

It was not until 1897 that a new sixth section was added to the revised Exarchic Statute in which matrimonial law was regulated on a purely ecclesiastical basis. It contained only procedural rules on engagement and the conclusion and dissolution of marriage, and no substantive provisions. The relations between spouses were regulated by neither canon law nor secular law.

Bulgarian canon law recognised more grounds for divorce than did the secular matrimonial law of Western countries. This prompted some commentators to claim that Orthodox Church was more liberal than

¹ See L. Dikov, *A Course in Bulgarian Civil Law, Volume II, Family Law*, Sofia, 1937, pp. 11-12.

² See L. Dikov, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, p. 92-116.

the Catholic Church.³ Article 187 of the Exarchic Statute specified ten grounds for divorce. These involved either a breach of matrimonial obligations (i.e. fault) or an objective reason for the failure to perform such obligations. Objective reasons for a failure to perform matrimonial obligations constituted grounds for dissolution of marriage only in exceptional cases, which were expressly set out in Article 187, § 6 and § 7.

The grounds for dissolution of marriage were expressly defined in the Exarchic Statute, which did not allow divorce by mutual consent. Nor was actual separation deemed to be a ground for divorce under the Exarchic Statute since it was reasoned that a spouse should not be able to take advantage of his or her own misconduct by simply relying on the ground of separation. Article 187 of the Exarchic Statute provided only absolute grounds for divorce, which amounted to a total of twelve:⁴

(1) Absence by the husband, but not the wife. This provision covered two hypothetical situations: first, the situation where a husband had been gone for 4 years and his whereabouts were unknown, and, second, the situation where the whereabouts of the husband were known but he had not paid maintenance to his wife (Article 187 § 1). The mutual obligation of spouses to support each other while they were living in a common household was transformed during separation into an obligation to provide maintenance of the same pecuniary value. Non-payment had to be intentional and not the result of an incapacity that could be proved objectively. Soldiers' wives were obliged to wait for their husbands to return from service.

(2) Where a wife deserted or expelled her husband for a period of three years, without good reason, and refused to live with him despite the persuasions of the Church authorities (Article 187, § 10). This provision was introduced in 1897. Where the conditions were fulfilled, there was held to be lasting and persistent fault and wrongful breach by the wife of the matrimonial obligation of cohabitation. This ground

³ See L. Dikov, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, p. 87.

⁴ L. Nenova, *Family Law of the Peoples Republic of Bulgaria*, Sofia, 1977, p. 237.

was to the benefit of the husband in view of the shorter term of separation (3 rather than 4 years). Where there was a good reason for the separation, it could not constitute a ground for divorce. In any event it could constitute a ground for divorce only for the husband and not for the wife.

(3) Breaching the sanctity of marriage by adultery (Article 187, § 2). Divorce was possible on account of the adultery of either spouse, irrespective of which party petitioned for divorce. The continuation of cohabitation after the adultery extinguished the right to divorce since there was a presumption of forgiveness. The adulterous party was not allowed subsequently to marry the co-respondent.

(4) Unproved accusation of adultery (Article 187, § 9). This provided a remedy in cases where the other spouse had abused the right to petition for divorce on the ground of adultery. Such a claim (i.e. on the grounds of unproved accusation) was possible only as an independent petition to the ecclesiastical court for dissolution of the marriage and not as an accusation made in the course of divorce proceedings.

(5) Drunkenness and profligacy (Article 187, § 3(?)). Only in their extreme forms did drunkenness and profligacy constitute grounds for divorce. Usually this was the case where there was deemed to be no chance that the behaviour would improve.

(6) Violence by one spouse against the other (Article 187, § 3(b)). This provision covered both physical violence and mental cruelty (jealousy, slander and false accusation) of such a kind as to make the continuation of the marriage impossible. Violence against close relations of the spouse and his or her children could also be a ground for divorce. Even a single battering could, if very severe, constitute a ground for termination of marriage. No evidence of behaviour compensating for the fault was admissible, but the wrongful behaviour of each party was considered individually.

(7) Actions or threats against the life of the other spouse in any manner whatsoever (Article 187, § 3(c)).

(8) Unnatural intercourse by a husband with his wife (Article 187, § 4). This had to be proven by expert medical evidence.

(9) Imposing constraints on the religious freedom of a Christian Orthodox spouse and exerting pressure on him or her to adopt the other spouse's creed (Article 187, § 5). This was presumed to be a type of mental cruelty. A defence was available only to an Orthodox spouse within a mixed marriage.

(10) Where a spouse was sentenced to a severe punishment for theft, vagrancy or murder (Article 187, § 8). This ground was introduced by the 1897 Exarchic Statute. Since the wording of the text differs from that in the Penal Code, there are difficulties in interpreting and enforcing this ground for divorce. The reason for divorce is that the matrimonial cohabitation is unbearable.

(11) Where one of the spouses is unable to perform his or her marital duties due to a medically proven deficiency (Article 187, § 6). This provision covers sexual impotence, natural or accidental, and even physical disgust.

(12) Where one of the spouses suffers from insanity, idiocy, epilepsy or syphilis after the marriage, the marriage can be dissolved only in extreme cases, after all possible medication has been tried (Article 187, § 7). The reason for dissolution is both the sickness and the accompanying incapacity of the spouse concerned for physical and mental union.

(b) Content, exercising and extinction of the right to divorce.

As regulated under canon law, the right to divorce was a personal, non-transferable and non-inheritable right. It could be exercised through a representative. Divorce proceedings were instituted by filing a petition before a competent court. Divorce was the result of such a petition and the judgment of the court. Both the petition and the judgment were treated as constitutive court documents. However, the view among Christian Orthodox dogmatists was that the judgment could only have a declaratory character as the marriage could not be terminated. Where there were grounds for divorce, the person filed a

public petition with the ecclesiastical authorities requesting them to rule on the petition for divorce. This petition bore the words 'right to divorce'.⁵ The right to divorce was extinguished in the cases where there had been forgiveness or upon the death of a spouse. No limitations on the time within which this right could be exercised were laid down.

The proceedings took place before the Christian Orthodox courts (for Orthodox Christians). Until 1878, the official courts in the territory of Bulgaria were those of the Muslim state, the Shariah courts, which applied the matrimonial laws of the Shariah only between Muslims. The Turkish State had accordingly vested the jurisdiction over matrimonial matters and disputes in the various religious denominations.

This procedure was regulated by the 'Rules for the Conduct of Cases falling within the Authority of Ecclesiastical Courts'. The laws on civil and penal proceedings were applied on a subsidiary or optional basis. Before considering the substance of the petition the court attempted to reconcile the parties (Articles 195 and 196, Exarchic Statute). A specific term could be assigned for this purpose. During the first session, the parties had to appear in person in order to make an attempt at reconciliation. According to the commentators, however, this rule did not produce the desired result, and it therefore began to be applied *pro forma*. Representation by a lawyer was also admissible. During the proceedings, the ecclesiastical court could make interim orders regarding accommodation for the wife and maintenance for her and the children. Temporary accommodation could be allocated to the wife by mutual consent or by court ruling. Where this was the matrimonial home, the husband was bound to leave. When temporary accommodation was allocated, the spouses were in effect subject to temporary judicial separation. A decree of divorce constituted a pronouncement on two issues: whether or not the marriage was to be ended and which of the spouses was at fault. In fact, the fault of the respondent spouse was implicit in the very formulation of the divorce grounds. The proceedings were dealt with at two instances.

⁵ L.Dikov, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, p. 110.

(c) History of secular matrimonial law.

In 1920-30, Bulgarian lawyers, legal theorists and practitioners mounted a campaign to challenge the ecclesiastical nature of marriage and press for the restoration of secular matrimonial law. A 'Bill on the Conclusion and Termination of Marriage' was prepared in 1936. This introduced the option of civil marriage and reproduced the grounds for divorce contained in the Exarchic Statute. However, it also introduced a new ground, namely irretrievable breakdown of marriage. This implicitly contained the element of fault, for the failure to perform matrimonial obligations (Article 43). The Bill also provided that secular courts should have jurisdiction in divorce cases. The Bill was not adopted due to strong opposition from the Church. Canon law remained in force until 1945.

1945 saw the adoption of a Marriage Ordinance, under which matrimonial matters were regulated under secular law for the first time: this covered relations between spouses, introduced civil marriage and recognised all church weddings as being effective for the time being. The combined effect of the Gender Equality Ordinance (1944) and the Marriage Ordinance was to give equal rights to legitimate and illegitimate children (although this issue was hardly a matter for regulation under a law on marriage). The Marriage Ordinance introduced a mixed system of divorce grounds: divorce by mutual consent (Article 30), six grounds for divorce (Articles 31-36), namely: adultery, threats against the other spouse's life, criminal conviction, absence, illness and sexual impotence and infertility. There was also one last ground (Articles 37 and 38), which needed a ruling by the court: namely severe breach of matrimonial obligations and marriage breakdown (fault was irrelevant).

The Persons and Family Act of 1949 was an attempt was to codify family law. However, the Act contained civil provisions on the legal status of persons and legal subjects. As such it repeated the grounds introduced by the Marriage Ordinance (Articles 44 and 45). Only the ground of 'sexual impotence and infertility' was dropped.

In 1952, the Bulgarian Code of Civil Procedure made important changes to divorce legislation. Following the new ideology of 'preserving the marriage', it introduced a ban on divorce by mutual consent. It also barred divorce in cases where the breakdown was attributable solely to the behaviour of the petitioner and the other spouse wished to preserve the marriage (Article 263). For the first time, a conciliation session was introduced as a necessary component of divorce proceedings (Article 259). The aim was to reconcile the parties by discussing the reasons for the divorce before the judge and identifying opportunities to avoid it. Both parties were required to appear in person before the judge and take part in the discussion. Many commentators argued that this procedure did not play the role for which it was originally intended, but simply delayed the divorce and thus caused additional harm to both parties. The conciliation stage was followed by a waiting period of 2-3 months.

The 1953 revision of the Persons and Family Act dropped all grounds for divorce except one: marriage breakdown (Article 45). The former grounds were interpreted as reasons for the marriage breakdown (Article 47). The prohibition on granting divorce against the will of one of the spouses was limited to cases complying with the following wording: 'by exception, where there is serious public concern on this account'.

The first Bulgarian Family Code was adopted in 1968 and finalised the codification of family law. The Code identified only two grounds for divorce: mutual consent (restored) and 'serious and irretrievable breakdown of the marriage'. The issue of matrimonial fault could be considered only if this was raised by the petitioner. The Second Bulgarian Family Code of 1985 preserved these two grounds for divorce and restored fault as a ground for divorce.

3. *Have there been proposals to reform your current divorce law?*

See Question 2.

B. GROUNDS FOR DIVORCE

I. General

4. *What are the grounds for divorce?*

Two grounds for divorce are set out in the Bulgarian Family Code: irretrievable breakdown of the marriage and mutual consent.

(a) Divorce through breakdown of the marriage: Article 99

(1) Each of the spouses is entitled to petition for divorce where there has been a 'serious and irretrievable breakdown' of the marriage.

(2) When granting the decree of divorce the court makes a ruling on its own motion on the issue of the fault for the breakdown of the marriage, unless the breakdown is caused by objective factors which cannot be ascribed as the fault of either spouse.

(3) The court does not rule on the issue of fault for the breakdown of the marriage where the spouses so request and they submit to the court their agreement on the custody of any children and access to and maintenance of the children, and also on the division of their property, the use of the matrimonial home, the payment of maintenance and the use of the family name.

(4) A divorce is not allowed where the breakdown of the marriage is due solely to the misconduct of the petitioner and the respondent wishes to preserve the marriage, unless there are important reasons why the divorce action must continue.

(b) Divorce by mutual consent: Article 100.

Where there is serious and firm agreement between the parties about the divorce, the court allows it without investigating their motives for terminating the marriage. A petition for a divorce by mutual consent cannot be filed until three years after the contraction of the marriage.

(c) Agreement reached by the spouses in a divorce by mutual consent:
Article 101

(1) In a divorce by mutual consent the spouses have to include provisions in the agreement regarding the discharge of parental rights and obligations, their personal relations, and the maintenance of the children, and also their property relations, the use of the matrimonial home, the payment of maintenance and the use of the family name. The agreement is ratified by the court after it is satisfied that the interests of the children have been protected.

(2) Where the agreement is not complete or the interests of the children are not well protected the court sets a term within which these defects should be remedied. If the defects have not been remedied within this term, the divorce petition is dismissed. Applications for child custody and child maintenance after the termination of a marriage by mutual consent are admissible where a change in the circumstances has occurred.

5. Provide the most recent statistics on the different bases for which divorce was granted.

Year	1998	1999	2000	2001
Number of marriages	35 582	35 540	35 164	32 000
Marriage rate (gross)	4.3	4.3	4.3	4.3
Number of divorces	10 390	9 781	10 578	10 275
Divorce rate (gross)	1.3	1.3	1.3	1.3
Irretrievable breakdown	55%	56%	57%	51%
Divorce by consent	45%	44%	43%	49%

6. How frequently are divorce applications refused?

Type of divorce case	Marriage breakdown		Mutual consent	
	<i>Rejected petitions</i>	<i>Terminated cases</i>	<i>Rejected petitions</i>	<i>Terminated cases</i>
1997	197	2 887	8	774
1998	269	2 817	9	729
1999	234	2 253	2	532

2000	191	2 077	13	543
2001	180	1 871	35	477
2002 (June)	87	913	9	228

7. *Is divorce obtained through a judicial process, or is there also an administrative procedure?*

There is no administrative procedure available for divorce. Divorce is obtainable only through a court procedure – Articles 258–265 of the Bulgarian Code of Civil Procedure.

8. *Does a specific competent authority have jurisdiction over divorce proceedings?*

No. The common district courts have jurisdiction over divorce proceedings. Article 79 of the Civil Procedure Code reads –

(1) All civil cases fall under the jurisdiction of district courts except those which fall under the jurisdiction of county courts at first instance.

Specialised panels (matrimonial sections) have been established in the courts of some regional centres and also in the capital with sole jurisdiction to hear matrimonial cases.

9. *How are divorce proceedings initiated? (e.g. Is a special form required? Do you need a lawyer? Can the individual go to the competent authority personally?)*

It depends on the ground for divorce. If the ground is ‘irretrievable breakdown of the marriage’ it is sufficient for one of the spouses (the petitioner) to file a divorce petition before the court. The other spouse (the respondent) may then decide whether or not to contest it. Where the ground is ‘mutual consent’, the petition is filed by both spouses.

There is no legal requirement for the petition to be in a special form. Under the Bulgarian Code of Civil Procedure, a petition should necessarily contain certain data, such as the names and addresses of the petitioner and the respondent, the facts of the case, the claim and

the evidence (Article 98). A model form can be obtained by the petitioner from an electronic database.

Hiring a lawyer is advisable but not strictly necessary. There are no formal impediments that would prevent either party from filing a petition in court. Under Article 16 (1) of the Bulgarian Code of Civil Procedure, persons of full legal capacity may perform in person all procedural acts in court proceedings. The principle is that, in view of the personal nature of matrimonial legal relations, the spouses should have the opportunity to take part in the matrimonial proceedings in person. Article 258(2) of the Bulgarian Code of Civil Procedure therefore expands the procedural capacity of the spouses (see Question 4) by providing that 'Persons who have not attained their full majority or whose legal capacity is subject to constraints may file matrimonial petitions and be respondents in such proceedings in their own right'.⁶

10. When does the divorce finally dissolve the marriage?

The marriage is dissolved as soon as the court issues the decree. No appeal lies against the decision granting a divorce by mutual consent (Article 259 (c) Bulgarian Code of Civil Procedure), since the court decree merely ratifies the mutual consent. An agreement regulating the consequences of divorce, which is also confirmed by a court judgment, does not have the same effect and may be attacked by filing a claim under the appropriate procedure.

A divorce decree based on the irretrievable breakdown of the marriage also takes immediate effect: 'A divorce decree shall enter into force even if it has been appealed, provided that the appeal relates only to the issue of fault' (Article 265 Bulgarian Code of Civil Procedure). Before 1999, the text of this provision had been the exact opposite: 'A divorce decree shall not enter into force if it has been appealed, even if the appeal relates only to the issue of fault.' This 1999 revision does not comply with the substantive provisions of the Bulgarian Family Code regarding the meaning of the fault for divorce due to marriage breakdown. Under the Bulgarian Family Code, where a divorce petition is filed, the issue of fault must be examined by the court,

⁶ J. Stalev, *Bulgarian Law of Civil Procedure*, Sofia, 1994 p. 512.

which then rules on this issue as part of the ground for granting divorce. However, appeal lies against both the part of the divorce decree dealing with the issue of fault and the part regarding parental rights or the family name. The decree on the termination of marriage becomes effective irrespective of any such appeal.

If under your system the sole ground for divorce is the irretrievable breakdown of marriage answer part II only. If not, answer part III only.

III. Multiple grounds for divorce

1. Divorce by consent

22. Does divorce by consent exist as an autonomous ground for divorce, or is it based on the ground of irretrievable breakdown?

Divorce by mutual consent exists as an autonomous ground for divorce and is separate from the ground of 'serious and irretrievable breakdown', irrespective of the legislature's hesitation about this ground, which was introduced in 1945, repealed in 1952 and restored in 1968.

23. Do both spouses need to apply for a divorce together, and if not, how do the divorce proceedings vary according to whether one or both spouses apply for a divorce?

Both spouses must together apply for divorce. This follows from the requirement of mutual consent in Article 100 of the Bulgarian Family Code. The mutuality of consent is part of the ground for the divorce. Proceedings for divorce by mutual consent therefore follow the procedure for unilateral applications, since both spouses are petitioners. No dispute exists between them and they have a common will to terminate their marriage.⁷

Mutual consent has to be expressed on three occasions, once when the divorce petition is filed, once during the conciliation session, and once during the court hearing. In order to express effective mutual consent the spouses need to be persons of full legal capacity. To apply for

⁷ See J. Stalev, *Bulgarian Law of Civil Procedure*, Sofia, 1994 ? . 527.

divorce by mutual consent it is sufficient for them not to be the subject of a full incapacity order. The Bulgarian Code of Civil Procedure provides that persons who are not of full age and therefore have restricted legal capacity can file matrimonial claims on their own (Article 258, § 2 of the Bulgarian Code of Civil Procedure).

24. Is a period of separation required before filing the divorce papers?

No. The admissibility of divorce by mutual consent is not dependent on the existence of a preceding period of separation between the spouses.

25. Is it necessary that the marriage was of a certain duration?

Yes. Under Article 100, § 2 of the Bulgarian Family Code, no application may be made for divorce by mutual consent until 3 years after the contraction of the marriage.

26. Is a minimum age of the spouses required?

No. Generally, the rules of matrimonial capacity apply, which predetermine the effect of marriage. Under the Bulgarian Family Code, matrimonial legal capacity starts at the age of 18. By way of exception, it is possible for a person aged 16 to contract a valid marriage. For that purpose, two additional conditions must be fulfilled: first, there must be good reasons and, second, permission must have been given by the president of the District Court in the place of residence of the person in question (Article 12, § 2 of the Bulgarian Family Code). Any person who contracts marriage before reaching the age of majority acquires full legal capacity. The general position under this rule is that application for divorce by mutual consent may be made by spouses of at least 21 (18+3) years of age or 19 (16+3) years of age. It follows that no spouse under the age of majority can take part in divorce proceedings by mutual consent.

Age for contraction of marriage: Article 12.

(1) A marriage may be contracted by a person who has reached the age of 18.

(2) By way of exception, a marriage may be entered into by a person who has reached the age of 16, provided that there are good grounds and that the consent of the president of the regional court in the person's place of residence has been obtained. Where both parties are minors and live in different regions, they may apply for consent to the president of the court in the place of residence of either party, at their discretion. The president hears the minor and the parents or the guardian. The opinion of the parents or the guardian may be submitted in writing with their signatures attested by a notary.

(3) Upon contracting a marriage a minor acquires legal capacity, but can dispose of real property only with the consent of the regional court in his or her place of residence.

27. Are attempts at conciliation, information meetings or mediation attempts required?

The Bulgarian Code of Civil Procedure provides for one conciliation session at which the spouses must appear in person, unless they submit to the court good reasons for their failure to do so (Article 259?). The purpose of the conciliation session is to avoid divorce. Where this is successful, the proceedings are terminated.

Until 1999, a period of two months had to elapse between the conciliation session and the court hearing. This provision has been repealed and the court hearing may now take place immediately after the conciliation session. Unlike proceedings based on 'serious and irretrievable breakdown', a conciliation session must be held in the case of divorce by mutual consent. The failure of either spouse to appear before the court for the conciliation session results in the termination of the proceedings, unless there are good grounds for such failure to attend.

'259a. (New, State Gazette 23/1968; amended, State Gazette 28/1983) (1) In the case of an action for divorce by mutual consent the president of the court summons the spouses to a conciliation session at which they must appear in person.

(2) (Amended, State Gazette 28/1983, 64/1999) If the spouses reaffirm their petition, the president of the court prepares a protocol on this subject and presents the petition for consideration in the court hearing.

(3) If either spouse fails to appear in person, without valid reasons, at the conciliation session or the court hearing, the action shall be terminated.'

The Bulgarian Code of Civil Procedure does not make any provision for information meetings or mediation attempts.

28. What (formal) procedure is required (e.g. how many times do the spouses need to appear before the competent authority)?

The spouses need to appear before the court at least twice: once, at the conciliation session, and once again, at the court hearing. It is possible for the parties not to appear in person only if they have acceptable reasons and the court respects such reasons (Article 259?, § 3 Bulgarian Code of Civil Procedure). If the court is not satisfied with the parties' agreement, it can set a date for a further hearing and order the parties to appear again for the purpose of assessing the new agreement drawn up by the spouses (see Questions 29 and 30).

29. Do the spouses need to reach an agreement or to make a proposal, or may the competent authority determine the consequences of the divorce?

Divorce by mutual consent is regulated in advance by an agreement which is reached and drawn up by the spouses and covers all the consequences of the divorce. As stated in Article 101, § 1 of the Bulgarian Family Code:

Article 101 (1): 'In a divorce by mutual consent the spouses must regulate their agreement on child custody, access and maintenance and on the division of property, the use of the matrimonial home, the payment of maintenance, and the use of the family name. The agreement is ratified by the court after it is satisfied that the interests of the children have been protected.'

The court confirms the agreement only after examining 'whether the interests of the children are protected'. The court may not substitute its decision for the provisions of a missing agreement as set out under Article 101, § 1. The court may only approve the agreement or give the spouses a deadline to improve it in accordance with the requirements of the law.⁸

30. *If they need to reach an agreement, does it need to be exhaustive or is a partial agreement sufficient? On what subjects should it be, and when should this agreement be reached?*

The agreement should be exhaustive and should arrange all post-divorce relations between the ex-spouses and their children. The subject of the agreement covers two groups of issues, namely:

- child custody, access and maintenance;
- personal and property relations between the ex-spouses: family name, matrimonial home, division of joint property and payment of maintenance (Article 101 § 1 of the Bulgarian Family Code).

It should, however, be noted that the approach taken by the first matrimonial law in Bulgaria, i.e. the 1945 Marriage Ordinance, was different. In cases of divorce by mutual consent it provided that agreement on the matters relating to the children was obligatory and that agreement on the division of property was optional (Article 61 § 1 and § 2 of the Marriage Ordinance). The Bulgarian Family Code provides that agreement on both issues is obligatory. This is regarded as a very onerous requirement since any dispute about property is bound to frustrate the use of the option for divorce by mutual consent, irrespective of the existence of consent and agreement about children⁹. The agreement, even if confirmed by the decree of divorce, may be

⁸ See L. Nenova, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926 p. 583 and J. Stalev, *Bulgarian Law of Civil Procedure*, Sofia, 1994 p. 529.

⁹ See L. Nenova, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, p. 583 and T. Tsankova, 'The New Family Code', *1 Legal World*, 1999, p. 70.

amended in so far as it relates to the arrangements for the children, provided that there has been a change of circumstances:

‘Applications concerning child custody and child maintenance after termination of the marriage by mutual consent are admissible where there has been a change of circumstances’ (Article 101 § 3 of the Bulgarian Family Code).

31. *To what extent must the competent authority scrutinise the agreement that has been reached?*

The court scrutinises two aspects of the agreement: completeness (does it cover all issues provided for by the law?) and adequacy (does it cover the children’s interests?). The court does not check the interests of the spouses, but the agreement should be in keeping with the requirements of the law and ethics.

Where an agreement does not meet one or more of the above requirements, the court sends it back to the spouses for its deficiencies to be remedied: ‘Where the agreement is not complete or the interests of the children are not well protected the court sets a term within which these defects should be remedied. Where the defects are not remedied within the prescribed term, the divorce petition is dismissed’. (Article 101 § 2 of the Bulgarian Family Code). If the spouses fail to remedy the deficiencies within the term prescribed by the court, the court dismisses their divorce petition.

32. *Is it possible to convert divorce proceedings initiated on another ground to proceedings on the ground of mutual consent, or must new proceedings be taken? Or is it possible to convert divorce proceedings on the ground of mutual consent to proceedings based on other grounds?*

Theory and judicial practice provide different answers to this question, which tends to occur most often in relation to petitions brought on the ground of irretrievable breakdown. The Supreme Court has specifically rejected the possibility of switching from divorce instituted on such a ground to divorce by mutual consent: ‘It is unacceptable that defended proceedings should be converted by agreement between the parties into divorce proceedings by mutual consent (i.e.

undefended) without the relevant provisions of the law having been observed'.¹⁰ The Supreme Court abides by its ruling that the consent of the respondent under the divorce petition may not constitute grounds for termination of the marriage. The court needs to ascertain whether there is a 'serious and irretrievable breakdown' of the marriage.¹¹

However, legal theorists do not see any reason why divorce proceedings instituted by unilateral petition should not be converted into divorce proceedings by mutual consent. It is sufficient for the spouses to create the conditions set out under the Bulgarian Family Code for such divorce: i.e. firm mutual consent and three years since the contraction of marriage.¹²

This question also arises in cases where the spouses do not require a ruling on the issue of fault and instead furnish an agreement on the consequences of their divorce. Although this situation is in some ways similar to that of divorce by mutual consent, there are still considerable differences between them. The court remains bound by the initial petition and is required to rule on the issue of 'serious and irretrievable breakdown' of the marriage. On the other hand, the rule of the three-year term of the marriage, which is effective in the cases of divorce by mutual consent, does not apply in this situation.¹³

Where the reverse situation applies, i.e. conversion from divorce by mutual consent to divorce based on marriage breakdown, the Supreme Court refuses such an option: 'This is not permissible. A new petition must be filed'.¹⁴

¹⁰ Supreme Court, ?-1871-1968.-?? ??., ?P-10-1974, § 4. The leading cases are cited in the following way: first, the type of the decision (P means decision of the Second Division of the Supreme Court and PP means decision of the Plenary Division of the Supreme Court) followed by the number of the decision, the year, and the division of the Supreme Court of Cassation. Usually it is the second one – II, which deals with matrimonial matters.

¹¹ Supreme Court, ?-2324-1975-???.?., ?-246-1976-???.?

¹² See J.Stalev, *Bulgarian Civil Procedural Law*, Sofia, 1994, p. 531.

¹³ *Bulgarian Law of Civil Procedure*, Sofia, 1994, p. 523.

¹⁴ Supreme Court, ?-1330-1979, ???.?

3. Divorce on the ground of irretrievable breakdown of the marriage and/or separation

44. How is irretrievable breakdown established? Are there presumptions of irretrievable breakdown?

The Bulgarian Family Code does not contain any presumptions of irretrievable breakdown. Irretrievable breakdown is a legal conclusion reached by the court based on all the facts presented and proved before it. Facts must provide evidence that the marriage has broken down irretrievably. In case law and theory, the concept of 'serious and irretrievable breakdown' is defined as follows:

The term irretrievable breakdown is a legal concept and depicts a state of matrimonial relations which is incompatible with the further existence of the marriage. In one of its leading decisions, the Supreme Court, construed the concept of irretrievable breakdown as: 'a breakdown, which has resulted in the disjunction of family relations, and in lack of mutuality, respect, trust and companionship between the spouses, as a result of which the matrimonial union is of formal content only and does not correspond to the law', and has held that 'a breakdown is irretrievable if it cannot be overcome in such a way that normal marital relations are restored'.¹⁵

- Legislation does not identify any specific facts which may cause irretrievable breakdown, but, according to legal theory, 'causes are not important, it is the result which matters'.¹⁶ It follows that in each particular case the court is required first to identify the reasons for marriage breakdown, second to draw a conclusion about the state of marital relations, and third to dissolve the marriage if it draws the legal conclusion that the marriage has broken down irretrievably. According to the Supreme Court, 'Matrimonial offences do not in themselves constitute a reason for the serious breakdown of a marriage. This will be deemed to be the case only where the matrimonial offences have resulted in the disintegration of the marriage.

¹⁵ Supreme Court, P-10-1971.

¹⁶ See. L. Nenova, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, p. 558.

The court has to be governed not by the significance of the reason, but only by its impact on matrimonial relations'.¹⁷

- Various reasons such as adultery, separation, violence and alcoholism are not deemed to be autonomous grounds for divorce. They have to be presented and proven in court. The court draws its conclusions based on the presentation and evidence of facts and assesses the influence and impact of each fact, which also functions as a reason for the breakdown, within that particular marriage. In judicial practice, the major facts that have to be proved are the existence of a serious breakdown and its causes.¹⁸
- The facts and statements of parties need to be proved. Otherwise, the petition is rejected.

45. Can one truly speak of a non-fault-based divorce or is the idea of fault still of some relevance?

The previous Bulgarian Family Code of 1968 abandoned the significance of fault in the granting of divorce on the ground of serious and irretrievable breakdown of marriage. Divorce could always be granted where the marriage had broken down seriously and irretrievably. A ruling on fault could be given only at the express request of the petitioner.

The current Bulgarian Family Code has restored the significance of fault in divorce proceedings. This has been done in two ways. Firstly, the ground of 'serious and irretrievable breakdown' is combined with an investigation into the issue of fault, and the court is obliged in all cases to make a ruling on fault on its own motion. Secondly, the prohibition on granting divorce at the request of the spouse found to be at fault has been reinstated in cases where the innocent party objects to the divorce (Article 99, § 4 of the Bulgarian Family Code). However, the prevailing view among family law theorists is now that the importance of fault in divorce needs to be diminished and that the

¹⁷ Supreme Court, ?-22-64-1974-?.

¹⁸ Supreme Court, ?-1893-1968-?.

rule in Article 99, § 4 should be repealed. The judiciary too supports this position.¹⁹ Article 99, § 2 of the Bulgarian Family Code reads:

‘When granting a divorce the court rules on its own motion on the issue of fault for the breakdown of the marriage, unless there are objective reasons for the breakdown which cannot be ascribed as the fault of either spouse.’

There are two exceptions to the requirement that a ruling must be given on fault, namely first where there are objective reasons for the breakdown, and second where both spouses wish to dispense with a ruling. (Article 99, § 2 and § 3). In the former case, i.e. where the court finds that there are objective reasons for the serious and irretrievable breakdown, it must give a ruling on the absence of fault. And in the latter case, i.e. where both spouses request that the court should not rule on the issue of fault, the court may respect their request subject to one proviso: the spouses must submit an agreement regulating all the consequences of the divorce (Article 99 § 3) (see Questions 13 and 14).

Divorce may not be granted if the breakdown is due to the fault of the petitioner, save for one exception: ‘A divorce is not allowed where the breakdown of the marriage is due solely to the misconduct of the petitioner and the respondent wishes to preserve the marriage, unless there are important reasons why the divorce action must continue’ (Article 99, § 4 of the Bulgarian Family Code). The main purpose of this rule is to penalise the spouse responsible for the marriage breakdown. Circumstances that might usually be held to constitute important reasons for an exception are a long period of actual separation and the impossibility of re-establishing marital relations or of starting another family.

The recent case law has adopted a more liberal approach to the application of this rule: ‘In a case where a marriage has broken down due to the fault of the petitioner, the insistence of the respondent on

¹⁹ See Supreme Court, ?-10-1971 and L. Nenova, ‘The Need for Reform in Bulgarian Matrimonial Law’ in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, ?. 564-565; T. Tsankova, ‘The New Family Code’, *Legal World*, 1999, p. 70.

preserving the marriage does not constitute an obligatory ground for dismissing the divorce petition filed by the party at fault'.²⁰

46. *To obtain the divorce, is it necessary that the marriage was of a certain duration?*

No such requirement exists.

47. *How long must the separation last before divorce is possible?*

The Bulgarian Family Code does not relate divorce on the ground of serious and irretrievable breakdown of marriage to a preceding period of separation between the spouses or to any specific duration. Under the Bulgarian Family Code, separation between the spouses may be deemed either to be a cause – like all other causes – of the breakdown or to be mere evidence of the existence of such a breakdown. Separation is not deemed to be an autonomous ground and is considered jointly with the other circumstances in the case.

The court has to find that the separation is '*lasting*' or '*lengthy*' if it is to be taken as an indication or cause of an existing breakdown of the marriage. The concept of (a) '*lasting*' (separation) is construed by the court on the facts of each case. The Supreme Court has thus held, for example, that 'A one-year separation may not be deemed the cause of a serious and irretrievable breakdown of marriage'.²¹ However, another decision of the Supreme Court states that 'The lasting *de facto* separation of the spouses and the start of cohabitation with another woman may constitute a ground for petitioning for and obtaining divorce'.²² 'The lengthy eight-year separation between the spouses breaks all spiritual, physical and other bonds between them and constitutes a ground for petitioning for and obtaining a divorce'.²³ Or 'The lasting separation may prove to be only an external symptom of the alienation between the spouses, but, in all cases other than for the

²⁰ Supreme Court, ? -912-1991-?? ??.

²¹ Supreme Court, ? -612-1955.

²² Supreme Court, ? -658-1955-??.

²³ Supreme Court, ? -587-1956-??.

purpose of the separation, the internal condition of the marital relations needs to be specified'.²⁴

48. Does this separation suffice as evidence of the irretrievable breakdown?

Separation is always assessed in the light of all the facts and evidence in the case. According to the Supreme Court, it may be either a cause or an indication of serious and irretrievable breakdown of marriage: 'A lasting separation may bring about a serious and irretrievable breakdown of the marriage. Its impact on the condition of marital relations is assessed in each particular case. Separation is not in itself a ground for dissolution of marriage. The court must examine whether it is the cause or simply an indication of serious and irretrievable marriage breakdown. Its impact on marital relations is assessed in the light of all the evidence in the case'.²⁵

It is possible, however, for the fact of separation itself to be a sufficient argument in support of the conclusion of serious and irretrievable breakdown of marriage. 'Where the spouses have been living separately for ten or more years, albeit under the same roof, and have each looked after their own wants (cooking, hygiene, etc.), without showing any interest in the other, this constitutes an irretrievable breakdown of the marriage'.²⁶ Or: 'The duration of the actual separation (more than 3 years in this case) may have some impact on the condition of the marriage'.²⁷

49. In so far as separation is relied upon to prove irretrievable breakdown,

(a) Which circumstances suspend the term of separation?

Neither legislation nor practice makes any provision to this effect. Separation is discussed in relation to all the facts and evidence submitted in the case.

²⁴ Supreme Court, ? -2010-1968.

²⁵ Supreme Court, ? P-10-1971-§ 3.

²⁶ Supreme Court, ? -453-1992- ??.

²⁷ Supreme Court, ? -3378-1981-??.

(b) Does the separation need to be intentional?

Not necessarily. The impact of *de facto* separation on the marriage is important. *De facto* separation may be intentional, in which case it will constitute marital misconduct. However, *de facto* separation may be the result of objective circumstances (e.g. where a spouse resides in another city or country due to the nature of his or her job or for the purposes of medical treatment). In such a situation, it is the effect of the separation on marital relations which is of significance.

(c) Is the use of a separate matrimonial home required?

Not necessarily. According to the Supreme Court, 'To constitute an objective circumstance reflecting the serious breakdown of the marriage, a lasting *de facto* separation need not necessarily entail a situation of continuous separate habitation'.²⁸ Also, 'A lasting *de facto* separation need not necessarily take the form of a geographical separation only (i.e. leaving the family home), but may also take the form of full physical and intellectual alienation'.²⁹ And, especially, 'Where the spouses have been living separately for ten or more years, albeit under the same roof, and have each looked after their own wants (cooking, hygiene, etc.), without showing any interest in the other, this constitutes an irretrievable breakdown of the marriage' (? - 543 - 1992- ??).

50. *Are attempts at conciliation, information meetings or mediation attempts required?*

The Bulgarian Code of Civil Procedure provides for conciliation measures to be taken before the hearing of the divorce petition. As in the case of divorce by mutual consent, (see Question 27), no provision is made for information meetings or mediation attempts. As set out under Article 259, § 1 of the Bulgarian Code of Civil Procedure,

'Proceedings in petitions for divorce begin with a conciliation session, under which the spouses are obliged to appear in person.

²⁸ Supreme Court, ? -514-1966-??.

²⁹ Supreme Court, ? -3749-1981-??.

Proceedings are terminated if the petitioner fails to appear without giving a valid reason. The non-appearance of the respondent does not prevent the hearing of the petition, but the court may direct that he or she should appear in person.'

Under the conciliation procedure the parties are summoned to appear before the court, where the court explains to them the consequences of divorce and invites them to reach an agreement for the continuation of their marriage:

'The conciliation hearing is held in closed session. The court shall hear the views of the parties, require an account of the grounds of the divorce petition, and explain to the parties the unfavourable consequences of divorce, in particular with regard to the children and society, and invite them to reconcile their differences' (Article 259, § 2 Bulgarian Code of Civil Procedure).

It is possible that, after the first conciliation session, the court may set a date for another such session provided that the following legal requirements are fulfilled:

- 'the court rules that the respondent appears in person;
- there is a wish on the part of one or both spouses to continue the efforts to achieve reconciliation and repair the marriage;
- the court feels that reconciliation is possible.' (Article 259, § 3 Bulgarian Code of Civil Procedure).

Such measures are not taken in cases where reconciliation would be impossible due to full legal incapacity, absence or any other insurmountable circumstance (Article 259, § 6 Bulgarian Code of Civil Procedure).

51. Is a period for reflection and consideration required?

No such period is expressly stipulated, but the making of an appointment for a second conciliation session under Article 259, § 3 Bulgarian Code of Civil Procedure could be construed as such a period. The law does not specify the time that must elapse between these two sessions, but it could span several months. Until 1997, the Bulgarian Code of Civil Procedure prescribed a period of 2 months

between the two conciliation sessions and another period of 4 months between the last conciliation session and the divorce hearing. These periods were abolished when the law was amended in 1997.

52. Do the spouses need to reach an agreement or to make a proposal on certain subjects? If so, when should this agreement be reached? If not, may the competent authority determine the consequences of the divorce?

In cases of divorce due to marriage breakdown, where a ruling is given on the issue of fault, the court settles all matters related to the consequences of divorce as regards the former spouses and their relations with their children. In cases where there are children under the age of majority, the court will make an order on its own motion as to custody, access and maintenance of the children, irrespective of whether or not the interested party files a claim to this end, and will also regulate the use of the matrimonial home (Articles 106, § 1 and 107 Bulgarian Family Code).

(a) Parental rights after divorce: Article 106.

'(1) When pronouncing the decree of divorce the court makes an order on its own motion for custody of the children, for parental access to the children and for maintenance of the children.

(2) The court makes an order for child custody after scrutinising all the circumstances with a view to the children's interests. The custody cannot be granted to the 'guilty' party since this may have an adverse effect on the raising and upbringing of the children.

(3) The court hears the parents and the children if they have reached the age of 14. Where the court finds it appropriate, it may also hear children who have reached the age of 10, as well as close relatives and friends of the family.

(4) Where the interests of children so require, the court may direct by way of exception that they should live with their grandfather, grandmother or someone else, with the consent of such person, or in a social institution.'

When a change in the circumstances occurs the court may, at the request of one of the parents or on its own motion, amend a previous order and make a new order.

(b) Assignment of the matrimonial home after the divorce: Article 107

‘(1) When making the decree of divorce the court assigns the use of the matrimonial home to one of the spouses in cases where it cannot be used separately by both of them; in doing so, it takes into account the interests of the children, the issue of fault, the health of the parties and other circumstances.

(2) Where there are no minor children of the marriage and the matrimonial home is the property of the guilty spouse, the court may assign the use of it to the innocent spouse only for a fixed period of time.

(3) Where there are children of the marriage who are not of full age, and the matrimonial home belongs to one of the spouses, the court may assign the use of it to the other spouse if he or she has been assigned parental authority, as long as he or she continues to exercise this authority.

(4) Where there are minor children of the marriage and the matrimonial home belongs to close relatives of one of the spouses, the court may assign the use of it to the other spouse for a limited period of time if he or she has been assigned parental authority.

(5) The use of the matrimonial home under §§ 2-4 may also be terminated before the expiry of the term if the beneficiary contracts a new marriage.

(6) Where there are minor children of the marriage the court will make a ruling on its own motion on the use of the matrimonial home.’

Where the spouses file a request that no ruling be given on the issue of fault, they are required to furnish an agreement regulating all aspects of relations between themselves and between them and their children after the divorce:

‘The court does not rule on the issue of fault for the breakdown of the marriage where the spouses so request and they submit to the court their agreement on the custody of any children and access to and maintenance of the children, and also on the division of their property, the use of the matrimonial home, the payment of maintenance and the use of the family name.’ (Article 99, § 3 of the Bulgarian Family Code).

The contents of such agreement are identical to those of the counterpart agreement in the case of divorce by mutual consent (see Question 30).

53. To what extent must the competent authority scrutinise the agreement that has been reached?

Although this subject is not expressly regulated in the legislation, both case law and theory indicate that the court has the same powers in assessing the agreement as it does in the case of divorce by mutual consent. Since the agreement settles all the consequences of the divorce, it has to guarantee the interests of children and to be complete and not contradictory to the law. Agreements which do not meet these requirements are returned to the parties for the purpose of remedying any identified deficiencies.

The Supreme Court has held that ‘the court, as provided by law, has no authority to transform the agreement or to replace it by any terms of its own, and may instead only instruct the parties as to the remedying of deficiencies ...’.³⁰ Subsequently, the court issues a decree dissolving the marriage and reproducing the agreement on the consequences of divorce (See Question 31).

54. Can the divorce application be rejected or postponed due to the fact that the dissolution of the marriage would result in grave financial or moral hardship to one spouse or the children? If so, can the competent authority invoke this on its own motion?

³⁰ Supreme Court, ? -60-1987.

The Bulgarian Code of Civil Procedure provides that the divorce application may be rejected or postponed in order to provide protection to the wife and a child under the provisions of Article 261, § 3 and § 4:

‘(3) (New, State Gazette 41/1985) A husband may not file a petition for divorce without the consent of his wife if the latter is pregnant or the child is under twelve months of age.

(4) (New, Not. 89/1953; amended, State Gazette 28/1983) The proceedings in matrimonial claims shall be stopped at the request of the wife if she is pregnant or the child is under the age of 12 months.’

The above provisions are applied by the court not on its own motion but where the wife objects and herself raises the issues of an existing pregnancy or child.

C. SPOUSAL MAINTENANCE AFTER DIVORCE

I. General

55. *What is the current source of private law on the maintenance of spouses after divorce?*

The current source of private law on the maintenance of spouses after divorce in Bulgaria is the Bulgarian Family Code (1985) – Articles 79-81, 83-84, 86-93.

56. *Give a brief history of the main developments of your private law on the maintenance of spouses after divorce.*

Prior to 1945, maintenance obligations and the amount of maintenance between spouses and former spouses were based on custom or were regulated in part by various items of legislation, namely the Exarchic Statute (1871), which applied to Orthodox Christians only, and the Ordinance on the Obligation of Support (1937). The major features of maintenance under the legislation were as follows:

(a) Marriage-generated obligation.

The Exarchic Statute provided that *the husband was under an obligation to support his wife* by sharing his means of support with her during their life together or by providing a cash equivalent of this during separation. The husband's obligation was terminated only where his wife deserted or expelled him for no acceptable reason.³¹ Moreover, the husband was not in breach where non-payment resulted from mutual consent or from objective reasons.

(b) Gender-based obligation.

Husbands were the party obliged to pay maintenance both during marriage and after divorce. This was based on their leading role in marriage as the family breadwinner. Only in exceptional cases where the husband was unable to perform his obligation for objective reasons was the wife entitled to receive family benefit by law or custom.³² Under the Ordinance on the Obligation of Support, the husband owed maintenance to his wife in accordance with his social standing, whereas a wife owed maintenance to her husband only if he was physically incapacitated or was destitute (Article 3). The husband could be exempted from the obligation if he lacked the means to pay maintenance.

(c) Jurisdiction divided between ecclesiastical and secular courts.

Ecclesiastical courts had to identify the debtor in this contractual relationship. Civil courts merely determined the amount of maintenance to be paid (Article 189 of the Exarchic Statute). The obligation could be reviewed only where circumstances changed. Maintenance was fixed for life or until the wife remarried.

(d) Fault.

In the case of divorce, fault was the criterion applied to determine whether a person was obliged to pay maintenance. The obligation existed if:

³¹ Synod Decision, 66/30.

³² See L. Dikov, *A Course in Bulgarian Civil Law, Volume ??, Family Law*, Sofia, 1937 p.82 *et seq.*

- one of the parties had been found to be at fault by the ecclesiastical court competent to rule on the dissolution of the marriage.
- the other party lacked adequate means of subsistence;
- the other party possessed assets (i.e. possessed the resources to pay maintenance).

This applied when the wife was found not to be at fault. Where the opposite was true, a woman could owe maintenance to her former husband only if the latter lacked means of subsistence and, due to some sickness or handicap, was unable to earn his own living. Where neither party was at fault and the divorce was on the grounds of ill-health, the healthy person had to support his or her sick spouse.

Under the case law on separation, the husband owed maintenance to his wife irrespective of the issue of fault.³³ In cases where a party left the matrimonial home voluntarily, the claim for maintenance was assumed to be renounced.³⁴

During this period, views were divided on the nature of the obligation to provide maintenance. The Supreme Court of Cassation held that agreements between spouses who were separated (either de facto or judicially) regarding the maintenance obligations of the husband were valid. However, legal theorists maintained that since these obligations were of a public and not a private nature the parties were not entirely free to conclude maintenance agreements. The right to maintenance could be renounced only in respect of past entitlement, not future entitlement. Second, the agreement would be valid inasmuch as it did not contradict the public legal ground from which the obligation stemmed and inasmuch as it actually provided for the wife's subsistence.

On this issue, the Supreme Court of Cassation took a different position. It recognised the public elements in the maintenance obligation following divorce. In giving effect to the husband's obligation to support his wife, it required that the wife should not

³³ Supreme Court, P-714-1927.

³⁴ Supreme Court, P-401-1931.

have any means of supporting herself and should have an actual need of such maintenance.³⁵

New rules on maintenance, which were founded on new principles, were adopted after 1944. The first statute which introduced these principles was the 1949 Persons and Family Act. The Bulgarian Family Codes of 1968 and 1985 reproduced and elaborated these principles. The major features of the new rules were:

(e) Substantiation of the obligation.

Marriage itself and either a physical disability of a spouse or the inability of a spouse to support himself/herself from his/her assets. According to Article 79 of the Bulgarian Family Code:

‘Only a person who is disabled and cannot support himself from his assets has a right to maintenance’. In determining the order in which claims for maintenance may be brought the Bulgarian Family Code states that: ‘The persons entitled to maintenance may claim it in the following order: 1. From a spouse or a former spouse; ...’ (Article 80, § 1).

(f) The amount of maintenance.

The amount of maintenance is fixed in accordance with the needs of the claimant and the means of the indebted party.

(g) Who pays?

In divorce only a ‘guilty’ spouse is obliged to pay maintenance. Where both spouses are at fault, no maintenance is due. The maintenance obligation is not indefinite: it is effective either for a fixed period of up to 3 years following divorce or until the spouse receiving such support contracts a new marriage.

³⁵ Supreme Court, P-93-1930 and P-401-1930.

(h) Measures in other legislation to facilitate maintenance applications after divorce.

By way of exception, the Bulgarian Code of Civil Procedure provides for local jurisdiction over maintenance claims (based on the claimant's place of residence). This means that the maintenance claim can be filed with the divorce petition (Article 260, § 2), and that an interim maintenance order can be made which is applicable during the divorce proceedings (Article 261, § 1). Moreover, the payment of maintenance is facilitated: the legislation provides that maintenance is a privileged receivable and can be enforced by attachment of earnings (Article 341, § 3). Moreover, the maintenance cannot be seized for the discharge of other liabilities of the person concerned (Article 341, § 5).

(i) Gender neutrality.

57. Have there been proposals to reform your current private law regarding maintenance of spouses after divorce?

See Question 2.

58. Upon divorce, does the law grant maintenance to the former spouse?

Under the Bulgarian Family Code, divorce extinguishes the right to maintenance by virtue of marriage. The maintenance of a former spouse (irrespective of gender) following divorce is provided for in a new way.³⁶ The liability to pay maintenance is based on the general legal requirements for the receipt and provision of maintenance, in particular the obligation that exists where a spouse is disabled and is unable to maintain himself/herself from his/her assets and the other spouse is able to provide such maintenance. Under Article 79 of the Bulgarian Family Code: 'Only a person who is disabled and cannot support himself from his assets has a right to maintenance'.

³⁶ See L. Nenova, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, p. 501-508. Also S. Litman, *The Obligation of Maintenance Between Spouses and Former Spouses* (1988, Sofia) ?p.15-20; I. Efremov, 'The Obligation of Maintenance Between Spouses and Former Spouses', *3 Property and Law*, 2000, p. 49-54.

The law contains no provision regulating the situation where such disability occurs during marriage or the issue of causality in relation to marriage.³⁷ The court interprets employment disability as an objective condition, i.e. a position where an individual is unable to work, usually for reasons of ill-health. Employment disabilities may be continuous or temporary. Pregnancy and maternity are considered to be a temporary disability coinciding within the respective periods of leave set out in the Labour Code (for pregnancy and confinement, and, depending on the number of children, ranging from 120 to 180 calendar days, 45 of them prior to confinement).³⁸ Where a mother used unpaid maternity leave to raise a child of 2-3 years of age, the Supreme Court held that 'the mother is able-bodied, although she may have difficulty in supporting herself during this period. However, this does not entitle her to seek maintenance from her former husband'.³⁹

Where no provision for maintenance has been made but an employment disability occurs within the time limit prescribed by law (3 years after divorce), maintenance is due only where such disability is relevant to the marriage. With the exception of these general provisions, the right to maintenance is acquired only by the 'innocent' party in a divorce. Under Article 83, § 1 of the Bulgarian Family Code: 'Only the spouse who has not been at fault has a right to maintenance'. It is possible to make an agreement on maintenance even where such maintenance is not due (e.g. maintenance for an able-bodied or 'guilty' spouse). In this case, the terms of the contract apply.

59. Are the rules relating to maintenance upon divorce connected with the rules relating to other post-marital financial consequences, especially to the rules of matrimonial property law? To what extent do the rules of (matrimonial) property law fulfil a function of support?

No direct connection exists between these rules. Matrimonial property law creates specific matrimonial assets, i.e. real property and bank

³⁷ Supreme Court, ? -2914-1972-???.?, ? -2585-1973-???.?

³⁸ Supreme Court, ? -5-1970.

³⁹ Supreme Court, ? -13-1979-???.?, ? -77-1980- II.

deposits of the spouses acquired during the marriage. These are jointly owned by the spouses under Article 19 of the Bulgarian Family Code:

‘(1) The assets, rights in assets and bank deposits acquired by the spouses during the marriage as a result of their joint contributions belong to them jointly, irrespective of whether they have been acquired in the name of one or both spouses. The mutual contribution of the spouses may be made in the form of either money or labour and by care for the children and work in the household. There is a prima facie presumption of mutual contributions.’

Naturally, premarital assets and assets acquired during marriage on personal grounds (donation, inheritance and assets for personal or professional use) remain the personal property of each of the spouses. The functions of the matrimonial community of property are not merely to provide the economic foundations of the family, but also to protect the interests of the economically disadvantaged spouse and the children.⁴⁰ During marriage, spouses have joint title to the assets constituting the community. The joint ownership of assets is mandatory. It cannot be replaced by a marriage contract. No provision for this is made in the Bulgarian Family Code.

The termination of a marriage terminates the community of property, pursuant to Article 26, § 1 of the Bulgarian Family Code: ‘The matrimonial community of property is terminated by the death of one of the spouses, by divorce or by the dissolution of the marriage’. The spouses become joint holders of two equal shares: ‘Upon termination of the matrimonial community of property the shares of the spouses are equal’ (Article 27 of the Bulgarian Family Code).

The purpose of these legislative provisions is to ensure that the economic consequences of marriage termination are fair: the assets acquired by the joint efforts of both spouses during marriage are divided into equal shares. Where, following divorce, a spouse is able to support himself or herself from his or her share of the matrimonial

⁴⁰ For more see V. Todorova, *Termination of Matrimonial Community of Property during Marriage*, Sofia, 1999, ? . 25-31.

property, such spouse is not entitled to claim maintenance from the other spouse.

60. Do provisions on the distribution of property or pension rights (including social security benefits where relevant) have influence on maintenance after divorce?

No such provision exists. Pension rights are individual. The post-divorce distribution of spousal property, pension rights and social security benefits is of only indirect relevance, namely as an indication of a spouse's ability to provide for himself/herself from his/her own property and, in this sense, his/her need of maintenance.

On the other hand, the absence of pension rights (or other social security benefits) related to marriage is bound to constitute a ground for maintenance since this will provide substantiation of the right: employment disability and inability to support oneself from the property. However, such circumstances involve interpretation of the law by the court in accordance with the dictates of common sense and fairness.

61. Can compensation (damages) for the divorced spouse be claimed in addition to or instead of maintenance payments? Does maintenance also have the function of compensation?

Compensation (damages) for the divorced spouse cannot be claimed in addition to or instead of maintenance payments. It is assumed, however, that, as the 'guilty' spouse is not entitled to seek maintenance, such maintenance can, to a degree, be regarded as a compensation for the loss by the disabled spouse of his or her favourable position as a result of the divorce.⁴¹ This is also the position taken by the Supreme Court: 'Maintenance for a former spouse is due neither for any causal relationship between employment disability and marital life nor for the infliction of injury on the disabled spouse by the 'guilty' party, but rather for the fact that the 'guilty' spouse has, by

⁴¹ See L. Nenova, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, p. 502.

destroying the marriage, placed the disabled spouse in a disadvantaged position'.⁴²

62. *Is there only one type of maintenance claim after divorce or are there, according to the type of divorce (e.g. fault, breakdown), several claims of a different nature? If there are different claims explain their bases and extent.*

No, there are not.

63. *Are the divorced spouses obliged to provide information to the other spouse and/or to the competent authority on their income and assets? Is this right to information enforceable? What are the consequences of a spouse's refusal to provide such information?*

Persons applying for maintenance have to produce evidence about their own income and that of their former spouse. The respondent has no obligation to produce evidence of his or her income. The court may, at the request of the applicant, instruct the respondent to produce evidence of his or her income and assets.

The court may issue the applicant with a certificate enabling him or her to obtain indirect information about the income of the debtor by checking social security contributions (if any). In maintenance claims, the evidence presented in divorce proceedings about the property of spouses (which was provided in order to determine the scope of the matrimonial community of property) can also be regarded as of a circumstantial nature.

II. Conditions on which maintenance is paid

64. *Do general conditions such as lack of means and ability to pay suffice for a general maintenance grant or are there specific conditions such as age, illness, duration of marriage and the raising of children? Please explain.*

The circumstances determining the right of a former spouse to maintenance are employment disability and the inability of the spouse to support himself/herself from assets. These two prerequisites define

⁴² Supreme Court, ? -118-1984-?? ??.

the need for maintenance and have to be satisfied cumulatively. Under Article 79 of the Bulgarian Family Code: 'Only a person who is disabled and cannot support himself from his assets has a right to maintenance'.

A former spouse owes support only if he/she is able to provide such support. Article 84 of the Bulgarian Family Code provides that: 'The amount of maintenance is determined according to the needs of the person entitled to it and the means of the person liable to provide it'. The Bulgarian Family Code does not contain any other restrictions or requirements which determine the right to maintenance.

Age and health are of importance only inasmuch as they constitute factors indirectly determining the need for maintenance. According to the Supreme Court, 'an individual's needs are determined in accordance with his/her normal (typical) living conditions, bearing in mind his/her age, educational background and other circumstances in the case. Needs are always specific'.⁴³ The duration of marriage and the raising of children are also of indirect relevance.

65. To what extent does maintenance depend on reproachable behaviour or fault on the part of the debtor during the marriage?

Maintenance does not depend on the debtor's reproachable behaviour during marriage. Only the behaviour of the applicant is considered important. Under Article 83, § 1 of the Bulgarian Family Code: 'Only the 'innocent' spouse has a right to maintenance'. Where both spouses are found responsible for the marriage breakdown they do not owe maintenance to each other.⁴⁴ Where divorce is due to marriage breakdown and no ruling is given on the issue of fault, the right to maintenance is not extinguished, as there is no requirement that the respondent to a maintenance claim be responsible for the breakdown. The fact that the applicant is not at fault is sufficient.

⁴³ Supreme Court, ? -5-1970.

⁴⁴ Supreme Court, ? -218-1983-???.?

66. *Is it relevant whether the lack of means has been caused by the marriage (e.g. if one of the spouses has given up his/her work during the marriage)?*

The law does not necessarily relate the lack of means to marriage. It is not necessary for there to be a causal relationship between the lack of means and the marriage. What matters is the inability of a former spouse to provide for himself/herself. The decisions of the Supreme Court cover various specific situations, such as that of a wife who devoted herself to the upbringing of the children. 'Where a wife finds it impossible to maintain herself from income and assets because she is bringing up children and this circumstance is found to have been of relevance even before the *de facto* separation, her husband will be liable to maintain both her and the children after separation. In such cases, the entitlement to maintenance is based on the legal circumstances of the family, which made it impossible for the wife to maintain herself because she was fulfilling her duty to care for the children.'⁴⁵

The causal relationship is required to exist in only one instance: where disability arises following the dissolution of marriage but before the 3-year term for payment of maintenance by a former spouse elapses, and where such disability is related to marriage (for instance, deterioration of the wife's health as a result of a difficult confinement).

67. *Must the claimant's lack of means exist at the moment of divorce or at another specific time?*

The law does not contain any special requirement as to the time when the need for maintenance arises. Such need may be related to marriage, but it could also pertain to circumstances existing before marriage (such as a sickness or handicap). Where an employment disability occurs after the dissolution of marriage but before the 3-year term for the provision of maintenance to a former spouse has elapsed, such disability needs to be related to the marriage.

⁴⁵ Supreme Court ?.-891-1976-???.?

III. Content and extent of the maintenance claim

68. *Can maintenance be claimed for a limited time-period only or may the claim exist over a long period of time, maybe even life-long?*

Maintenance can be claimed for a period of three years from the termination of marriage. Article 83, § 2, provides: 'Maintenance is due for a maximum of three years from the date of the dissolution of the marriage, unless the parties have agreed upon a longer term'.

After this term has elapsed, it is possible to file a new claim for maintenance for a subsequent period: 'The court may extend this period where the former spouse, i.e. the recipient of the maintenance, is in a particularly difficult financial situation and the other spouse is able to provide such maintenance without any special inconvenience' (Article 83, § 2 of the Bulgarian Family Code). In such a situation, the period of maintenance may be extended by the court, not on its own motion but in response to the filing of a new claim by the spouse suffering hardship.⁴⁶ According to the reasons given in support of this rule in the Bulgarian Family Code, it is intended to provide protection for the wife where she is old and unable to work and has no source of income.⁴⁷

Under Article 83, § 2, both criteria, i.e. the 'difficult situation' of the recipient and the lack of special inconvenience' for the other spouse, have to be fulfilled if an order for maintenance is to be made. According to the Supreme Court, the expression 'difficult situation' covers both the condition of ill-health and the poor financial position of the party seeking maintenance.⁴⁸ These requirements apply because of the length of time that has elapsed since the divorce (more than 3 years), which means, according to legal theorists, that 'the parties have

⁴⁶ Supreme Court, ?-2585-1973-???.?

⁴⁷ Citation by L. Nenova, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, p. 504.

⁴⁸ Supreme Court, ?-2420-1975-???.?

become strangers to one another'.⁴⁹ The court has to fix a new term for the payment of maintenance. Maintenance ends upon the contraction of a new marriage. The term fixed in the contract applies for the agreed maintenance.

69. *Is the amount of the maintenance granted determined according to the standard of living during the marriage or according to essential needs or other criteria?*

The amount of maintenance is determined according to the needs of the claimant and according to the standard of living during marriage. The previous standard of living is taken into account in determining maintenance for the children but not for a former spouse. Under Article 84 of the Bulgarian Family Code: 'The amount of maintenance is determined according to the needs of the person entitled to it and according to the means of the person liable to provide it'.

According to the Supreme Court, 'the needs of individuals are determined on the basis of their typical living conditions, taking into account age, education and the other circumstances of the case. Maintenance has to be fixed in such a way as not to encourage an extravagant lifestyle or provide opportunities for expenditure for purposes other than maintenance'.⁵⁰

70. *How is maintenance calculated? Are there rules relating to percentages or fractional shares according to which the ex-spouses' income is divided? Is there a model prescribed by law or competent authority practice?*

No model for the calculation of maintenance is prescribed by law. The amount is fixed by the court, not by formal mathematical criteria or percentages, but by reference to the specifically identified needs of the claimant and the capacity of the debtor. The amount is fixed by the needs/capacity ratio.

⁴⁹ Se L. Nenova, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, ?504.

⁵⁰ Supreme Court, ? P-5-1970- § 4.

Thus, according to the Supreme Court: 'The criterion for the amount of the maintenance, i.e. the average monthly earned income during the last 12 months before the court decision, is in fact a measure (an indicator) of the capacity of the party owing maintenance ...'.⁵¹ Moreover, the Supreme Court stipulates that: 'the capability of persons owing maintenance is determined by their income, financial position and professional qualifications. The income generated from assets, bank deposits and property itself is taken into account in identifying a specific capability'.⁵² And: 'The amount of the maintenance is determined by the needs of the party claiming maintenance, but may not exceed the capacity and capability of the debtor'.⁵³

71. *What costs other than the normal costs of living may be demanded by the claimant (e.g. necessary training for further professional qualifications, costs of health insurance and costs of insurance for old age or disability)?*

There are no legislative provisions allowing such claims. Applicants may only claim maintenance for their normal (typical) costs of living.

72. *Is there a maximum limit on the maintenance that can be ordered?*

No.

73. *Does the law provide for a reduction in the level of maintenance after a certain time?*

The Supreme Court allows the amount of maintenance initially determined under the contract to be changed where there is a change of circumstances, but not because a given period of time has elapsed. 'Where circumstances change, the maintenance under the order may be altered or discontinued altogether' (Article 86, Bulgarian Family Code). The right to maintenance is for a definite term and is extinguished upon the expiry of 3 years after the divorce, except where the court extends the term for payment of maintenance in response to

⁵¹ Supreme Court, ?-548-1980-???.?

⁵² Supreme Court, ? P-5-1970-§ 5.

⁵³ Supreme Court, ?-464-1986-???.?

a new claim. Any maintenance fixed under an agreement confirmed by the court may be amended or terminated if circumstances change.⁵⁴

74. How is the maintenance to be paid (periodical payments, payment in kind or lump sum)?

The Bulgarian Family Code contains only one provision regarding the manner of payment. Under Article 89, 'Maintenance in cash is payable monthly. In cases of default, interest of one per cent per month is due'. The idea is that maintenance is designed to meet current and immediate needs. Maintenance in kind is not ruled out. Usually, it would apply where the payer and the recipient have a common household. However, where they live in different households (which is the normal situation for divorcees), maintenance has to be paid periodically, by monthly instalments.

75. Is a lump sum prescribed by law, can it be imposed by court order or may the claimant or the debtor opt for it?

The claimant and the debtor may reach agreement on the payment of a lump sum or it may be imposed by a court order. There are no legislative provisions on this subject.

76. Is there an (automatic) indexation of maintenance?

No. Maintenance can be increased by the submission of a new claim.

77. How can the amount of maintenance be adjusted to changed circumstances?

The Bulgarian Family Code allows the amount initially fixed and agreed to be adjusted if there has been a change of circumstances. 'Where circumstances change, the maintenance under the order may be altered or discontinued altogether' (Article 86, Bulgarian Family Code). If such a claim is to be granted, there must have been a 'lasting and significant change in the needs of the recipient or a lasting and

⁵⁴ Supreme Court, ?-2265-1976-???.?

significant change in the capacity of the indebted party'.⁵⁵ 'Temporary disability, brief sicknesses or sick leave (of the debtor) do not constitute grounds for amending (reducing) the amount of the maintenance'.⁵⁶ 'A decrease in the income of the debtor for reasons dependent on his/her own volition is not a ground for reducing the amount of his/her maintenance obligation'.⁵⁷ At the same time, the Supreme Court emphasises that 'one of the reasons for claiming maintenance is employment disability, which affects the person seeking maintenance. This circumstance may constitute a ground for the indebted party to apply for the maintenance to be amended or terminated'.⁵⁸ Maintenance fixed by an agreement which has been confirmed by court may also be amended or terminated in the event of a change of circumstances.⁵⁹

IV. Details of calculating maintenance: financial capacity of the debtor

78. Do special rules exist according to which the debtor may always retain a certain amount even if this means that his/her maintenance obligations will not be fully discharged?

No such rule exists, but this effect is achieved through the interpretation and application of the rules on the amount of maintenance. The capacity of the debtor is one of the two criteria by which the amount of maintenance is fixed. Maintenance is due only by a party able to pay it. The generally accepted interpretation is that only a person whose financial means are more than sufficient to meet his or her own subsistence requirements can be ordered to pay maintenance.⁶⁰ By the same token, persons whose financial means are so limited that they would have to cut back on their own minimum subsistence requirements in order to maintain another person have no

⁵⁵ Supreme Court, ? P-5-1970, § 19.

⁵⁶ Supreme Court, ? -161-1970-?? ??.

⁵⁷ Supreme Court, ? -1227-1984-?? ??.

⁵⁸ Supreme Court, ? -2107-1973-?? ??.

⁵⁹ Supreme Court, ? -2265-1976-?? ??.

⁶⁰ See. L. Nenova, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, p. 463.

capacity to pay maintenance. It follows that debtors always retain a sufficient amount of their income to satisfy their own needs.

79. *To what extent, if at all, is an increase of the debtor's income a) since the separation, b) since the divorce taken into account when calculating the maintenance claim?*

An increase in the debtor's income has to be proved. This is done when his or her capacity to pay maintenance is assessed. An increase in capacity may influence the amount of the maintenance.

80. *How far do debts affect the debtor's liability to pay maintenance?*

In assessing the debtor's capacity to provide maintenance, his/her liabilities are taken into account. For instance, a liability to pay child maintenance is taken into account when determining the amount of the maintenance payable by a former spouse.

81. *Can the debtor only rely on his or her other legal obligations or may he or she also rely on his or her moral obligations in respect of other persons, e.g. a de facto partner or a stepchild?*

These obligations are not taken into account. There is no obligation whatever to pay maintenance for such persons for as long as the former spouse is entitled to maintenance. The consequences of *de facto* family relations have not been regulated by law. The Supreme Court has held that 'The obligations to which a person may be subject do not include the obligation to pay maintenance for stepchildren born to other marriages of a former spouse'.⁶¹

82. *Can the debtor be asked to use his or her assets to fulfil his or her maintenance obligations?*

When the capacity of the debtor is assessed, both their income and their financial position are taken into account.

⁶¹ Supreme Court, ? -109-1977-?? ??.

83. Can notional income be taken into account where the debtor is refusing possible and reasonable gainful employment or where he or she has deliberately given up such employment?

Yes, the Supreme Court has held that able-bodied persons who refuse work without good reason may not be exempted from paying maintenance. In another of its decisions, the Supreme Court has pointed out that 'the fact that debtors have, at their own discretion, changed to a job generating a smaller income does not entitle them to claim a reduction of their liability. Such a reduction may be allowed only where the claimant proves that he/she has had no chance to continue in the former more lucrative position'.⁶²

In another case, the Supreme Court held that 'the debtor may not rely on changes in employment made with the intention of reducing or hampering the payment of maintenance. A decrease in income resulting from the intention not to pay maintenance or the acceptance of a job that does not correspond to the debtor's professional qualification is not deemed a ground for changing the amount of the maintenance'.⁶³ In this case, the capacity for paying the maintenance is determined by reference to the person's qualifications and the other circumstances of the case.

84. Do the debtor's social security benefits which he or she receives or could receive have to be used for the performance of his/her maintenance obligations? What kinds of benefit have to be used for this purpose?

In assessing the capacity of a debtor to pay maintenance, all his or her income and property is taken into account. In this sense, pensions and sickness benefits will also count, but not social security benefits.

85. In respect of the debtor's ability to pay, does the income (means) of his or her new spouse, registered partner or de facto partner have to be taken into account?

No. The obligation is personal.

⁶² ?-94-1973 - BC

⁶³ ?-5-1970 - ??

V. Details of calculating maintenance: the claimant's lack of own means

86. *How will the claimant's own income reduce his maintenance claim? Is it relevant whether the income is derived from employment which can be reasonably expected or from employment which goes beyond what can be reasonably expected?*

A right to maintenance exists only where people are unable to work and cannot provide for themselves from their own assets. The assessment of physical ability is based on age and other circumstances considered in the case.

87. *To what extent can the claimant be asked to seek gainful employment before he or she may claim maintenance from the divorced spouse?*

The right to maintenance arises only where there is an employment disability: i.e. a full or partial inability to work. An able-bodied person is required to work and, subsequently, has no right to maintenance. Employment disability may be partial or temporary, and this will be reflected in the amount of maintenance. No person who is temporarily unemployed can be deemed to have an employment disability. Such a person may obtain means of subsistence in exchange for an undertaking to repay. Similarly, a person who refuses to work for subjective reasons is not entitled to maintenance.⁶⁴

The Supreme Court has held that a mother who is using her unpaid leave to raise a child under the age of 3 years may not claim maintenance for herself as she is able-bodied.⁶⁵ In another case of a mother raising an infant, the Court has held that if the mother had no employment disability she had no right to maintenance, irrespective of how hard she found it to provide for herself under these circumstances.

⁶⁴ See. L. Nenova, 'The Need for Reform in Bulgarian Matrimonial Law' in: V. Boyadjiev, P. (ed.) *Reports and Resolutions of the Third Council of Bulgarian Lawyers*, Sofia, 1926, ? 461 and N. Mevorah, *Family Law*, Sofia, 1962, ? 165.

⁶⁵ Supreme Court, ? -13-1979 and ? -77-1980-?? ,

88. *Can the claimant be asked to use his or her capital assets before he or she may claim maintenance from the divorced spouse?*

Yes. According to the Supreme Court, 'Where a disabled person holds any assets, they are obliged to provide an income for themselves from the value of such assets, although they need not dispose of their home or household utilities'.⁶⁶

89. *When the claimant's income and assets are calculated, to what extent are maintenance obligations of the claimant in relation to third persons (e.g. children from an earlier marriage) taken into account?*

These obligations are not taken into account, as they constitute personal liabilities of the claimant. Account may, however, be taken of maintenance payable to a child of the claimant and the debtor.

90. *Are there social security benefits (e.g. income support, pensions) the claimant receives which exclude his need according to the legal rules and/or court practice? Where does the divorced spouse's duty to pay maintenance rank in relation to the possibility for the claimant to seek social security benefits?*

No special legal rules exist in this respect. The answer can, however, be derived from the interpretation of other provisions regarding maintenance. For instance, pensions and other security benefits which replace income from employment have to be taken into account as they constitute income received by the claimant. Inasmuch as such income satisfies the need for maintenance, no corresponding right will arise.

The right to social security benefits is dependent on the impossibility of obtaining maintenance from a former spouse.⁶⁷ Under Article 2 § 3 of the Social Assistance Act: 'Persons who, for reasons of ill-health, age or social or other factors beyond their control, are unable, either on their own or with the aid of persons under a legal obligation, are unable to provide for their own basic subsistence have a right to social

⁶⁶ ?-5-1970-??

⁶⁷ See Article 2, § 6 of the Social Assistance Act (1998).

assistance'. Only a person receiving maintenance from a former spouse is denied access to social security.

VI. Questions of priority of maintenance claims

91. How is the relationship of different maintenance claims determined? Are there rules on the priority of claims?

The claimant may seek maintenance from several categories of person in an order prescribed by law. Under Article 80 of the Bulgarian Family Code:

'(1) The persons entitled to maintenance may claim it in the following order:

- from a spouse or a former spouse;
- from children;
- from parents;
- from grandchildren and great-grandchildren;
- from brothers and sisters;
- from grandfathers and grandmothers and ancestors of a higher degree.

(2) Where the persons of a preceding category are unable to provide the maintenance the persons of the next category provide it.

(3) Where several persons of the same category are liable to provide maintenance the obligations are apportioned among them according to their resources. Where the maintenance is provided by only one of them he or she is entitled to claim the appropriate share from the rest of them, which they are obliged to pay together with the accrued interest.'

92. Does the divorced spouse's claim for maintenance rank ahead of the claim of a new spouse (or registered partner) of the debtor?

The divorced spouse's claim for maintenance ranks the same as that of the new spouse. A partner of the debtor has no legal right to maintenance.

93. *Does the claim of a minor child of the debtor rank ahead of the claim of a divorced spouse's claim?*

They rank equally. Under Article 81 of the Bulgarian Family Code: 'A person who is liable to pay maintenance to several persons entitled to maintenance is obliged to provide it in the following order:

- to children and to the spouse or a former spouse;
- to parents;
- to grandchildren and great-grandchildren;
- to brothers and sisters;
- to grandfathers and grandmothers, and to ancestors of a higher degree.'

When the maintenance for a child is determined the maintenance of a former spouse is not taken into account, but when maintenance for the latter is determined account is taken of the maintenance for a child.

94. *What is the position if that child has reached the age of majority?*

The rule is that the obligation of the parents to support a child is extinguished when it reaches the age of 18. By way of exception, the maintenance for a child may be due until it reaches the age of 20 or 25, as the case may be, where the conditions specified in Article 82, § 2 of the Bulgarian Family Code are fulfilled. As a result, the child drops off the list of persons entitled to maintenance: Article 82.⁶⁸

'(1) The parents are obliged to support their children who are not of full age regardless of whether they are fit for employment or can support themselves from their own assets.

(2) The parents are obliged to support their children who have come of age if the latter cannot support themselves from their income or use of their assets and are studying at secondary, undergraduate or higher education establishments for the specified term of education, up to 20 years of age in the case of

⁶⁸ Amended, SG, No. 11/1992.

study at secondary school and up to 25 years of age in the case of study at undergraduate or higher education establishments.

(3) The support under the preceding paragraph is due provided it does not cause hardship for the parents.'

95. *Does the divorced spouse's claim for maintenance rank ahead of the claims of other relatives of the debtor?*

Yes, as stated by Article 81 of the Bulgarian Family Code. See Question 33.

96. *What effect, if any, does the duty of relatives or other relations of the claimant to maintain him or her have on the ex-spouse's duty to maintain him or her?*

Where an ex-spouse is unable to provide maintenance, this duty transfers to other persons (in descending order of rank), who are under the same obligation and are related to the person in need of maintenance.

VII. Limitations and end of the maintenance obligation

97. *Is the maintenance claim extinguished upon the claimant's remarriage or entering into a registered partnership? If so: may the claim revive under certain conditions?*

Yes. A subsequent marriage extinguishes the maintenance order. Partnership has no such direct effect. Maintenance may be continued where it has been agreed upon and the debtor does not object to paying it.

98. *Are there rules according to which maintenance may be denied or reduced if the claimant enters into an informal long-term relationship with another person?*

Long-term relationships do not constitute a special ground for the extinguishment or reduction of a claim. Such a relationship could, however, be used to prove 'a change of circumstances' within the meaning of Article 86 of the Bulgarian Family Code. Under Article 86:

'The maintenance ordered by the court may be altered or discontinued altogether in the event of a change of circumstances'.

99. Can the maintenance claim be denied because the marriage was of short duration?

No.

100. Can the maintenance claim be denied or reduced for other reasons such as the claimant's conduct during the marriage or the facts in relation to the divorce ground?

Under Article 83, § 1, fault in divorce constitutes a reason for rejecting the claim. The text reads: 'Only the spouse who has not been at fault has a right to maintenance'. A maintenance claim could also be denied or reduced on the ground of 'a grave offence'. Under Article 91, § 1 of the Bulgarian Family Code: 'A person who has committed a grave offence against a person who is liable to pay maintenance to him/her or against his/her spouse, descendant or ancestor is not entitled to claim maintenance'. The law bars the receipt of maintenance in situations where this would be contrary to family and public ethics. No definition of 'grave offence' is given in the text, but it is assumed that such an offence is a deliberate act and not an act of negligence. It is not necessary for the act to constitute a crime, but it has to be a 'grave' one and has to be addressed against the persons most closely related to the person liable to pay maintenance. In all cases, the court considers the offence within the context of the specific circumstances of the case.

101. Does the maintenance claim end with the death of the debtor?

Yes. The death of the debtor immediately extinguishes the obligation to pay maintenance. The obligation is personal and the death of the debtor extinguishes it. It is not transferred to the latter's heirs.

VIII. Maintenance agreements

102. May the spouses (before or after the divorce or during the divorce proceedings) enter into binding agreements on maintenance in the case of (an eventual) divorce?

The spouses may enter into binding agreements on maintenance in the case of divorce. In order for the agreement to be enforceable it should be approved by the divorce court as a part of its divorce decree. The agreement on maintenance between the spouses is a part of their general agreement regarding all consequences of divorce. The agreement is a part of the grounds for divorce by mutual consent and divorce for marriage breakdown, where the court is requested to abstain from ruling on the issue of fault. In order to be approved by the court, the agreement has to fulfil three requirements: it must (i) settle all consequences of the divorce (i.e. be complete); (ii) meet the interests of the children; and (iii) fulfil the requirements of the law. This part of the agreement, which settles the maintenance between the spouses, is assessed only with respect to compliance with the law. There are no obstacles to the conclusion of an agreement that contains a more favourable maintenance regime for the spouses, such as maintenance for an able-bodied spouse, maintenance for a term longer than that fixed by law, settlement of the manner of payment, etc.

It is possible for a contract of maintenance to involve the transfer of assets. Such a contract is governed by the regulations of the Contracts and Obligations Act and not by the Bulgarian Family Code. Where such a contract is signed by the spouses, the creditor loses the right to legal maintenance.⁶⁹

103. May a spouse agree to renounce his or her future right to maintenance? If so, are there limits on that agreement's validity?

No, a future right to maintenance cannot be renounced. The Bulgarian Family Code stipulates that such a renouncement is void: 'The waiver of maintenance for future periods is null and void' (Article 88 of the Bulgarian Family Code).

104. Is there a prescribed form for such agreements?

⁶⁹ Supreme Court, ? P.-5-1970.

Grounds for Divorce and Maintenance Between Former Spouses

Not applicable.

105. Do such agreements need the approval of a competent authority?

Not applicable.