

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

HUNGARY

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A. GENERAL

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

The current source of law for divorce is the Family Act¹ on marriage, the family and guardianship which has been amended on several occasions. In Hungary family law is regulated in an independent act and not within the Civil Code. The source of law for divorce cases is Act No. III 1952 on Civil Procedure which has also been amended on several occasions. Chapter XV of the Civil Procedure Act contains matrimonial rules. Several amendments to both the Family Act and the Civil Procedure Act affect several rules within the law of divorce.²

¹ Act No. IV 1952.

² For a selected bibliography in Hungarian see: Endre Nizsalovszky, *Magyar családi jog* (Hungarian Family Law), 1949; Károly Szladits, *Magyar magánjog - II. kötet Családi jog* (Hungarian Civil Law - Part II. Family Law), 1934; András Korös, *A családjog kézikönyve, szerkeszto, (Family Law)*, 2000; Petrik Ferenc, *A családjogi törvény magyarázata II, szerkeszto (Commentary on Family Law)*, 1988; Bencze Lászlóné – Csánitzné Csiky Ilona – Csiky Ottó, *A házasság megkötése, felbontása A házastársi tartás (Marriage, Divorce, Spousal Maintenance)*, 1999; Emilia Weiss, 'Vétkesség – feldúltság – és a házaselek közös megegyezése a múlt és a ma magyar házassági bontójogában Jogtudományi' ('Fault – Irretrievable Breakdown – Consent of the Spouses in the Past and the Present Hungarian Divorce Law'), *Journal of legal Studies* 1981. For relevant case-law on divorce, see: P. törv.II. 20428/1975, *Bírósági Határozatok (Court Decisions)*, 1976/6. 261; P. törv. II. 21183/1977, *Bírósági Határozatok (Court Decisions)*, 1978/7. 282; Zalaegerszeg 2. Pf. 20079/982, *Bírósági Határozatok (Court Decisions)*, 1982/11. 466; P. törv II. 20405/1984, *Bírósági Határozatok (Court Decisions)*, 1985/2. 63; P. törv II. 20511/1982, *Bírósági Határozatok (Court Decisions)*, 1983/4. 120; P. törv II. 20092/1992, *Bírósági Határozatok (Court Decisions)*, 1992/9. 586.

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

In Hungary the Marriage Act³ provided for the public regulation of divorce law and gave competence to the public courts to hear divorce cases. Until that time this matter fell within the competence of the rules of canon law, so for those belonging to different religions, a different divorce law was applicable. In the case of so-called mixed marriages it was not impossible for different legal rules to apply to each spouse. Of course, for those who adhered to the beliefs of the Catholic church, divorce was an impossibility.

The Marriage Act⁴ acknowledged the dissolubility of marriages but, in accordance with the acts of that period, it strictly demanded fault for a divorce. The Act enumerated the grounds for divorce and differentiated between so-called absolute and relative grounds for divorce. In the case of an absolute ground for divorce the spouse requesting divorce only had to verify the occurrence of the ground for divorce determined by the Act; in the case of a relative ground for divorce the judge had to consider whether that particular ground for divorce had to be considered to be so serious that it gave rise to a divorce in that particular case. This consideration was of importance especially in those cases where both spouses were at fault.

According to the principle of fault in divorce, the spouse at fault could not sue the innocent party for divorce. In the divorce decree it was obligatory to state which spouse had been at fault and if both were considered to be guilty, then fault could be attributed to both parties. Some disadvantages were attached to a declaration of fault. For example, if fault was attributed to the wife, she thereby lost her right to maintenance. However, in awarding custody of minor children, the fact that the children had to be cared for was more important than the issue of fault.

The acknowledgement of absolute grounds for divorce - which was the legislature's intention - resulted in the fact that in a system which is based strictly on fault in divorce the possibility of divorce based on the mutual consent of the spouses was established through the

³ Act No. XXXI 1894

⁴ Act No. XXXI 1894

backdoor as the parties agreed to fabricate one of the grounds. However, one of the spouses had to be declared to be at fault in the divorce decree in these cases as well.

The divorce law did not change from the Marriage Act in 1894 until 1945. In 1945 a Decree by the Prime Minister⁵ acknowledged some new grounds for divorce as well as retaining the earlier grounds. The new grounds for divorce were no longer based on fault so the divorce law had abandoned the strict requirement of fault in divorce, at least to some degree. The Decree acknowledged the mutual consent of the spouses as a ground for divorce. It also acknowledged five years' separation as a ground for divorce regardless of whether the respondent or the petitioner had deserted the other spouse.

The comprehensive regulation of family law and divorce law took place in the Family Act.⁶ This Act no longer required fault in divorce - although fault could retain its importance as regards accessory issues - and it no longer contained a list of the grounds for divorce. The Act considered a marriage to be dissolvable if there were good grounds therefor. One of the earlier grounds for divorce could no longer in itself be considered to be a sufficient ground.

However, a demand soon emerged for the courts to be able to adjudicate cases where the spouses shared a common consent somewhat differently and if that consent included an agreement as to accessory issues then it should be accepted by the courts as a good ground for divorce. The first step was taken by a directive of the Supreme Court issued in 1963 and later Act No. I. 1974 within the framework of the first comprehensive reform of the Family Act. This 1974 Act stated that the only ground for divorce is the complete and irretrievable breakdown of the married life, instead of the good reason for divorce. The Act also included the common consent of the spouses if there is also consent concerning the accessory issues enumerated in the Act which indicate that the marriage had broken down completely and irretrievably. In such a case it was no longer necessary to prove complete and irretrievable breakdown.

⁵ No. 6800/1945.

⁶ Act No. IV 1952.

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After Act No. I. 1974 the rules on divorce were only partially amended as regards the common consent of the spouses. Act No. IV. 1986, the second comprehensive reform of the Family Act, contains these amendments. In addition, the rules concerning the procedure in divorce cases have been amended on several occasions. The latest is the amendment under Act No. LX 1995 which specifically dealt with conciliation in divorce cases and it extended the scope of cases where the courts can dissolve the marriage at the first hearing.⁷

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

In Hungary a new Civil Code is currently being prepared which will also include the rules on family law. There are no plans to amend the main issues under divorce law. However, it is intended to provide a more important role for mediation - which is beginning to take shape - without making it obligatory.⁸

B. GROUNDS FOR DIVORCE

I. General

4. *What are the grounds for divorce?*

Under Hungarian family law no grounds for divorce are specifically enumerated. The marriage may be dissolved if married life has broken down completely and irretrievably.

To some extent, a divorce by mutual consent is dealt with somewhat differently: mutual consent makes it unnecessary to investigate the reasons for the breakdown of the marriage if this consent also includes an agreement on accessory issues. In such a case there is a presumption that the marriage has broken down.⁹

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

⁷ For information on Hungarian law see the footnote to Question 1.

⁸ For information on Hungarian law see the footnote to Question 1.

⁹ For information on Hungarian law see the footnote to Question 1.

According to the compilation entitled "Matrimonial cases in 2000" by the Statistical and Analytical Codification Department of the Ministry of Justice a total of 23,968 marriages were dissolved during 2000, of which 18,440 marriages (76.94%) were dissolved by mutual consent. In the other cases the statistics do not investigate the facts upon which the complete and irretrievable breakdown are based.¹⁰

6. *How frequently are divorce applications refused?*

It is extremely rare for a divorce to be refused. According to the statistical compilation mentioned in Question 5, in 2000 a total of three applications for divorce were refused. However, it is much more frequent - although there is no statistical data available - that the spouses seek a divorce but the marriage is not dissolved because the spouses in the meantime abandon their plans to become divorced. According to the procedural rules in divorce cases the day of the second hearing - which follows the first, the so-called conciliatory hearing - is only fixed by the judge if the spouses so request within three months following the first hearing.¹¹

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

A divorce can only be obtained through a judicial process.¹²

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

There is no specific competent authority in divorce proceedings. Divorce cases and family law cases in general are heard by civil law judges. In the larger courts there are judges who specialise in family law.¹³

¹⁰ For information on Hungarian law see the footnote to Question 1.

¹¹ For information on Hungarian law see the footnote to Question 1.

¹² For information on Hungarian law see the footnote to Question 1.

¹³ For information on Hungarian law see the footnote to Question 1.

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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?)*

No special form is required for the initiation of divorce proceedings. According to the Family Act either of the spouses can initiate the divorce and they can also initiate it jointly. According to the rules of Civil Procedure in a divorce case there is a petitioner and a respondent even when there is mutual agreement between the spouses. From the time when the Hungarian divorce law broke with the requirement of fault in divorce, either spouse who is solely responsible for the complete breakdown and disruption of the marriage can initiate the dissolution of the marriage as well.¹⁴

In the petition for divorce the spouses have to present information concerning the conclusion of the marriage and the birth of the living children from the marriage and they have to verify such information by producing the necessary deeds.

If the spouses request a divorce by consent they have to present their agreements on the accessory issues as required by law. In divorce cases there is no need to resort to a lawyer, the spouses can apply to the competent court individually. In practice, however, it is much more frequent for the spouses to be represented by a lawyer.¹⁵

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

The divorce finally dissolves the marriage when the decree becomes absolute. If one of the spouses dies before the divorce becomes absolute, the marriage is terminated upon that spouse's death.¹⁶

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.

Under Hungarian divorce law the irretrievable breakdown of the marriage is the sole ground but there are partially different rules for

¹⁴ For information on Hungarian law see the footnote to Question 1.

¹⁵ For information on Hungarian law see the footnote to Question 1.

¹⁶ For information on Hungarian law see the footnote to Question 1.

divorce by consent. The answers to Questions 11-21 are given, also taking into consideration Questions 22-32 where appropriate.

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

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

According to the rules of the Family Act the court dissolves the marriage if the married life of the spouses has broken down completely and irretrievably. This fact, that is the reason why the marriage has broken down, has to be investigated in the divorce proceedings if the spouses are not divorcing by mutual consent. Even in the case of a divorce by consent there is no presumption of an irretrievable breakdown but– provided that the spouses have agreed on the accessory issues – the court does not have to investigate the reasons giving rise to the divorce.

According to the wording of the Act the corresponding agreement to divorce between the spouses, which is not the result of undue influence and is their final decision, indicates the complete and irretrievable breakdown of married life. This agreement is deemed to be final by the Act and so the court can leave aside the investigation of the reasons resulting in the dissolution, but only if the spouses have agreed on each accessory issue as required by the Act. (See on these accessory issues in Question 21).

The divorce by consent, even if it is dealt with somewhat differently, is not an autonomous ground for divorce, as the divorce is still based on irretrievable breakdown.¹⁷

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

With regard to the dissolution and dissolubility of matrimonial ties we can truly speak of the concept of non-fault divorce, as even if it is the

¹⁷ For information on Hungarian law see the footnote to Question 1.

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guilty spouse who seeks the divorce, the court will still dissolve the marriage.

The fault can still be of importance as regards some accessory issues – such as qualifying for maintenance, the right to possess the matrimonial home after divorce or custody of the children after divorce - but this importance is not unconditional. Taking into consideration the best interests of the child has precedence over the issue of fault in any of these issues.

In addition, the spouses cannot be precluded from referring to the fault of the other party or, when both parties are at fault, the more serious fault of the other party, even if fault has no importance in the settlement of accessory issues. When seeking a non-consensual divorce dealing with the issue of fault is often unavoidable if the court investigates the reasons for the divorce.¹⁸

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

No, to obtain a divorce, it is not necessary that the marriage was of a certain duration. This question is closely connected with that raised in the context of divorce by consent: whether a minimum age of the spouses is required for this kind of divorce. The answer is no. There is only a minimum age for marriage itself. According to Hungarian law the spouse who has not reached the age of majority becomes of full age due to the marriage, so the requirement of a minimum age would be unreasonable.

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 or she does not? Are there other exceptions?

No, a period of separation is generally not required before filing the divorce papers. It is generally not required even in the case of divorce by consent. However, in a divorce by consent the law does not require

¹⁸ For information on Hungarian law see the footnote to Question 1.

so many agreements on accessory issues if the spouses have lived apart, not in the same home, for at least three years. See Question 19.¹⁹

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

No, it does not. Nevertheless, in the case of a divorce by consent based on a period of separation of at least three years - contrary to other kinds of divorce - the court can already dissolve the marriage at the first hearing.²⁰

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

(a) Which circumstances suspend the term of separation?

Not relevant.²¹

(b) Does the separation need to be intentional?

Not relevant.²²

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

Not relevant.²³

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

Conciliation is - without exception - an obligatory part of divorce proceedings; it is a legal duty for the judge. In the majority of divorce proceedings the main function of the first hearing is to attempt conciliation but, according to the rules of Civil Procedure, the judge has the authority to conciliation at any other stage of the proceedings as well.

¹⁹ For information on Hungarian law see the footnote to Question 1.

²⁰ For information on Hungarian law see the footnote to Question 1.

²¹ For information on Hungarian law see the footnote to Question 1.

²² For information on Hungarian law see the footnote to Question 1.

²³ For information on Hungarian law see the footnote to Question 1.

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Divorce mediation exists in Hungary, but it is not yet widely available. The spouses can take advantage of this service voluntarily, either before initiating the divorce proceeding, or during the proceeding itself.²⁴

18. Is a period for reflection and consideration required?

During the divorce proceedings the court may suspend the hearing for three months in order to give the spouses time to reconsider. They have to request the resumption of the divorce proceeding within three months, otherwise it terminates without a decision having been rendered. Both spouses or either of them can request such a resumption and the judge will then determine a new day for the hearing after the expiry of thirty days from the date of the petition to provide time to think matters over. Already at the first hearing the spouses also have the possibility to request a six-month interruption in the proceedings.

In exceptional cases enumerated in the Act - including divorce by consent based on three years' separation - in which the court can dissolve the marriage at the first hearing, there is only time to think matters over if the spouses request an interruption. In the mediation procedure there is no obligatory rule for reflection and consideration.²⁵

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?

With regard to this issue there are different rules which apply to divorce by consent and to other cases of divorce.

In those cases of divorce by consent the spouses have to present their agreement when initiating the divorce proceedings. In general cases of divorce by consent the agreement has to include provisions on the custody and the maintenance of the child, the non-custodial parent's right of contact with his or her child, if the claimant so requests, spousal maintenance, the right to use the matrimonial home after

²⁴ For information on Hungarian law see the footnote to Question 1.

²⁵ For information on Hungarian law see the footnote to Question 1.

divorce and the distribution of common property, excluding immovable property. This agreement will be judicially settled. If the divorce by consent is based on the fact that the spouses have lived apart for at least three years, the spouses have to prove during the divorce proceedings that the issues of custody and maintenance of the children have been properly settled during this time. A mere proposal concerning these issues is not enough in either cases of divorce by consent, there has to be an express agreement.

The spouses may agree on the settlement of accessory issues or a part thereof in any other divorce proceeding - if there is no divorce by consent - not only before the proceeding but also during the course of the divorce proceeding, but they are not obliged to reach any such agreement. The competent authority - under Hungarian law the court hearing the divorce case - is competent to determine these issues at the request of each spouse. Concerning the issues of custody and maintenance of the child the court can decide, *ex officio*, without the request of the spouses if this is in the interests of the child.

In cases of divorce by consent a partial judgement cannot be delivered without an agreement on accessory issues and without this agreement having been judicially approved. In other divorce cases the decision on accessory issues can be postponed. It is not exceptional for property issues to be determined in later, separate proceedings.²⁶

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

Both in cases of divorce by consent and in other divorce cases the agreement of the spouses concerning accessory issues has to be judicially approved. So the court has to investigate whether the agreement is in the interests of the minor children and whether or not it is detrimental to the interests of one of the spouses. If, for example, one of the spouses renounces his/her right to custody of the children, the court will look closely at such an agreement.

In addition, the court has to remind the spouses that they should not enter into ill-considered agreements merely to obtain a divorce decree

²⁶ For information on Hungarian law see the footnote to Question 1.

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as soon as possible, as their agreement may only be subsequently amended when there are special circumstances or when it is in the interest of minor children to do so and then only within two years of the divorce decree.²⁷

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?*

Hungarian divorce law does not have a hardship clause. A dismissal of the application for divorce - as mentioned in the answer to Question 6 - is extremely rare, and it has not yet occurred that the application for a divorce has been dismissed because it would result in disproportionate hardship for one spouse.²⁸

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

Although this question belongs's to category III, it is answered here because of the difference between hearing a divorce by consent and other divorce cases. The answer is yes. It is possible to convert divorce proceedings on another ground to a divorce by mutual consent - provided that during the divorce proceedings the spouses agree thereto. The opposite situation, converting a divorce by consent into another kind of divorce will occur if the court does not approve of the spouse's agreement on accessory issues and so these issues can only be settled by the court. There is no need to initiate new proceedings in either case.²⁹

C. SPOUSAL MAINTENANCE AFTER DIVORCE

I. General

²⁷ For information on Hungarian law see the footnote to Question 1.

²⁸ For information on Hungarian law see the footnote to Question 1.

²⁹ For information on Hungarian law see the footnote to Question 1.

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

The current source of law for the maintenance of spouses after divorce is also the Family Act³⁰ on marriage, the family and guardianship which has been amended on several occasions. These amendments hardly affect the rules on the maintenance of spouses, however, as these rules have generally been developed by judicial practice.³¹

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

Under the Marriage Act 1894 only the non-guilty spouse has a right to be maintained if he/she did not have the necessary means for subsistence, a provision which generally applied to wives although it could also be exceptionally applied to the husband. The amount of maintenance awarded to women depended on the financial and social standing of the husband and on the degree to which the wife's income was sufficient for her subsistence. The wife was entitled to maintenance in accordance with her husband's social standing, but there were never any 'tables' to determine the actual amount or indeed a specific formula for this purpose in contrast to other legal systems where this was widespread.

³⁰ Act No. IV. 1952

³¹ For a selected bibliography in Hungarian see: Endre Nizsalovszky, *Magyar családi jog (Hungarian Family Law)*, 1949; Károly Szladits, *Magyar magánjog - II. kötet Családi jog (Hungarian Civil Law - Part II. Family Law)*, 1934; András Korös, *A családjog kézikönyve, szerkeszto, (Family Law)*, 2000; Petrik Ferenc, *A családjogi törvény magyarázata II, szerkeszto (Commentary on Family Law)*, 1988; Bencze Lászlóné - Csánitzné Csiky Ilona - Csiky Ottó, *A házasság megkötése, felbontása A házastársi tartás (Marriage, Divorce, Spousal Maintenance)*, 1999; Emilia Weiss, 'Vétkekesség - feldúltság - és a házasfelek közös megegyezése a múlt és a ma magyar házassági bontójogában Jogtudományi' ('Fault - Irretrievable Breakdown - Consent of the Spouses in Hungarian Divorce Law Past and Present'), *Journal of legal Studies* 1981. For relevant case-law on divorce, see: P. törv. II. 21433/1972, *Bírósági Határozatok (Court Decisions)*, 1973/8. 300; P. törv. II. 21145/1972, *Bírósági Határozatok (Court Decisions)*, 1973/8. 298; P. törv. II. 20567/1986, *Bírósági Határozatok (Court Decisions)*, 1987/2. 43; P. törv. II. 20073/1983, *Bírósági Határozatok (Court Decisions)*, 1984/1. 21; P. törv. II. 20304/1992, *Bírósági Határozatok (Court Decisions)*, 1992/8. 531; High Court Pfv. III. 21828/1993, *Bírósági Határozatok (Court Decisions)*, 1994/6. 316.

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In 1945 when the fault-based grounds were partially annulled, the maintenance of women became subject to the spouses' consent in the case of a divorce by mutual consent. If the marriage was dissolved upon the ground that the spouses had lived apart for five years or more, the court determined the maintenance by considering all the circumstances including the behaviour of the spouses during and after the marital cohabitation.

The Hungarian Constitution of 1949 subsequently declared that spouses had equal rights and the earlier maintenance of wives was changed to maintenance of spouses although the maintenance of the former husband remained exceptional in practice.

From the beginning of the 1950s it became the norm for women to work - this coincided with the provision of childcare centres so the lack of means on the part of the ex-wife and the importance of maintenance between spouses diminished.

The Family Act 1952 provided the following statutory preconditions for a maintenance claim: a lack of means on the part of the claimant; moreover, this lack of means must not have been caused by his/her own fault and he/she had to be worthy of maintenance (unworthiness was not akin to fault).

The amount of maintenance was related to the debtor's income, but it no longer depended on the husband's social standing. It was also based on a lack of means. Besides, the amount of maintenance was substantially influenced by the duty of maintenance towards the children, which enjoyed and still enjoys priority over the maintenance of the divorced spouse. The calculation of maintenance was not based on any formula.

From the very beginning the spouses have had the right, and continue to have such a right, to regulate the issue of maintenance by contract. Such a contractual agreement can regulate the amount of the maintenance and the method of payment. In case of a divorce based on

common consent, if one of the spouses requires maintenance this matter has to be regulated by contract.³²

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

As was mentioned under Question 3 a new Civil Code is currently being prepared but it will not be completed under this current government, so the rules regulating maintenance will remain unchanged until 2006. After that date it will eliminate some of the inadequacies of the current rules and will also amend some of the less important issues.

Under the current regulation there is a general lack of provisions on maintenance to be regulated by contract although, in the case of a divorce by mutual consent, such maintenance must be governed by contract. There is also a lack of guidance as to the amount of the maintenance. Under the proposed new Civil Code the spouse should enjoy the same standard of living as that during the marriage.

It is also proposed that in the case of a childless marriage which has only lasted for a short time the spouse should have no right - or only in exceptional cases - to receive maintenance after divorce.³³

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

Hungarian family law only grants maintenance to the former spouse subject to special legal conditions. Nevertheless the spouses can agree on maintenance after divorce even when these legal conditions are lacking, or one of the spouses can him/herself pledge to make such a payment. Such a contractual or unilateral obligation may receive judicial confirmation.

The legal conditions for maintenance after divorce are the claimant's lack of means, a situation which has been brought about through no fault of his or her own and that he or she should not be unworthy of maintenance due to his or her behaviour during the marriage. On the

³² For information on Hungarian law see the footnote to Question 55.

³³ For information on Hungarian law see the footnote to Question 55.

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part of the debtor, he or she should be in a position to pay the maintenance, taking into account his or her other financial obligations.

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 rules relating to maintenance upon divorce are basically not connected with the rules relating to other post-marital financial consequences.

Hungarian matrimonial property law is a system of common property as regards the property acquired during the marriage. When the marriage is dissolved, this common property is evenly distributed between the spouses, regardless of the actual contribution of each of the spouses in attaining this property. Nevertheless this equal division of common property has no maintenance function.³⁴

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

The provisions on the distribution of property can be of importance for maintenance after divorce if the property in question generates a regular income for one of the spouses. This can influence the claimant's lack of means. The same is true if the claimant has property which provides a regular income and such property has not originated from the distribution of common property, but, for instance, has been inherited or acquired before the marriage.

Pension rights are purely personal rights and are only important when considering a lack of means. Hungarian law does not contain rules on social security rights.³⁵

³⁴ For information on Hungarian law see the footnote to Question 55.

³⁵ For information on Hungarian law see the footnote to Question 55.

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?*

No. Damages cannot be claimed either in addition to, or instead of maintenance payments. It may occur that if the common property cannot be evenly distributed because of its nature – for instance business property - one spouse may have to compensate the other for this uneven distribution in the form of maintenance. However, compensation does not have the same function as damages as it is generally based on the law of contract.³⁶

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

There is only one type of maintenance claim after divorce. Nevertheless, maintenance after divorce is to be settled - in the case of divorce by consent -not by the divorce claim but simultaneously with the divorce petition.³⁷

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?*

Under Hungarian family law only the spouse who lacks the necessary means is entitled to maintenance after divorce. The claimant has to verify his or her lack of means, either by proving evidence of income or of pension or disability payments. There are no other legal rules concerning the verification of a lack of means but, to date, this has not resulted in any problems.³⁸

II. Conditions under which maintenance is paid

³⁶ For information on Hungarian law see the footnote to Question 55.

³⁷ For information on Hungarian law see the footnote to Question 55.

³⁸ For information on Hungarian law see the footnote to Question 55.

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 such as age, illness, duration of marriage and the raising of children? Please explain.*

The Family Act defines a lack of means as a general condition for a claim for maintenance. The Act does not go into further detail but the age of the spouse, his or her illness, the upbringing of the children or the fact that one of the spouses has given up his or her work during the marriage can be a reason for such a lack of means. There can be other reasons for a lack of means as well. Moreover, certain lack of means can provide grounds for divorce maintenance without any time-limit while others tend to point to maintenance for a specified length of time.

Advanced age or chronic illness are grounds for maintenance for an indefinite period of time, while the raising of children would only require maintenance for a definite period of time. The fact that one spouse has given up his/her employment during the marriage may be a reason for granting maintenance for a limited period so that he/she has sufficient time to seek suitable employment.

The duration of a marriage can be of importance when it has existed for a long time and, alternatively, when it has existed for a short period and there are no children.³⁹

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

Maintenance after divorce does not depend on the reproachable behaviour or the fault of the debtor. The spouse who lacks necessary means is entitled to maintenance after divorce regardless of the other party's reproachable behaviour.

As far as the claimant is concerned it may be of importance if he or she is unworthy of the maintenance because of his or her behaviour during the marriage. In this context the behaviour of the other spouse is to be

³⁹ For information on Hungarian law see the footnote to Question 55.

adjudged as well. In the case of the reproachable behaviour of both spouses, unworthiness is not generally looked at.⁴⁰

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 or her work during the marriage)?*

Hungarian law does not specify that the spouse is only entitled to maintenance if the lack of means has been caused by the marriage. Nevertheless, there is a direct relationship. So – as we have stated under Question 64 - the reason for such a lack of means can be the fact that one of the spouses – generally the wife – has given up his/her employment in order to care for the children and to run the household, or indeed to work in the other spouse's business without paid remuneration.⁴¹

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

The claimant's lack of means will provide a right to maintenance not only if it exists at the moment of the divorce. It may occur at a later date for whatever reason and there can therefore be a subsequent claim for maintenance. The Family Act contains only one restriction this respect: if the lack of means occurs more than five years after the dissolution of the marriage the spouse is generally not entitled to maintenance, although in exceptional circumstances it may still be awarded.⁴²

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?*

Maintenance can be claimed either for a limited period of time or indefinitely. There are cases when the court awards the maintenance for a limited period of time only, especially when it is foreseeable that

⁴⁰ For information on Hungarian law see the footnote to Question 55.

⁴¹ For information on Hungarian law see the footnote to Question 55.

⁴² For information on Hungarian law see the footnote to Question 55.

there will no longer be a lack of means, for instance maintenance can be granted until the completion of the spouse's studies, until the child becomes three years of age (women are entitled to childcare facilities until the child becomes three), or if the child is in poor health. But in the case of a chronic illness the end of the lack of means might not be foreseeable.⁴³

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 will not be equivalent to the standard of living during the marriage; it is not intended to compensate income. The court only takes into consideration the extent of the lack of means. The amount of the maintenance is determined according to a basic standard of living which is necessary for subsistence and all costs will be taken into consideration within that basic standard (e.g. medicines).⁴⁴

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?

In calculating maintenance the court takes into consideration the income or pension on the one side and the lack of means on the other. According to judicial practice the amount of the maintenance is generally less than that of child maintenance. The court considers the income of both spouses but does not equate them, and only a certain proportion of the income of one spouse is granted to the other. Generally - in judicial practice - 10-15% of the income of the debtor is granted to the claimant, but in each case there is a very strict limitation: the spousal maintenance cannot make it impossible for the debtor to maintain him/herself.⁴⁵

⁴³ For information on Hungarian law see the footnote to Question 55.

⁴⁴ For information on Hungarian law see the footnote to Question 55.

⁴⁵ For information on Hungarian law see the footnote to Question 55

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?)*

General spousal maintenance is so-called ordinary maintenance, so normal costs can be claimed, but costs which are not included in that category - for instance the cost of studies, professional training and so on - cannot. There is no prescribed maximum limit either within the legislation or court practice. The court considers all the circumstances of the case and duty determines the amount of maintenance.⁴⁶

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

See Question 71.⁴⁷

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

The debtor can claim a reduced level of spousal maintenance if there are essential and permanent changes. This may be the case when the debtor's ability to pay the maintenance reduces or the claimant's lack of means ceases, for instance because he or she inherits property.⁴⁸

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

Maintenance is generally to be paid - in legal practice in 90% of all cases - in periodical payments which is a fixed amount each month. The court does not award monthly payments expressed in percentage terms. In practice the court orders monthly payments to be paid in cash or if the debtor is a pensioner, the maintenance will be directly attached to the pension itself.

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?*

⁴⁶ For information on Hungarian law see the footnote to Question 55.

⁴⁷ For information on Hungarian law see the footnote to Question 55.

⁴⁸ For information on Hungarian law see the footnote to Question 55.

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See Question 74.⁴⁹

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

There is no automatic indexation of maintenance. If circumstances have changed, either of the spouses can apply to have the maintenance amended. The court carefully considers all the circumstances. If the change in circumstances - after considering all the facts - prove to be essential and permanent, the court will reduce or increase the amount of maintenance.⁵⁰

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

See Question 76.⁵¹

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?*

There are no special rules which provide that the debtor should retain a certain amount.⁵²

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?*

When calculating maintenance the court takes into account the income of the debtor during the twelve months immediately preceding the date of the application for spousal maintenance. If the maintenance is

⁴⁹ For information on Hungarian law see the footnote to Question 55.

⁵⁰ For information on Hungarian law see the footnote to Question 55.

⁵¹ For information on Hungarian law see the footnote to Question 55.

⁵² For information on Hungarian law see the footnote to Question 55.

amended due to changed circumstances net income which is taken into consideration.⁵³

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

There are no legislative provisions concerning this issue. The court will generally take into account the common debts of the claimant and of the debtor. The debts of the debtor can be taken into account by the court when determining the amount of maintenance but this is not obligatory. Generally the court considers all the circumstances of each case, for instance the amount of a particular debt.⁵⁴

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?

Moral obligations cannot be taken into consideration.⁵⁵ The debtor can only rely on his/her legal obligations.

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

Yes, depending on the kind of assets. If, for instance, the debtor has immovable property, he or she can be obliged to move to a smaller home. If the debtor has assets in the form of cash, he or she cannot be asked to exhaust it. In every case the main rule is that the spousal maintenance cannot be detrimental to his or her own standard of living.⁵⁶

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?

If the debtor is able to work but deliberately gives up his or her employment and does not have any income, he or she is obliged to

⁵³ For information on Hungarian law see the footnote to Question 55.

⁵⁴ For information on Hungarian law see the footnote to Question 55.

⁵⁵ For information on Hungarian law see the footnote to Question 55.

⁵⁶ For information on Hungarian law see the footnote to Question 55.

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find work. He or she is obliged to earn the minimum wage or if he or she is more highly qualified, it can also be determined that he or she is obliged to earn a higher wage. The court takes into consideration the ability to work, the real earning capacity and the extent of the claimant's lack of means.

In actual Hungarian practice those ex-spouses claiming maintenance after divorce are mostly women who receive a pension, so the debtors are also generally male pensioners. The maintenance is attached to the pension of the debtor.⁵⁷

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 or her maintenance obligation? Which kinds of benefits have to be used for this purpose?

See Question 83.⁵⁸

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?

The standards of living of both spouses are taken into consideration before the court determines the amount of maintenance. Here the court considers the earning capacity of each adult who lives in the common household, so the earning and financial capacity of the new spouse or partner (as well as that of an adult child and a parent) will also be included. When considering the debtor's actual ability to pay, the court will only take into account the income of the debtor.

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

⁵⁷ For information on Hungarian law see the footnote to Question 55.

⁵⁸ For information on Hungarian law see the footnote to Question 55.

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 court takes into consideration the income of the claimant from the point of view of employment which is reasonably to be expected. If the claimant has more than one job, the court can take this into account in determining the amount of the maintenance, but this is not obligatory.⁵⁹

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

The court - according to judicial practice - will expect the claimant to find suitable employment in accordance with his or her qualifications. When considering all the circumstances the claimant can be asked to use his or her assets as well.⁶⁰

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

See Question 87.⁶¹

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?*

This does not occur in practice as in Hungary it is mostly pensioners who seek maintenance. Nevertheless there is no legal rule excluding this possibility.⁶²

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*

⁵⁹ For information on Hungarian law see the footnote to Question 55.

⁶⁰ For information on Hungarian law see the footnote to Question 55.

⁶¹ For information on Hungarian law see the footnote to Question 55.

⁶² For information on Hungarian law see the footnote to Question 55.

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

As was mentioned earlier, if the claimant receives a pension, the court will take into consideration the claimant's lack of means and the amount of pension received.

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?

Yes, there are rules on the priority of claims for maintenance. Within this ranking priority is given to children – minor children as well as adult children who are in need of maintenance – (see Questions 93 and 94). The spouse and the ex-spouse follow the children in second place (see Question 92) and the other relatives of the debtor follow the spouse and the ex-spouse. All maintenance duties are taken into consideration.

The court does have the authority, however, to depart from this legal ranking if circumstances so require.⁶³

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

No. The new spouse and the divorced spouse have equal ranking. Moreover, if the maintenance of the divorced spouse is detrimental either to the maintenance of the debtor him/herself, or to the maintenance of someone whom the debtor is obliged to maintain and such a person has the same ranking as the divorced spouse (the new spouse falls into this category) the divorced spouse's claim may fail. Hungarian law does not recognise any form of registered partnership.⁶⁴

⁶³ For information on Hungarian law see footnote to Question 55.

⁶⁴ For information on Hungarian law see the footnote to Question 55.

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 claim for maintenance for a minor takes precedence over all other claims for maintenance. If the minor has reached sixteen years of age and is in paid employment he or she will no longer be in need of or only partly in need of maintenance.

An adult child who is disabled and is incapable of earning his or her own living because of this disability, chronic illness or because of any other reason has to be considered as a minor from the point of view of entitlement to maintenance. Even the maintenance entitlement of an adult child capable of working ranks ahead of the claim by a divorced spouse if the child is in need of maintenance because of pursuing full-time education.

However, there is one exception. This is when the child has married. In such a case the obligation to maintain him or her falls primarily on his or her spouse and only if the spouse is not in a position to maintain him/her (for instance the spouse is also pursuing full-time education), does this obligation fall upon the parents.

If the children are no longer in need of being maintained, the claim for maintenance by the divorced spouse will revive.⁶⁵

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

See Question 93.⁶⁶

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

Yes, the divorced spouse's claim for maintenance - except for that of the children - ranks ahead of claims by other relatives of the debtor. However, the court does have the authority - as already mentioned in Question 91 - to depart from this legal ranking order. This may occur, for example, if the children are being cared for not by the debtor'

⁶⁵ For information on Hungarian law see the footnote to Question 55.

⁶⁶ For information on Hungarian law see the footnote to Question 55.

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divorced spouse but the parents of the debtor and they, in turn, need to be maintained because they are bringing up the children.⁶⁷

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 relatives of the claimant to maintain him or her does not affect the duty of the ex-spouse to maintain him or her. In the ranking order the duty of the ex-spouse to maintain takes precedence over the duty of other relatives to maintain the ex-spouse.⁶⁸

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 maintenance claim is extinguished upon the claimant's remarriage and it will never revive. Hungarian law does not recognise any form of registered partnership.⁶⁹

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?*

Only the spouse who is in need of maintenance is entitled to be maintained and if his or her lack of means ceases, his or her claim for maintenance will cease as well. If the divorced claimant has entered into an informal long-term relationship during the divorce proceedings or even preceding such proceedings, his or her claim for maintenance may be denied. If he or she enters into an informal long-term relationship with another person after the divorce, it can result in the termination of his or her entitlement to maintenance. See the answer to Question 97.

⁶⁷ For information on Hungarian law see the footnote to Question 55.

⁶⁸ For information on Hungarian law see the footnote to Question 55.

⁶⁹ For information on Hungarian law see the footnote to Question 55.

If his or her lack of means revives – this may occur, see Question 67, generally within five years of the divorce – his or her entitlement to maintenance may also revive.⁷⁰

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

According to the prevailing rules of family law, maintenance can not be denied because of the short duration of the marriage. However, in practice it is of importance with regard to the amount or duration of the maintenance. See also under Question 57.⁷¹

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 maintenance claim can be denied because of the unworthiness of the claimant. However, the claimant's conduct during the marriage or the facts in relation to the ground for divorce can only be judged in conjunction with the debtor's conduct. If the conduct of both spouses may be condemned no reference will be made to the unworthiness of the claimant.

Hungarian family law also recognises the case where the ex-spouse subsequently becomes unworthy to obtain maintenance, which results in maintenance being terminated. This occurs very rarely in practice, however.⁷²

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

Yes, the maintenance claim ends with the death of the debtor. No maintenance duties what so ever can be claimed against the inheritance of the successor.⁷³

⁷⁰ For information on Hungarian law see the footnote to Question 55.

⁷¹ For information on Hungarian law see the footnote to Question 55.

⁷² For information on Hungarian law see the footnote to Question 55.

⁷³ For information on Hungarian law see the footnote to Question 55.

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?

Yes, the spouses may enter into a binding agreement on maintenance after divorce either before the divorce proceedings, or during the actual proceedings. It is unusual to enter into an agreement on maintenance in the case of an "eventual" divorce.

It has already been mentioned on several occasions that in the case of divorce by consent, if the divorced spouse claims maintenance, the spouses have to agree on this issue as it is a condition for a divorce by consent.⁷⁴

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

The Family Act does not contain any rule on the spouse's renouncement of his or her future right to maintenance. However, a Supreme Court directive does provide guidance, not on the validity of that agreement, but on the legal consequences of such a renouncement if the spouse subsequently lacks the necessary means within five years of the divorce.

Renouncing the future right to maintenance may occur in return for compensation, for instance the spouse who renounces maintenance has the right to exclusive possession of the matrimonial home after divorce (this right to possession of the home has great material value in Hungary). If the renouncement has not been made in return for compensation, it is possible that if the renouncing spouse later finds him/herself in a position where he/she lacks the necessary means, he/she will be able to claim maintenance – within the mentioned time-limit. According to the directive of the Supreme Court this renouncement is voidable under the rules of the Civil Code and within the time-limit provided.⁷⁵

⁷⁴ For information on Hungarian law see the footnote to Question 55.

⁷⁵ For information on Hungarian law see the footnote to Question 55.

104. Is there a prescribed form for such agreements?

There is generally no prescribed form for an agreement on spousal maintenance. In the case of divorce by consent the spouses have to present this agreement within the framework of the written application for divorce.⁷⁶

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

In the case of divorce by consent this agreement has to be judicially approved and it has the form of a judicial settlement. If the spouses agree on maintenance after divorce not in the case of a divorce by consent but in contentious proceedings, it has the form of a judgement or a judicial settlement. In any other case the agreement does not have to be approved.⁷⁷

⁷⁶ For information on Hungarian law see the footnote to Question 55.

⁷⁷ For information on Hungarian law see the footnote to Question 55.