

Conclusions of the summary report on the courts' jurisprudence in cases related to maintenance of relatives

1) In former years (including the years preceding the entry into force of the new Civil Code) the number of petitions for review filed with the Curia of Hungary against judgments related to child maintenance (which make up 40 % of all family law cases) has significantly increased and child maintenance has become an area of law where the parties to the lawsuits first turned to the Curia for guidance on the application (interpretation) of the provisions of the new Civil Code under which their cases were to be determined.

In preparing for its examination, the jurisprudence-analysing working group started from the fact of public knowledge that after the collapse of socialism in Hungary, due to the social and economic changes that have occurred in the country, in the absence of agreement between the parties the adjudication of maintenance cases has become rather difficult, because due to the appearance of new, formerly unknown forms of work relationships and the increase of the number of enterprises and self-employed persons revenues and assets can be more easily hidden and actual real income can only be established, with a view to awarding a child maintenance amount meeting a child's needs, in complex evidence-taking proceedings.

These facts of public knowledge were supported by the results of the analysis which covered 600 first instance or second instance child maintenance judgments obtained from county level courts and analysed according to aspects identified as crucial for the examination of evidence-related questions arising in child maintenance cases.

2) Based on the received questionnaire replies and the personal experience of the evaluating judge members of the working group, the following major conclusions have been made in the summary report:

In "three-actor" child maintenance cases the courts' basic task is to establish the child's justified needs and to determine the ability of the parents (primarily, of the parent obliged to pay child maintenance) to support the child, and to establish on the basis of these findings a child maintenance while paying due regard to the equitable interests of all parties but regarding the child's best interest as primary consideration.

The child's justified needs may not be limited to basic needs (food, clothing, etc.) and complementary needs (related to studies or sports) but should be treated as including support by appropriate means to all activities (use of computer, internet, mobile phone) that promote the child's balanced and harmonic development. Basic needs can be regarded as being of "public knowledge", therefore the majority of the courts do not conduct (detailed) evidence-taking in respect of such needs.

As to evidence-taking, the most complex and work-consuming task is the establishment of the obligor's payment ability. Payment ability is affected to the greatest extent by the constantly changing social and economic relations and the changes in national and regional employment possibilities.

In approximately 60 % of the examined cases the courts having determined the legal dispute reached the conclusion that the submitted income data reflected actual real income. In the remaining percentage of the cases the determination of the parent's actual real income could only be determined in lengthy evidence-taking proceedings.

3) The jurisprudence-analysing working group has made the following proposals:

- To avoid superfluous evidence-taking on issues of public knowledge, it is advisable to determine within the scope of the child's justified needs (which presupposes an optimal situation) the child's self-evident basic needs which parents under all conditions must fulfil. The monthly amount covering such needs was determined by the jurisprudence-analysing working group (for the year 2018) as 25 000,- HUF.
- In close relation with the above, a minimum child maintenance amount needs to be determined. This amount is payable by the obligor, because of his/her obligation existing toward his/her child, under all conditions save for a few exceptions (e.g. prisoners having very low income). This amount should be adjusted to the obligor's income of public knowledge, that is, the amount which the obligor has (or must have). This monthly amount was determined by the jurisprudence-analysing working group as 15 000,- HUF.