

Maintenance duty between parents and children and ancestors and descendants

Resumé

The topic of my thesis is the maintenance obligation between parents and children and ancestors and descendants.

After the introduction, I addressed the history of maintenance obligation in family law focused on the legal regulation of maintenance obligation. Act No. 265/1949 on Family Law changed the institute of the power of a father to the institute of the power of parents. Father and mother had and have until now the same rights and the same obligations in the upbringing and nutrition of children. First, the law established maintenance obligation for mothers. The said Act did not make difference between a child born to the marriage and a child born outside of marriage. This Act was progressive. The Family Act No. 94/1963 Coll. related to the economic change which had an influence on the vast changes of our legal order. The said Act has been amended for several times.

Since January 1, 2014, maintenance obligation has been regulated by the Civil Code, Act No. 89/2012 Coll. into which the family law is incorporated. The Civil Code is a general code of private law which is, in terms of content, not continuous with the previous Civil Code, No. 40/1964, however this does not apply to family law. The Civil Code takes over the regulation of family law as it was regulated in the Family Act No. 94/1963, except partial changes, the main changes are in the systematics of legal regulations.

In the next chapter of my work I have tried to define the basic terms and to define the types of maintenance obligation.

I consider crucial the issue of the maintenance obligation between parents and children, therefore I elaborated this regulation in detail. The standard of living of the child should be basically identical to the standard of living of the parents. This aspect precedes the aspect of reasonable aspects of the child (Section 915, paragraph 1). The quoted aspect was denied by the judgment of the Constitutional Court of the CR, docket number IV. ÚS 650/15, and therefore I focused on an analysis of the quoted judgment.

Furthermore, I address the court's decision on maintenance. Under the provision of Section 30, paragraph 1 of Act No.292/2013 Coll. on Special Court Proceedings, appeal against decision is not permissible under Title Two, Part Five of this Act, unless it is a judgment on the restriction or deprivation of parental responsibility, suspension or limitation of execution thereof, the determination or denial of parenthood or irrevocable adoption which is unfortunate due to the new terms in the New Civil Code, non only concerning the interpretation. The above - mentioned implies that the Court of Appeals decision on maintenance for an underage child based on the review of the Court of Final Appeals is excluded. This is a big change comparing to the previous legislation.

Furthermore, I have focused on the recovery of maintenance orders which are ordered and executed by the court under the Civil Procedure Court, Act No. 99/1963 Coll. and on the recovery of maintenance orders which are enforced by the distrainer under the Enforcement Code, Nr.120/2001 Coll. The number of parents who do not pay maintenance for their children is still increasing and therefore I refer in this work to Section 71a of the Enforcement Code, according to which the distrainer may issue an enforcement order to suspend the driving license of the obliged person if arrears of maintenance for underage child are enforced within the enforcement proceedings. In other cases, he cannot issue an enforcement order to suspend the driving license.

Currently, many parents are over-indebted and therefore I also dealt with the insolvency proceedings in respect of the payment of ordinary alimony and alimony owed in the insolvency proceedings.

The last chapter is devoted to the regulation in the criminal law. The Criminal Code, Act No. 40/2009 Coll., contains provisions on the offence of nutrition malpractice to which another provision was added, according to which the court may impose in criminal proceedings reasonable restrictions to the perpetrator of this offense so that the perpetrator refrain from driving, especially if there is a reasonable concern that the obligation to pay alimony is thwarted or impeded.

In my work I have tried to comprehensively accommodate the issue of maintenance obligation focusing on current changes.

Key words

The maintenance obligation between parents and children

Family law

Alimony