

6 Divorce and legal regulation of proportion of parents to the minor child for a period after divorce

6.1 Resumé

This diploma deals with the Czech legal regulation of divorce of marriage and status of the minor child during and after the divorce procedure.

In the second chapter, following the introduction, is described the divorce itself. The divorce is the only possible legal dissolution of the marriage throughout spouses' life upon the qualified breakdown. As demanded by law, the qualified breakdown has to be deep, permanent and the restoration of cohabitation cannot be expected. The Czech legal regulation recognizes three forms of divorce, (i) non-contentious (consensual) divorce, (ii) contentious divorce and (iii) divorce with harshness clause.

Non-contentious divorce (hereinafter referred to as „consensual divorce“) was amended in our legal regulation in 1998 by the act No. 91/1998 Coll. In my opinion this consensual divorce is the best how to dissolve the marriage from the point of view of the protection of the child's interests. The advantage of the consensual divorce is that spouses have to set off all their rights and obligations relating to their marriage (i.e. property relations, living situation, agreement on the status of the minor child after the divorce, ... etc.). Without any doubt the necessity to fulfil all these conditions stands behind the quickness and complexity of this form of divorce.

Contentious divorce is the basic and most common form of divorce. It is useful in case of lack of compliance between the spouses in the questions related to divorce.

Divorce with harshness clause was also amended in our legal regulation in 1998 by the act No. 91/1998 Coll. The harshness clause is providing the protection against the divorce to the disagreeing spouse, but the above-mentioned protection is not absolute and this marriage can be at last divorced when all the legal conditions are met.

One of the biggest impact of the divorce aims against the minor children. This topic is elaborated in the third chapter of this thesis. In case of an minor child it is necessary to decide on his/her care and responsibility for maintenance before the

beginning of divorce proceeding. In our legal regulation we may find three types of the child care, (i) exclusive care, (ii) common care and (iii) alternative care.

In Czech republic is most often the minor child confided to the exclusive care to his/her mother. There is a common opinion that woman is able to care about the minor child better than man.

In case of common care are both parents responsible for the minor child care. Because parents have to agree on the common care, can be assumed, that they will be able to cooperate and solve together day-to-day situations and problems without any difficulties. In case of common care is not unusual when parents still live in the same household.

Alternative care is based on the system of the „timetable“. By the decision of court is set who and when will be responsible for and take care of the minor child. This care is typical for its „doubling“ of minor child's background – two beds, two homes. The court decides on the rights and obligations of individual parent for determinate time, typically is than the minor child moved between his/her parents in fortnight terms.

The important part of divorce is to set off the responsibility for maintenance. By the responsibility for maintenance cannot be recognized only as financial support, but also as expanses connected with living, food, culture, education, clothing, ... etc. If parents do not settle the amount of maintenance, the court will decide.

It is suspected that the recent Family Act will be replaced by the new re-codification of Civil Code, in which the legal regulation of family will be incorporated as its the second part divided into four chapters.

It is necessary to realize, that the question of divorce affects whole society and is still actual. The impact of uneasy divorce on the minor child could be destructive. The precise legal regulation of this phenomenon and its accompanying matter could prevent the society from the troubles relating to the criminality of juveniles growing up in the incomplete families.

Klíčová slova

Rozvod, nezletilé dítě, výchova dítěte

Keywords

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