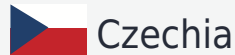


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Divorce and legal separation



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(in civil and commercial
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1 What are the conditions for obtaining a divorce?

The court decides to grant a divorce on the basis of a petition filed by one of the spouses. During the proceedings, the court will determine whether or not there are grounds for divorce, i.e. whether the marriage has broken down and the reasons for this breakdown.

A marriage is automatically considered to have broken down if it lasted for at least one year, the spouses have not been living together for at least six months and the other spouse joins the petition for divorce. The court does not ascertain the reasons for the breakdown but will grant the divorce if it concludes that identical statements by the spouses concerning the breakdown and their intention to obtain a divorce are true and the spouses submit:

- a final court decision approving the agreement on custody and visitation rights for a minor child who has not acquired full legal capacity for the period following the divorce;
- a written agreement with officially verified signatures settling financial matters and rights and duties from their common residence as well as any maintenance duty for the period following the divorce.

If the spouses have a minor child, the divorce will not be granted if special reasons dictate that it is against the interests of the child (e.g. physical or mental disability). The divorce will not be granted until there is a final court ruling on custody and visitation rights for the minor child during the period following the divorce.

If the spouse who was not primarily responsible for the breakdown of the marriage through violation of matrimonial obligations disagrees with the petition for divorce and would be seriously harmed by the divorce, the court will reject the petition for divorce if extraordinary circumstances indicate that the marriage should be preserved. However, if the spouses have not been living together for at least three years, the court will dissolve the marriage if it has broken down.

2 What are the grounds for divorce?

The grounds for divorce are a deep, permanent and irretrievable breakdown of the marriage, where the spouses cannot be expected to be able to live together again.

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

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

A spouse who has adopted the surname of the other spouse may notify the registry within six months of the divorce decision becoming final that he/she wishes to revert to his/her previous surname or that he/she will no longer append the other spouse's surname to his/her original surname.

3.2 the division of property of the spouses

Joint property of spouses ceases to be held jointly on their divorce.

If the joint property is liquidated or destroyed or reduced in size, the former common obligations and rights are dissolved through a settlement. The settlement agreement must be in writing if it was concluded during the marriage or if the subject of the settlement is something for which the ownership transfer contract also requires agreement in writing. Should the spouses fail to agree on a settlement for their common property, the court will carry out a settlement of the common property at the request of one of the spouses. When settling common property, the court starts from the assumption that the spouses have equal shares in the assets constituting their joint property. Each spouse is entitled to request repayment of their contribution to the joint property and is required to repay anything paid out of the joint property for his or her exclusive assets. During the settlement, the primary focus is on the needs of dependent children, the way in which each of the spouses cared for the family (particularly how they cared for the children and the family home), and their contribution to the acquisition and maintenance of the value of the assets constituting their joint property.

If within three years of the divorce no settlement agreement is concluded or no petition for its settlement by court ruling has been filed, tangible movable assets are deemed to belong to the person who uses them as an owner exclusively for his or her own needs, the needs of his or her family or the needs of his or her household. Other tangible movable assets and immovable assets are deemed to be co-owned with each co-owner having an equal share; the same also applies to other property rights, receivables and debts.

3.3 the minor children of the spouses

Prior to granting a divorce to the parents of a minor child who has not acquired full legal capacity, the court will lay down the rights and responsibilities of the spouses concerning the child for the period following the divorce. In particular, the court will designate the spouse who will have custody of the child and the manner in which each of the parents will contribute to the child's maintenance.

3.4 the obligation to pay maintenance to the other spouse?

A divorced spouse has a duty to maintain the other divorced spouse who is not capable of supporting himself or herself where this inability has its origin in the marriage or is related to it. In determining maintenance, account is taken in particular of age, the state of health at the time of the divorce, and termination of custody of the children of the marriage. If the couple fail to reach agreement on the amount of the maintenance, the court will decide on the basis of a proposal by one of the spouses. This maintenance can be paid in a lump sum or in instalments.

Should the spouses or divorced couple fail to agree on maintenance, the court may award maintenance based on a proposal from the spouse who was not the primary cause of the breakdown of the marriage and who suffered serious damage as a result of the divorce, but for no longer than three years after the divorce.

The right to maintenance ceases if the entitled spouse remarries or enters into a registered partnership.

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

Legal separation does not exist in the Czech Republic.

5 What are the conditions for legal separation?

See question 4.

6 What are the legal consequences of legal separation?

See question 4.

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

The court will annul a marriage even without a petition, if it was concluded with a man or woman who was already married, with a person who had previously entered into a registered partnership or other similar union abroad, if that marriage, partnership or other similar union still exists; or between an ascendant and a descendent, between siblings or between people related through adoption.

The court will annul a marriage on a petition by one of the spouses whose consent to enter into the marriage was obtained under duress consisting in the use of violence or threats of violence or whose consent to enter into the marriage only resulted from an error concerning the identity of the intended spouse or the nature of the nuptial negotiations. The petition must be filed within one year from the earliest day on which the spouse was able to do so in view of the circumstances, or on which he/she learnt of the true situation. The court will annul a marriage on a petition by someone who has a legitimate interest therein if the marriage was concluded despite the presence of a legal obstacle (e.g. being underage or, incapacity to undertake legal acts; this does not apply in the case of restricted legal capacity).

The marriage is void if, in the case of at least one of the persons aiming to enter into the marriage, the conditions that must be unreservedly met were not complied with in their consent to the marriage or in the marriage ceremony or in connection with it.

8 What are the conditions for marriage annulment?

See question 7.

9 What are the legal consequences of marriage annulment?

A marriage that is annulled by a court is considered never to have been concluded from the very beginning (*ex tunc*). However, until such time as the court declares it to be void, it is regarded as valid. The same provisions govern the rights and responsibilities of the spouses concerning their children and their property after a marriage has been annulled as in the case of a divorce. A marriage annulment means that any declaration made by the alleged spouses concerning their surname also becomes void. Both spouses subsequently return to their original surnames and have no right to choose their surnames. After the annulment of a marriage the surnames of any children remain unchanged. The presumption of fatherhood remains with the mother's spouse even after the marriage has been annulled.

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

There are various counselling services for family, marital and interpersonal relationships. Another option is mediation. Further details are available on the website of the Association of Mediators of the Czech Republic and the Association of Marriage and Family Advisors of the Czech Republic – see the links below. However, the dissolution of marriage by divorce may only occur on the basis of a final decree nisi handed down by a court.

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?

An application to commence divorce proceedings and an application to commence annulment proceedings are filed at the district court for the district in which the couple had its last common residence in the Czech Republic, provided at least one of the spouses is resident in the district where the court has jurisdiction. Should this court not exist, the general court of the spouse who did not file the petition to commence proceedings has jurisdiction, and if there is no such court, then jurisdiction lies with the general court of the spouse who did file the petition to commence proceedings. The general court of a natural person is the district court for the district in which this person has his/her residence, and if he/she does not have a residence, the district in which he/she is staying. Residence means the place in which a person resides with the intention of staying there permanently (there may

also be several such places, so all these courts may count as the general court). For further details refer to information on court jurisdiction.

The petition must be made in writing, it must show clearly which court it is intended for and who is filing it, as well as clearly stating the parties (the whole name, surname, birth number or date of birth, address of permanent residence or postal address) and the marriage to which it refers (when the marriage was entered into and the circumstances, development and causes of its breakdown). The petition must be signed and dated. In the case of a petition where both spouses have agreed on the divorce, it must contain the signatures of both spouses. The facts alleged in the petition should be supported by documentary evidence.

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

In general, the parties are not entitled to compensation for the costs of the divorce proceedings, the annulment of a marriage or a ruling on whether the marriage is void or not. The court may award compensation for these costs or part thereof should the circumstances of the case or the situation of the parties justify so doing. On application, the chairman of the court senate may grant a party full or partial exemption from the court costs, providing this is justified by the situation of the party and provided this does not involve the arbitrary or clearly futile application or obstruction of a right. If necessary to protect the interests of a party to the proceedings, the party may also apply to the court to appoint legal counsel (a barrister). The court may also appoint legal counsel prior to the commencement of proceedings, but the party must fulfil the conditions for exemption from court fees. The party must provide the court with evidence of his/her social situation, income and.

Assuming that the requirements set out in the Act on Attorneys are met, an application may also be made to the Czech Bar Association to provide the legal services of a legal counsel free of charge or for a reduced fee.

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

An appeal may be filed against a decision to grant a divorce or annul a marriage within fifteen days of receipt of the written copy of the court decision. The appeal is submitted in writing to the court against which the appeal is being filed. If a corrective decision is issued with regard to the original decision, the deadline begins again from the date on which the corrective decision comes into legal effect. An appeal is also considered to have been filed in time even if it arrives after the fifteen-day deadline, where the appellant acted on incorrect instructions from the court regarding the appeal. An appeal is not admissible if a joint application for divorce was granted.

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?

Unless the decision issued in another EU Member State (apart from Denmark) falls within the temporal scope of Council Regulation (EC) No. 2201/2003 (Brussels II bis), the decision will be recognised without any special procedure. The Registry Office will simply take account of the decision and make an additional record in the appropriate register automatically on submission of the required documents, i.e. the final decision of a court in another EU Member State or a certified copy thereof, concerning a divorce, legal separation or annulment of the marriage with an official translation into Czech and the certificate referred to in Article 39 of the Brussels II bis Regulation (or Article 33 of Brussels II bis). The courts that decided on the divorce, legal separation or annulment of the marriage will issue a certificate at the request of a party to the proceedings. The requirement to submit this certificate may be waived if all the facts that would otherwise be contained in the certificate can be found in the decision itself, or in other documents submitted (e.g. if the decision submitted is endorsed as being final).

However, the interested party may apply to the competent district court for a decision that the judgment be or not be recognised, for example if there is a need to clarify whether the marriage exists or not (Article 21(3) of the Brussels II bis Regulation). In that case however, this only concerns the right of the interested party and is not an obligation; this type of court decision is not required for a normal entry in the register.

If the decision was issued in another EU Member State prior to 1 May 2004 and at least one of the parties to the

proceedings is a citizen of the Czech Republic, decisions on marital matters are recognised on the basis of a special decision of the Supreme Court of the Czech Republic. Foreign decisions, endorsed as being final, or other documents required (e.g. marriage certificate) are submitted to the Supreme Court of the Czech Republic with an official translation into Czech and provided with the appropriate higher authentication (superlegalisation, apostille), unless otherwise laid down in an international treaty. Further details on these proceedings can be found on the website of the Supreme Court of the Czech Republic – see link below.

Certain bilateral agreements on legal aid, binding on the Czech Republic (these are agreements with Slovakia, Hungary and Poland), contain provisions recognising judgments on matters other than proprietary matters issued by the authorities of the other party (which also include decisions on divorce/legal separation/annulment), which are recognised in the Czech Republic without a special procedure and are merely taken into account by the Registry Office. In these cases, the Registry Office makes an additional entry in the register after submission of a foreign judgment endorsed as being final, with an official translation into Czech and provided with the appropriate higher authentication (superlegalisation, apostille), unless otherwise laid down in an international treaty. The procedure set out above obviously only applies in cases where the decision was issued prior to 1 May 2004. Otherwise the procedure set out in the Brussels II bis Regulation applies– see above.

The Czech Republic is a signatory to the Convention on the Recognition of Divorces and Legal Separations (the Hague, 1 June 1970). Provided the judgment meets the conditions prescribed in this Convention, a practice has been introduced in the Czech Republic according to which there is no need for special proceedings to be brought before the Supreme Court of the Czech Republic for recognition, provided the judgment entered into force after 11 July 1976, i.e. the day on which the Hague Convention entered into force for the Czech Republic. A foreign judgment endorsed as being final is submitted to the Registry Office with an official translation into Czech and provided with the appropriate higher authentication (superlegalisation, apostille), unless otherwise laid down in an international treaty.

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?

A decision can be challenged on the grounds specified in Article 22 of the Brussels II bis Regulation. In that case an application can be made to the locally competent district court, which is the general court for the natural person against whom the petition is directed.

The automatic recognition of a decision by a Registry Office in accordance with a bilateral agreement or the Convention on the Recognition of Divorces and Legal Separations (the Hague, 1 June 1970) can be prevented in administrative proceedings with the option of filing a subsequent appeal to the competent regional court under the administrative judicial system.

There is no appeal against the recognition of a decision by the Supreme Court of the Czech Republic.

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?

In the Czech Republic, the termination of marriage by means of a divorce is governed by the legislation of the country of which the spouses were nationals at the time of the commencement of the divorce proceedings. If the spouses are nationals of different countries, the termination of the marriage by divorce is governed by the legislation of the country in which both spouses have their habitual residence or, if not, by the Czech legal system.

If the divorce would be covered by a foreign legal system that does not allow the termination of marriage by divorce, or only under exceptionally difficult circumstances, and provided at least one of the spouses is a citizen of the Czech Republic or at least one of the spouses has their habitual residence in the Czech Republic, Czech law will apply.

Related links

[Association of Mediators of the Czech Republic](#)

[Association of Marriage and Family Advisors of the Czech Republic](#)

[Supreme Court of the Czech Republic – recognition of foreign judgments](#)

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