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## Grondslagen van partneralimentatie

Spalter, N.D.

2013

### **document version**

Publisher's PDF, also known as Version of record

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### **citation for published version (APA)**

Spalter, N. D. (2013). *Grondslagen van partneralimentatie*. [, Vrije Universiteit Amsterdam]. BOOM.

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## SUMMARY

### *Grounds of maintenance between former spouses*

Since the law governing maintenance between former spouses was brought into force in the Netherlands in 1971, partner maintenance remains a subject of ongoing discussion. In recent years this debate has intensified to a level where currently several political parties have launched various initiatives to amend existing maintenance law. The main concerns regarding the current law have to do with the fact that the entitlement to maintenance effectively removes or reduces the drive for economic independence of the ex-spouse. Furthermore, there is criticism that the duration of maintenance being too long and the amount of maintenance being too high. Strikingly, an important aspect entirely missing in this debate is the question *why per se* ex-spouses are legally bound to financially support individuals from whom they have separated. This basic question of justification – or grounds – of maintenance between former spouses forms the subject of this PhD thesis. The central idea of the thesis is that there exist two schools of thought regarding maintenance grounds: the *continuing solidarity* and the *marriage-related diminishing of earning capacity*. In brief, the first ground is no more than mere solidarity between the (ex)-spouses created by marriage, while the second ground has to do with the sacrifices made by the dependent spouse for the sake of the marriage. The latter is mostly the case when during the marriage an unequal distribution of economic power exists in the couple, producing a clear dichotomy between wage earner and domestic carer, performing unpaid household work.

The main research question of this thesis is in which way and to what extent could the maintenance law be improved by making a clear distinction between the cases based on the grounds of *continuous solidarity* or *marriage-related reduction of earning capacity*. In order to answer this question three hypotheses are tested in this study. The first hypothesis is that the current maintenance law rests on the two afore-mentioned grounds. The second hypothesis is that in the Netherlands no clear distinction is presently made between these two grounds and that such a lack of distinction leads to certain problems. The third hypothesis suggests that social acceptance of the maintenance law in the Netherlands is currently low, but the level of acceptance may increase once the law makes clear distinction between the two grounds.

In the first part of the thesis, the grounds of maintenance between former spouses under the Dutch law are investigated. Chapter one deals with the current rules of maintenance law and recent legislative proposals made by various political parties. This chapter addresses the question whether or not the current rules make distinction between the two grounds and the related problems are thereafter analyzed. Chapter two gives a historical overview of diverse opinions on the justification of maintenance between former spouses put forward in Dutch legislative history, case law and legal literature. These

two chapters indicate that the justification of maintenance is presently sought in continuing solidarity and the marriage-related reduction of earning capacity. However, in the Netherlands, no clear distinction between those grounds has been made. As a result, the parties involved entirely fail to appreciate why they are entitled to receive or are obliged to pay maintenance. It also appears that the application of maintenance law without making a clear distinction between grounds leads to problems with justification of attribution, amount, duration, and termination of maintenance in case of remarriage or entering into marriage-like relationship by the dependent ex-spouse (article 1:160 Dutch Civil Code).

Chapter 3 scrutinises which elements of maintenance law allow for the determination of the appropriate ground of maintenance in each particular case. The conclusion of this chapter is that the main test for determining a maintenance ground is the question whether or not there is a causal relationship between the marriage and the financially disadvantage position of the dependent spouse. If the answer to this question is 'yes', the maintenance obligation is based on the marriage-related reduction of earning capacity. If no causal relationship is established and the dependence results from other personal or societal courses (e.g. illness or unemployment) the ground of maintenance will be the continuing solidarity. This chapter allows the conclusion to be drawn that distinguishing between the two grounds is practically possible and contributes to resolving the indicated problems.

In the second part of the thesis, the issue of social acceptance of the Dutch maintenance law is scrutinised in light of the discussion surrounding the maintenance grounds. Chapter 4 contains the theoretical research. Thereby, various classic anthropological, sociological and legal-philosophical theories are employed in order to clarify why a distinction between the two maintenance grounds can influence the social acceptance of maintenance between former spouses. In this chapter it is submitted that the two maintenance grounds are rooted in two different archetypal forms of solidarity. The marriage-related reduction in earning capacity is rooted in instrumental solidarity and the continuous solidarity is rooted in affective solidarity. It is further defended that the instrumental solidarity is better linked to the western notion of justice than affective solidarity that is based on mere benevolence. In chapter three, this theory is tested with the help of quantitative research: a questionnaire enquiry conducted upon representative sample of the Dutch population (N=1031). The views of the population regarding maintenance were tested using this empirical study and one of the major findings was that post-divorce partner maintenance in the Netherlands still enjoys considerable social support. From the information obtained, it also appeared plausible that social acceptance of the maintenance between former spouses would increase if the rules on process of maintenance attribution, duration and amount would incorporate the distinction between the two maintenance grounds.

The third part of this thesis entails comparative study of the role of the maintenance grounds in the 'Principles of European Family Law Regarding

Maintenance between Former Spouses' of the Commission on European Family Law, and Belgian and German law. The main purpose of this study is to find out whether in these jurisdictions the distinction between grounds of maintenance has contributed to finding adequate remedies for the problems indicated in the Netherlands.

The final part of this thesis contains the main conclusions and the 23 suggestions for improving the Dutch partner maintenance law; indicating how the legal rules may be improved by making a clear distinction between the two maintenance grounds. Along with a few general suggestions, specific suggestions are offered regarding the attribution of partner maintenance, amount, duration and termination of maintenance according to article 1:160 CC.