

LEGAL UPDATE

Period of spousal maintenance reduced from twelve to five years?

Date: 19 June 2018

On 19 June 2015, a private member's bill to revise the spousal maintenance Act was submitted to the Dutch House of Representatives. This bill included a change in the basis for spousal maintenance payments (loss of earning capacity), a reduction of the duration of the maintenance payments, a simplification of the calculation method and the possibility of excluding spousal maintenance in case of a prenuptial agreement. This proposal received a lot of criticism, also from the Council of State, and little more was heard about for a long time.

On 11 June 2018, three members of the House, Van Oosten (VVD), Kuiken (PvdA) and Groothuizen (D66) presented a simplification of the previously proposed bill, in which only the reduction of the duration of the maintenance payments has been retained. They want to reduce the period of the maintenance payments from a maximum of twelve years to a maximum of five years. If the bill is adopted, the revised Section 1:157 of the Dutch Civil Code will include the provision that if the court has not set a period, the maintenance obligation will end by operation of law after the expiry of a period equal to half the duration of the marriage, subject to a maximum of five years. There are two exceptions to this basic rule:

1. In case a long marriage, in which the person entitled to maintenance is not more than ten years younger than the state pension age, the spousal maintenance can last for a maximum of ten years (until the state pension age is reached);
2. If young children are cared for, the maximum period of the maintenance payments will remain twelve years.

The maintenance obligation can end only when the youngest child is older than twelve years.

According to the House members who submitted the bill, these changes address the criticisms that were voiced, including by the Council of State, and respond to a broad public opinion that the duration of the maintenance payments should be reduced.

The basis for spousal maintenance remains the same as it is now (solidarity between former spouses). The current calculation method is not revised and the possibility to exclude spousal maintenance in case of a prenuptial agreement is no longer included in the bill.

Now it remains to be seen whether there is sufficient support in the House of Representatives to adopt the bill.

We will keep you informed about the developments.

This is a Legal Update from Stephanie Thijssen.

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