Divorce: Childcare - Financial compensation - 20/06/06
Rancagua, June 20, 2006.

The judgement under appeal is replicated, with the following modifications: Recitals 12 and 14 ° to 16° are removed. And for their replacement the following shall be taken into account:

1) That the compensation demanded as a counterclaim corresponds to a Marriage Law Institution introduced by Law Nº19.947; and is intended to compensate the spouse who is devoted to the care of children or to the ordinary household tasks for the economic impairment suffered as a result of not engaging in any job or other profitable activity or to compensate them for having done so to a lesser extent (Article 61). Thus, it is not true - as it was held by the previous judge - that such compensation has a welfare nature or that is a sort of assistance, but evidently the objective of the legislator was to set an institution with a purely compensatory intent. In this regards, the indigence and the dignity factors shall not be taken into account, but those set out in Article 62 of the Act, which are: a) duration of the marriage and of the life together; b) balance sheets of both; c) good or bad faith; d) age and health status of the recipient spouse; e) situation of the recipient spouse in interim profit and health; f) professional qualifications and chances of accessing the labor market; and g) collaboration in the employment of the other spouse. It is not opposed to such requirements to take into account other considerations or other equally useful criteria, provided that those criteria do not interfere with the stated objective, as for example: degree of commitment in the romantic relationship (for example a marriage where there is no bond or affection between the spouses or where such bond has been practically reduced to its minimum, introduces damage regarding marriage longevity), the age and the state of health of the other spouse, the economic and purchasing powers (which is not the same as taking into account its economic situation), economic performance during coexistence, and separation preceding the divorce,etc.

2) The previous judge contested the validity of the compensation, claiming that the fiscal impairment was not duly proved, because during the term of the marriage in question the spouse would have been able to study a technical career and have their own income which would have helped cover their expenses. However, the study of a minor technical career and to procure certain economic contributions through them, do not contest the essential factual circumstances referring to the profit because it is not disputed that the woman was devoted mainly and effectively to the care of the children (who, in this case were not even common with her husband) and that had prevented, at least at some point, to engage full time in the development of a lucrative activity, which would have allowed her to look more peacefully to a sustainable future.

3) Taking the above mentioned into account, it now is important to determine if thecompensation is in accordance to the criteria referred to in Article 62 of the Marriage Law. To this effect, it is not discussed (i) that the actual duration of marriage reached 16 years; (ii) that the counterclaim plaintiff maintained for its latency and subsequently a clear and deep commitment, as it can be derived from the dedication revealed in the care of the children of his spouse; (iii) that the counterclaim defendant has been able to meet seamlessly alimony of $ 139,234(Fs.39); (iv) that the woman is suffering from colon cancer. A powerful element of judgment in the case *sub lite* is the age of the woman at the time of the dissolution of the marriage, 61 years old, which obviously would hinder access to female labor market. Naturally, the age, health and economic difficulties of the main applicant also prevent to grant compensation as originally was requested.

4) Accordingly, taking into account all the factors previously mentioned, this Court considers that the compensation should be made on a regular basis payable in a sum of money that implies that the non-payment of one of the installments will grant the right to claim for the total chargeable, which is made in lump sum and total of 993.6UF (equivalent to the date of this judgment to $ 18,023,218), which may be borne in180 equal monthly installments of UF 5.52 ($ 100,128.9 this data), as of the month following the date on which the judgment is final. And also taking into account the provisions of Articles 170, 186 and 187 of the Code of Civil Procedure, this Court declares:

REPEALS original ruling dated on March 20, 2006, written fs. 59-66, specifically in the part which denied counterclaim for financial compensation, which, however, is SUSTAINED which is made in lump sum and total of 993.6UF (equivalent to the date of this judgment to $ 18,023,218), which may be borne in180 equal monthly installments of UF 5.52 ($ 100,128.9 this data), as of the month following the date on which the judgment is final. Failure to pay any of the fees will allow the charge of the total indicated as due and payable; and in that case also accrued interest.

On the other, the judgment is APPROVED. Roll 529-2006.