# Divorce and legal separation

Content provided by:

European Judicial Network (in civil and commercial matters)

## Croatia

## 1 What are the conditions for obtaining a divorce?

In order for the court to issue a decision on divorce, appropriate court proceedings for divorce (civil or non-contentious) must be initiated by the authorised person or persons (*locus standi*), pursuant to the provisions of Articles 50, 369 and 453 of the Family Act (*Obiteljski zakon*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia) Nos 103/15, 98/19, 47/20, 49/23 and 156/2023). If the spouses have a minor child in common, the petition for divorce by mutual consent must be accompanied by the appropriate supporting documents (report on mandatory counselling and joint parental care plan – Article 55 in conjunction with Article 456 of the Family Act). Similar regulations apply when the spouses have a minor child in common and just one of the spouses files an action for divorce (report on mandatory counselling – Article 57 in conjunction with Article 379 of the Family Act).

Therefore, prior to filing a joint petition for divorce by mutual consent or to one of the spouses filing an action for divorce, spouses who have minor children in common are required to submit a request for mandatory counselling to the regional office of the Croatian Institute for Social Work (*Hrvatski zavod za socijalni rad*) with territorial competence for the place where the child has their permanent or temporary address, or for the place where the spouses last had their shared permanent or temporary address (Articles 321, 322 and 323 of the Family Act).

## 2 What are the grounds for divorce?

The conditions for divorce are governed by the provisions of Article 51 of the Family Act. Pursuant to the aforementioned legal provisions, the court will dissolve a marriage if: 1. both spouses petition for divorce by mutual consent; 2. it finds that there has been a serious and irretrievable breakdown in marital relations; or 3. 1 year has passed since the dissolution of the marital union.

## 3 What are the legal consequences of a divorce as regards:

### 3.1 the personal relations between the spouses (e.g. the surname)

One legal consequence of the dissolution of the marriage is the cessation of the personal rights and duties of the spouses (Articles 30–33 of the Family Act). The Family Act expressly provides that in the event of the dissolution of the marriage (by annulment or divorce), each of the former spouses may keep the surname they had upon dissolution of the marriage (Article 48 of the Family Act).

### 3.2 the division of  property of the spouses

Before the dissolution of marital property (by agreement or by judicial termination – in non-contentious proceedings), the most commonly occurring issue is that of differentiating rights and objects that are part of the matrimonial property from rights and objects that are the individual assets of one or the other spouse (differentiating the three sets of assets). These issues are resolved in civil proceedings on the basis of the

appropriate provisions of the Family Act (Articles 34–39 and 43–46), if the spouses were unable to reach a property settlement agreement (marriage contract – Articles 40–42 of the Family Act), with the alternative application of the Act on Ownership and Other Real Rights (*Zakon o vlasništvu i drugim stvarnim pravima*), the Civil Obligations Act (*Zakon o obveznim odnosima*), the Land Registration Act (*Zakon o zemljišnim knjigama*), the Companies Act (*Zakon o trgovačkim društvima*), the Enforcement Act (*Ovršni zakon*) and the Civil Procedure Act (*Zakon o parničnom postupku*) (Articles 38, 45 and 346 of the Family Act).

### 3.3 the minor children of the spouses

The legal consequences of the dissolution of a marriage that apply to minor children include several important matters: which parent the child will live with after the marriage has been dissolved; maintaining a personal relationship with the parent with whom the child will not be living; child maintenance; and the way in which the remaining areas of parental care will be organised (such as representation of the child, conclusion of legal affairs, management and disposal of the child's assets, and the child's education and health). The spouses may reach an agreement regarding these legal consequences of divorce (joint parental care plan) and thus initiate simpler and faster non-contentious divorce proceedings (Articles 52, 54–55, 106 and 453–460 of the Family Act). If the spouses do not draw up a joint parental care plan that contains an agreement on the above-mentioned legal consequences of the divorce, those matters will be automatically decided on by the court in civil divorce proceedings initiated by filing an action (Articles 53–54, 56–57 and 413 of the Family Act). Nevertheless, the parents may reach an agreement on the legal consequences of the divorce during the civil divorce proceedings. In that case, the court will decide on the basis of the parents' agreement, if it considers that the agreement is in the child's best interest (Article 104(3) in conjunction with Article 420 of the Family Act).

### 3.4 the obligation to pay maintenance to the other spouse?

The Family Act provides for the possibility of a spouse requesting maintenance before conclusion of the divorce trial. If no maintenance request was submitted during the divorce trial, a former spouse may file an action to request maintenance within 6 months of dissolution of the marriage if the legal conditions for maintenance were met upon conclusion of the main hearing in the divorce trial and continued to be met up to the conclusion of the main hearing in the maintenance trial (Articles 295–301 and 423–432 of the Family Act). The legal conditions for maintenance are that the spouse submitting the request for maintenance does not have sufficient means to support themselves or is unable to obtain such means from their assets, and is unfit for work or unable to find employment, provided that the spouse against whom the request has been submitted has sufficient means and ability to fulfil such an obligation (Article 295 of the Family Act). Maintenance is determined for a fixed period of time. Article 298 of the Family Act states that the spouse's maintenance obligation may last for up to 1 year, depending on the duration of the marriage and on the possibility for the claimant to secure a livelihood in another way in the foreseeable future. The Family Act also regulates the arrangements for fulfilling the maintenance obligation. Pursuant to Article 296 of the Family Act, maintenance for spouses is determined as a regular monthly sum paid in advance. However, it is possible that the court, at the request of one or both spouses, orders payment as a one-off sum, depending on the circumstances of the case. In accordance with Article 302 of the Family Act, spouses may also conclude a maintenance agreement in the event of divorce (Articles 302 and 470–473 of the Family Act).

## 4 What does the legal term "legal separation" mean in practical terms?

There is no term equivalent to 'legal separation' (*zakonska rastava*) in Croatian family law. An analogous term for 'legal separation' found in current legislation would be 'dissolution of a marital union' (*prestanak bračne zajednice*). 'Dissolution of a marital union' occurs if the spouses terminate all mutual relations that otherwise characterise conjugal life, i.e. if they no longer wish to live as spouses and to maintain their union. 'Dissolution of a marital union' is a term under marital law since, pursuant to Article 51 of the Family Act, one of the legal grounds for dissolution of a marriage is that more than 1 year has passed since dissolution of the marital union. 'Dissolution of a marital union' also has a specific meaning with regard to property settlement between the spouses since, pursuant to Article 36 of the Family Act, property acquired by the spouses by means of work over the duration of the marital union (as opposed to the marriage), or which is derived from such property, is deemed to be matrimonial property.

## 5 What are the conditions for legal separation?

There is no term equivalent to ‘legal separation’ (*zakonska rastava*) in Croatian family law. An analogous term for ‘legal separation’ found in current legislation would be ‘dissolution of a marital union’ (*prestanak bračne zajednice*). The Family Act does not lay down conditions for the ‘dissolution of a marital union’, since marital union is a legal standard and represents the content of conjugal life. The dissolution of a marital union ensues if the spouses terminate all mutual relations that otherwise characterise conjugal life, i.e. if they no longer wish to live as a married couple and to maintain their union (e.g. they cease to communicate). The dissolution of a marital union is most commonly manifested in practice by one of the spouses leaving the family home and the other spouse.

## 6 What are the legal consequences of legal separation?

There is no term equivalent to ‘legal separation’ (*zakonska rastava*) in Croatian family law. An analogous term for ‘legal separation’ found in current legislation would be ‘dissolution of a marital union’ (*prestanak bračne zajednice*). ‘Dissolution of a marital union’ is a term under marital law since, pursuant to Article 51 of the Family Act, one of the legal grounds for dissolution of a marriage is that more than 1 year has passed since dissolution of the marital union. ‘Dissolution of a marital union’ also has a specific meaning with regard to property settlement between the spouses since, pursuant to Article 36 of the Family Act, property acquired by the spouses by means of work over the duration of the marital union (as opposed to the marriage), or which is derived from such property, is deemed to be matrimonial property. The logic behind such provisions is that the duration of the marital union does not have to coincide with the duration of the marriage, especially when the marriage ends in divorce. As a rule, the dissolution of the marital union occurs before divorce proceedings are initiated. Divorce proceedings may therefore last beyond the ‘dissolution of a marital union’, and usually do so (especially if legal remedies are invoked in the proceedings).

## 7 What does the term “marriage annulment” mean in practice?

In Croatian family law, the term *poništaj braka*, rather than *poništenje braka*, is used to mean ‘marriage annulment’. ‘Marriage annulment’ is one of the grounds for dissolution of a marriage (Article 47 of the Family Act) and constitutes one of three marital disputes regulated by the Croatian legal system (Article 369 of the Family Act). ‘Marriage annulment’ represents a family-law sanction where a marriage was entered into contrary to the provisions on the validity of the marriage (Articles 25–29 of the Family Act). It is implemented in civil proceedings initiated by filing an action (Article 369 of the Family Act). The provisions on ‘marriage annulment’ apply where a marriage is not valid (Articles 29, 49 and 369–378 of the Family Act).

## 8 What are the conditions for marriage annulment?

In Croatian family law, the term *poništaj braka*, rather than *poništenje braka*, is used to mean ‘marriage annulment’. A marriage is invalid if it was entered into contrary to the provisions of Articles 25–28 of the Family Act, i.e. if it was entered into by underage persons, persons who are unable to reason, persons deprived of the legal capacity to make statements regarding their personal situation, or persons who are blood relatives or in an adoptive relationship, or if the bride or groom are in a previous marriage or life partnership. The provisions on ‘marriage annulment’ will apply to such a marriage (Article 29 of the Family Act).

## 9 What are the legal consequences of marriage annulment?

In Croatian family law, the term *poništaj braka*, rather than *poništenje braka*, is used to mean ‘marriage annulment’. The legal consequences of ‘marriage annulment’ are regulated in the same manner as those of dissolution of marriage by divorce (see the answer to question 3).

## 10 Are there alternative non-judicial means for solving issues relating to the divorce without going to court?

In the Croatian legal system, divorce is regulated as judicial proceedings, and there is no possibility of non-judicial divorce proceedings. Nevertheless, one of the fundamental principles of family law, which is particularly

highlighted in divorce proceedings, is the consensual resolution of family relationships, which is the task of all bodies providing professional support for families or deciding on family relationships (Article 9 of the Family Act). Family law therefore provides for two types of non-judicial proceedings, the objective of which includes the consensual resolution of divorce-related matters: mandatory counselling (Articles 321–330 of the Family Act) and family mediation (Articles 331–344 of the Family Act). Mandatory counselling is undertaken by a team of experts from the regional office of the Croatian Institute for Social Work (*Hrvatski zavod za socijalni rad*) and constitutes a form of support for family members (e.g. spouses intending to initiate divorce proceedings who have a minor child in common) to reach consensual decisions on family relationships, taking particular care to protect the family relationships involving the child. This includes drawing up a joint parental care plan, which is an agreement on the legal consequences of divorce and must lay down in detail: the place and address of the child's residence; the time the child will spend with each of the parents; how information will be shared regarding consent for decisions that affect the child; how important information about the child is to be shared; the amount of maintenance as an obligation of the parent with whom the child does not live; and how future issues are to be resolved. The consensual decisions must also cover the legal consequences of failing to reach an agreement and initiating court proceedings to decide on the child's personal rights. Family mediation is a process in which the parties attempt to resolve family disputes consensually with the support of one or more family mediators. The main purpose of the process is to draw up a joint parental care plan and other agreements connected to the child, and on all other issues of a material and non-material nature.

## 11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

Spouses without a minor child can initiate court proceedings by either of them filing an action for divorce or by both of them filing a petition for divorce by mutual consent (Article 50 of the Family Act). In either case, the non-judicial proceedings of mandatory counselling – a form of professional support for family members to reach consensual decisions on family relationships, provided by a team of experts from the regional office of the Croatian Institute for Social Work (*Hrvatski zavod za socijalni rad*) – are not implemented (Articles 321–322 of the Family Act), and the spouses enter into (civil or non-contentious) judicial divorce proceedings immediately, which is relatively straightforward and fast. The above also applies to court proceedings for marriage annulment where the spouses do not have a minor child in common.

Spouses with a minor child can initiate court proceedings by either of them filing an action for divorce or by both of them filing a petition for divorce by mutual consent (Article 50 of the Family Act). However, before initiating divorce proceedings (by filing an action or a petition for divorce by mutual consent) where there is a minor child in common, the spouses are required to take part in non-judicial mandatory counselling. This is a form of professional support for family members to reach consensual decisions on family relationships, provided by a team of experts from the regional office of the Croatian Institute for Social Work (*Hrvatski zavod za socijalni rad*) with territorial competence for the place where the child has their permanent or temporary address, or for the place where the spouses last had their shared permanent or temporary address (Articles 321–322 of the Family Act). The purpose of this regulation is to provide spouses with professional support, including on drawing up a joint parental care plan, which is an agreement on the legal consequences of divorce and must lay down in detail: the place and address of the child's residence; the time the child will spend with each of the parents; how information will be shared regarding consent for decisions that affect the child; how important information about the child will be shared; the amount of maintenance as an obligation of the parent with whom the child does not live; and how future issues will be resolved. Parents may draw up a joint parental care plan during mandatory counselling, or draw it up by themselves or during family mediation (a non-judicial process in which the spouses attempt to resolve disputes arising from family relationships consensually with the support of one or more family mediators – Article 331 of the Family Act). By drawing up a joint parental care plan, the spouses can opt for simpler and faster non-contentious divorce proceedings, which are initiated by filing a petition (Articles 52, 54–55, 106 and 453–460 of the Family Act). Spouses with a minor child in common are required to attach the report on mandatory counselling referred to in Article 324 of the Family Act and the joint parental care plan referred to in Article 106 of the Family Act to their petition for divorce by mutual consent (Article 456 of the Family Act).

If the spouses do not draw up a joint parental care plan that contains an agreement on the above-mentioned legal consequences of the divorce, those matters will be automatically decided on by the court in civil divorce

proceedings initiated by filing an action (Articles 53–54, 56–57 and 413 of the Family Act). If the spouses have a minor child in common, they must enclose the report on mandatory counselling referred to in Article 324 of the Family Act with their action for divorce.

## 12 Can I obtain legal aid to cover the costs of the procedure?

In the Croatian legal system, matters relating to legal aid and the possibility of exemption from payment of the costs of court proceedings and court fees are regulated by the Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*) (NN Nos 143/2013 and 98/2019). A party may qualify for primary legal aid in all proceedings, including marital disputes and other family-law proceedings, provided that it meets the legal requirements (Articles 9–11 of the Legal Aid Act). A party may qualify for secondary legal aid in family-law proceedings and in other proceedings laid down by law, provided that it meets the legal requirements (Articles 12–25 of the Legal Aid Act). The matter of obtaining an exemption from payment of the costs of court proceedings for specific proceedings, including family-law proceedings, is regulated by Article 13(3) of the Legal Aid Act. Particular emphasis should be paid to the provisions: (a) regulating the provision of secondary legal aid without determining the financial situation of the person in question (Article 15 of the Legal Aid Act); (b) regulating the procedure for obtaining secondary legal aid (Articles 16–18 of the Legal Aid Act); (c) regulating the scope of provision of secondary legal aid (Article 19 of the Legal Aid Act), and (d) regulating procedural matters and other matters that are relevant for obtaining legal aid (Articles 20–25 of the Legal Aid Act). At the same time, attention is drawn to Articles 10 and 11 of the Court Fees Act (*Zakon o sudskim pristojbama*) (NN Nos 74/95, 57/96, 137/02, (26/03), 125/11, 112/12, 157/13, 110/15, 118/18 and 51/23) with regard to parties that are always exempt from the payment of court fees.

## 13 Is it possible to appeal against a decision relating to divorce/legal separation/marriage annulment?

It is possible to appeal a decision relating to divorce or marriage annulment. Both parties have this right during proceedings. The Family Act does not explicitly regulate appeals in marital disputes. Rather, the provisions of Article 346 provide for the alternative application of the provisions of the Civil Procedure Act (*Zakon o parničnom postupku*) (NN Nos 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, 80/22, 114/22 and 155/23).

Article 348 of the Civil Procedure Act regulates appeals against a judgment, while Article 378 regulates appeals against a decision. As for legal remedies, the Family Act provides that a judicial review is not permissible against second-instance judgments handed down in a marital dispute (Article 373 of the Family Act).

## 14 What should I do to have a decision on divorce/legal separation/marriage annulment issued by a court in another Member State recognized in this Member State?

Pursuant to Article 30 of Regulation (EU) 2019/1111, such a decision is recognised in Croatia without the need for any specific procedure.

Moreover, no specific procedure is required to update the civil-status records of a Member State on the basis of a decision relating to divorce, legal separation or marriage annulment handed down in another Member State, against which no further appeal lies under the law of that Member State.

## 15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?

Applications for recognition or non-recognition of a decision (Article 21(3) of the Brussels IIa Regulation) must be submitted to the municipal court (*općinski sud*) with local jurisdiction. In that case, the procedure under Section 2 of Chapter III of the Brussels IIa Regulation applies.

The legal remedy, i.e. an appeal under Article 33 of the Brussels IIa Regulation, is submitted to a second-instance court (county court (*županijski sud*)) via the first-instance court that handed down the decision (the municipal court under the above-mentioned list).

## 16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?

If the spouses have chosen the applicable law for the divorce, one of the following laws will be applicable: the law of the country where both spouses have their habitual residence when the applicable law is chosen; the law of the country where they had their last joint habitual residence if one of them still has their habitual residence in that country; the law of the country of which at least one of them is a national when the applicable law is chosen; Croatian law (Article 36 of the International Private Law Act (*Zakon o međunarodnom privatnom pravu*), NN Nos 101/17 and 67/23). If the spouses did not choose the applicable law in accordance with Article 36 of the International Private Law Act, one of the following laws will be applicable for the divorce: 1. the law of the country where both spouses have their habitual residence when the divorce proceedings are initiated; 2. the law of the country where they had their last joint habitual residence if one of them still has their habitual residence in that country; 3. the law of the country of which they are nationals when the divorce proceedings are initiated; 4. Croatian law.



Last update: 08/10/2024