

HUNGARY

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A. New Developments in the field of Divorce (since September 2002)

The recodification process of the Hungarian civil law began in 1998 and it resulted in a new Hungarian Civil Code, namely Act No. V of 2013 (HCC) which entered into force on 15 March 2014. The HCC consists of books and the Fourth Book contains the family law rules (Family Law Book). The earlier legal source on family law, namely the Hungarian Family Act, Act No. IV of 1952 on marriage, family and guardianship expired. However, the traditional structure of family law and the main and traditional legal structure of family law has been kept.

Although some new provisions have been introduced in connection with the termination of marriage the main structure of divorce has remained untouched. The basis of divorce has been maintained as marriage may be dissolved only if married life has broken down completely and irretrievably and divorce can be obtained only by a judge. An administrative procedure is not available for spouses who want to divorce. The irretrievable breakdown of marriage has remained the general rule¹ and concept of divorce which means that no special ground for divorce is regulated in the Hungarian family law. Either of the spouses may initiate the divorce proceedings.

Two types of divorce proceedings have been shaped during the decades of the Family Act in the judiciary, namely the divorce upon mutual consent and divorce without the spouses' mutual consent. While the Family Act did not articulate this difference in a definite way between the two proceedings, the HCC's Family Law Book draws an unambiguous distinction between them. If the spouses do not divorce upon mutual consent, the judge has to investigate whether the marital life has completely and irretrievably broken down. The lack of mutual consent means that either of the spouses do not want to divorce but this scenario also exists if they cannot agree on every accessory issues. A new rule has been added to divorce upon mutual consent, as the Family Law Book states that the complete and irretrievable breakdown of the marriage can be established in particular if the community of marital life has ceased and there is no prospect of restoring it considering the process leading up to the termination of the community of life and of the duration of the separation.² Although the HCC

¹ Art. 4:21(1) of the Hungarian Civil Code.

² Art. 4:21(1) of the Hungarian Civil Code.

entered into force almost seven years ago, there has been no experience concerning this possibility.

Concerning the divorce upon the spouses' mutual consent, this consent is not an automatic ground for divorce, however the court does not have to investigate whether and how the marital life of spouses has broken down. The rule according to which the divorce upon mutual consent may be initiated if the spouses present their agreement to the court and, if they have a mutual agreement to divorce that is not the result of undue influence and is their final decision, has remained unchanged such as the requirement of finality. The agreement may be considered as final if the spouses agree on the enumerated accessory issues.

The circle of accessory issues has changed. According to the HCC the spouses have to agree on the use of the matrimonial home, the spousal maintenance (if this is claimed), the maintenance of the child, the parental custody and the contact between the child and the parent living separately from the child. A huge change was codified concerning the accessory issues.

While previously the spouses had to agree on the distribution of common property, excluding immovable property, the HCC does not require the spouses to agree on it anymore. During the codification of the Civil Code it was thought that the spouses' property relations became complicated. I have to remark that even if the spouses would like to agree on the distribution of common property in the frames of the agreement on accessory issues they cannot include the agreement on the distribution of common property into the agreement to be presented before the court in the divorce proceeding. In meantime a new Act on the Hungarian Civil Procedural Law, namely the Act No. CXXX of 2016 on the Code of Civil Procedure entered into force and it prohibits linking the action for the dissolution of marriage and the action for deciding on the property of the spouses.³

There are new and detailed rules concerning the agreement on parental custody because joint parental custody has been emphasised in the Family Law Book. If the spouses agree on joint parental custody it is not obligatory for them to agree on contact, but they have to decide on the place of residence of the child. If one of them exercises parental custody after divorce, they have to agree on contact between the child and the parent living separately. Both issues became highly debated after the HCC's entry into force and the Advisory Board for the Interpretation of the new HCC set up by the president of the Hungarian Curia, which aim is to support the application of the HCC, published a non-binding opinion concerning these issues.⁴ According to the opinion of this board the spouses are not obliged to agree on contact with the child in case of

³ Art. 462 of the Hungarian Civil Procedural Law.

⁴ <http://www.lb.hu/hu/ptk>.

joint parental custody, but they can agree on it. Another opinion declares that if the spouses agree on the child's alternating residence only one place may be fixed as the child's residence.

B. New Developments in the field of Maintenance between former spouses (since September 2002)

The recodification process of the Hungarian civil law began in 1998 and it resulted in a new Hungarian Civil Code, namely Act No. V of 2013 (HCC) which entered into force on 15 March 2014. The HCC consists of books and the Fourth Book contains the family law rules (Family Law Book). The earlier legal source on family law, namely the Hungarian Family Act, Act No. IV of 1952 on marriage, family and guardianship expired. However, the traditional structure of family law and the main and traditional legal structure of family law has been kept.

Although some new provisions have been introduced in connection with the maintenance between former spouses the basic structure of this kind of maintenance has remained untouched. In the new structure of the maintenance obligations of family members, the maintenance of former spouses is regulated as a special form of maintenance. However the common rules of maintenance of family members (relatives) are to be applied to the maintenance of former spouses as well. The responsibility of spouses and former spouses towards each other has been maintained in the Family Law Book and the spouses' responsibility has been kept also in case of divorce. Spouses may agree on maintenance and either of them may claim maintenance before court. In case of the spouses' agreement the maintenance is not subject to special legal requirements but if one of them claims for maintenance the legal requirements are investigated.

There is only one type of maintenance and the legal requirements of maintenance have not changed, these are the claimant's lack of means, a situation which has been brought about through no fault of his or her own and the lack of unworthiness.⁵ The debtor has to be in a position to pay maintenance.⁶ These requirements are the same as under the regime of the Family Act and their judicial application has not changed either.

Although the main rules are the same as in the Family Act, some new provisions have been introduced. One new provision determines that when the community of life has lasted only one year and there was no common child, the duration of maintenance

⁵ Art. 4:29(1) and 4:30 of the Hungarian Civil Code.

⁶ Art. 4:31 of the Hungarian Civil Code.

after divorce may not last longer than the community of life as a main rule.⁷ The Family Law Book permits exceptions in case of peculiar circumstances. Another new rule introduced the possibility of performing spousal maintenance in a lump sum. It is an exceptional rule as the court cannot order a payment in lump sum.⁸ Spouses may agree on performing the maintenance in a lump sum in a public deed or in a private deed countersigned by an attorney. In this case, the spouse cannot claim maintenance, even if he or she was entitled to it according to the HCC. The spouses can agree also on regular, usually monthly, payment which may be based upon a fixed sum or can be expressed in percentage terms. The court can order the payment only in a fixed periodical sum of money. There have not been any special experiences in the judicial application of these rules yet.

The ranking of the maintenance claims has remained untouched, namely the new spouse and the divorced spouse have equal ranking. However, in 2009 the registered partnership has been introduced as a new institution⁹ into the Hungarian legal order and the registered partner and the former registered partner have equal ranking with the new and divorced spouse. It is to be added that the former cohabitant may claim for maintenance as well and he or she has the same ranking. If the claimant enters into another marriage, registered partnership or cohabitation,¹⁰ the maintenance obligation ceases.

C. New Developments in the field of Parental Responsibilities (since December 2004)

The recodification process of the Hungarian civil law began in 1998 and it resulted in a new Hungarian Civil Code, namely Act No. V of 2013 (HCC) which entered into force on 15 March 2014. The HCC consists of books and the Fourth Book contains the family law rules (Family Law Book). The earlier legal source on family law, namely the Hungarian Family Act, Act No. IV of 1952 on marriage, family and guardianship expired. However, the traditional structure of family law and the main and traditional legal structure of family law has been kept.

The HCC includes general rules on parental responsibilities (parental authority according to the Hungarian legal terminology).¹¹ Parents must exercise their custodial responsibilities in cooperation with each other and with the aim of ensuring the child's

⁷ Art. 4:29(3) of the Hungarian Civil Code.

⁸ Art. 4:32 of the Hungarian Civil Code.

⁹ Act No XXIX of 2009 on on Registered Partnership, Modification of Legal Rules in Connection with Registered Partnership and the Facilitation of Proof of Cohabitation.

¹⁰ Art. 4:33 of the Hungarian Civil Code.

¹¹ Art. 4:147-149 of the Hungarian Civil Code.

appropriate physical, mental and moral development. If they exercise joint parental custody, the parents' rights and obligations are equal. There is a definite requirement for the parents to involve the child in the decision making. According to the text of Article 4:148 HCC: 'Parents are obliged to inform the child of any decisions affecting him and they shall ensure that their child who is of sound mind may express his views before the decisions are taken, and in the cases specified by an act, decide jointly with his or her parents. The parents have to take the child's views into account with appropriate weight, according to his age and maturity.' The exceptional nature of restrictions on parental authorities is emphasised as well. The rule according to which the parent's parental custody may be restricted or withdrawn by the court or other authorities in exceptionally justified cases are set out by an act, to the extent required to ensure the interests of the child.

The concept of parental responsibilities and some regulations have changed in the framework of the HCC. The traditional elements of parental responsibilities such as the care and education of the child, the administration of the child's property, the legal representation of the child and the right of the parents to appoint a person as guardian for their child or exclude persons from the guardianship in case of their death have been preserved and as a result of the change of legal structure the determination of the child's name¹² is regulated as an element of parental responsibilities. The content of these elements has also been maintained.

The attribution of parental responsibilities has not changed in case of married parents or unmarried parents living together and divorce, annulment of marriage and factual separation affect the parental responsibilities in the same way as previously. Parents are free to agree upon the attribution of parental responsibilities after divorce, splitting of cohabitation or in any case of living separately. They can agree on the way of exercising parental responsibilities. They can choose for joint parental custody, agree on the division of the rights and obligations belonging to parental custody and the exercise of parental custody in its entirety.¹³

Joint parental custody (joint parental responsibilities) means that both parents have the same parental rights and obligations. It is prescribed in the Family Law Book that they should provide a balanced lifestyle for their child and both of them have the right to act alone in the interest of the child, subject to notifying the other parent without delay.¹⁴ The agreement on the alternating residence of the child was not regulated in the Family Act, and is also not regulated in the HCC. However, parents sometimes

¹² Art. 4:150 of the Hungarian Civil Code.

¹³ Art. 4:165(1)-(2) of the Hungarian Civil Code.

¹⁴ Art. 4:164(2)-(3) of the Hungarian Civil Code.

choose this solution (as a special form of joint parental custody) in practice. If parents cannot cooperate during the exercise of joint parental custody either of them may claim that the court should terminate it.

If parents cannot agree on the exercise of parental responsibilities, either of them can claim for a decision of the court. Joint parental custody cannot be ordered by the court, as both parents' willingness is held to be essential if they have to cooperate in their everyday life and the court shall not order the division of parental rights and obligations. The court will decide on which parent will exercise parental custody in its entirety.¹⁵ The court considers how the child's physical, mental and moral development might be best ensured.

If parents agree on the exercise of parental responsibilities in their entirety or the court decides on this issue, the designated parent shall exercise all rights and obligations but there are some issues concerning which both parents decide together. The parents should exercise parental custody together in the following important matters: (a) determining and changing the name of the child, (b) determining the child's place of residence if it differs from that of the parent with whom the child lives, (c) determining the place of residence abroad for an extended time period or with the aim of settlement, (d) changing the child's nationality and (e) choosing and changing the child's schooling (education) and envisaged career path.¹⁶ These issues were also enumerated in the Family Act, but their scope has been extended. Lacking the parents' agreement, the Family Act provided the competence to decide to the court, but the Family Law Book gives this competence to the guardianship authority.

Regarding other persons, the spouse, registered partner or cohabitant of the child's parent or any other third person (e.g. grandparent), the HCC provides a relatively small right to this person. According to the new rule the person in whose own household or in whose household shared with the parent the child has been brought up for an extended period of time, can be involved in exercising certain rights and obligations during the care and upbringing of the child, with the consent of the parent exercising custody.¹⁷ The third person cannot get parental custody or any elementary right of parental responsibilities officially, but they can be involved in the care and upbringing in an informal way.

The regulations on contact between the child and the non-residential parent remained basically unchanged in the HCC, however some slight modifications happened. The

¹⁵ Art. 4:167 of the Hungarian Civil Code.

¹⁶ Art. 4:175(2) of the Hungarian Civil Code.

¹⁷ Art. 4:154 of the Hungarian Civil Code.

main modification affected the contact rules in 2020 (Act No. CXXVII of 2019) when the enforcement of the contact between the child and the non-residential parent was placed under the competence of the court in non-litigious proceeding (previously it was the task of the guardianship authority).

D. New Developments in the field of Property relations between spouses (since August 2008)

The recodification process of the Hungarian civil law began in 1998 and it resulted in a new Hungarian Civil Code, namely Act No. V of 2013 (HCC) which entered into force on 15 March 2014. The HCC consists of books and the Fourth Book contains the family law rules (Family Law Book). The earlier legal source on family law, namely the Hungarian Family Act, Act No. IV of 1952 on marriage, family and guardianship expired. However, the traditional structure of family law and the main and traditional legal structure of family law has been kept.

The structure of the earlier rules concerning matrimonial property has not changed which means that no general rights and duties are regulated in the HCC. All 'general' rights and obligations are regulated in the frames of the default matrimonial property regime which is the community of property regime. The community of property regime as the default regime and mostly all provisions concerning that regime have been maintained. The new rules in connection with the default regime partly codify the earlier crystallized judicial practice and partly complete the earlier rules with some new ones, but these did not change the pillars of the default regime. As an example for the built-in judicial practice the presumption of community property can be mentioned,¹⁸ while new rules have been codified relating to the use and administration of assets belonging to the community of property.¹⁹ If there are assets belonging to the community of property, but serving the purpose of pursuing a profession, this spouse may use and administer the property with the consent of the other party and silent consent is enough.

The main novelty concerning the matrimonial property rules is that two alternative matrimonial property regimes have been introduced, namely the regime of the community of accrued gains and that of the separation of property. The provisions of these two optional regimes are contained in the HCC as well. The judicial practice concerning the default regime has not changed, as the principles of this regime have been kept and the new rules have been built primarily upon the judicial experiences

¹⁸ Art. 4:40 of the Hungarian Civil Code.

¹⁹ Art. 4:43 of the Hungarian Civil Code.

on matrimonial property rules. With regards to the alternative regimes the superior courts have not had any possibility to deal with regimes in concrete cases yet.

The possibility of entering into a matrimonial property agreement for future or current spouses has not only been maintained but also emphasised in the HCC. The HCC gives great freedom to the spouses considering the content of their matrimonial property agreement,²⁰ as the spouses may determine the matrimonial property regime to be applied for their property relations. They can choose another matrimonial property regime instead of the default one or can set out various matrimonial property regimes for certain parts of their property. They can maintain the default regime with deviations as far as it is not prohibited. They can choose either alternative regime, but they can also deviate from the given provisions of the chosen regime as the provisions concerning the optional regimes are so called model rules.

A new institution for the registration of the matrimonial property agreement was introduced in 2014, namely the Register of Matrimonial Property Agreements which is kept by the Hungarian National Chamber of Notaries. The rule according to which the matrimonial property agreement is valid only if it is included in a public instrument or a private document attested by a lawyer has not changed. However, the agreement is only valid against third parties if it has been recorded in the Register of Matrimonial Property Agreements or if the spouses prove that the third party knew or should have known about the existence of the agreement and its contents.²¹ A special further rule concerns (future) spouses who are below the age of eighteen or whose capacity to act is partially limited in terms of legal declarations in property issues.²²

The property regime of community of accrued gains includes so called model rules, however neither these model rules nor the possible deviation from these rules has been tested by any judicial decision yet. During the existence of this property regime the spouses may acquire separate property and after the termination of the property regime both spouse may claim for the division of the increase in the other party's property and this increase has to be considered as accrued gains.²³ According to the model rule both spouses may claim for half of the accrued gains.²⁴ The accrued gains are defined 'as the net value of the spouse's property owned by the spouse at the time of the termination of the community of life, after deducting the spouse's share of the

²⁰ Art. 4:34(1) and 4:63 of the Hungarian Civil Code.

²¹ Art. 4:65(2) of the Hungarian Civil Code.

²² Art. 4:64(2) of the Hungarian Civil Code.

²³ Art. 4:69(1)-(2) of the Hungarian Civil Code.

²⁴ Art. 4:71(2) of the Hungarian Civil Code.

debts and the separate property of the spouse'.²⁵ In case of debate at the termination of the regime it is to be presumed that the assets belonging to either spouse's property is part of the accrued gains.

Personal assets in the matrimonial community of property regime do not belong to acquired property such as other assets which would be qualified as separate property according to the rules of the default matrimonial property regime.²⁶ The regime of community of accrued gains terminates upon the spouses' joint agreement or either of them may claim the termination of the regime before the court. This latter opportunity is connected to the protection of the spouse's share of accrued gains.²⁷ If either of the spouses wishes to protect his or her share because of the other party's behaviour endangering this share, he or she may ask for the determination of the accrued gains and the provision of adequate security and lacking it, this spouse may turn to the court and claim the termination of the regime of community of accrued gains. If the court terminates this regime, the regime of the separation of property will apply to the spouses' matrimonial issues.

The regime of separation of property is regulated briefly. The spouses cannot acquire matrimonial joint property if they enter into a regime of separation of property, as each of them acquires the assets as his or her own property. The HCC contains some restrictions for the sake of the common responsibilities for the family. The spouses have to jointly bear the costs of the common household and also the expenditures required for the bringing up of their common child and any stepchild. A clause which exempts either spouse from such costs either completely or predominantly, is void.²⁸

According to the rule of the Act No. XIX of 2009 all property rules which are to be applied to (future) spouses are to be applied to (future) registered partners in an analogous way.

E. New Developments in the field of De Facto Partnerships (since February 2015)

The Hungarian report contains the rules of the HCC. Nothing can be added to those rules. Cohabitation cases concerning which the new rules of the HCC would be applicable have not reached the superior courts yet.

²⁵ Art. 4:69(2) of the Hungarian Civil Code.

²⁶ Art. 4:69(4) of the Hungarian Civil Code.

²⁷ Art. 4:70 of the Hungarian Civil Code.

²⁸ Art. 4:73(2) of the Hungarian Civil Code.