

Gökçe

# The Resolution

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## DETERMINATION OF THE DURATION OF THE ALIMONY



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In order to prevent spouses from being deprived of financial support after their divorce and therefore falling into poverty, an alimony has been envisaged in many legal systems. Whereas child support is stipulated in order for the non-custodial spouse to support the care of the child after the divorce, an alimony unlike the child support, aims to prevent one of the spouses from falling into poverty due to lack of financial support.

Under Turkish law, an alimony may be awarded provided that the party who falls into poverty is not at fault. On the other hand, the alimony is regardless of whether the party who is obliged to pay is at fault or not. Therefore, it does not constitute a punishment and is considered as the result of marriage union. The nature and duration of alimony is one of the many years of debate in Turkish law.

Previously, under Turkish law, an alimony would only be requested up to one year after the date of divorce, but by nature of the amendments of the Turkish Civil Code in 1988, it became possible to be claimed indefinitely. In 2012, an application was filed before the Constitutional Court for the annulment of the relevant article based on the ground that the alimony for an indefinite period is contrary to the principle of equality and therefore, the Constitution. The Constitutional Court rejected the application, ruling that the alimony for an indefinite period is not unconstitutional.

In the event that the alimony is ruled for an indefinite period, such decision can be revoked under the following cases; (i) death of one of the parties, (ii) marriage of the alimony creditor or (iii) court order regarding the termination of an alimony. In case the alimony creditor has a defacto marriage or the alimony creditor's state of poverty ends, it is possible to revoke the alimony ruled by the court. However, the problem is that alimony creditors tend to refrain themselves from remarrying in order to continue to receive alimony. This results in de facto marriages which are not lawful and recognized under Turkish law. Such reasons make it difficult for alimony debtors to revoke alimony which is ruled for an definite period and put them under life-long alimony obligation. As matter of fact, the concern is that, the balance of interest between the alimony creditor and debtor could not be provided, if the alimony debtor was obliged to pay alimony for many years despite the duration of the marriage being very short. For these reasons, it has been on the agenda once again to rule alimony for a definite period under Turkish law.

Working on this issue is continuing with the Alimony Workshop organized by the Ministry of Justice and the Ministry of Labour, Social Services and Family. Local courts and the Supreme Court have also recently ruled on reformist decisions in relation to this issue. For instance, Ankara 5th Family Court ruled the alimony for 2 years considering that the divorced couple is young and alimony creditor may work in the future. The possibility of the Ministry of Justice legalizing alimony with a definite period and thus, encountering similar reformist rulings by the courts are increasing day by day.

While the Supreme Court was reversing the decisions concerning the alimony for a definite period ruled by the local courts in its previous precedents, it is seen that it has recently changed its view and makes decisions stating that alimony for a definite period may be ruled. However, current discussions on this issue are unlikely to end in the near future. Therefore, there is a need for work to be done by the Supreme Court and the Ministry of Justice in order to settle the disagreements. Yet, it is difficult for the local courts to decide on this issue and the rendered decisions are not parallel with each other. Consequently, the work of the Alimony Workshop conducted by the Ministry of Justice and the Ministry of Labour, Social Services and Family should be closely monitored and the alimony for an indefinite period should be prevented considering the spouses may work in the future.

# Answers. Not theories.

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