

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

**CZECH REPUBLIC**

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**A. GENERAL**

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

Divorce is regulated under §§24 to 25 of Act No. 94/1963 Coll., The Family Code, and namely as amended under Act No. 91/1998 Coll. Contemporary regulation has been operative since 1 August 1998. The legal consequences of divorce are regulated under both the Family Code (duty to maintain the divorced spouse) and under the Czech Civil Code (settlement of property and the matrimonial home).<sup>1</sup>

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<sup>1</sup> For a selected bibliography in Czech see: M. Holub and H. Nova, *Zakon o rodine a predpisy souvisici*, Prague: Linde, 2000 (Family Code with Commentary); M. Hrusaková, *Rodinne pravo v aplikacni praxi. Rozvod - deti - vyzivne*, Prague: C.H. Beck, 2000 (Family Law in Practice. Divorce - Children - Maintenance); M. Hrusaková and Z. Kralicková, *Ceske rodinne prava*, 2<sup>nd</sup> Edition, Brno: Masarykova Univerzita, 2001 (Czech Family Law); M. Hrusaková *et al*, *Zakon o rodine*, 2<sup>nd</sup> Edition, Prague: C.H. Beck, 2001 (Commentary on the Family Code); M. Hrusaková, 'Czech Republic', in: *International Encyclopaedia of Laws Series Family and Successional Law*, Supplement 21, The Hague/London/New York: Kluwer Law International, 2002; S. Radvanová, *Zuklinova, M. Instituty rodinneho prava*, Prague: C.H. Beck, 1999 (Institutions of Family Law); O. Tezka and H. Nova, *Vyzivovaci povinnost*, Prague: Linde, 1995 (Maintenance Duty). For selected articles on Czech law see: J. Dvoraková and J. Zavodská: 'Rozvod za 10 minut' ('Divorce in 10 minutes'), *Rodinne pravo (Family Law)* 1998, No. 10; J. Haderka, 'K dejinym zakladum pravni upravy rozvodu na uzemi Ceskoslovenska' ('The History of the Legal Regulation of Divorce'), *Pravny obzor*, 1990, No. 5; J. Haderka, 'K temu vede nedokonalá pravni uprava u § 24a zakona o rodine' ('No Perfect Regulation of Consensual Divorce'), *Pravni praxe (Legal Practice)*, 1999, No. 6; J. Haderka, 'K nekterym dalsim poznatkum z aplikace § 24a zakona o rodine' ('Some Remarks on the Judicial Practice concerning Consensual Divorce'), *Pravni praxe (Legal Practice)*, 1999, No. 9; M. Hrusaková, 'Nova pravni uprava rozvodu manzelstvi' ('New Regulation of

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

(a) 1918 – 1949: After the emergence of an independent Czechoslovak Republic on 28 October 1918, by means of the so-called reception rule (Act No. 11/1918 Coll.) the previous civil law which was in effect in the territory of the former Austrian-Hungarian Empire was adopted. Marital and family relations in the territory of the contemporary Czech Republic were stipulated in the Allgemeines Bürgerliches Gesetzbuch of 1811, as later amended. From the very beginning the new state legislature had to face the serious problem of reforming marital and family relations which had been affected by the War. How urgent the need to reform these relations was is apparent from the fact that the very first bill introduced upon a proposal by Dr. Boucek in the so-called Revolutionary National Assembly in its first session on 14 November 1918, concerned the reform of marital law.

Shortly after the emergence of the Czechoslovak Republic a new regulation for marital relations was being prepared. Compared to the initial enthusiastic approaches the so-called Marriage Amendment of

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Divorce'), *Rodinne pravo (Family Law)*, 1999, No.1; M. Hrusakova and T. Novak, 'Realne o spolcne a stridave porozvodove peci ('Getting Real in Joint Custody after Divorce'), *Bulletin advokacie*, 1999, No. 3; M. Hrusakova and T. Novak, 'Tzv. Smluveny rozvod a mediace' ('Consensual Divorce and Mediation'), *Bulletin advokacie*, 1999, No.5; R.Jurcik, 'K institutu rozvodu dohodou podle novely zakona o rodine' ('Consensual Divorce'), *Rodinne pravo, (Family Law)*, 1999, No. 3; M. Kralik, 'Zamysleni nad nekterymi novelizovanymi ustanovenimi zakona o rodine z pohledu soudni praxe' ('Judicial Practice and the New Regulation of Family Law'), *Pravni rozhledy (Legal Review)*, 1998, No. 8; Z. Kralickova, 'Vyzivovaci povinnost mezi rozvedenymi manzely podle velke novely zakona o rodine ucinne k 1.8.1998. ('Duty to Maintain the Divorced Spouse'), *Pravni rozhledy (Legal Review)*, 1998, No. 8; A.Kurimaiova, 'Rozvod manzelstvi podle ustanoveni § 24a zakona o rodine' ('Consensual Divorce'), *Rodinne pravo (Family law)*, 1999, No. 1. Supreme Court decisions which also generally and significantly interpret particular legal provisions are published in a separate Collection of Supreme Court Decisions. In divorce cases of a second appeal (an extraordinary remedy against appellate court decisions) is excluded. The same applies with regard to maintenance duty decisions (§§229 and 237 Civil Procedural Code). Some decisions by the regional courts sitting as appellate courts are also published in the legal literature namely with respect to divorce or the duty to maintain a divorced spouse. Some five decisions of the Supreme Court from the 1970s and 1980s deal with the duty to maintain a divorced spouse. The legal regulation now differs, so that only the basic principles in these cases are now applied.

1919 (Act No. 320/1919 Coll.) was a considerable compromise. It dealt with newly entered into marriages, legal obstacles to marriage, and divorce.

This Marriage Amendment introduced, in addition to a church wedding, the option of a civil ceremony as well as the possibility of divorce as the legal termination of marriage regardless of the religion of the spouses, and it retained the earlier institution of marriage separation (*separatio a mensa et thoro*) which, however, did not have the effect of legally terminating a marriage as a judicial separation only ended the duty of the spouses to cohabit.

The legal rules on divorce were rather complex. So-called absolute grounds for divorce were provided under the Amendment, although it also recognized so-called relative grounds (irresistible aversion and the breakdown of marital relations). The proceedings were complex and in some cases a judicial separation had to be applied for prior to petitioning for divorce.

The grounds for divorce were specifically enumerated under §13 Marriage Amendment. When some of the specified grounds for divorce have been proved the married spouses were entitled to obtain a divorce. The grounds for divorce were listed as follows:

- adultery
- the respondent spouse had been sentenced to a term of imprisonment of at least three years, or to a shorter term, but for a crime arising from, or committed under circumstances which demonstrated his/her depravity;
- the respondent spouse had deserted his/her spouse maliciously and did not return within six months upon a court notice,
- the respondent spouse had intentionally deprived his/her spouse of his/her life or health;
- the respondent spouse had inflicted grievous bodily harm on his/her spouse or had repeatedly insulted him/her;
- the respondent spouse was leading a licentious life;
- the permanent or periodically repeated occurrence of mental disorder of one of the spouses lasting for three years; a gross hereditary or acquired mental degeneration including gross

hysteria, alcohol abuse or habitual drug addiction lasting for two years; epilepsy lasting for at least one year with at least six attacks a year or with an accompanying mental disorder.

Besides these particular listed grounds the law also stipulated two other grounds for divorce formulated in a more up-to-date manner. A divorce could also be granted by the court if such a serious breakdown of the marriage had occurred that the spouses could not fairly be expected to remain married. Divorce could not be granted upon the petition of the spouse who was largely responsible for the marriage breakdown.

Another general ground was so-called irresistible aversion. Such a petition could, only be granted, however, if the other spouse, even subsequently, had joined the suit. In this case the court was not bound to subsequently grant the divorce; first it would grant, perhaps even on several occasions, a *separatio a mensa et thoro*. This provision entered into effect on 31 December 1949.

(b) 1950 – 1964: Act No. 264/1949 Coll., Family Law Act, arose from the ideals embedded in the Constitution of 9 May 1948. It stipulated equality between the parties within the marriage and the family and children born within and also out of wedlock were made equal.

The dissolution of marriage was also considerably simplified. Both the old institution of separation and the old concept of divorce were repealed. Marriage was dissolved by divorce based on an objective principle - the breakdown of relations between the spouses. This objective principle was modified by the principle of a breakdown which had been caused by the fault of one of the spouses. Married spouses could not be divorced without consent having been granted by the so-called exclusively faultless spouse (§30). If so agreed upon by both spouses, the court could dispense with the issue of fault in reaching its verdict (§31).

A divorce could not be granted, if it was contrary to the minor children's interests (§30). The court verdict establishing fault resulted in serious legal consequences concerning the settlement of property and the duty to maintain the divorced spouse.

The impossibility for a married couple to obtain a divorce against the will of the exclusively faultless spouse led, in practice, to a number of so-called dead marriages failing to fulfil their social functions. Therefore this provision was modified by the Legal Measure of the National Assembly Board No. 61/1955 Coll. in the sense that a divorce could exceptionally be granted even against the will of the exclusively faultless spouse, if the marriage, which had completely and irretrievably broken down, had not fulfilled its social functions for a long period of time.

(c) 1964 – 1998: Divorce within the contemporary Family Code remained in effect, without any amendment, from 1 April 1964 to 31 July 1998. Its very general wording allowed gradual and substantial changes emerge within court practice. Under §24 in its original wording the court could grant a divorce upon a petition by one of the spouses providing their relationship had so seriously broken down that the marriage could no longer fulfil its social functions. When deliberating on divorce the court was namely bound to consider the interests of the minor children involved. The Supreme Court's interpretation of this provision (R IV/1966) implied that the court would consider the situation of the minor children at the time of the marriage breakdown and thereby compare it with the likely situation after the divorce. In other words, even though the court might find that the marriage had irretrievably broken down, it could refuse to grant the divorce if it adversely affected the interests of the minor children involved.

The Family Code no longer took the issue of fault into consideration in deciding a divorce. This change was reasoned by the fact that, as a rule, both spouses were to a certain extent at fault and at the time when the Code entered into force the spouses very often jointly petitioned for divorce and thus the court would often specifically state in its decision that it had refrained from considering the issue of fault. Instead, the court was bound to ascertain the causes leading to the breakdown and to state them in its reasoned judgment (§25 Family Code in its original wording). The bill stated that this provision allowed the court to morally condemn the spouse who was largely

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responsible for the marriage breakdown without expressly establishing fault on the part of either spouse.

Legally, the divorce hearing was linked to the hearing which dealt with the arrangements relating to minor children immediately following the divorce. The court could only grant a divorce after being satisfied as to which spouse should be awarded custody of the children and after determining the particular amount of maintenance to be paid for the minor children after divorce (§113 Czech Civil Procedure Code).

In its judgment the court only dealt with the dissolution of the marriage, the custody of children and on the maintenance of minor children. Possible maintenance for a divorced spouse could only be considered in a separate hearing following the divorce. Property settlement between the spouses (undivided co-ownership, a joint apartment tenancy etc.) could only be determined after the divorce. Property settlement agreements entered into before the court judgment became effective were deemed to be void.

Divorce was considered to be a matter which touched upon society as a whole. Thus §23 stated that an inconsiderate attitude towards marriage was contrary to the interests of society. Divorce should only be available in well-founded cases. This provision was revoked by the amended Family Code on 1 August 1998.

Before the amendment of the Czech Civil Procedure Code by Act No. 49/1973 Coll. divorce proceedings must have been preceded by an obligatory conciliation hearing before the court. A conciliation hearing could only exceptionally be dispensed if the hearing would obviously not attain its purpose. If the conciliation hearing failed, either of the spouses could petition for a divorce within one year. If the divorce petition was filed later than within a year, a new conciliation hearing had to take place.

The conciliation hearing proved to be of little effect and it was therefore replaced by the court's duty to encourage the spouses to rectify their differences and to strive for a reconciliation (§100(2) Czech

Civil Procedure Code). Over the course of time this provision, still in effect today, became little more than a formality.<sup>2</sup>

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

The proposed new Czech Civil Code intends to retain the existing divorce provisions with the addition of some minor details. Changes are being discussed, however, in relation to the recodification of the Czech Civil Procedure Code concerning a possible separate stipulation for the divorce hearing. However, a new Czech Civil Procedure Code has so far only been the subject of theoretical discussion.<sup>3</sup>

## **B. GROUNDS FOR DIVORCE**

### **I. General**

4. *What are the grounds for divorce?*

Under Czech law there is only a single ground for divorce, which is the irretrievable breakdown of marriage. The ways of divorcing only differ from one another as to whether the irretrievable breakdown, including the causes thereof, must be proved or whether the law determines that there is an irrefutable presumption that the marriage has broken down in a given case or whether, indeed, despite proof as to the irretrievable breakdown, the petition still has to be dismissed as a result of the so-called 'hardship' clause.

An essential precondition within §24(1) Family Code is the fact that the court may grant the divorce when the marriage has so seriously and permanently broken down that restoring matrimonial cohabitation cannot be expected. The causes of the marriage breakdown are taken into consideration by the court. In 1998 a significant change occurred in the understanding of the overall notion of divorce. The Family Act in its original wording emphasized the qualified breakdown of relations between the married spouses; however, the amended provision mentions the breakdown of marriage. This change occurred with regard to assessing the consequences of this breakdown. The

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<sup>2</sup> For more information on Czech law see the footnote to Question 1.

<sup>3</sup> For more information on Czech law see the footnote to Question 1.

previous stipulation demanded that the court should examine whether the marriage meets, or fails to meet, its “social goals and purposes”. The interest of society in maintaining the marriage was thus emphasized. Specialists and commentators noted that the divorce not only had to be in the interest of the married spouses, but also of society as a whole. The new wording of the provisions under §24(1) now concentrates on relations between the married spouses and emphasizes the impossibility of restoring marital cohabitation. Thus divorce has been transformed from a universal social question into a private matter between the spouses intending to divorce.

This concept allows the assumption that there is a so-called qualified breakdown (irretrievable breakdown) not only according to its duration and intensity, but also due to the fact that the married spouses no longer live together (cohabit) due to the breakdown. Whether or not the married spouses cohabit is not linked to the existence of a common residence. Married spouses may live in the same apartment, but they do not cohabit, and married spouses may live separately for a number of reasons (the job opportunities or studies of one of the spouses, the impossibility of finding a common home) but in spite of this they do cohabit. Cohabitation between spouses is not only a question of their personal (including sexual) relationship, it also depends on other factors such as community of property, the time spent together, caring for the other spouse, joint finances, etc.

Even though the law presumes that a divorce will be automatically granted where it cannot be expected that marital cohabitation will be resumed, it is nevertheless necessary to prove an irreversible termination of the personal communion between married spouses and of their common household and property management without any hope of reconciliation (common property will be the general rule between the spouses throughout the marriage, irrespective of the fact that they do not have joint finances, unless no such property remains during the marriage or such a rule has been restricted by a court order or an agreement between the spouses.

The Family Code obliges the court to consider the causes of the marriage breakdown. This can only mean that the court has to



ascertain such causes. How far it will become involved in searching for such causes also depends upon the extent to which the parties will rely on these causes when presenting their case, namely where the party sued opposes the divorce and the court will thereby have to investigate whether there are reasons to apply so-called hardship clause, or whether one party will be able to meet the terms of a successful claim for maintenance after divorce.

As for the causes of the breakdown, it should be noted that the law now distinguishes between whether such causes were the result of the violation of “marital duties” or whether there were other subjective or objective reasons.

The Family Code stipulates the following fundamental rights and duties: the duty of the spouses to cohabit, to be faithful to one another, to respect one another’s dignity, to help one another, to jointly care for their common children and to create a sound family environment and background (§18) and to satisfy the family needs (§19).

Statistics have not so far provided a proper reflection of the amendments discussed. The available court statistics have not so far distinguished whether there has been a divorce by means of ascertaining the causes of the breakdown (the basic stipulation) or a divorce without searching for the causes (so-called consensual divorce). The most frequent causes on the part of husbands are conflicting interests and non-compatibility; secondly, adultery; and thirdly, alcohol abuse by the husband (meaning predominantly the wife’s attitude to her husband’s drinking!), as is demonstrated in the divorce statistics. On the part of wives, the court statistics demonstrate that, in the first place, no underlying cause of the breakdown was found (which is difficult to understand in those cases in which the court has attributed blame to the wife for the breakdown of the marriage). Conflicting interests and non-compatibility was in second place and adultery in third. Among other causes, which, however, are not so frequent, is a lack of interest in the family and desertion.

Searching for the causes of the breakdown is rather difficult, because as a rule no single cause commonly exists. On the other hand, the court is often unable to find the genuine cause of the breakdown because

there is nothing more to go on than the consenting testimonies of the spouses.

However, the current law allows a married couple, without having to elucidate the causes of the marriage breakdown, to obtain a divorce very amicably including determining all the legal effects following the divorce.

This type of divorce is called an “uncontested or agreed divorce” in the courts. It is not, however, the type of divorce based on the principle of mutual agreement of the spouses (consensual divorce) known in a number of Western countries. Based on certain facts the law only allows an irrefutable presumption to be established that the marriage has broken down which, in return, will not have to be proved before the court. The court does not investigate the causes of the breakdown either. In granting an agreed divorce (§24a) it is presumed that:

- the marriage has lasted at least one year,
- the couple has been separated for more than six months,
- the other spouse agrees to the divorce petition.

Minimum duration of the marriage is supposed to bar hasty divorces. This period will be calculated regressively from the day of petitioning for divorce. Evidence that the married spouses have not been cohabiting for longer than six months is only provided by the concurring testimonies of the spouses. A separate residence is not per se required.

As a divorce hearing is deemed to be a contentious hearing, the spouses may not jointly petition for divorce. The other spouse may, however, join the suit upon filing it or at any other time during the proceedings.

In line with the aforementioned presumptions the court will presume that there has been a breakdown between the spouses and will grant the divorce if the spouses submit:

- an effective decision by which the court has approved the agreement between the parents concerning the custody of a child and the maintenance of a child, and

- an agreement concerning the settlement of family assets and a settlement of their rights and duties concerning their common dwelling (matrimonial home) and possibly also an agreement on maintenance for the divorced spouse.

The signatures of the spouses must be officially verified. The agreements in question may be made in the form of a public notary record. The agreements may include a future condition, i.e. they will only become effective on the day on which the divorce comes into effect. The court does not have to approve these agreements, it only takes them into account, although it must deal with their validity.

The agreement on the settlement of family assets and the agreement on the settlement of rights and duties concerning the common dwelling must always be submitted. In a number of instances under Czech law a spouse is protected from being evicted from a common apartment in that a substitute apartment must be found. In this type of divorce the court hearing is very short and formal.

This method of divorcing enabling the spouses to divorce amicably without the necessity to elucidate their reasons for doing so is very much appreciated by both justices and by couples about to divorce. It has become the prevailing method in court practice. About 70% of all divorces are estimated to be based on an agreement between the divorcing spouses along with the simultaneous settlement of property issues emanating from divorce.

As the particular types of divorce only differ from one another by the presence or absence of the necessity to prove the irretrievable breakdown before the court, it is possible, and it occurs rather often, that the divorce petition will include certain facts to demonstrate the breakdown of the marriage. Before the court orders a hearing to be commenced, the couple will agree on the future settlement of family assets. In this situation, proving the existence of a breakdown and its causes will not be necessary. On the other hand, it may occur that even though the spouses have made all the necessary agreements, the court dealing with custody disputes will not approve their agreement concerning custody and maintenance and they will have no other choice but to prove the marriage breakdown before the court. The

prevalent opinion is that the agreements entered into cannot come into force and after the divorce becomes effective a new agreement on the settlement of family assets must be entered into.

The divorce may be granted even though one of the spouses does not agree thereto, because it is sufficient to satisfy the court by submitting the necessary proof that the marriage has indeed broken down. However, since 1998 the Family Code has contained a hardship clause (§24b). Even though the breakdown of the marriage has been objectively demonstrated, the court will not grant the divorce if one of the spouses opposes the divorce. The spouse opposing the divorce must not be the party which has predominantly contributed – by violating matrimonial duties – to the breakdown. This should not mean that the other spouse is responsible for the breakdown and it does not have to be shown to what extent this spouse has predominantly contributed - by violating matrimonial duties - to the marriage breakdown. In theory, a marriage breakdown might arise due to objective causes, e.g. the sterility of one of the spouses, etc. The spouse opposing divorce must also show that he/she would suffer very serious hardship as a result of divorce. This hardship is not only financial, but first and foremost hardship of a personal nature. Extraordinary circumstances must exist in favour of preserving the marriage.

If the married couple have not lived together for longer than three years, the court will grant a divorce in spite of the other spouse's opposition (§24b(2)). This three-year term implies an evident effort to protect a deserted wife who would find herself in a difficult social situation after divorce. This form of divorce is so far very rare. Some courts have adopted an interesting method by which to resolve the situation where one of the spouses opposes the divorce due to reasons which carry a great deal of weight, even though they do not meet the hardship clause under §24b. In such a situation the court will adjourn the hearing indefinitely. To prevent criticism (or even sanctioning) by the Chief Justice for inactivity in the matter, the judge in question will, based on an unwritten rule, order at least one judicial procedure within a year. He will thus order a further hearing in the matter in almost a year's time. At that time the majority of the cases are then

held to have broken down irretrievably and the court will grant the divorce.<sup>4</sup>

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

We have already stated that there is only one type of divorce based on the irretrievable breakdown of marriage under Czech law. The statistics do not distinguish whether the divorces have been granted under §24 or under §24a (agreed divorce).

The number of divorces between 1919 and 1939 averaged around 4,500 per year. After adopting the Family Law Act in 1949 the divorce rate was expected to increase rapidly and in this way the problem of marriages which had been dead or non-functioning for many years, based entirely on property interests, was expected to be resolved, with the divorce rate thereafter starting to decrease. Only the first prediction came true and the number of divorces following the adoption of the Family Law Act almost doubled. Illustrative in this respect is the fact that for 1920-1924 there were, on average, 4,658 divorces per year, while the yearly average for 1950-1954 had shot up to 10,535 divorces per annum. The divorce rate thus continued, without exception, to grow rapidly.

The divorce rate curve only stopped growing in 1990 after reaching a historical peak of 32,055 divorces a year. In 1991 and 1992 there was a slight decrease in the divorce rate (29,366 divorces in 1991 and 28,572 in 1992) and then the number of divorces gradually increased arriving at a peak in 1998.

The decrease in the divorce rate in the early 1990s might be the result of feelings of uncertainty related to fundamental social changes, but it was also a result of growing numbers of lawsuits during this period (namely the great impact of restitution disputes overburdening the courts) and many experienced judges leaving court practice, resulting in considerable delays in judicial proceedings.

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<sup>4</sup> For more information on Czech law see the footnote to Question 1.

The almost incredible decrease in divorces following 1998 (in 1999 a “mere” 23,657 married couples became divorced) did not mean that married spouses no longer wanted to divorce, rather it was a result of substantial changes to the divorce rules, accompanied by an overall extension of divorce proceedings in cases of spouses with minor children.

Statistics and various sociological surveys have proved that the divorce rate differs from region to region. It is not surprising that the lowest divorce rate has been found in agricultural regions and in typical religious regions (e.g. South Moravia). On the other hand, large cities with a considerable population migration (and a number of tempting opportunities) are typical for their high divorce rate.

It often occurs that even several minor children do not prevent couples from divorcing. The number of long-term marriages ending in divorce has recently started to increase. Considering that before 1990 the average marrying age was a little over 20, this trend is understandable to a certain extent. Unlike the divorce rate the marriage rate has decreased significantly since the early 1990s. This has coincided with a decrease in the number of births in spite of the fact that those persons born during the “baby-boom” years have now reached child-bearing age. More optimistic prognoses explain this by the fact that marriage and the birth of the first child is delayed until much later, as nowadays young people have more opportunity to travel, study abroad etc. At the same time the number of non-marital spouses cohabiting as well as the number of children born out of wedlock has been increasing significantly. In the socialist era no more than 7-10% of all children were born out of wedlock, in 1996 this figure had increased to 15% and at present it is around 20%. The average duration of marriages ending in divorce in 1999 was 12 years.<sup>5</sup>

6. *How frequently are divorce applications refused?*

As Czech divorce law is based on proving the objective fact of the irretrievable breakdown of marriage, if this fact is proved during the hearing, the court will grant the divorce even against the will of one of

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<sup>5</sup> For more information on Czech law see the footnote to Question 1.

the spouses. It depends on the particular judge as to whether the breakdown in question is so serious that no resumption of marital cohabiting may be expected. Court statistics tend to show that in the long term the courts grant 75 - 80% of all divorce petitions. In cases where a divorce is not granted, these are mostly situations where the divorcing spouses have patched up their differences, the petitioner has withdrawn his/her petition, the hearing has been stayed and has thereafter been discontinued, etc.

In 1999 as few as 217 divorce petitions were dismissed, a reconciliation occurred in 4,905 cases, while the action was otherwise terminated (withdrawing the petition, a spouse's death, discontinuing the action following a stay) in 831 cases. A total of 23,657 divorces were granted in that year. In 2000 a divorce was granted in 85% of all cases.

In 2001 163 divorce petitions were dismissed, a reconciliation occurred in 4,090 cases, 855 petitions were otherwise terminated. A divorce was granted in 31,586 cases.<sup>6</sup>

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

The divorce hearing is not an independent proceeding under Czech law. It is generally governed by the provisions of the Czech Civil Procedure Code involving contentious cases. However, under the Czech Civil Procedure Code there are some very minor exceptions concerning this specific proceeding.<sup>7</sup>

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

There is no specific competent authority. The court in the district in which the married couple have resided together in the Czech Republic has jurisdiction to hear the case, if at least one of the spouses has resided within that particular court district; if there is no such court the appropriate court is the general court of the respondent and if that

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<sup>6</sup> For more information on Czech law see the footnote to Question 1.

<sup>7</sup> For more information on Czech law see the footnote to Question 1.

court does not exist, then it is the general court of the petitioner (§88(a) Czech Civil Procedural Code).<sup>8</sup>

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?)*

Divorce proceedings may only be commenced by means of a petition by either spouse. This is a genuine personal right of a spouse and therefore court proceedings cannot be commenced without the petition (*ex officio*). Even though the other spouse agrees to the divorce, the proceeding is still deemed to be contentious and the couple may not jointly petition the court for a divorce, not even in the case of a so-called agreed divorce.

In a divorce action the parties do not have to be represented by a lawyer. In the case of an agreed divorce (§24a) the court hearing is very formal, lasting some 10 - 15 minutes. Also in the case of divorces under §24 when the spouses have not agreed upon the division of property after divorce and the court has to examine the causes of the breakdown, the respective hearing also tends to be rather brief and formal as the most important problems concerning the children have already been resolved. Unless the divorcing spouse does not intend to claim so-called sanctional maintenance and consents to the divorce, the court will grant the divorce at the first hearing, and the presence of a lawyer is rather to provide moral support while the hearing takes no more than 30 - 60 minutes.

In relation to the extensive amendment of the Czech Civil Procedural Code (Act No. 30/1999 Coll.), which has been operative since 1 January 2000, some of the court practice has held that in cases of so-called agreed divorce the court hearing should not be compulsory. Under the new provision of §115a of the Czech Civil Procedure Code the court can dispense with the procedure if the matter may be resolved based on written evidence and the parties to the action have waived their rights to participate in the hearing and they additionally agree to dispose of their case without the court having to order a

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<sup>8</sup> For more information on Czech law see the footnote to Question 1.



hearing. At the moment the opinions as to whether it is possible to grant an agreed divorce without ordering the hearing differ considerably even in single courts where some judges already grant divorces in such a manner, while others, especially the older generation, tend to disagree.<sup>9</sup>

*10. When does the divorce finally dissolve the marriage?*

The marriage is dissolved on the day when the divorce enters into effect. This is legally stipulated in the same way as for all other court decisions, i.e. it becomes effective on the fifteenth day following the service of the written court decision unless an appeal has been lodged. If the spouses have expressly waived their right to appeal, the decision becomes effective upon the day of its service on the parties. As the court decision involves person's personal status and the contracting of new marriages may be involved, no extraordinary judicial remedies like a second appeal or the reopening of a case are available (§229 and §237(2) Czech Civil Procedural Code).<sup>10</sup>

*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.*

**II. Divorce on the sole ground of irretrievable breakdown of the marriage**

*11. How is irretrievable breakdown established? Are there presumptions of irretrievable breakdown?*

The Family Code contains no special provision on how to prove the existence of the breakdown. As the divorce hearing is an ordinary court hearing, the burden of proof rests on the petitioner. In practice, as a rule the court is satisfied by questioning the parties to the action (§131 Czech Civil Procedure Code) and they may not refuse to give evidence. This is an exception to the general rule that evidence to be obtained by interrogation may only be ordered by court if the facts to

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<sup>9</sup> For more information on Czech law see the footnote to Question 1.

<sup>10</sup> For more information on Czech law see the footnote to Question 1.

be proved may not be established in some other manner and if the party to be questioned thereby consents.<sup>11</sup>

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

It is evident from the wording of the law that the legislator was very careful to avoid mentioning fault in connection with divorce. However, the law does provide better protection for the spouse who has not been at fault in the breakdown, as can be seen from the formulation “the spouse who did not predominantly cause the breakdown by violating marital duties”. This, however, is not to imply that the other spouse inevitably “predominantly” caused the marriage breakdown as in theory the breakdown might also have occurred for objective reasons (e.g. the sterility of one of the spouses, mental disorder ec.). Of course, in practice it is mostly due to the “fault” of the other spouse, typically an act of adultery with another partner. The spouse who has not largely caused the marriage breakdown may claim maintenance after divorce regardless of whether he/she is unable to support himself/herself (see below), or, if he/she has opposed the divorce, regardless of whether he/she might suffer considerable serious loss as a result of the divorce. If there are extraordinary circumstances in favour of retaining the marriage, the court may postpone the divorce for three years (§24b). Thus, although the Family Code does not equate fault with divorce, it nevertheless “rewards” the spouse who is relatively “innocent” in the divorce.<sup>12</sup>

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

Such a period is not generally required. Only when the spouses have agreed to divorce and they are not bound to prove the existence of an irretrievable breakdown and its causes before the court and at the same time they have to settle their property issues prior to the divorce (§24a), is it required for the marriage to have lasted no less than one year. If the marriage breakdown has occurred within the first year of

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<sup>11</sup> For more information on Czech law see the footnote to Question 1.

<sup>12</sup> For more information on Czech law see the footnote to Question 1.

marriage, the spouses have to prove this fact to the court and also to state the causes of the breakdown.<sup>13</sup>

*14. Is a period of separation generally required before filing the divorce papers? If not, go to question 16. If so, will this period be shorter if the respondent consents than if he/she does not? Are there other exceptions?*

A specific statutory period of separation is not generally required. Only in the case of divorce under §24a (agreed divorce) is a declaration required to the effect that the spouses have not been cohabiting in a common household for at least the previous six months. In this case proof is only an affirmative allegation by the parties which under §120(4) Czech Civil Procedure Code, is admitted by the court as evidence without having to further investigate whether or not their allegations are true. If one of the spouses opposes the divorce and the terms of the hardship clause are fulfilled, the court may only grant the divorce after the spouses have not been cohabiting for a period longer than three years (§24b).<sup>14</sup>

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

Separation is only one of the methods of proving an irretrievable breakdown and the court may also consider further evidence (namely questioning the witnesses). However, in practice in the vast majority of cases the consensual allegation of the spouses that they have not been managing a common household and have not been intimately cohabiting is sufficient.<sup>15</sup>

*16. In so far as separation is relied to prove irretrievable breakdown:*

(a) Which circumstances suspend the term of separation?

Separation is entirely informal and in practice it is deemed to be the mere discontinuance of a common household, i.e. the spouses do not manage their common household and do not cohabit intimately. In the

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<sup>13</sup> For more information on Czech law see the footnote to Question 1.

<sup>14</sup> For more information on Czech law see the footnote to Question 1.

<sup>15</sup> For more information on Czech law see the footnote to Question 1.

majority of cases the court will be satisfied with the allegation of the spouses that they no longer cohabit.<sup>16</sup>

(b) Does the separation need to be intentional?

The separation does not have to be intentional. Decisive is the objective situation and the fact that, for example, as a result of separation an irretrievable breakdown has occurred.<sup>17</sup>

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

The use of a separate matrimonial home is not required. Free-market housing is almost non-existent in the Czech Republic and thus such a requirement could hardly be met. Very often, even after divorce, the spouses remain in one apartment or house, especially when they have insufficient financial means to purchase a separate dwelling.<sup>18</sup>

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

No at all.

*18. Is a period for reflection and consideration required?*

There is no statutory period for reflection and consideration. Concerning the length of court proceedings a limit does in fact exist especially if the spouses to be divorced have minor children. In relation to the number of court actions the particular courts may differ, but generally it can be said that divorce proceedings between spouses with minor children ideally last for about nine months (unless there is a dispute between the spouses concerning which parent will have custody of the child, or a dispute concerning maintenance). In a divorce under §24a, if the spouses have no minor children, the court hearing is ordered within three months. As in this case the spouses must have agreed to a common property settlement, the spouses intending to divorce have a certain opportunity to reflect even before

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<sup>16</sup> For more information on Czech law see the footnote to Question 1.

<sup>17</sup> For more information on Czech law see the footnote to Question 1.

<sup>18</sup> For more information on Czech law see the footnote to Question 1.

filing a divorce petition and thus they do have an opportunity to realize all the legal consequences relating to the divorce.<sup>19</sup>

*19. 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?*

The spouses to be divorced do not have to agree on anything at all. If the court concludes that there is an irretrievable breakdown, a resumption of marital cohabitation cannot be expected and the spouses have not been cohabiting for more than three years, they will become divorced regardless of how much the other spouse opposes the divorce. If the spouses have minor children, the court has to approve an agreement which awards custody of the child to one of the parents and an agreement on maintenance, and if the spouses have not agreed on anything, the court will then decide. (§25 Czech Civil Code).

After the divorce decision has come into effect, the spouses have three years to reach an agreement on a common property settlement. This agreement is not subject to the court's approval. If, during this period, an agreement has not been reached and a settlement case has not been filed, there is then an irrefutable presumption under the law that the spouses have arrived at some sort of agreement (§149 Czech Civil Code).

Under the earlier Czech divorce law nothing was terminated, but rather started by the divorce, as the court only resolved the relations of parents with their children and their personal status and relations as regards each other. Therefore the new amendment (§24a Czech Civil Code) enabling agreements to be reached, even before the divorce, on all the legal consequences of the divorce has been widely appreciated.<sup>20</sup>

*20. To what extent must the competent authority scrutinize the reached agreement?*

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<sup>19</sup> For more information on Czech law see the footnote to Question 1.

<sup>20</sup> For more information on Czech law see the footnote to Question 1.

If the juvenile court approves the parental agreement concerning the position of the minor children after the divorce, it will only do so if this agreement is in the children's interests. If it is not, the court will not give its approval and will decide on the issue itself. Of course, in practice this may only concern the particular amount of maintenance and it will be an exceptional case.

The court does not have to approve those agreements dealing with the settlement of marital property and the rights and duties regarding their common dwelling, or the possible maintenance of a divorced spouse. Under the law such agreements must only be submitted to the court, which merely records the fact that the agreement has been made and that it is valid under the law. The spouses' signatures must be officially verified.<sup>21</sup>

*21. 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?*

If one of the spouses disagrees with the divorce and, at the same time, it is not this spouse who is largely responsible for the marriage breakdown by violating marital duties, he/she will suffer a considerably serious loss as a result of the divorce. In such a case if there are extraordinary circumstances in favour of retaining the marriage, the court may dismiss the divorce petition. The court will, however, grant the divorce if the spouses have not cohabited for more than three years. (§24b Czech Civil Code).

If the divorce has been initially refused, the court may not later grant the divorce upon its own motion, although after three years have elapsed one of the spouses may file a new divorce petition in which he/she will rely on the fact that the spouses have not been cohabiting during this period and therefore no resumption of marital cohabitation may be expected.

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<sup>21</sup> For more information on Czech law see the footnote to Question 1.

The court may also dismiss the divorce petition when it is contrary to the minor children's interests (§24(2) Czech Civil Code). In this case, if a new divorce petition has been filed, the court may possibly conclude that this contradiction is no longer present, or it may grant the divorce only after the children have come of age.<sup>22</sup>

## C. SPOUSAL MAINTENANCE AFTER DIVORCE

### I. General

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

The duty to maintain the divorced spouse is stipulated under §§92 to 94 Family Code. The current regulation has been operative since 1 August 1998.<sup>23</sup>

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<sup>22</sup> For more information on Czech law see footnote to Question 1.

<sup>23</sup> For a selected bibliography in Czech see: M.Holub and H.Nova, *Zakon o rodine a predpisy souvisici*, Prague: Linde, 2000 (Family Code with Commentary); M.Hrusakova, *Rodinne pravo v aplikacni praxi. Rozvod - deti - vyzivne*, Prague: C.H.Beck, 2000 (Family Law in Practice. Divorce - Children - Maintenance); M.Hrusakova and Z.Kralickova, *Ceske rodinne prava*, 2<sup>nd</sup> Edition, Brno: Masarykova Univerzita, 2001 (Czech Family Law); M.Hrusakova *et al*, *Zakon o rodine*, 2<sup>nd</sup> Edition, Prague: C.H.Beck, 2001 (Family Code Commentary); M.Hrusakova, 'Czech Republic' in: *International Encyclopaedia of Laws series, Family and Successional Law*, Supplement 21, The Hague/London/New York:Kluwer Law International, 2002; S.Radvanova, *Zuklinova, M. Instituty rodinneho prava*, Prague: C.H.Beck, 1999 (Institutions of Family Law); O.Tezka and H.Nova, *Vyzivovaci povinnost*, Prague: Linde, 1995 (Maintenance Duty). For selected articles on Czech law see: J.Dvorakova and J.Zavodska: 'Rozvod za 10 minut' ('Divorce in 10 minutes'), *Rodinne pravo (Family Law)* 1998, No. 10; J.Haderka, 'K dejinym zakladum pravni upravy rozvodu na uzemi Ceskoslovenska' ('On the History of Legal Regulation of Divorce'), *Pravny obzor*, 1990, No. 5; J.Haderka, 'K cemu vede nedokonala pravni uprava u § 24a zakona o rodine' ('No Perfect Regulation of Consensual Divorce'), *Pravni praxe (Legal Practice)*, 1999, No. 6; J.Haderka, 'K nekterym dalsim poznatkum z aplikace § 24a zakona o rodine' ('Some Remarks on the Judicial Practice Concerning Consensual Divorce'), *Pravni praxe (Legal Practice)*, 1999, No.9; M.Hrusakova, 'Nova pravni uprava rozvodu manzelstvi' ('New Regulation of Divorce'), *Rodinne pravo (Family Law)*, 1999, No.1; M.Hrusakova and T.Novak, 'Realne o spolcne a stridave porozvodove peci' ('Getting real on Joint Custody after Divorce'), *Bulletin advokacie*, 1999, No. 3; M. Hrusakova and T.Novak, 'Tzv. Smluveny rozvod a mediace' ('Consensual Divorce and Mediation'), *Bulletin advokacie*, 1999, No.5; R.Jurcik, 'K institutu rozvodu dohodou podle novely zakona o rodine' ('Consensual Divorce'), *Rodinne pravo, (Family Law)*, 1999, No. 3; M.Kralik,

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

(a) 1918 – 1949: The granting of divorce resulted in the marriage articles becoming extinct. Unless there had been an agreement to regulate matters in the case of a possible divorce, court practice held that if the married couple had become divorced due to the fault of the husband, the wife was entitled to a level of maintenance which was appropriate to her needs and the amount of assets of her former husband. If the spouses had become divorced without establishing fault on the part of either of them, the wife was not entitled to be maintained. The faultless spouse could however claim damages which had been suffered as a result of the divorce (§1266 Allgemeines Bürgerliches Gesetzbuch).

(b) 1950 – 1964: The Family Law Act (Act No. 265/1949 Coll.) which had been operative since 1 January 1950, stipulated under §34 a duty to maintain the divorced spouse only in cases when that spouse, who had not been at fault, was unable to provide for him/herself. The divorced spouse could also claim maintenance from the spouse who was not at fault. If the court held that both spouses were at fault, the court could order maintenance for the spouse who would be unable to provide for him/herself. The amount of maintenance was determined

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‘Zamysleni nad nekterymi novelizovanymi ustanovenimi zakona o rodine z pohledu soudni praxe’ (‘Judicial Practice and the New Regulation of Family Law’), *Pravni rozhledy (Legal Review)*, 1998, No. 8; Z.Kralickova, ‘Vyzivovaci povinnost mezi rozvedenymi manzely podle velke novely zakona o rodine ucinne k 1.8.1998. (‘Duty to Maintain the Divorced Spouse’), *Pravni rozhledy (Legal Review)*, 1998, No. 8; A.Kurimaiova, ‘Rozvod manzelstvi podle ustanoveni §24a zakona o rodine’ (‘Consensual Divorce’), *Rodinne pravo (Family law)*, 1999, No. 1. Supreme Court decisions which also generally and significantly interpret particular legal provisions are published in a separate Collection of Supreme Court Decisions. In divorce cases of a second appeal (an extraordinary remedy against appellate court decisions) is excluded. The same applies with regard to maintenance duty decisions (§§229 and 237 Civil Procedural Code). Some decisions by the regional courts sitting as appellate courts are also published in the legal literature, namely with respect to divorce or the duty to maintain a divorced spouse. About five decisions of the Supreme Court from the 1970s and 1980s deal with the duty to maintain a divorced spouse. The legal regulation now differs, so that only the basic principles in these cases are now applied.



by the court in accordance with the income and the property of the other spouse. The right to maintenance extinguished upon the death of the debtor unless the contrary had earlier been agreed upon by him/her or this had been provided by the court. The right to maintenance was extinguished upon remarriage.

(c) 1964 – 1998: Unlike the majority of Western European countries the former socialist countries did not consider the duty to maintain the divorced wife to be a natural outcome of a divorce. Therefore the Family Code in its original wording recognized the divorced spouse's right (regardless of gender) to be maintained when that spouse was not able to support himself/herself. The claim was limited to so-called necessary maintenance and for up to five years following the divorce, with an option to extend this duty to maintain in exceptional cases.

The statutory limit of five years was based on a somewhat unreal presumption that the period mentioned was sufficient for the majority of divorced spouses, especially women, who were mostly affected, to become economically independent. If the divorced spouses were looking after young children, the period of five years was considered to be long enough in order to place the children in collective childcare centres so that the maintaining parent could in turn gain employment. It transpired, however, that the conditions which applied at the time of granting maintenance very often continued to exist after this five-year period.

The Family Act, as amended in 1982, revoked the statutory time-limit and the maintenance claim was extended by so-called reasonable maintenance. Regarding the reformed rules for divorce in 1998 the duty to maintain between ex-spouses was also amended.<sup>24</sup>

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

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<sup>24</sup> For more information on Czech law see the footnote to Question 55.

The principles contained in the proposed new Czech Civil Procedure Code intend to retain the current regulation concerning the duty to maintain a divorced spouse.<sup>25</sup>

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

The right of a divorced spouse to be maintained is not a general consequence of a divorce, and it may only be ordered by a court after complying with certain statutory terms. By 1998 the possible decision to order maintenance for the divorced spouse was exclusively linked to his/her ability to support himself/herself, which typically concerned mothers with young children.

The actions claiming maintenance for a divorced spouse have been very rare in court practice. By 1990 the reason for this was predominantly that there was a general duty to be employed and thus the divorced spouse was normally able (except for special cases) to support himself/herself. Maintenance was only considered in cases where the living standards of the two spouses would be substantially disproportionate after the divorce.

Along with the economic changes after 1990 (and namely after the family law reform in 1998) a growth in the number of actions claiming maintenance for a divorced spouse could have been expected, but in practice the number of such disputes is still very low.<sup>26</sup>

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<sup>25</sup> For more information on Czech law see the footnote to Question 55.

<sup>26</sup> For more information on Czech law see the footnote to Question 55.

Year	Number of Divorces	Maintenance for divorced	
		Wife	Husband
1995	31,135	903	67
1996	33,113	924	89
1997	32,465	871	53
1998	32,363	949	74
1999	23,657	1124	97
2000	29,704	984	86
2001	31,586	856	76

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?*

The duty to maintain the divorced spouse is a separate claim that is not linked to the settlement of property following the divorce. Problems arise from the fact that the divorced spouse is not obliged to sell his/her property which he/she has received as a result of the settlement of joint property in order to meet his/her needs if the other spouse is in a situation to be able to maintain him/her.<sup>27</sup>

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

As a general rule, the divorced spouse has a right, within the settlement of joint property, to claim half of that joint property. This does not mean, however, that he/she cannot successfully claim maintenance as the statutory requirements for granting maintenance are formulated separately. The claims involving social security are

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<sup>27</sup> For more information on Czech law see the footnote to Question 55.

linked to one spouse only. Thus a divorced spouse may not claim a widow's (widower's) pension after the death of the other spouse.<sup>28</sup>

*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?*

Maintaining the divorced spouse is deemed to act as compensation for his/her inability to support himself/herself as a result of the previous marriage (childcare, poor health after many years of marriage, low pension, etc.) There is no separate right to claim damages as a result of the divorce under Czech law. In theory, however, there may be a right to claim damages resulting from an infringement of personal rights (§§11 and 12 Czech Civil Code). Such a claim would exist in addition to the right to maintenance, although this in itself would not be the reason for the divorce.<sup>29</sup>

*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 different nature? If there are different claims explain their bases and extent.*

Under the Family Code there are two different claims which are available for the maintenance of a divorced spouse, which, however, are not tied to the type of divorce. The basic requirement arises from the fact that the divorced spouse is unable to support himself/herself. In this situation he/she may request that the former spouse should contribute to his/her so-called appropriate maintenance (§92 Family Code) until the time that he/she is able to support himself/herself or he/she has remarried. The court may only grant maintenance to the divorced spouse if the other spouse is in a position to be able to provide the maintenance and the claim to be maintained must be consistent with good morals (§96).

Within the family law reform of 1998 there was another possible claim for a spouse who had not largely contributed to the marriage breakdown by violating matrimonial duties and who suffered a

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<sup>28</sup> For more information on Czech law see the footnote to Question 55.

<sup>29</sup> For more information on Czech law see the footnote to Question 55.

considerable loss as a result of the divorce. The divorced spouse may claim maintenance to the same extent as the mutual duty to maintain between married spouses (i.e. equal living standards for both married spouses). Such maintenance may be granted for no longer than three years following the divorce (§93). This is regardless of whether the spouse entitled to maintenance has agreed to the divorce, or whether he/she was the petitioner. Whether or not the divorced spouse is able to support himself/herself will not be ascertained in the proceedings, either. In practice this type of maintenance is called “sanctional maintenance”, which is not quite accurate, because (even merely in theory) the other spouse has not necessarily caused the divorce by violating his/her matrimonial duties and the marriage breakdown might have occurred due to other reasons.

Court statistics do not distinguish whether the maintenance of a divorced spouse has been granted on the basis of appropriate maintenance or on the basis of equal living standards. However, it may be concluded that judicial decisions relating to so-called sanctional maintenance are still very rare in practice.<sup>30</sup>

*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?*

The duty to inform the other spouse or the court as regards property is not stipulated by law. A maintenance assessment hearing for the benefit of a divorced spouse is a general contentious hearing and the Czech Civil Procedure Code contains no special stipulations in this respect. The court is bound by the particular amount of maintenance requested by the plaintiff and it cannot grant more than that which has been requested. Of course, it may determine a reduced amount and it may also dismiss the claim altogether. Both parties to the dispute must prove their allegations to the court and thus, as a rule, the debtor will go to great lengths to provide evidence of his/her poverty or poor health and therefore his/her inability to pay the maintenance requested. Under Act No. 337/1992 Coll. on the Administration of

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<sup>30</sup> For more information on Czech law see the footnote to Question 55.

Taxes and Payments the taxpayer's confidentiality is only breached by the Tax Office to the extent that is bound to report to the court a person's net tax situation (income minus expenditures), information which is generally of little use as it does not reflect the true situation concerning a person's assets. The court may only demand this information during the hearing.<sup>31</sup>

## **II. Conditions under which maintenance is paid**

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

The general provision under §96(1) of the Family Code concerning all forms of maintenance stipulates that in the assessment of maintenance the court will consider the reasonable needs of the creditor and the abilities, situation and property of the debtor. If the debtor is generally unable to provide maintenance e.g. because he/she is unable to provide for him/herself, is dependent on social security benefits, or receives an old-age or disability pension, then maintenance payments cannot be ordered.

The law gives the court a great deal of latitude in considering whether the abilities and property of the debtor allow him/her to perform his/her duty to maintain the divorced spouse. Therefore the court ruling will depend on the particular circumstances of the case. If the situation of the debtor, after paying maintenance, drops to below subsistence level, there is then sufficient reason to reduce the respective maintenance.<sup>32</sup>

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

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<sup>31</sup> For more information on Czech law see the footnote to Question 55.

<sup>32</sup> The published Ruling of the Regional Court, Hradec Králové, 14 Co 755/1995, even though it concerned the maintenance of a minor child, is in principle generally applicable to maintenance for a divorced spouse. For more information on Czech law see the footnote to Question 55.

As for the behaviour of the maintenance debtor who has, for example, caused the marriage breakdown, this fact will not influence the amount of maintenance in any way. The general provisions under §96(2) Family Code concerning all kinds of duty to maintain stipulate that maintenance cannot be granted if the behaviour of the maintenance creditor is contrary to good morals. Thus the spouse who has largely caused the marriage breakdown will not be entitled to maintenance. The behaviour which is contrary to good morals need not be such that it has directly caused the marriage breakdown, it may also be behaviour relating to the spouse after the divorce. For example, Supreme Court Ruling No. 2/1966 held that the criminal activities of a divorced wife resulting in her dismissal from her employment and thus her failure to earn a living may, depending on the particular case, be sufficient reason to deny her claim to maintenance.<sup>33</sup>

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

Even though it is not expressly stipulated by law, the inability of a spouse to provide for him/herself is traditionally interpreted by the courts as an inability arising from the existence of the previous marriage, e.g. having to care for the common children, the length of the marriage during which the spouse gave up his/her paid employment, etc.<sup>34</sup>

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

The inability of the maintenance debtor to provide for him/herself should exist at the time when the court delivers its decision on the divorce. Such an inability may, however, also arise following the divorce. Of course, the causes thereof must emanate from the marriage itself (e.g. the illness or disability of a common child). If, for example, a spouse is dismissed from his/her employment after the divorce and has insufficient financial means, as a rule he/she will not be entitled to receive maintenance from the former spouse. The same would apply,

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<sup>33</sup> For more information on Czech law see the footnote to Question 55.

<sup>34</sup> For more information on Czech law see the footnote to Question 55.

for example, in the case of an injury or illness which occurs after the dissolution of the marriage.<sup>35</sup>

### **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 lifelong?*

The basic maintenance provision, arising from the fact that the maintenance creditor is not able to provide for him/herself, has no time-limit. Apart from the situation where the creditor remarries, the duty to maintain terminates when the reasons why it was granted have ceased to exist, i.e. the financial situation of the spouse has improved. For example, in cases when the spouse suffers from a mental disorder (beginning during the marriage) and is placed in institutional care, the other spouse's duty to maintain will evidently persist until the death of either of the spouses, presupposing, of course, that the maintenance debtor is in a position to provide the maintenance. Maintenance is only restricted in the case of so-called sanctional maintenance (§93) for a term of three years following the divorce. If, after this time, the divorced spouse will not be able to provide for him/herself, he/she may claim within the scope of appropriate maintenance.<sup>36</sup>

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

The amount of the maintenance is basically limited to so-called appropriate maintenance. The standard of living of a divorced spouse will therefore not be the same as it was during the marriage. Of course, in the case of so-called sanctional maintenance the divorced spouse is entitled to the same standard of living as that enjoyed by his/her former spouse, even though for only three years following the divorce.<sup>37</sup>

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<sup>35</sup> For more information on Czech law see the footnote to Question 55.

<sup>36</sup> For more information on Czech law see the footnote to Question 55.

<sup>37</sup> For more information on Czech law see the footnote to Question 55.



*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?*

There is no set system for calculating the amount of maintenance under Czech law. It arises from somewhat abstract notions: the maintenance debtor must be in a position to pay the maintenance, taking into account his/her "abilities, situation and assets", and the "reasonable needs" of the creditor also have to be taken into account and, in some types of maintenance duty, also the "inability to provide for him/herself". The following maintenance amount is then provided:

- "an equal living standard" – the duty of parents to maintain their children, the duty to maintain between married spouses, so-called sanctional maintenance paid to the divorced spouse
- "reasonable maintenance" – the duty of children to maintain their parents
- "appropriate maintenance" - an essential provision concerning maintenance to be paid to the divorced spouse, the right of an unmarried mother to be maintained by her child's father for a period of two years
- "necessary maintenance" – the duty to maintain between predecessors and descendants with the exception of parents and children and the duty of grandparents to maintain their minor grandchildren, where no amount is actually stipulated but obviously a sum more than necessary maintenance is in question.

When assessing the amount of maintenance the court also "takes into account" other maintenance duties on the part of the maintenance creditor. What should be understood as "reasonable, appropriate or necessary" maintenance will depend on many circumstances which have to be taken into consideration. This "playing with words" gives the court an opportunity to consider the particular circumstances of a case; on the other hand, however, it is rather demanding in practice and in it results in a considerable diversity of decisions. Of course, the extent of a claim is assessed somewhat differently in large cities and

regions with higher unemployment rates as it also reflects living costs which are naturally higher in larger cities.

A maintenance hearing in the case of minors is always a contentious hearing depending on the evidence presented and the court is always bound by the plaintiff's proposal, i.e. it cannot award more than that which has been requested by the plaintiff. Based on the evidence the plaintiff may, however, increase his/her claim during the proceedings.<sup>38</sup>

71. *What costs other than the normal costs of life may be demanded by the claimant? (e.g. Necessary further professional qualifications? Costs of health insurance? Costs of insurance for age or disability?)*

The term maintenance is traditionally interpreted as including not merely the costs of basic subsistence, but also all the material and cultural needs of the person entitled, within the range provided by the law. What will be included within the maintenance and what will be taken into account by the court, will depend on the particular case, because in this respect no rules have been laid down. (See Question 70).<sup>39</sup>

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

There is no maximum or minimum limit stipulated by the law, the particular abilities, situation and assets of the maintenance debtor and the reasonable needs of the creditor always being taken into account in each particular case.<sup>40</sup>

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

If a substantial change occurs in the situation of either the maintenance debtor or creditor, the amount of the maintenance may be reconsidered by the court and the particular amount of the

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<sup>38</sup> For more information on Czech law see the footnote to Question 55.

<sup>39</sup> For more information on Czech law see the footnote to Question 55.

<sup>40</sup> For more information on Czech law see the footnote to Question 55.

maintenance may accordingly be increased or decreased (§163 Czech Civil Procedure Code).<sup>41</sup>

*74. In which way is the maintenance to be paid (Periodical payments? Payment in kind? Lump sum?)?*

Maintenance is paid in regular periodical payments a month in advance (§97(1)). The particular day of payment will be stated in the court decision. Maintenance which is payable to a divorced spouse may only become applicable after the court proceedings commence (§98(1)).

The divorced spouses may agree to pay the maintenance in the form of a lump sum. Upon payment the right to maintenance then ceases (§94(2)). Typical are those agreements in divorce under §24a (an agreed divorce), where the lump-sum payment may act as a kind of “compensation payment” and in this way the plaintiff may “financially induce” the divorce by persuading the other spouse to agree to it.<sup>42</sup>

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

The court may not award maintenance to the divorced spouse in the form of a lump-sum payment. A lump-sum payment may only be agreed upon between the divorced spouses themselves. The agreement must be made in writing (§94(2)) and if presented to the court as part of the property settlement, the spouses’ signatures must be officially verified (§24a Czech Civil Code).<sup>43</sup>

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

Czech law does not have any indexation of maintenance.<sup>44</sup>

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<sup>41</sup> For more information on Czech law see the footnote to Question 55.

<sup>42</sup> For more information on Czech law see the footnote to Question 55.

<sup>43</sup> For more information on Czech law see the footnote to Question 55.

<sup>44</sup> For more information on Czech law see the footnote to Question 55.

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

Upon the request of the maintenance creditor or debtor the court may adjust the maintenance when there is a substantial change in the situation of the creditor or debtor. More often than not this will be a request by the maintenance debtor to have the maintenance reduced because another duty to maintain has arisen and/or his assets have changed for one reason or another (§163 Czech Civil Procedure Code. Also see Question 73).<sup>45</sup>

**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 he or she will not fully fulfil his maintenance obligations?*

The amount of maintenance depends on the debtor's abilities, situation and assets. If they are substantial the amount of the maintenance will be greater. If the debtor is in a disadvantageous economic situation, the amount will be lower or maintenance will not be awarded at all. In theory, at least, such rules are not necessary under Czech Law. The maintenance debtor must be left with at least the minimum subsistence level.<sup>46</sup>

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?*

The married spouses are entitled to the same living standards and the court will decide on the maintenance duty between the married spouses (§91 Family Code). After the divorce the court will determine the maintenance to be paid to the divorced spouse under different legal provisions (§§92 or 93 Family Code).

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<sup>45</sup> For more information on Czech law see the footnote to Question 55.

<sup>46</sup> Act No.463/1991 Coll.

In all forms of maintenance the assessment provisions under §154(1) Czech Civil Procedural Code will apply, under which the position of the spouses at the time when the decision is rendered will be decisive. In its decision the court cannot rely on the possibility that the spouse's income will increase within a certain period of time after the judgment has been delivered. As maintenance only becomes payable after the proceedings commence, the court may determine that a higher or lower maintenance sum should be paid for a certain length of time, depending on the circumstances of the case.<sup>47</sup>

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

The debts of the maintenance debtor are taken into consideration by the court in determining whether he/she is in a position to be able to pay the maintenance. Of course, the court will take into consideration exactly what kind of debts they are, for example, whether these are debts incurred by the settlement of joint property, or whether they have arisen from his/her business activities etc. Maintenance claims are so-called preference claims; however, the category of preference claims also includes claims by the state (taxes, health and pension insurance).<sup>48</sup>

*81. Can the debtor only rely on his or her other legal obligations or can 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?*

When determining the particular amount of maintenance the court will consider maintenance duties under the law. As for voluntary maintenance, this situation will depend on the particular judge who will probably not take this situation into account.<sup>49</sup>

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

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<sup>47</sup> For more information on Czech law see the footnote to Question 55.

<sup>48</sup> For more information on Czech law see the footnote to Question 55.

<sup>49</sup> For more information on Czech law see the footnote to Question 55.

This fact will be taken into account when assessing the abilities, situation and assets of the maintenance debtor.<sup>50</sup>

*83. Can a “fictional” income be taken into account where the debtor is refusing possible and reasonable gainful employment or where he or she deliberately gave up such employment?*

When assessing the abilities, situation and assets of the maintenance debtor the court will ascertain whether the debtor has given up a more profitable profession or business or property without a valid reason or whether he/she has taken unreasonable business risks (§96(1) 2nd clause). In assessing maintenance the court can thus rely on the potential income of the maintenance debtor. Details concerning such abilities, situation and assets as well as assessing the actual and potential income of the debtor are interpreted in the first instance by referring to court decisions relating to the determination of maintenance by parents towards their minor children.<sup>51</sup>

*84. Does 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 obligation? Which kinds of benefits have to be used for this purpose?*

If the debtor’s income is derived solely from social security benefits, it will hardly be possible for the claimant to claim maintenance. If the maintenance debtor lives on a disability pension, no maintenance will be awarded.

The maximum and minimum amounts payable under an old-age pension are provided under Act No. 155/1995 Coll. on pension insurance. In the last ten years the option to pay a supplementary amount towards an old-age pension as part of a pension insurance or life insurance has arisen, but this increase has so far been included in very few cases as the relevant policies have not yet matured. If paid at all, the particular amounts are not high.

If the debtor receives an old-age pension, the divorced spouse’s maintenance claim will only be allowed in exceptional circumstances,

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<sup>50</sup> For more information on Czech law see the footnote to Question 55.

<sup>51</sup> For more information on Czech law see the footnote to Question 55.

namely if the living standards of the divorced spouses differ considerably after the divorce and especially when so-called sanctional maintenance has been claimed (§93). It must be taken into account that a right to maintenance only generally arises when the entitled spouse is not able to provide for him/herself. If a person is in receipt of the minimum old-age pension there is a presumption that he/she will be able to care for him/herself and, if not, he/she may then have a right to claim other social benefits (state housing allowances, travelling costs, etc.).<sup>52</sup>

*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?*

If the maintenance debtor remarries, the court will take into account the fact that the debtor and his/her new spouse have joint property between them and that they will principally have equivalent living standards. In theory it might occur that if the income of the new spouse is higher than that of the maintenance debtor, the court will take into account the total assets of the new family and the new partner will in fact be in a position of having to support the former spouse. There is no registered partnership under Czech Law. The position of factual partners is not officially taken into consideration.<sup>53</sup>

#### **V. Details of calculating maintenance: The claimant's lack of own means**

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

The right to be maintained (except for so-called sanctional maintenance) only exists if the entitled spouse is unable to provide for him/herself, i.e. has no income from employment, social security benefits or any other assets. Whether a spouse is unable to provide for him/herself is for the court to decide in each particular case.

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<sup>52</sup> For more information on Czech law see the footnote to Question 55.

<sup>53</sup> For more information on Czech law see the footnote to Question 55.

For this reason maintenance is typically awarded to mothers with minor children of pre-school age as, according to case law, a mother is not obliged to place a child in childcare facilities and to find employment. If a minor child's mother is registered as a job applicant at the Employment Office, she is entitled to unemployment benefit and other social benefits (supplementary benefit to top-up income so that it equals the minimum subsistence level). If the assets (namely the income) of the other spouse is very substantial, the court could consider granting maintenance to the divorced wife. In practice this will be reflected in the amount of maintenance granted to the children. Thus in fact maintenance for the divorced spouse is included within the maintenance for the child, even though this was not the legislator's intention.

If the disability of the divorced spouse is reflected in his/her poor health or advanced age, the assessment of maintenance will depend on the assets of the former spouse. The court will consider maintenance for divorced spouses only upon a request by the entitled spouse. It is evident from the court statistics that such maintenance is only very rarely awarded (see Question 78).

In a claim for maintenance in order to equate the standard of living to that enjoyed during the marriage, whether or not the spouse is able to maintain him/herself is not decisive and will not be taken into consideration by the court. This type of maintenance – sanctional maintenance – has been denoted (although not accurately so!) both in practice and in the legal literature as a kind of “revenge” for the divorce. If this type of maintenance is claimed, it is made clear for the court and for all those concerned that the spouses have parted as irreconcilable enemies.<sup>54</sup>

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

Considering this fact will again form part of ascertaining whether the entitled spouse is able to provide for him/herself. If it is proved

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<sup>54</sup> For more information on Czech law see the footnote to Question 55.



during the hearing that the divorced spouse had an opportunity to obtain suitable employment which is appropriate to his/her education, health etc., and thus enabling him/her to provide for him/herself, and it transpired that he/she did not avail him/herself of this opportunity, it is highly probable that the court will dismiss the maintenance claim as it is contrary to good morals to be supported by the other spouse unless the assets of the other spouse are substantial.<sup>55</sup>

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

The divorced spouse is not obliged to sell property obtained from the settlement of joint property in order to satisfy his/her own needs. If capital assets are involved, then the court will conclude that there should be no dependence on maintenance provided by the other spouse.<sup>56</sup>

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

The court will always take into account the entitled spouse's duty to maintain his/her children from a previous marriage. On the other hand, if the entitled spouse claims maintenance from the divorced spouse, he/she is himself/herself dependent on maintenance and cannot be ordered to maintain third persons (children) as this is not within his/her abilities to provide maintenance. In such cases the court will conclude in its reasoned judgment that even though there is a duty to maintain, it either cannot be assessed, or the spouse entitled exercises this duty through the personal care of the child. If maintenance is claimed based on an equal standard of living (sanctional maintenance), where the inability of the entitled spouse to provide for him/herself is not a legal prerequisite, the court will also take into account his/her duty to maintain when it considers the issue of maintenance.<sup>57</sup>

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<sup>55</sup> For more information on Czech law see the footnote to Question 55.

<sup>56</sup> For more information on Czech law see the footnote to Question 55.

<sup>57</sup> For more information on Czech law see the footnote to Question 55.

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 maintain rank in relation to the possibility for the claimant to seek social security benefits?*

The ability of the entitled person to provide for him/herself is also related to whether and to what extent he/she is entitled to receive social security benefits. Under earlier court rulings the fact that a divorced spouse receives a disability pension does not in itself suffice to conclude that the divorced spouse is unable to provide for him/herself (§92(1) Family Code), unless for this reason he/she is unable to meet, besides the necessary costs of food, other essential needs. In such a case the granting of maintenance would depend to a considerable extent on the assets of the maintenance debtor.<sup>58</sup>

#### **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?*

Even though under Czech family law the duty to maintain concerns only the immediate family members, competition between several types of maintenance duties may occur. Some of these discrepancies are expressly resolved by the Family Code, although in other cases the priorities given to particular types of maintenance indirectly form the systematic enumeration of particular types of maintenance duties under the law.

With regard to the duty to maintain a (divorced) spouse which may compete with the duty of children to maintain their parents, the Family Code expressly stipulates that the former duty takes precedence over the latter (§91(3) and §92(2)). Thus if a parent finds himself/herself dependent on being maintained, it is his/her spouse (or a divorced spouse) who has the duty to maintain him/her. Only if his/her spouse is no longer alive or is unable to maintain him/her, may the entitled person claim maintenance against the children (supposing, of course, that his/her children are able to maintain

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<sup>58</sup> For more information on Czech law see the footnote to Question 55.

him/her). In the case of young divorced spouses a duty to be maintained by their parents may also apply. The duty to maintain one's children does not terminate upon coming of age, but on attaining an ability to provide for oneself. A child also attains this ability by marrying, as a mutual duty to maintain arises between the spouses. Typically in cases of so-called student marriages, if neither of the spouses is able to provide for him/herself, the parents' duty to maintain is retained, although, of course, this only applies to their own child. By 1990 such cases had become rather frequent, although nowadays they are rather exceptional. In theory the restoration of the parents' duty to maintain their adult child who has not yet completed full-time education and whose divorced spouse is not in a position to be able to support him/her (e.g. because he/she is also a student) could also apply. In practice the needs of such a person will mostly be covered by social security benefits and the parents' duty to maintain could only be considered in the situation where the parents themselves have abundant assets. The court will also consider whether requiring maintenance to be paid by the parents would comply with good morals.<sup>59</sup>

*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 duty to maintain a divorced spouse may not take precedence over the duty to maintain a new spouse. This is specifically laid down under the law.<sup>60</sup>

*93. Does the claim of a child of the debtor, if that child has not yet come of age, rank ahead of the claim of a divorced spouse's claim?*

The parents' duty to maintain their children enjoys priority among maintenance duties, taking precedence over all other maintenance duties. A child has the right to enjoy its parents' standard of living (§85(1)).<sup>61</sup>

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<sup>59</sup> For more information on Czech law see the footnote to Question 55.

<sup>60</sup> For more information on Czech law see the footnote to Question 55.

<sup>61</sup> For more information on Czech law see the footnote to Question 55.

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

In this situation it is legally irrelevant whether the child dependent on maintenance is a minor or an adult.<sup>62</sup>

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

The right of a divorced spouse to maintenance does not take precedence over the claims of other persons who may be entitled, i.e. children, or the parents of the maintenance debtor. The Family Code contains no provision concerning mutual relations' duty to maintain a divorced spouse and parents. If the maintenance debtor would be obliged to maintain his/her parents (the duty of children to maintain their parents is still an exceptional case in court practice) and this duty would conflict with his/her duty to maintain a divorced spouse, when considering the amount of maintenance, the court would take other obligations into account and it would probably assess the maintenance for the divorced spouse in relation to the income and assets of the maintenance debtor after deducting the maintenance paid to his/her children, and possibly also to the parents.

If there is competition between various types of maintenance (also, for example, towards minor children from the parents' various relationships) the factual position is often decisive in practice. Thus in deliberating on the last claim the court may award only a restricted amount of maintenance because having to pay more would be beyond the abilities, situation and assets of the maintenance debtor. On the other hand, it may occur that when the court is considering increasing the amount of the maintenance, it could find that it cannot award the appropriate increase because, in the meantime, several other maintenance duties have been awarded against the debtor. When there is competition between maintenance duties towards several minor children from various relationships the judge who hears matters involving children's care may deal with the matter *ex officio*, although, in practice, this does not often occur.<sup>63</sup>

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<sup>62</sup> For more information on Czech law see the footnote to Question 55.

<sup>63</sup> For more information on Czech law see the footnote to Question 55.

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?*

The duty of other relatives, i.e. parents (and also grandparents, at least in theory) to maintain only applies when the debtor spouse does not have sufficient assets has not to be able to maintain the person in question. The same applies to the duty of children to maintain their parents (see Question 91).<sup>64</sup>

## **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?*

The duty to maintain finally terminates the moment when the maintenance creditor remarries (§94(1)), as a mutual duty to maintain will arise between the new spouses. If this second marriage would also be dissolved (by divorce) the most recent spouse's duty to maintain will then arise. The duty of the previous spouse to maintain may not be resurrected.<sup>65</sup>

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?*

Such matters are not expressly dealt with under the Family Code. In this particular case the court will consider whether providing maintenance by the divorced spouse would be consistent with good morals (§96(2)).<sup>66</sup>

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

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<sup>64</sup> For more information on Czech law see the footnote to Question 55.

<sup>65</sup> For more information on Czech law see the footnote to Question 55.

<sup>66</sup> For more information on Czech law see the footnote to Question 55.

This matter is not expressly dealt with under the Family Code. In such a case, if the inability of a spouse to provide for him/herself has arisen during the marriage, or has been caused by the marriage, the duration of the actual marriage is not decisive when considering the maintenance claim. In deciding not to award maintenance the judge in question will rather consider whether this decision is consistent with good morals.<sup>67</sup>

*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?*

The general provisions under the Family Code concerning all types of maintenance duties stipulate that maintenance may not be granted if this is inconsistent with good morals (§96(2)). Acting contrary to good morals may involve the claimant's conduct both during the marriage and after the divorce. Thus clearly the spouse who has committed a criminal offence against his/her spouse and subsequently after the divorce he/she is unable to provide for him/herself, will not be awarded maintenance.<sup>68</sup>

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

The duty to maintain extinguishes upon the death of the maintenance debtor and does not pass to the heirs (§94(1)).<sup>69</sup>

### **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?*

If the spouses have consented to the divorce and have made an agreement on the settlement of mutual property after divorce (agreed divorce under §24a), they may, at the same time, enter into an agreement on the duty to maintain. The Family Code does not bar the

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<sup>67</sup> For more information on Czech law see the footnote to Question 55.

<sup>68</sup> For more information on Czech law see the footnote to Question 55.

<sup>69</sup> For more information on Czech law see the footnote to Question 55.

spouses from agreeing on the duty to maintain after divorce. Such an agreement does not need the court's approval and will be as valid as any other contract.<sup>70</sup>

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

There is an applicable principle under Czech law that no one may waive any rights that may arise in his/her favour in future. An agreement that the entitled spouse waives his/her right to be maintained would be void. The agreements entered into in relation to a so-called agreed divorce often contain clauses stating that neither of the divorced spouses will claim a right to maintenance, which, of course, does not mean that after the divorce the court cannot award maintenance.<sup>71</sup>

*104. Is there a prescribed form for such agreements?*

The form of the maintenance agreement is not generally prescribed under the Family Code. If the maintenance agreement has been made as part of other property agreements in connection with a so-called agreed divorce, it must be made in writing and the signatures therein must be officially verified (§ 24a). An agreement on the termination of maintenance by paying a lump sum under §94(2) must also be made in writing. If made after the divorce, the respective signatures need not be officially verified.<sup>72</sup>

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

An agreement on maintaining the divorced spouse does not need the approval of any competent authority.<sup>73</sup>

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<sup>70</sup> For more information on Czech law see the footnote to Question 55.

<sup>71</sup> For more information on Czech law see the footnote to Question 55.

<sup>72</sup> For more information on Czech law see the footnote to Question 55.

<sup>73</sup> For more information on Czech law see the footnote to Question 55.