

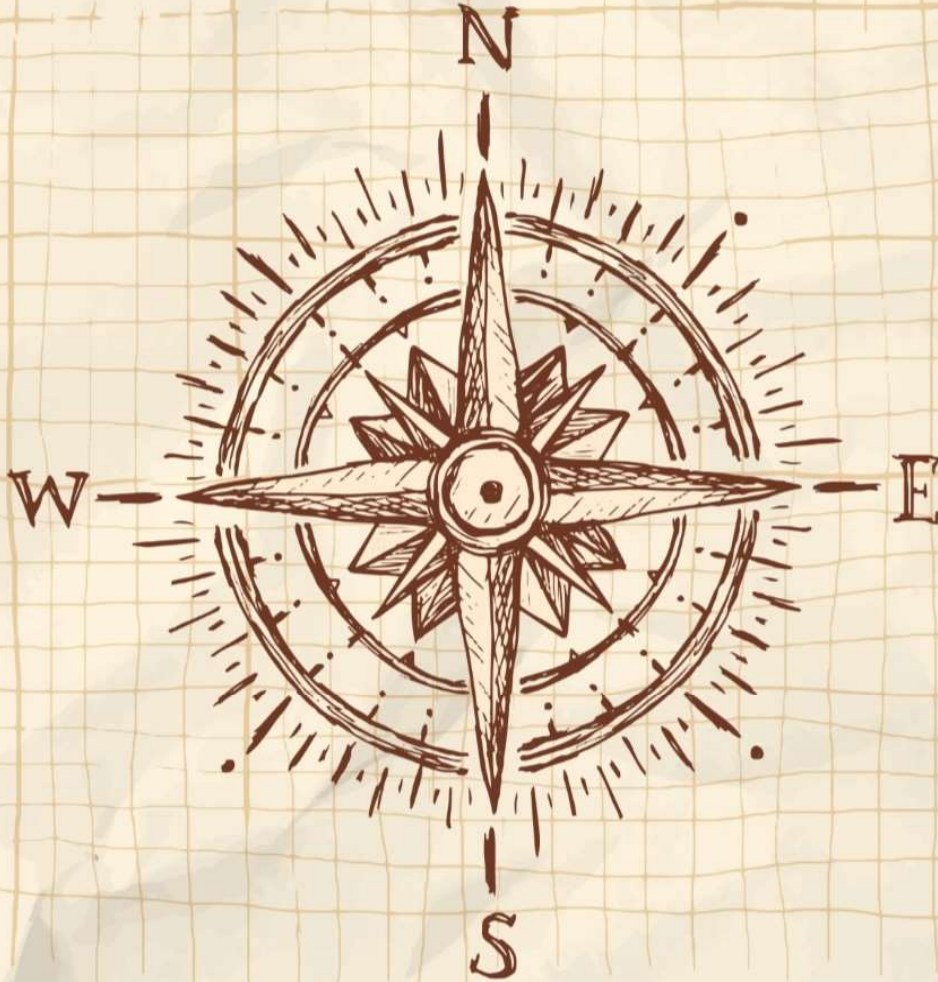


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THE CONDITIONS OF POST MARITAL SPOUSAL SUPPORT (ALIMONY) IN TURKISH LAW

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Abstract

In this paper, the conditions of post marital spousal support (post marital maintenance or alimony) will be examined in Turkish law doctrine and judicial practice. Considering the fact that the main source of inspiration for the Turkish Civil Law is the Swiss Civil Law, we will refer to the provisions on spousal support and to the recent amendments on the Swiss Civil Code (SCC) to the extent it is relevant.

Spousal support is based on social and ethical considerations. These considerations aim at ensuring the survival of the spouse falling into poverty due to the ending of marriage by divorce. According to Article 175 of the Turkish Civil Code (TCC), *"the party falling to poverty due to divorce may demand from the other side indefinite spousal support for living costs, in proportion to his/her financial power and on the condition that the fault of recipient shall not be heavier than the obligor's fault. It is not necessary for the obligor to be faulty"*. In this case, according to the Turkish Law, the conditions for claiming spousal support are as follows: 1- Spousal support should be demanded. 2- The spouse who needs spousal support must have fallen to poverty. 3. The party who claims spousal support must be faultless or less faulty than the spousal support obligor. In addition, the Turkish Court of Cassation rules that spousal support may be claimed if both of the divorced spouses who are receiving party and the paying party are equally at fault in divorce. 4- Spousal support to be ordered by court must be proportional to the financial power of the spousal support obligor.

The Turkish Court of Cassation emphasizes the necessity of establishing a balance between the needs of the receiving party and the financial status of the paying party. A spousal support to the receiving party during her/his lifetime without a time limit is a matter of current debate in Turkish Law. The Constitutional Court ruled that the indefinite contribution of spousal support is not contrary to the Turkish Constitution.

On the other hand, according to the Swiss Civil Code, *"If a spouse cannot reasonably be expected to provide for his or her own maintenance, including an appropriate level of retirement provision, the other spouse must pay a suitable contribution"* (Art.125/I of SCC). So unlike the Turkish Civil Code, Swiss Civil Code doesn't include the condition that the party who claims spousal support must be faultless or less faulty than the spousal support obligor.

Pursuant to Art.125/II of SCC, *"In deciding whether such a contribution is to be made and, if so, in what amount and for how long, the following factors in particular must be considered: 1. the division of duties during the marriage; 2. the duration of the marriage; 3. the standard of living during the marriage; 4. the age and health of the spouses; 5. the income and assets of the spouses; 6. the extent and duration of child care still required of the spouses; 7. the vocational training and career prospects of the spouses and the likely cost of reintegration into working life, 8. expectancy of federal old age and survivor's insurance benefits and of occupational or other private or state pensions, including the expected proceeds of any division of withdrawal benefits"*. Unlike Art.125/II of SCC, the Turkish Civil Code does not include such detailed criteria for being in poverty. These criteria are shaped by the jurisprudence of Turkish Court of Cassation.

Keywords: Spousal support, post marital maintenance, alimony, conditions of post marital maintenance, conditions of alimony, conditions of post marital spousal support

IN GENERAL

Spousal support is based on social and ethical considerations. These considerations aim at ensuring the survival of the spouse falling into poverty due to the ending of marriage by divorce. In other words, even if the obligation of solidarity between spouses ends with a divorce, the obligation of financial support continues even after the divorce, if an ex-spouse cannot reasonably be expected to provide for his or her own maintenance. This is based on the idea of protecting the trust of the ex-spouse who counts on the continuance of the marriage.

According to Article 175 of the Turkish Civil Code (TCC), *"the party falling to poverty due to divorce may demand from the other side an indefinite spousal support for living costs, in proportion to the financial power of the other spouse on the condition that the fault of the recipient shall not be heavier than the fault of the obligor. It is not necessary for the obligor to be faulty"*.

According to the Swiss Civil Code, *"If a spouse cannot reasonably be expected to provide for his or her own maintenance, including an appropriate level of retirement provision, the other spouse must pay a suitable contribution"* (Art.125/I of SCC).

In Swiss law, there are provisions on the responsibility of the state for the occupational pensions of the spouses after marriage (SCC Art.122-124e). However, there is no similar provision in Turkish Civil Code. In other words, Swiss law, unlike Turkish law, in order to ensure the maintenance of the spouses, brings the "social state" principle to the fore. Therefore "spousal support" is considered as a secondary remedy¹.

There are two principles which guide to determine the financial conditions of the ex-spouses after divorce: The first one is the "personal responsibility" (clean break principle) which means each spouse is responsible for providing her/his own maintenance. The other one is the principle of "post marital support". In German law, as a rule, the principle of personal responsibility ("clean break" principle) applies (GCC § 1569). Accordingly, after divorce, each spouse is responsible for providing for her/his own maintenance. If she/he is not in a position to do this, she/he has a claim for maintenance against the other spouse only in exceptional cases (GCC § 1570 - § 1576) where one party is crucially in need of financial support². These exceptional cases are maintenance to care for or upbringing of a child of the spouses, maintenance by reason of old age, maintenance for illness or infirmity, maintenance for unemployment and topping-up maintenance, maintenance for training, further training or retraining to enter a gainful employment, maintenance for reasons of equity³.

¹ Mustafa ŞAHİN, "Türk – İsviçre Medeni Kanunlarına Göre Evlilik Sonrası Katkının (Yoksulluk Nafakasının) Şartları", Gazi Üniversitesi Hukuk Fakültesi Dergisi, Vol.21/3, 2017, p.83. One of the opinions in Turkish doctrine defends that there should make a legislative amendment which will allow the state to pay this debt and then recourse against the obligor in the case of non-payment of spousal support. For this opinion, see: Saibe OKTAY-ÖZDEMİR, Türk Hukukunda Boşanma Sisteminde Revizyon İhtiyacı, Public and Private International Law Bulletin, Vol: 35, Issue: 1, 2015, p.43 ff.

² For this issue, see: Andrea BÜCHLER/Sandro CLAUSEN, "Die Eigenversorgungskapazität im Recht des nahehelichen Unterhalts: Theorie und Rechtsprechung" Die Praxis des Familienrechts, Edit: Ingeborg Schwenzer, Andrea Büchler, Michelle Cottier, FamPra.ch, Issue: 1, Stämpfli Verlag 2015 p.4, 5; Gediz KOCABAŞ, "Evlilik Sonrası Dayanışma İlkesi ve Bu İlkenin Sınırı Olarak Clean Break İlkesi Doğrultusunda Yoksulluk Nafakasını Belirleyici Ölçütler", Marmara Üniversitesi Hukuk Fakültesi Hukuki Araştırmalar Dergisi, Vol: 19, Issue: 1, 2013, p. 361; Peter TUOR/ Bernhard SCHNYDER/ Alexandra JUNGO, Das Schweizerische Zivilgesetzbuch, (Edit: Peter Tuor, Bernhard Schnyder, Jörg Schmid, Alexandra Jungo), 14. Ed., Zürich Schulthess, 2015, §24, N.44.

³ A divorced spouse may demand maintenance from the other to the extent that and as long as he, for other serious reasons, cannot be expected to be in gainful employment and the refusal of maintenance, taking into account the concerns of both spouses, would be grossly inequitable. The mere fact that serious reasons led to the breakdown of the marriage does not mean that they may be taken into account (GCC § 1576).

The same principle applies to Swiss law. Although the SCC does not clearly state that the “clean break” principle is accepted as a rule, doctrine and jurisprudence is inclined to consider, as a rule, the personal responsibility of spouses after divorce⁴. According to the Swiss law, the main function of the clean break principle is to limit spouses' liability for the post marital support: In short marriages, the clean break principle will be stronger, while long-term marriages will find a greater emphasis on the post marital support principle after divorce⁵. However, unlike German and Swiss Law, the post marital support principle is dominant in Turkish Law.

THE CONDITIONS OF SPOUSAL SUPPORT

According to Article 175 of the Turkish Civil Code (TCC), the conditions for claiming spousal support are as follows: 1- Marriage must end with a divorce. 2-Spousal support should be demanded. 3- The spouse who needs spousal support must have fallen to poverty. 4. The party who claims spousal support must be faultless or less faulty than the spousal support obligor. 5- the spousal support obligor must be in an economic condition to pay spousal support and it must be proportional to her/his financial condition.

A. MARRIAGE MUST END WITH A DIVORCE

In order for spousal support to be paid, the marriage must end with divorce and the decision of divorce must be finalized⁶. If the divorce case is rejected, or if one of the spouses has died or has been declared presumed dead⁷ (TCC Art.131) during court proceedings, the court cannot rule for spousal support. It cannot be claimed in cases where a marriage is officially non-existent⁸. Therefore, an unmarried partner does not have the right to claim the spousal support from the other partner⁹. Likewise, a divorce, an annulment of marriage is also ends a marriage (TCC Art.145 ff.). Spousal support might be claimed, even in the case that the marriage is annulled by a court (TCC Art.158 (3)¹⁰).

⁴ Urs GLOOR/ Annette SPYCHER, in Basler Kommentar, Zivil Gesetzbuch I, Art.1-456 ZGB, 4.Ed., Edit: Heinrich Honsell/Nedim Peter Vogt/Thomas Geiser, Basel, Helbing Lichtenhahn Verlag, Basel, 2010, Vor Art.125-130, N.5 and Art.125, N.2; Dieter FREIBURGHANUS, Personen- und Familienrecht - Partnerschaftsgesetz Art. 1-456 ZGB – PartG, CHK - Handkommentar zum Schweizer Privatrecht, Edit: Peter Breitschmid, Alexandra Jungo, 3.Ed., Schulthess 2016, Art.125, N.3; BGER 5C.139/2005 E.1.2; BGE 134 III 145 ff; BGE 135 III 158 ff. E.4.3. Cf. Ivo SCHWANDER, ZGB Kommentar Schweizerisches Zivilgesetzbuch, OFK - Orell Füssli Kommentar (Navigator.ch), Edit: Jolanta Kren Kostkiewicz, Stephan Wolf, Marc Amstutz, Roland Fankhauser, 3.Ed., Orell Füssli Verlag, 2016, OFK, N.2.

⁵ For details, see: BÜCHLER/CLAUSEN, p. 3 ff.; GLOOR/SPYCHER, Art.125, N.2; Yalçın TOSUN: “Türk ve İsviçre Hukukunda Yoksulluk Nafakasının ve Doğurduğu Hukuki Sorunların İncelenmesi”, Bahçeşehir Üniversitesi Hukuk Fakültesi Dergisi, Vol:10, Issue: 129-130, Ankara, Seçkin, 2015, jurix, p.4; KOCABAŞ, p.363 ff.

⁶ Before a divorce case finalized, the court can rule the spouse to pay a temporary maintenance (alimony ad interim) for the spouse in need during the trial on the basis of the existence of the conditions and the necessity. (TCC Art.169).

⁷ If it is highly probable that a person is dead because he or she has disappeared in extremely life-threatening circumstances or has been missing for a lengthy period without any sign of life, the court may declare that person presumed dead on application by any person deriving rights from his or her death (TCC Art.32/I).

⁸ Abdülkerim YILDIRIM, “Yoksulluk Nafakası ve Yoksulluk Nafakasında Süre Sorunu”, Legal Hukuk Dergisi, Vol:14, Issue:157, 2016, p.64.

⁹ Mine UZUN, Yargıtay Kararları Kapsamında Yoksulluk Nafakası, İstanbul, Vedat, 2013, p.29-30.

¹⁰ Ahmet C. RUHİ, Yargıtay İçtihatlarıyla Nafaka Hukuku, 3.Ed, Ankara, Seçkin, 2010, p.42; Y.2HD 22.03.2004, 2665/3562 (RUHİ, p.42); Ahmet M. KILIÇOĞLU, Aile Hukuku, 3. Ed., Turhan Kitabevi, Ankara, 2017, p.134; UZUN, p.25.

B. SPOUSAL SUPPORT SHOULD BE DEMANDED

In order for the court to rule for spousal support, the spouse should make a demand in front of the court. The judge cannot rule for maintenance *ex officio* without a demand^{11 12}. The claim can be made in writing or verbally. If the claim is put forward verbally, it must be recorded in the court proceedings¹³. In accordance with the principle of equality, there is no difference whether a man or woman requests spousal support¹⁴.

The spousal support may be claimed during the divorce proceedings or by filing a separate case¹⁵. If the claim is filed during the divorce proceedings, the court can decide to pay spousal support only after the divorce is finalized¹⁶. If the spousal support is demanded separately from the divorce case, it must be put forward within a time limit of one year from the finalization of the divorce case¹⁷ (TCC Art.178). In the separate case, the payment is awarded starting from the date the case is filed¹⁸.

¹¹ RUHİ, p.47; Halil BOZOVALI, *Mevzuattaki Son Değişikliklerle Öğreti ve Uygulamada Türk Medeni Hukukunda Bakım Nafakaları*, İstanbul, Kazancı, 1990, p.70; Turgut AKINTÜRK/Derya ATEŞ KARAMAN, *Türk Medeni Hukuku*, Vol: II, Aile Hukuku, Beta, 20.Ed., İstanbul, 2017, p. 303; Bilal KÖSEOĞLU/Köksal KOCAAĞA, *Aile Hukuku ve Uygulaması*, Ankara, Türkiye Barolar Birliği Yayınları, 2009, p.228; Mustafa DURAL/Tufan ÖĞÜZ/Mustafa Alper GÜMÜŞ, *Türk Özel Hukuku*, Vol:III, Aile Hukuku, 13. Ed., İstanbul, Filiz, 2018, N.795; Bilge ÖZTAN, *Aile Hukuku*, 5.Ed., Ankara, Turhan, 2004, p.497; KILIÇOĞLU, p. 135; Ömer ARBEK, "Boşanmanın Mali Sonuçları", *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, Vol:54, Issue: 1, 2005, p.141; Azra ARKAN SERİM, "Yoksulluk Nafakası", *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, Vol: 65, Issue: 1, p.288; Ebru CEYLAN, *Türk ve İsviçre Hukukunda Boşanmanın Hukuki Sonuçları*, İstanbul, Galatasaray Üniversitesi Yayınları, 2006, p.107; YILDIRIM, p. 65; KOCABAŞ, p.373; ŞAHİN, p.89; UZUN, p.58; Mecit DEMİR, *Türk Medeni Hukuk Öğreti ve Uygulamasında Yoksulluk Nafakası*, Ankara, Seçkin, 2018, p.45; Y.2HD 04.04.2007, 17410/5596 (A. İhsan ÖZUĞUR, *Nafaka Hukuku*, 4.Ed., İstanbul, Legal,2007, p.323).

In a law case, the defendant, during the divorce, responded to the case after the response time is over and demanded spousal support. According to the Turkish Court of Cassation, a spousal support claim after the response time is over should not be taken into account by the court, because it is contrary to the prohibition of extension of the claim and defense in Turkish Civil Judicial Code: Y.2HD 03.03.2017, 22856/2139 (Kazancı).

¹² However, during the divorce proceedings, the court may decide to pay for a temporary spousal support (alimony ad interim), even if there is no demand.

¹³ YHGK 09.04.2003, 2-280/274 (Kazancı); For the same opinion: Feyzi N. FEYZİOĞLU, *Aile Hukuku*, 3.Ed., İstanbul, Filiz, 1986, p.399; KÖSEOĞLU/KOCAAĞA, p.228; ARKAN SERİM, p.288; TOSUN, jurix, p.5.

¹⁴ After the amendment made in 1988 in Article 144 of the former Turkish Civil Code (repealed in 2001), for men in order to claim spousal support from women, women should have been living in prosperity. This provision has been removed because it is contrary to the equality between men and women.

¹⁵ RUHİ, p.49; DURAL/ÖĞÜZ/GÜMÜŞ, N.795 ff. In TCC Art.177, it is explicitly mentioned that "spousal support case to be filed after divorce".

¹⁶ BOZOVALI, p.74; AKINTÜRK/ATEŞ KARAMAN, p.306; CEYLAN, p.114; ŞAHİN, p.89; Nafiye YÜCEDAĞ, "Kadının Talep Ettiği Yoksulluk Nafakası (Women's Alimony)", 6.Uluslararası Suç ve Ceza Film Festivali, Edit: Prof. Dr. Adem Sözüer "Yoksulluk", *Tebliğler*, İstanbul, Oniki Levha, p.513. The Court of Cassation decides in the same manner: Y.2HD 04.10.2006, 6397/13134 (GENÇÇAN, p.1091); Y.2HD 26.01.2005, 15581/808 (GENÇÇAN, p.1091); Y.2HD 31.03.2004, 2928/4059 (GENÇÇAN, p.1091);

For a different opinion, see: ARKAN SERİM, p.294. This opinion defends that spousal support must be paid from the date on which the divorce case is filed and the spousal support is claimed.

If the court has decided to pay for a temporary spousal support (alimony ad interim) during the divorce case, after the case finalized, temporary spousal support (alimony ad interim) ends automatically. From this date on, spousal support can be claimed, if the conditions exist.

¹⁷ However, if the spousal support has been demanded within the time limit, there will not be a time limit for the demands to increase or decrease the amount of the maintenance (regulated in TCC Art. 176/IV); see YILDIRIM, p.65-66.

¹⁸ RUHİ, p.4; BOZOVALI, p.74; YILDIRIM, p.65; CEYLAN, p.114; YÜCEDAĞ, p.513.

In case of divorce by joint request (uncontested divorce), the parties must agree on the spousal support and this agreement must be approved by the judge (TCC Art.184, sub-section 5)¹⁹. According to the Turkish Court of Cassation, the party stating that she/he will not claim spousal support in an uncontested divorce case is bound by this declaration and cannot claim spousal support even if she/he later needs it²⁰.

The spouse who claims spousal support must indicate the amount of spousal support in the petition²¹. If the spouse claims a certain amount of money, the court cannot decide to pay more than the requested amount²².

Whether a spousal support must be paid for lifetime, without a time limit is a matter of current debate in Turkish Law. In cases where an indefinite period of payment is demanded²³, it is debated in Turkish Law whether or not the court is bound by this demand. In other words, is the court obliged to rule for indefinite spousal support or may it rule for maintenance only for a certain period of time despite the spouse's claim. It is accepted by some jurists in Turkish doctrine²⁴ that the judge has a discretion to also rule for spousal support for limited time after evaluating the conditions of the parties. However, the majority in the Turkish doctrine²⁵ and the Court of Cassation²⁶ interprets the expression "indefinite" in the text of the article and is of the opinion that the judge is bound by the demand. Therefore, according to the Court of Cassation, the judge has no discretionary power to limit the spousal support with a definite time period but may reduce its amount according to circumstances and conditions of the parties. Besides, the Constitutional Court decided that the expression "indefinite contribution of maintenance" is not contrary to the Turkish Constitution²⁷. There is no provision in Swiss and German Laws concerning the duration of the payment. Instead the judge determines the length of the payment period depending on the conditions and circumstances and under the criteria to be shown below. Due to the wrong application of the Turkish Court of Cassation, a

¹⁹ ARBEK, p.141; YÜCEDAĞ, p.513.

²⁰ HGK 06.03.2013, 3-836/306 (Kazancı). For a different opinion, see: OĞUZ, p.144-145. The matter whether or not the spousal support might be claimed when the uncontested divorce protocol does not include any provision about the spousal support is debated. See the opinion that in that case, the spousal support cannot be claimed: RUHİ, p.47. The Court of Cassation decides in the same manner: Y.2HD 02.04.2002, 4038/4625 (Ö. Uğur GENÇCAN, Boşanma Tazminat ve Nafaka Hukuku, Ankara, Yetkin, 2008, p.1089); Y.2HD 02.04.2002, 4038/4625 (GENÇCAN, p.1090); Y.2HD 10.05.2001, 5880/7315 (RUHİ, p.47). This opinion relies on the fact that when the uncontested divorce case is finalized, the secondary results of divorce are also finalized. The spousal support claim is also a secondary result of the divorce; so it cannot be claimed after the finalization of the decision of the court. However, according to the opposite view, in this case spousal support still must be demandable within its time limit: ÖZTAN, p.498; UZUN, p.63.

²¹ DEMİR, p.45; Y.2HD 07.05.2007, 18856/7452 (GENÇCAN, p.1083)

²² Y.2HD 14.02.2008, 1084/1516 (GENÇCAN, p.1082); Y.2HD 07.03.2007, 15647/3474 (GENÇCAN, p.1083); Y.2HD 02.03.2005, 915/3137 (GENÇCAN, p.1082).

²³ The claimer may demand a spousal support within a definite time limit or without a time limit. Same way, ex-spouses may agree on a definite or an indefinite maintenance payment. If the claimer demands a maintenance payment for a definite time (like for 3 years), the judge has to rule spousal support in the limited time according to the principle of deciding as much as requested (Turkish Civil Judiciary Code Art.26/I).

²⁴ KÖSEOĞLU/KOCAAĞA; p.233; KOCABAŞ, p.367; ARBEK, p.145-146; ŞAHİN, p.88; YÜCEDAĞ, p.525-526.

In Turkish doctrine, as a necessity, a legislative amendment on the period of maintenance payment in justice and fairness is proposed (*ex aequo et bono*). For this opinion, see: OKTAY-ÖZDEMİR, p.43.

²⁵ S. Sulhi TEKİNAY, Türk Aile Hukuku, 7.Ed., İstanbul, Filiz, 1990 p.264; RUHİ, p.46; DURAL/ÖĞÜZ/GÜMÜŞ, N.808; Mehmet ERDEM, Aile Hukuku, Ankara Seçkin, 2018, p.204. See and cf. for a different opinion: YILDIRIM, p.78.

²⁶ Y.2HD 12.12.2017, 8859/14407 (<http://www.hukukmedeniyeti.org/ictihatyazdir.asp?id=868778>, 12.05.2018); Y.2HD 11.07.2012, 14283/19487 (GENÇCAN, p.1206); Y.2HD 31.05.2010, 7918/10493 (Kazancı); For a decision regarding the former Turkish Civil Code: YHGK 02.05.1990, 2-111/261 (Kazancı).

²⁷ Constitutional Court, 17.05.2012, 136/72 (RG 26.06.2012, N.28335).

draft amendment of Art.175 of the TCC aiming at limiting the duration of the payment is currently in front of the Turkish parliamentary commission.

C. THE PARTY WHO CLAIMS SPOUSAL SUPPORT MUST BE FAULTLESS OR LESS FAULTY THAN THE SPOUSAL SUPPORT OBLIGOR

The party who claims spousal support must be faultless or less faulty than the spousal support obligor. The fault here is the fault which leads to divorce²⁸. In this case, the receiving party must be either faultless in the divorce or less faulty than the spousal support obligor²⁹. On the other hand, unlike in the case of pecuniary and non-pecuniary damages caused by divorce, it is not necessary for the spousal support obligor to be faulty in divorce in order for the court to rule for payment (TCC 175 (2)). If the obligor is faultless, the receiving party must also be faultless³⁰. The Turkish Court of Cassation rules that spousal support may be claimed if both of the divorced spouses are equally at fault in divorce³¹.

Unlike the Turkish Civil Code, Swiss Civil Code doesn't include the condition that the party who claims spousal support must be faultless or less faulty than the spousal support obligor³². After the revision made in Swiss Civil Code on 26.06.1998, which took effect on 01.01.2000, "faultiness" was abandoned generally in the law of divorce³³. This abandonment had an impact also on the provisions of spousal support and its conditions. On the other hand, in order for the judge to remove or reduce spousal support, instead of "faultiness", new criteria based on "equity" were brought (SCC Art.125 (3))³⁴. These amendments in Swiss law have not been adopted by the new Turkish Civil Code of 22 November 2001.

D. THE SPOUSE WHO NEEDS SPOUSAL SUPPORT MUST HAVE FALLEN TO POVERTY AS A CONSEQUENCE OF THE DIVORCE

The spouse who needs spousal support must have fallen to poverty as a consequence of the divorce³⁵. If an ex-spouse falls into poverty for any other reason, such as bankruptcy,

²⁸ Where a fault of one party occurs in a reaction to the behavior of the other party, the faults of both parties should not be considered independently of each other. The effect of fault on divorce should be examined. See, Cemal OĞUZ, "Medeni Kanun Madde 174/1 ile 175 Arasındaki Farklar", Gazi Üniversitesi Hukuk Fakültesi Dergisi, Vol: 4, Issue: 1-2 (June-December 2000), published: 2003, p.25, 26.

²⁹ In Art.144 of the former Turkish Civil Code, the party who demanded spousal support had to be faultless in the events that led to divorce.

³⁰ For example, in a divorce case which is based on the mental illness that occurs after marriage, a spousal support can be ruled by the court, even if both parties are faultless (FEYZİOĞLU, p.398; Bülent KÖPRÜLÜ/Selim KANETİ, Aile Hukuku, 2.Ed., İstanbul, Filiz, 1989, p.194; TEKİNAY, p.259, 263; BOZOVALI, p.68; AKINTÜRK/ATEŞ KARAMAN, p.303; ÖZTAN, p.500; KILIÇOĞLU, p.136; YILDIRIM, p.63; CEYLAN, p.110; YÜCEDAĞ, p.518).

³¹ Y.3HD 9.11.2017, 16123/15627 (Kazancı); Y.2HD 22.12.2010, 20658/21699; Y.2HD 19.03.2003 2500/3532 (Kazancı); Y.2HD 02.03.2005, 1312/3100 (GENÇCAN, p.1037); Y.2HD 07.04.2003, 3811/4907 (Kazancı). For the same opinion, see: FEYZİOĞLU, p.398; BOZOVALI, p.68; RUHİ, p.44-45; ÖZTAN, p.499; KÖSEOĞLU/KOCAĞA, p.228; KOCABAŞ, p.370; Mehmet ERDEM, Aile Hukuku, Ankara Seçkin, 2018, p.198; ŞAHİN, p.85.

³² Before the amendment that entered into force in Swiss Law in 2000, the "fault liability" principle was applied in terms and the consequences of divorce. See: GLOOR/SPYCHER, Vor Art.125-130, N.2.

³³ SCHWENZER/BÜCHLER, FamK, Vor Art.3 ff, 5; Urs GLOOR/Annette SPYCHER, in Basler Kommentar, Zivil Gesetzbuch I, Art.1-456 ZGB, 4.Ed., Edit: Heinrich Honsell/Nedim Peter Vogt/Thomas Geiser, Basel, Helbing Lichtenhahn Verlag, Basel, 2010., Art.125, N.1 ff; Heinz Hausheer, "Yeni İsviçre Boşanma Hukukunun Önemli Yenilikleri", (translated by Ali Çivi/Denise Unkan), İsviçre Borçlar Kanunu ve Medeni Kanunu'nun Alınışının 80.Yılı (80 Jahre Schweizerisches ZGB und OR in der Türkei), İstanbul 2007, p.32. According to the Turkish doctrine, the "fault liability" principle should also be abandoned in Turkish Law, likewise in Swiss Law. See, TOSUN, jurix, p.5-6.

³⁴ See section III below.

³⁵ FEYZİOĞLU, p.397; BOZOVALI, p. 69; RUHİ, p.43; ÖZTAN, p.502; ARKAN SERİM, p.290; CEYLAN, p.108; YILDIRIM, p.67; YÜCEDAĞ, p.515; TOSUN, jurix, p.7; UZUN, p.33.

extravagance, or fraud, she/he will not be entitled to claim the spousal support. If there is no danger of falling into poverty, the spousal support cannot be ruled by court³⁶.

Actually, the term "falling into poverty" used in the text of the article 175 of the Turkish Civil Code is not clear enough to explain the conditions of spousal support and is an expression that can lead to confusion³⁷. Falling into poverty is not defined in the text of the article and therefore it is in the discretionary power of the judge to define it. In fact, the poverty term describes that the ex-spouse does not have the opportunity to work after divorce and her/his existing assets and income is unable to make a living of it, or that there is a risk of falling to these adverse circumstances soon³⁸.

According to the Court of Cassation, "those who do not have enough asset or income to the extent that the individual meets the expenditures required and necessary such as eating, dressing, housing, health, transportation, culture should be considered as having fallen into poverty"³⁹. On the other hand, the aim of spousal support is not to maintain the same standard of living during the marriage; on the contrary, the aim is that the spouse has a minimum economic situation to meet the expenditures required and necessary to provide a living after the divorce. Her/his financial condition may not be elevated to the same level as it was before divorce⁴⁰. It is not required that the spouse who claimed spousal support has fallen into a great poverty⁴¹; the average poverty risk to be determined by the general living conditions is sufficient⁴².

In order to claim spousal support after divorce, the claimer should not have the possibility or power to be employed or even if she/he is employed, his /her income must not be enough to make a living. Whether the claimer is expected to work or not is determined by good faith (*bona fides*) principle⁴³. The fact that the claimer is getting income through availability of assets, renting, pension funds, payment from a life insurance etc does not constitute ground for direct refusal of the claim⁴⁴. Instead, it should be examined by the court whether such incomes are

³⁶ FEYZİOĞLU, p.397; BOZOVALI, p.69; ARKAN SERİM, p.290; CEYLAN, p.108; KÖSEOĞLU/KOCAĞAĞA, p.226; YILDIRIM, p.67; GENÇCAN, p.1081; Y.2HD 06.06.2006, 20697/8889 (Kazancı); UZUN, p.34; DEMİR, p.48.

³⁷ In Turkish Civil Code, "poverty alimony" is used to define spousal support. It would be more appropriate to use the term "post-marriage support" or "post-marriage contribution" instead of the term "poverty alimony" in the text of Code. For the same opinion, see: ŞAHİN, p.78.

³⁸ TEKİNAY, p.263; AKINTÜRK/Derya ATEŞ KARAMAN, p. 303; ÖZTAN, p.499, 502-503; OĞUZ, p.27; KOCABAŞ, p.369; KÖSEOĞLU/KOCAĞAĞA, p.225 ff; ARKAN SERİM, p.289-290; YILDIRIM, p.68; YÜCEDAĞ, p.513; ERDEM, p.198-199; TOSUN, jurix, p.7. In Turkish doctrine ŞAHİN defends that spousal support should not be paid for lifelong; it must serve for the purpose of the adaptation of the ex-spouse claiming maintenance to life. See: ŞAHİN, p.85.

³⁹ YHGK 07.10.1998, 2-656/688; YHGK 28.02.2007, 3-84/95; YHGK 16.05.2007, 2-275/275; YHGK 10.11.2010, 2-614/597 (Kazancı).

⁴⁰ BOZOVALI, p.69-70; M. Kemal OĞUZMAN/Mustafa DURAL, Aile Hukuku, 3. Ed., İstanbul, Filiz, 2001, p.146; DURAL/ÖĞÜZ/GÜMÜŞ, N.803; AKINTÜRK/ATEŞ KARAMAN, p.304; ŞAHİN, p.81, 87; OĞUZ, p.27, 33; ARKAN SERİM, p.290, 293; ERDEM, p.201; TOSUN, jurix, p.8; Y.2HD 15.03.2013, 15803/7026 (Kazancı). Look for another view of that the amount of spousal support may increase more than the amount for required minimum living standard of the claimer, if the financial situation of obligor is available: ÖZTAN, p.500. According to ÖZTAN, the obligor should maintain the standard of living before the divorce, when the obligor's financial situation is available. It should be the maximum limit of the spousal support payment (p.501).

⁴¹ Before the amendment of the former Turkish Civil Code in 1988, the person who claimed spousal support had been asked to "fall into a great poverty" condition. It was repealed by the amendment in 1988.

⁴² AKINTÜRK/ATEŞ KARAMAN, p.304; YILDIRIM, p.67.

⁴³ KOCABAŞ, p.372; ERDEM, p.201.

⁴⁴ RUHİ, p.42-43; DURAL/ÖĞÜZ/GÜMÜŞ, N.801; ÖZTAN, p.503; YÜCEDAĞ, p.514; ERDEM, p.198-199; UZUN, p.40 ff, 43 ff; DEMİR, p.50-51; YHGK 07.10.1998, 2-656/688 (Kazancı); YHGK 16.05.2007, 2-275/275 (Kazancı); YHGK 11.03.2009, 2-73/118 (Kazancı); YHGK 25.11.2009, 2-500/557 (Kazancı); Y.2HD 08.09.2005, 27302/15092 (Kazancı); Y.2HD 27.10.2015, 16400/19951 (Kazancı); Y.3HD 18.01.2016, 16747/174 (Kazancı).

sufficient to end poverty or not. According to the Court of Cassation rulings⁴⁵, if a spouse works for a minimum wage, it can play a part in determining the amount of spousal support, but it is not a cause by itself for the refusal of spousal support.

If the spousal support claimer gets a compensation for pecuniary or non-pecuniary damages because of divorce (TCC Art.174), it does not prevent her/him to claim also for spousal support. Likewise, if the spousal support claimer gets her/his share as a result of ending or liquidation of matrimonial property system, it does not also prevent her/him to claim spousal support. However, when the amount of spousal support is being determined, these amounts of compensation or share of the liquidation of matrimonial property shall be taken into account to the extent that they remove poverty⁴⁶.

When ex-spouse has a right to demand maintenance from her/his relatives according to duty of maintenance provisions (TCC Art.364), it does not prevent her/him to claim also spousal support⁴⁷. The maintenance from relatives is secondary to the spousal support; that means in order to be able to claim the maintenance from relatives; the spouse should not be adequately supported by the spousal support.

In the case of an uncontested divorce, the parties may agree on the amount of spousal support. This protocol must be approved by the court in order to be valid (TCC Art.184, sub-section 5). In the separate case, the court takes into consideration the conditions at the date of the divorce case finalized in order to decide on the spousal support.

E. THE SPOUSAL SUPPORT OBLIGOR MUST BE IN AN ECONOMIC SITUATION TO PAY SPOUSAL SUPPORT AND THE AMOUNT MUST BE PROPORTIONAL TO THEIR FINANCIAL SITUATION

The spousal support obligor must be in an economic condition to pay spousal support. The court cannot rule obligor to pay maintenance, in cases where the obligor is in insolvency for example⁴⁸. The amount of spousal support to be ordered by court also must be proportional to the financial power of the spousal support obligor. That means, the court must establish a balance between the needs of the receiving party and the financial status of the paying party⁴⁹. However, the Court of Cassation⁵⁰ says that the spousal support obligor must still be awarded a reasonable amount of payment, even if the financial power of the obligor is weak. The court

⁴⁵ Y.3HD 9.11.2017, 16123/15627 (Kazancı); Y.3HD 18.01.2016, 16747/174 (Kazancı); Y.2HD 19.03.2003 2500/3532 (Kazancı); Y.3HD 20.09.2017, 14390/12295 (Kazancı); YHGK 07.10.1998, 2-656/688 (Kazancı).

⁴⁶ TEKİNAY, p.265; OĞUZMAN/DURAL, p.146-147; RUHİ, p.44; DURAL/ÖĞÜZ/GÜMÜŞ, N.805; ÖZTAN, p.503; AKINTÜRK/ATEŞ KARAMAN, p.304; ARKAN SERİM; p.290-291, 300; YILDIRIM, p.63; ŞAHİN, p.87; UZUN, p.49 ff, 51 ff; YÜCEDAĞ, p.516; ERDEM, p.200; TOSUN, jurix, p.8; UZUN, p.45 ff. Cf. CEYLAN, p.112.

Unless the matrimonial property between the spouses is liquidated, it cannot be determined that the claimer has fallen into poverty: Mustafa Alper GÜMÜŞ, "Türk Hukukunda Yasal Mal Rejimi Olan Edinilmiş Mallara Katılma Rejimi Çerçevesinde Boşanma Davası; İştirak Nafakası; "Maddi Tazminat ve/veya Yoksulluk Nafakası" ve/veya Manevi Tazminat Talepleri ile Mal Rejiminin Tasfiyesi Talebi Arasındaki İlişki", Atatürk Üniversitesi Erzincan Hukuk Fakültesi Dergisi, Vol:IX, Issue:3-4, Erzincan, 2005, p.388-401.

⁴⁷ DURAL/ÖĞÜZ/GÜMÜŞ, N.802; YILDIRIM, p.68-69; ERDEM, p.199-200; Y.2HD 19.02.1990, 10680/1999 (Kazancı).

⁴⁸ YİBK 12.12.1966, 5/11 (RG 12550); Y.2HD 05.04.2005, 3639/5458 (Kazancı); Y.2HD 15.02.1996, 858/1592 (ÖZÜĞÜR, p.447). For the same view, see: DURAL/ÖĞÜZ/GÜMÜŞ, N.803; KOCABAŞ, p.371; ARKAN SERİM, p.292-293; YILDIRIM, p.69; ERDEM, p.201. The Court of Cassation once ruled that spousal support can not be ruled out when the obligor is in military service: Y.2HD 05.03.2013, 19652/5769 (Kazancı). For a decision on the contrary; if the obligor has enough income and assets, the court may rule him to pay spousal support even if he is in the military service, see: Y.2HD 16.05.2011, 7773/8479 (Kazancı).

⁴⁹ FEYZİOĞLU, p.398; BOZOVALI, p.71; RUHİ, p.45; ÖZTAN, p.501; KÖSEOĞLU/KOCAAĞA, p.232; ARBEK, p.147-148; YILDIRIM, p.63; YÜCEDAĞ, p.514; ERDEM, p.201; UZUN, p.64 ff; DEMİR, p.60; YHGK 14.11.2012, 2-529/779 (Kazancı); Y.3HD 13.03.2014, 3096/4000 (Kazancı); Y.3HD 21.10.2002, 11749/12260 (Kazancı); Y.3HD 10.09.2012, 12553/18377 (Kazancı).

⁵⁰ HGK 10.11.2010, 2-614/597 (www.karara.com).

bases this decision on the idea that it will even be harder for the claiming party to take an action again in the future in the case that the financial situation of the obligor deteriorates. I think this decision is not right considering the fact that the upper limit of the spousal support is the financial power of the obligor. It is not right to force the obligor to pay maintenance even if she/he does not have any financial power to pay it.

When the judge is determining the obligor's ability to pay, the economic support that the obligor has to provide (such as to children or to a partner if she or he is subsequently married) should also be taken into account⁵¹.

The court shall fix an amount to be paid periodically by way of maintenance contribution or, may order a lump sum settlement instead of regular payments (TCC Art.176 (1)). In practice courts usually order periodically (monthly) payments. The party entitled to maintenance may request that the payments be adjusted in line with future inflation (TCC Art.176 (5))⁵². If the court orders for periodic payments, in the event of a substantial and enduring change in the circumstances of both parties or if equity necessitates, the periodic maintenance payments⁵³ may be reduced or increased upon the request of one of the parties (TCC Art 176 (4))⁵⁴. The change in circumstances or financial situation must be substantial and enduring⁵⁵.

Although article 176, section 4 of the Turkish Civil Code mentions reducing the amount of maintenance payment, it is not clear in the text of the article whether or not it is possible to cancel the spousal support completely. It should be accepted that it is possible for the judge to be able to completely cancel the spousal support if the financial situations of parties change or equity requires⁵⁶. In Swiss law, in the event of a substantial and enduring change in circumstances, the periodic maintenance payments may be reduced, cancelled or suspended for a certain time (SCC Art.129 / I).

⁵¹ DURAL/ÖĞÜZ/GÜMÜŞ, N.804; ERDEM, p.201.

⁵² Considering the inflation, the court may decide to increase maintenance payment at the rate of IPP, so that it may not be necessary to file a new case to increase the payout of the maintenance.

⁵³ In cases where the court ordered a lump sum settlement instead of regular payments, no action can be taken to increase or decrease the amount of spousal support.

⁵⁴ For example, if the spousal support obligor has a disease that reduces the working power, or if the spousal support creditor finds a job or inherits income or assets, it can reduce the amount of maintenance payment. The reduction in the working power of the maintenance creditor or retirement can be a reason for the increase in the amount of maintenance.

⁵⁵ According to the Court of Cassation, if there is no extraordinary change in circumstances, the court should decide to raise the proportion of spousal support payment only at the rate of PPI, in case the lawsuit is filed for the increase of the amount of maintenance: Y.3HD 27.01.2016, 16493/855 (Kazancı); Y.3HD 01.10.2015, 10787/14775 (Kazancı); Y.3.HD 01.09.2016, 16097/2634 (Kazancı).

According to the Court of Cassation, an extraordinary change in conditions is not sufficient in order to be able to change the amount of maintenance in cases where the spousal support is determined by a protocol in an uncontested divorce. In addition, the change must be unpredictable, because the protocol of the uncontested divorce is subject to the contract law, and the principle is *pacta sunt servanda* in the contract law. For this reason, the conditions for *clausula rebus sic stantibus* and adaptation of contract must exist (TCO Art.138). See Y.3HD 27.06.2016, 6064/10176 (Kazancı); Y.3HD 20.06.2016, 6159/9575 (Kazancı).

⁵⁶ ARKAN SERİM, p.296; YILDIRIM, p.73-74; ERDEM, p.205. Also see and cf. ÖZTAN, p.509.

For repealing the TCC Art.177/IV a case filed at the Constitutional Court because it was contrary to the Constitution on the grounds that TCC Art.177/IV does not allow the abolition of the spousal support by the court. However, the case was rejected by the Constitutional Court, on the grounds that the provision of TCC Art.177/IV should be interpreted together with the TCC Art.175 which regulates the conditions of the spousal support. For this decision, see: Constitutional Court, 25.06.2009, 56/94 (RG-repeating (mükerrer) 26.11.2009, N.27418).

F. THERE MUST NOT BE THE REASONS FOR REFUSAL, EXPIRATION OR CANCELLATION OF SPOUSAL SUPPORT

Pursuant to Art.176 (3) TCC, if the obligation to pay maintenance is decided to be paid in the form of periodic income⁵⁷, this obligation will expire upon the remarriage⁵⁸ of the receiving party or upon the death of either the receiving party or the paying party⁵⁹; the duty to pay maintenance is cancelled by the court order in case that the receiving party lives together with someone else as if they are married without being married⁶⁰, or in case that the poverty has come to an end⁶¹ or in case that the receiving party begins to live a dishonorable life⁶².

On the contrary, in Swiss Law, living together with someone else as if they are married or living a dishonorable life are not considered as reasons for cancellation of the spousal support⁶³. Pursuant to SCC Art.125 (3), *“exceptionally, a maintenance contribution may be denied or reduced if it would clearly be inequitable, particularly because the spouse otherwise entitled to receive such contribution: 1. has grossly neglected his or her duty to contribute to the maintenance of the family; 2. has willfully brought about his or her own indigence; 3. has committed a serious criminal offence against the other spouse or a person close to him or her”*⁶⁴.

⁵⁷ In case where the maintenance is decided by the court to be paid in lump sum, if the obligor dies, the obligation of payment proceeds to its inheritors. However, if the creditor dies before the receivables are collected, her/his heirs inherit the right to claim spousal support, but, according to the doctrine, in this case the repayment of it should be demandable according to the unjust enrichment rules. For this opinion, see: ARKAN SERİM, p.297.

⁵⁸ Under Swiss law, it is possible to make an agreement between ex-spouses on the subject that the maintenance will not end, even if the spousal support receiver subsequently remarried (SCC Art.130 / II). In Turkish law, the former TCC Art.145/III was explicitly permitted in the text of the article to be able to conclude a contract in the sense that the parties could demand spousal support even if the reasons for the abolition of it exist. Whereas in the text of the new TCC Art.176/III does not include a similar provision. However, the text of the new article does not intend to consciously prohibit this possibility. For this reason, it should be also possible in Turkish law to make an agreement between ex-spouses that the maintenance will not end, even if the spousal support receiver subsequently remarried. For the same opinion, according to ARBEK, there is no obstacle to the acceptance of this situation in terms of Turkish Law (p.150).

⁵⁹ Because of the remarriage of the receiving party or the death of either the receiving party or the paying party, the spousal support expires *ipso iure* without a court decision. In Turkish law, there is no provision regarding the requirement that in the event of the death of a spousal support obligee, her/his inheritors inherit the obligation to pay spousal support in proportion to their share of inheritance. In opinion that such a provision should be regulated in the Code: TEKİNAY, p.271; FEYZİOĞLU, p.402; BOZOVALI, p.76; ERDEM, p.207. In cases where spousal support obligor dies, it is not fair and reasonable that the obligor's heirs do not inherit the obligation to pay maintenance when the court ruled maintenance to pay in the form of periodic income; but, on the contrary, the obligor's heirs inherit the obligation when the court ruled payment in lump sum.

⁶⁰ In the background of this provision there is an idea that the situation of living together with someone else as if they are married without being married constitutes abuse of right (TCC Art.2/II).

In Turkish doctrine it is defended that it should be possible for the parties to agree on whether the spousal support will continue to be paid in the case of their living together with someone else as if they are married without being married: See ARBEK, p.150.

⁶¹ However, according to the Court of Cassation, if the financial status of the spousal support receiver is subsequently deteriorated after the court has decided to abolish the maintenance obligation because of the fact that the poverty has ended, the receiver is not allowed to claim the spousal support again (Y.3.HD 22.11.2010, 17488/18838).

⁶² For instance, woman trafficking, committing infamous crimes, etc. (KILIÇOĞLU, p.39; ÖZTAN, p.508).

⁶³ The Swiss Federal Court ruled that demanding spousal support by an ex-spouse living together with someone else as if they are married rather than marrying him/her causes abuse of right which is not protected by law (BGE 109 II 188).

⁶⁴ For details, see: Ingeborg SCHWENZER/ Andrea BÜCHLER, Fam Kommentar, Scheidung Band I: ZGB, Edit: Ingeborg Schwenger, Roland Fankhauser, 3. Ed., Stämpfli Verlag, 2017, Art.125, N.109 ff; Urs GLOOR/Annette SPYCHER, in Basler Kommentar, Zivil Gesetzbuch I, Art.1-456 ZGB, 4.Ed., Edit: Heinrich Honsell/Nedim Peter Vogt/Thomas Geiser, Basel, Helbing Lichtenhahn Verlag, Basel, 2010., Art.125, N.37 ff; Dieter FREIBURGHANUS,

In terms of Turkish Law, according to the Court of Cassation decisions, the spousal support claimer is not entitled to alimony if she/he falls into poverty with her/his own fault. The spouse who chooses not to work by his/her own will or leaves his / her own work despite the fact that he / she has the power and ability to work cannot demand spousal support⁶⁵.

THE CRITERIA FOR SPOUSAL SUPPORT

Pursuant to Art.125/II of SCC, *“In deciding whether such a contribution is to be made and, if so, in what amount and for how long, the following factors in particular⁶⁶ must be considered: 1. the division of duties during the marriage; 2. the duration of the marriage; 3. the standard of living during the marriage; 4. the age and health of the spouses; 5. the income and assets of the spouses; 6. the extent and duration of child care still required of the spouses; 7. the vocational training and career prospects of the spouses and the likely cost of reintegration into working life; 8. expectancy of federal old age and survivor’s insurance benefits and of occupational or other private or state pensions, including the expected proceeds of any division of withdrawal benefits”⁶⁷*. Unlike Art.125/II of SCC, the Turkish Civil Code does not include such detailed criteria for being in poverty. Instead the judge has been given a wide margin of judicial discretion by the Turkish Civil Code. Nevertheless, in time, similar criteria have been shaped and accepted by the jurisdiction of Turkish Court of Cassation⁶⁸. In Swiss Law, these criteria are important and to be considered while determining the following three elements of spousal support: 1- In deciding whether such a contribution is to be made 2- If such a contribution is to be made, in which amount and 3- If such a contribution is to be made, for how long. These criteria have to be considered all together and not separately.

In Turkish Law, it is expected nowadays that some amendments will be made to the spousal support provisions of the Turkish Civil Code. One of these amendments aim at bringing a time limit to the duration of the spousal support payments.

Personen- und Familienrecht - Partnerschaftsgesetz Art. 1-456 ZGB – PartG, CHK - Handkommentar zum Schweizer Privatrecht, Edit: Peter Breitschmid, Alexandra Jungo, 3.Ed., Schulthess 2016, Art.125, N.47 ff.

In opinion that likewise in Swiss law, the faultiness principle in spousal support should be abandoned and a similar provision like SCC Art.175/III should apply also in Turkish law: YÜCEDAĞ, p.518.

⁶⁵ Y.2HD 30.03.2017, 25006/3605 (Kazancı); Y.2HD 10.11.2014, 23048/22220 (Kazancı); Y.2HD 08.05.2013, 330/12951 (Kazancı); Y.2HD 21.01.2008, 3784/348 (GENÇCAN, p.1059).

⁶⁶ These are not numerus clausus; they are especially mentioned herein.

⁶⁷ For details, see: SCHWENZER/BÜCHLER, FamK, Art.125, N.57 ff; GLOOR/SPYCHER, Art.125, N.23 ff; TUOR/SCHNYDER/JUNGO, §24, N.52 ff; FREIBURGHAUS, Art.125, N.3 ff, 33 ff; SCHWANDER, OFK, Art.125, N.7 ff.

⁶⁸ For the same opinion, see: KOCABAŞ, p.375. In the same manner, for example: YHGK 07.10.1998, 2-656/688 (Kazancı); YHGK 16.05.2007, 2-275/275 (Kazancı); YHGK 11.03.2009, 2-73/118 (Kazancı); YHGK 25.11.2009, 2-500/557 (Kazancı); Y.2HD 08.09.2005, 27302/15092 (Kazancı); Y.2HD 27.10.2015, 16400/19951 (Kazancı); Y.3HD 18.01.2016, 16747/174 (Kazancı).

ABBREVIATIONS

- Art. : Article
 BGE : Decisions of the Swiss Federal Supreme Court (Entscheidungen des Schweizerischen Bundesgerichtes)
 BGer : Decisions of the Swiss Federal Supreme Court (Bundesgericht)
 cf. : Confer, compare
 Ed. : Edition
 Edit : Editor
 ff. : Following pages or paragraphs
 GCC : German Civil Code
 HD/YHD: The Civil Chamber of the Turkish Court of Cassation (Yargıtay Hukuk Dairesi)
 Kazancı: Kazancı Databank for Decisions of Court of Cassation (Kazancı İçtihat Bilgi Bankası)
 N. : Paragraph number
 p. : Page
 PPI : Producer Price Index
 RG : Turkish official gazette (Resmi Gazete)
 SCC : Swiss Civil Code
 TCC : Turkish Civil Code
 TCO : Turkish Code of Obligations
 Vol. : Volume
 Y : Turkish Court of Cassation (Yargıtay)
 YHGK : The General Assembly of Civil Chambers at the Turkish Court of Cassation (Yargıtay Hukuk Genel Kurulu)
 YİBK : The Principle Decision of General Assembly of Joint Chambers at the Turkish Court of Cassation (Yargıtay İçtihadı Birleştirme Kararı)
 § : Paragraph (article) number

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