

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

**FINLAND**

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**A. GENERAL**

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

Divorce is governed by the Marriage Act of 13 June 1929 as amended by the Act of 16 April 1987/411 (Sections 25 – 31). The amended rules entered into force on 1 January 1988.

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

The original divorce rules codified in the Marriage Act of 1929 before they were amended by the Act of 1987/411 were largely the result of a lengthy gradual development by means of legislative measures, administrative decrees as well as by judicial and administrative practices. The divorce system consisted of various, partly incoherent elements derived from the doctrines of Roman Catholic Canon Law and Lutheran doctrines on marriage and divorce. The rules were mainly based upon the principle of fault (adultery, venereal disease, domestic violence, alcoholism or drug abuse and criminal convictions) but they also adopted the principle of the irretrievable breakdown of the marriage where a divorce could be obtained after a de facto separation of at least two years if the separation had been caused by the breakdown of marriage.

The principle of divorce by mutual consent was adopted in 1948 when the Marriage Act was revised by adding new provisions on judicial separation to the existing divorce rules. Under these rules each spouse was entitled to obtain a divorce if they had been de facto separated for

a period of at least one year after a judicial separation granted by a court. An application for a judicial separation could be made jointly by the spouses 'if they considered' that they could not continue their marital life together due to the permanent disruption of their personal relations. No evidence was required to satisfy the court that an irretrievable breakdown had occurred, a joint written statement in the application to the effect that the spouses 'considered' that their marriage had broken down was in itself sufficient.

- The present divorce rules adopted in 1987 were the result of lengthy preparatory work in several committees and working groups. All in all, the preparation of the new legislation took almost 17 years although the final Government Bill was drafted in exceptionally quickly, taking less than a year.<sup>1</sup> The new legislation brought a radical change to the existing divorce rules. The main principles of the new divorce law may be summed up as follows:
- The elimination of the concepts of fault, matrimonial offence, disreputable conduct as well as the irretrievable breakdown of the marriage or consent to the divorce from the provisions concerning the conditions for and the consequences of divorce.
- The introduction of the principle of *divorce on demand* pure and simple: the spouses or one of the spouses may apply for a divorce by means of a simple written application to the court stating that the applicants or, respectively, the applicant wishes to obtain a divorce and after the expiry of a period of reflection and consideration of at least six months the divorce shall be granted upon a renewed application by the spouses or by one of the spouses.

The elimination of all well-meant, but in practice inefficient 'marriage saving arrangements' such as mandatory reconciliation or mediation procedures or provisions providing the court with the power to refuse to grant a divorce by applying various kinds of 'hardship clauses'.

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

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<sup>1</sup> Government Bill 62/1986.

The divorce system enacted by the Act of 1987 has been widely accepted and acclaimed as an excellent, humane, smooth-running and inexpensive procedure which duly respects the privacy of the parties involved. This opinion has been shared not only by judges and attorneys (advocates) but also in particular by the spouses applying for a divorce. No serious proposals, official or unofficial, aiming to amend the present divorce law have been made and it cannot be envisaged that any significant substantive changes will be made in the foreseeable future. In particular, the adoption of a more restrictive divorce system seems to be politically out of the question.

## **B. GROUNDS FOR DIVORCE**

### **I. General**

#### *4. What are the grounds for divorce?*

As explained above, within the main system of divorce rules under the Marriage Act there are no 'grounds' for divorce whatsoever. The only 'ground' for divorce is simply a request for a divorce by means of a written application by both spouses or by one of them and which shall be renewed after the expiry of the mandatory six months' period for reflection and consideration.

However, the Marriage Act does contain one specific 'ground' for divorce. If the spouses have de facto lived apart for a period of at least two years, each spouse is entitled to apply for an immediate divorce without the mandatory six-month period which would otherwise be applicable. In these cases the reasons for the separation are irrelevant. In particular, it should be noted that it is not required that the separation has been caused by a breakdown of the marriage and the court is not even allowed to investigate or question the possible reasons for the separation.

Concerning the required evidence of the factual separation, according to the prevailing judicial practice witnesses need not appear before the court to testify that the required separation has taken place. The court is usually satisfied with an assurance by the applicants that they have been living apart if there are no reasons to doubt the truthfulness of

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their statements. As a consequence, even these cases are usually decided upon in chambers.

In addition, it should be noted that the provisions of the Marriage Act on the *ex nunc* annulment (in German: *Aufhebung*) of a marriage which has been concluded despite the existence of a mandatory impediment to the marriage (*impedimenta dirimentia*) have been repealed and replaced by rules under which such marriage will be dissolved by *divorce* which, if necessary, shall be applied by a public prosecutor. Such a divorce shall be pronounced in cases of bigamy and when the spouses are within the prohibited degrees of consanguinity.

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

Since our present law does not contain any 'bases' or 'grounds' for divorce in the traditional sense of that term and since the factual reasons for the divorce cannot be investigated by the courts, or even mentioned in official judicial documents, there are no systematic and continuous statistics on the grounds for divorce or on what particular facts or events have resulted in the divorce or the disruption of the relationships between the spouses.

In a recent study the National Research Institute of Legal Policy has described some characteristic features of current divorce proceedings in the year 2000 in the practice of the City Court of Helsinki, the largest court of first instance in Finland.<sup>2</sup> According to that study the Court granted 1,875 divorces in total. Of these cases, 10% were granted on the basis of two years separation while the remainder, i.e. 90%, were granted after the expiry of the six-month period of reflection and consideration. There were no cases from that period where a divorce ('annulment divorce') had been granted on the grounds of bigamy or prohibited blood relationships. These figures are considered to be representative of the whole country.

6. *How frequently are divorce applications refused?*

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<sup>2</sup> Helsinki 2001: 55.

Under the current Finnish divorce system there are in fact no possibilities to reject a request for divorce on substantive grounds: a divorce will always be granted if the spouses or one of them so requests.

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

Divorce is always granted in judicial proceedings by a court of law.

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

Jurisdiction in divorce proceedings is vested in the court of first instance.

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?)*

Divorce proceedings are initiated by lodging a written application to the court of first instance. The application shall be signed by both spouses or by one of them. Otherwise there is no specific form to be followed. The main requirement is that the application contains a statement to the effect that a divorce is requested and that it is duly signed.

In most cases (70 – 80%) the application is made by completing a simple printed form made available (free of charge) by the courts. The applicants do not have to be represented by a lawyer. According to the Helsinki study,<sup>3</sup> in 91% of all cases the applications had been written and submitted to the court by the parties themselves without the assistance of a lawyer. The application to the court may also be sent by post, by fax or by e-mail.

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

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<sup>3</sup> Helsinki 2001: 55.

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A decree of divorce granted by the court of first instance becomes final after the expiry of a 7-day period after the decree was granted and no appeal has been lodged.

*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.*

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

The Finnish divorce system does not contain any traditional principles applicable to divorces, such as the principle of fault or matrimonial offence (in particular adultery, family violence or desertion), divorce by consent or the principle of the irretrievable breakdown of the marriage. In order to clarify the basic principles of the new Finnish divorce law the following questionnaire questions 14 to 24 will be answered by indicating that Finnish law is indeed not at all based upon the breakdown principle or upon the principle of matrimonial fault and that under our law it is completely irrelevant whether one of the spouses consents to or opposes the divorce.

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

Irretrievable breakdown of the marriage is not a condition for granting a divorce. As a matter of fact, the spouses may still apply for a divorce while declaring that they are deeply attached to each other and wish to continue to live together but simply want the formal, legal link of the marriage to be dissolved by the court.

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

Under Finnish law there is no provision room for any kind of fault principle, which has been completely and fully eliminated from the conditions for divorce as well as from the consequences of divorce (e.g. maintenance after divorce, the division of matrimonial property or custody of the children).

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

There are no rules under which a marriage must have been of a certain duration before a divorce can be granted. Newly-wed spouses or one of them may apply for a divorce even immediately after the celebration of the marriage.

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/she does not? Are there other exceptions?*

Separation is not a condition for granting a divorce. As explained above the spouses are entitled to obtain a divorce even if they live together in common household and have declared to the court that they intend to live together as husband and wife even after obtaining the divorce.

Finnish law has carefully avoided adopting a system under which a divorce could be more easily obtained or in simplified procedures if the spouse of the applicant consents to the divorce. Such a system would in some cases provide a strong bargaining chip to a spouse against the other spouse who wishes to divorce as quickly as possible, e.g. in order to conclude a new marriage ('I might give my consent to a divorce provided that I'll get the house and children').

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

According to Section 25, paragraph 2 of the Marriage Act (1987/411) each spouse shall be entitled to obtain a divorce without the mandatory six-month period of reflection and consideration which should otherwise be applicable if they have *de facto* lived separately in different homes for a continuous period of at least two years. It is completely irrelevant whether the separation was caused by a disruption of the personal relationships between the spouses or, for example, because of employment abroad or professional or any other practical reasons (studies, illness etc.).<sup>4</sup>

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<sup>4</sup> See also Question 5.

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

(a) Which circumstances suspend the term of separation?

See Question 15.

(b) Does the separation need to be intentional?

See Question 15.

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

See Question 15.

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

There are no mandatory reconciliation, conciliation or mediation procedures or information meetings connected with divorce proceedings. However, the voluntary costfree mediation services are always available at any stage of the divorce proceedings, i.e. before the divorce application has been lodged, during the proceedings as well as after the divorce has been granted. Where mediation is successful, the consequences of divorce, such as maintenance for the children and the division of matrimonial property may be settled by an enforceable out of court agreement between the spouses.

*18. Is a period for reflection and consideration required?*

According to the main rule the mandatory six-month period of reflection and consideration is required before a divorce can be granted. This requirement applies even when the spouses agree to the divorce, there are no contested ancillary questions and even where the spouses have no minor children.

*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?*

It is not required that the parties have reached an agreement on the consequences of divorce.

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

See Question 19.

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?*

A divorce application cannot be rejected or postponed on any of the grounds mentioned in this question.

## **C. SPOUSAL MAINTENANCE AFTER DIVORCE**

### **I. General**

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

Maintenance of spouses after divorce is governed by the Marriage Act of 1929. These rules (Sections 46 – 51) were also amended by the Act of 16 April 1987/411 referred to above.

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

The rules of the original Marriage Act of 1929 concerning the maintenance of spouses were revised by the Act of 16 April 1987/411.<sup>5</sup> In essence, these amendments were almost entirely of a technical nature: the original rules were simplified and streamlined without attempting to make any significant substantive changes to the existing law. The assessment of the effects and the functioning of these revised rules concerning maintenance for a divorced spouse is difficult, if not even impossible, for one simple reason: in Finnish judicial and extra-

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<sup>5</sup> See also the answer to Question 55.

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judicial practice (out of court maintenance agreements) maintenance claims by a former spouse after divorce have virtually ceased to exist.

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

The provisions on spousal maintenance after divorce have become obsolete and are not applied in practice. There have been no proposals to revise or even to repeal these rules.<sup>6</sup>

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

Yes. See also the answers to Questions 21 (Boek I – ABC) and 57.

*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?*

Yes. When considering a request for maintenance the court will take into account the actual financial situation of the spouses as well as the financial situation after the division of matrimonial property has taken place. The final and binding division of the matrimonial property may take place immediately after the divorce application has been lodged, e.g. during the period of reflection and consideration, before the final divorce decree has been issued. The flexible matrimonial property system which even allows for unfair and unreasonable marriage contracts to be set aside does indeed fulfil the functions of support in such a way that there is necessarily no need to order maintenance to be paid in addition to property obtained in the sharing of matrimonial property (the so-called 'clean break' principle). According to these equitable sharing of matrimonial property rules, the division of the matrimonial property which, according to the main rule, will take place following the principle of an equal share of all the assets, may be 'adjusted' where such an equal share would otherwise lead to an unfair result.

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<sup>6</sup> See also the answer to Question 56.

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

The financial situation of both parties shall be taken fully into account when considering maintenance after divorce. This naturally includes all economic interests and benefits, salaries, pensions, benefits derived from insurance including health insurance unemployment benefits, any social security benefits, etc. On the other hand, it should be noted that our matrimonial property system does not contain any rules under which accrued pension rights may be shared between the spouses after divorce as a kind of 'new property' ('the splitting of pensions').

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 compensation may be claimed in addition to maintenance and spousal maintenance cannot function as compensation.

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 after divorce.

63. *Are the divorced spouses obliged to provide information to each 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?*

There is no specific obligation on the part of the spouses to provide information as to their income or assets.

## **II. Conditions under which maintenance is paid**

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*

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

According to Section 48, §1 of the Marriage Act when the spouses have been granted a divorce, the court may order a spouse to pay maintenance to the other spouse if the latter is considered to be in need of maintenance and if this is deemed to be reasonable taking into account the spouses' ability to pay maintenance and other relevant circumstances.

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

The behaviour or 'conduct' of the spouse who requests maintenance is not taken into account.

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)?*

The fact that one of the spouses has, for example, given up his or her employment and/or is not able to find a job can be taken into account.

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

The need for maintenance has to exist at the time when the maintenance claim is considered by the court.

### **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 for a limited (transitional) period or for an indeterminate period of time (to be paid periodically). In the latter case the maintenance obligation may indeed continue until the death of the maintenance creditor.

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 maintenance will be determined according to the essential needs of the claimant.

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?*

Determining the amount of maintenance is entirely at the court's discretion. There are no rules of thumb or mathematical formulae or percentages to be applied.

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?)*

All normal, reasonable costs of living which may include costs for medical treatment may be claimed.

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

There is no maximum limit for maintenance.

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

The court may order that periodical maintenance payments shall cease or be automatically reduced after the expiry of a certain time.

74. *In which way is the maintenance to be paid (periodical payments? payment in kind? lump sum?)?*

Maintenance is normally ordered to be paid periodically, but in exceptional cases the maintenance may be ordered to be paid in the form of a lump sum payment if this is deemed to be reasonable.

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75. *Is the lump sum prescribed by law, can it be imposed by a court order or may the claimant or the debtor opt for such a payment?*

Payment in the form of a lumpsum may only be ordered if so requested by the claimant or voluntarily agreed by the spouses.<sup>7</sup>

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

Yes, there is an automatic indexation of maintenance.<sup>8</sup>

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

A maintenance order under which maintenance is to be paid in periodical payments may be varied if this is required by a change of circumstances.

#### **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 distinct from other generally applicable rules concerning the recovery of maintenance or the enforcement of maintenance orders.

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?*

The increased income, or more generally the improved overall financial situation of the debtor after the separation or divorce, may be taken into account when considering the maintenance order or the variation of an existing maintenance order.

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<sup>7</sup> See also Question 74.

<sup>8</sup> Act of 16.12.1966/660.

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

The debts of the maintenance debtor, whether incurred during the marriage or, for example, after the maintenance order was granted shall be taken into account when assessing the debtor's ability to pay maintenance.

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?*

Only the legal maintenance obligations of the debtor are taken into account. Under Finnish law there is no maintenance obligation towards a stepchild.

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

Yes. If deemed to be reasonable a debtor may be required to use capital assets, e.g. when maintenance is ordered to be paid in the form of a lumpsum payment.

83. *Can a 'fictional' income be taken into account where the debtor is refusing possible and reasonable gainful employment or where he or she has deliberately given up such employment?*

No.

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?*

The debtor may be required to use even his or her social security payments for paying maintenance. However, there are no specific systems under which maintenance payments could be directly recovered from the social security payments of the debtor.

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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?*

No.

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

86. *In what way will the claimant's own income reduce his or her 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, from employment which goes beyond what is reasonably expected?*

Any income or benefit is taken into account when considering whether the claimant is in need of maintenance.

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 claimant is expected to seek employment before claiming maintenance.

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

Yes, to an extent which is deemed to be reasonable.

89. *When calculating the claimant's income and assets, to what extent are the maintenance obligations of the claimant in relation to third persons (e.g. children from an earlier marriage) taken into account?*

All obligations and liabilities, including maintenance obligations, are taken into account.

90. *Are there social security benefits (e.g. income support, pensions) the claimant receives which exclude his or her need according to the legal rules and/or court practice? Where does the divorced spouse's duty to maintain rank in relation to the possibility for the claimant to seek social security benefits?*

In principle, all the benefits to which the claimant is entitled are taken into account. If the social security benefits of the claimant are deemed to be sufficient to meet his or her reasonable needs, there will be no need for maintenance from a former spouse.

#### **VI. Questions of priority of maintenance claims**

91. *How is the relationship of between maintenance claims determined? Are there rules on the priority of claims?*

Under Finnish law the only maintenance obligations are the maintenance obligation of the parents towards their children and the mutual maintenance obligation between the spouses. There are no explicit priority rules applicable to competing maintenance claims.

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, but when a maintenance order has been made the order will remain in force even after the new marriage or partnership unless this is varied by the court.

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?*

In practice it is not conceivable that the maintenance claim of a former spouse would set aside the maintenance claim of a child of the debtor, even in a case where the child is not also the child of the maintenance creditor.

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

See Question 93.

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

There are no maintenance obligations other than those indicated in Question 91.

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?*

See Question 95

## **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?*

Yes. The maintenance claim is automatically extinguished in both cases and it cannot be revived.

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?*

No.

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

In principle no, but the court would most probably consider that the granting of maintenance in those circumstances is not reasonable.

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 ground for divorce?*

No.

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

Yes.

**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.

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

Yes, but such an agreement may be deemed not to be binding upon the spouse in need of maintenance if this is considered to be unfair.

*104. Is there a prescribed form for such agreements?*

Spouses may enter into an agreement as to maintenance after divorce and if made in writing and approved by the local Social Board, the agreement is enforceable as a court order.

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

See Question 104.