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CHILD ALLOWANCE

1. Definition and Content:

Child allowance is a payment which made on a monthly basis by parent who does not have a parental custody privilege (in principle) to the other parent who have the custody, in the cost of food, accommodation, clothing, health, education and transportation.

2. Temporary Alimony – Child Allowance Difference:

According to article 182/II of the Turkish Civil Code; the spouse, that is not given the privilege of custody, has to participate the nurturing and education expenses of the child, as much as he/she can. While the divorce proceeding continues between the spouses, the alimony which given to the party who has the custody for the child's needs is the temporary alimony. With the finalization of the divorce, the alimony will turn into "child allowance".

3. Judge's Discretionary Power in Determining the Maintenance Payment:

The judge has to take care the superior interests of the child while determining the child allowance. Therefore, unless explicitly waived, the judge should be able to rule for the child allowance even if it is not requested by the plaintiff. Protection of the child is a matter of public order. If need be, the judge has to protect the child even from his parents. Therefore, the judge should appraise the requested child allowance. The judge is not limited or bound by with the parties' requests, while using his discretionary power. If the income of the mother or the father and the needs of the child are determined correctly, the judge can rule a higher allowance than the requested amount since the allowance, originally, is established solely for the child. However, the opinion adopted by the Supreme Court and the one we have mentioned above in the doctrine conflict with each other. The Supreme Court regarded the reason for disqualification of the judge's request for the determination of the child allowance, and continues to consider the lawsuits related to the child allowance as a private law lawsuit, not a public order. Therefore, the person who demands the child allowance, should consider this situation while making a request to prevent the loss of child's rights.

4. Lawsuits Related to Child Allowance:

In all types of lawsuit that we will mention below, the amount of the child allowance shall be determined considering; the child's age, needs, educational status and the economic situation of the allowance creditor and debtor. The economic conditions of the allowance creditor and debtor affect his/her participation rate in the child's livelihood needs.

4.1. Demanding child allowance together with divorce lawsuit:

The spouse who holds the right of custody may demand sharing the expenses of the child from the other spouse by the pending divorce lawsuit. During the divorce proceeding, the temporary alimony shall be determined in order that the party who is not holding the custody shares the expenses of the child. With the finalization of the divorce lawsuit, the alimony appreciated for the child shall be the child allowance. As it is explained under article 3 above, although the child allowance is considered as a matter of public law, any verdict by the court surpassing the initial allowance claim by the plaintiff is not accepted by the Supreme Court. Therefore, claimed amount should be determined by considering the child's right, while demanding a child allowance. On the other hand, during the proceedings of the divorce lawsuit while determining the custody rights, the judge may appreciate an allowance for the child's benefit ex-officio, if the plaintiff have not demanded any allowance for the child in his/her initial claim.

4.2. Demanding child allowance severally:

If the party who has the custody of the child has not claimed any child allowance during the divorce proceeding, such party may always demand child allowance by filing a separate law suit for that matter. There is no statute of limitation for initiating such law suit. Even though any allowance has not been requested during the divorce lawsuit or even if it was explicitly waived from requesting an alimony, the party who is holding the custody of the child has the right to request child allowance at any time. In child allowance lawsuits which are filed after the divorce lawsuit, the child allowance must be separately and explicitly requested. Otherwise, the judge shall not appreciate the child allowance ex officio.

5. Request for Increase or Decrease in the Current Child Allowance:

In this lawsuit, there is a child allowance determined by the court in favor of the child, but the alimony creditor or the debtor request for an increase or decrease in the amount of the allowance from the court. In order to increase or decrease the amount of the child allowance, the court shall ascertain whether there is a change in the child's needs/expenses and whether there is a change in the income of the alimony creditor/debtor and after these criteria are evaluated, a decision shall be adopted by the judge's discretion.

6. Creditors and Debtors of the Child Allowance:

The creditors of the child allowance is the person who has the custody and/or the person who is caring the child. If it is determined that the child should be taken under guardianship instead of the custody, the creditor shall be the guardian of the child appointed by the court. In lawsuits where child allowance is requested, the plaintiff can be the mother, father, grandmother, grandfather, guardian or child him/herself who has the capacity to discernment. The debtors of the child allowance is the parent who has not holding the custody of the child i.e. mother, father or the bankruptcy administration.

7. Competent Court for Child Allowance Lawsuits:

Since the child allowance lawsuit is a family law issue, the Family Courts are the competent court to proceed with such lawsuits. In areas where no family court is established the Civil Court of First Instance are the competent courts. As the jurisdiction is related to public order, the judge shall consider ex officio whether he/she is competent or not, when the lawsuit is filed.

8. Authorized Court in Child Allowance Lawsuits:

If the child allowance is requested by a divorce lawsuit, such lawsuit shall be held by the court which is authorized to proceed with the divorce lawsuit. As a rule, authority power of the court is not considered as a public order matter and therefore the court shall only evaluate authority objections if only an objection is filed by the defendant party.

However, if the child allowance is requested by a separate lawsuit (not with the divorce lawsuit) the authorized court are: the court where the plaintiff is residing , where child is residing, or where defendant is residing.

9. Legal and Counsel's Fee on the Child Allowance Lawsuit:

If the child allowance is requested together with the divorce lawsuit, it is no longer subject to any legal or attorney fees because of the fact that the allowance payment is considered to be a secondary nature (fer'i nitelik) of the divorce.

If the child allowance is requested by an independent lawsuit (not with the divorce lawsuit), the child allowance lawsuit shall be subject to a proportional fee (nisbi harç). The proportional fee must be calculated on the basis of the 12-month value of the child allowance pro rata to the fees declared by the Council of Ministers every year.

The attorney's fees on the other hand shall be calculated based on the annual amount of the child allowance and based on the minimum attorneyship fee tariff which is announced annually. If the lawsuit rejected wholly by the court, the attorney fee should be ordered for the benefit of the defendant in accordance with the minimum attorneyship fee tariff. If the lawsuit is partially accepted and partially rejected by the court, the attorney's fee shall not be applicable for the rejected part in accordance with the Attorneyship Fee Tariff article 9/II on behalf of the defendant.