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Divorce and legal separation



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European Judicial Network
(in civil and commercial
matters)

1 What are the conditions for obtaining a divorce?

There is one type of extrajudicial divorce:

- divorce by mutual consent (*'divorce par consentement mutuel'*) through a private instrument countersigned by lawyers and filed in the official records of a notary.

There are four types of divorce:

- divorce by mutual consent;
- divorce by acceptance of the principle of marital breakdown (*'divorce par acceptation du principe de la rupture du mariage'*) or accepted divorce (*'divorce accepté'*);
- divorce due to the irretrievable breakdown of the marriage (*'divorce pour altération définitive du lien conjugal'*);
- divorce on the grounds of fault (*'divorce pour faute'*).

2 What are the grounds for divorce?

- Divorce by mutual consent through a private instrument countersigned by lawyers and filed in the official records of a notary may be applied for if the spouses agree on the principle of the breakdown and accept all of the consequences of the divorce. They must draw up an agreement with their lawyers, which is then signed by the two parties and their counsel after a reflection period. If they have one or more children, they must be informed of their right to be heard. If at least one of them makes a request to be heard, the parties must request the intervention of a family court judge (*'juge aux affaires familiales'*) for court divorce by mutual consent so that the child may be heard.
- Court divorce by mutual consent can only be requested by the spouses when a child applies to be heard if the spouses agree on the principle of the breakdown and accept all its consequences. In this case, they are not required to reveal the grounds for divorce and need only submit a draft agreement governing the consequences of the divorce for the judge's approval. The judge will refuse approval only in cases where the interests of the children or of one of the spouses are insufficiently protected.
- 'Accepted divorce' may be applied for by one of the spouses and accepted by the other, or jointly by both spouses. Unlike divorce by mutual consent, the spouses accept the principle of divorce but have not managed to reach an agreement regarding its consequences. It is therefore down to the judge to rule in this regard.
- Divorce due to the irretrievable breakdown of the marriage may be applied for by one spouse provided the couple have not been living together for one year as of the date on which the divorce petition is submitted. This assumes an absence of cohabitation and a desire to end the marriage.
- Divorce on the grounds of fault can be requested by one of the spouses for acts attributable to the other spouse where such acts constitute a serious or repeated violation of marital duties and obligations and render the continuation of life together intolerable.

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

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

- The obligations of fidelity, cohabitation and assistance come to an end when the court decision to grant a divorce becomes final, i.e. there is no longer any possibility of appeal.
- Each of the spouses is thereafter free to remarry.
- Following the divorce, each of the spouses forfeits the right to use the name of the other spouse. Nevertheless, one spouse may continue to use the other spouse's name, either with the latter's agreement or with the judge's authorisation, if they can put forward reasons why this is particularly important for them or for the children.

3.2 the division of property of the spouses

- Divorce leads to dissolution of the matrimonial property regime and, where appropriate, the division of assets.
- Divorce has no impact on the matrimonial benefits that take effect during the marriage or on gifts of existing assets. However, it does lead to the automatic revocation of the matrimonial benefits that take effect on dissolution of the matrimonial property regime, on the death of one of the spouses or on transfers *mortis causa*.
- In cases of court or extra-judicial divorce by mutual consent, the granting of the divorce is conditional upon the agreement of the spouses to the liquidation of their financial interests. In other types of divorce, the spouses may agree to this before the divorce is granted but they are not obliged to do so. In this case, the liquidation takes place later.

3.3 the minor children of the spouses

Divorce has no particular consequences on the rules regarding the exercise of parental authority which is, in principle, therefore retained jointly by both parents. Nonetheless, the judge may decide to entrust the exercise of parental authority to just one of the parents if this is in the interests of the child. The terms and conditions of parental responsibility must be established (habitual residence, visitation rights, etc)

Each of the parents must continue to contribute towards the child's maintenance and education. This contribution takes the form of a maintenance allowance paid by one of the parents to the other but it may also take the form, wholly or partially, of the direct payment of expenses incurred for the child. It may also be paid in the form of a right to use and a right to habitation.

3.4 the obligation to pay maintenance to the other spouse?

NB: The payment of maintenance by one spouse to another is a temporary measure, i.e. maintenance is paid only until the divorce is granted. Once the divorce has been granted, one spouse may claim only a compensatory support payment (*'prestation compensatoire'*) or payment of damages (*'versement de dommages-intérêts'*) from the other. This can be settled amicably for court or extra-judicial divorce by mutual consent, or by a judge in other cases.

- The aim of this support payment is to compensate for the disparity which the breakdown of the marriage may create in the respective living conditions of the spouses. The amount of the payment is set by the judge according to the incomes and needs of each of the spouses. It is by nature a lump sum paid, in principle, in the form of capital:
 - either by payment of a sum of money, with the method of payment to be agreed;
 - or through the allocation of assets for ownership or of the right to use, dwelling or usufruct, either on a temporary basis or for life.

Exceptionally, the compensatory support may be agreed in the form of a life annuity which may, in the event of changes in the resources or needs of the spouses, be revised downwards.

- Damages may be awarded to a spouse if the divorce has particularly severe consequences for them:

- where they were the defendant in a divorce granted on account of the irretrievable breakdown of the marriage and had not themselves brought an application for divorce;
- or where the divorce is granted against the other spouse and the blame lies wholly with the latter.

(See 'Maintenance claims -

France'<https://e-justice.europa.eu/contentPresentation.do?clang=fr&idTaxonomy=47&idCountry=FR>').

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

Legal separation (*'séparation de corps'*) is a legal arrangement which ends certain marital obligations, such as the duty of cohabitation, whilst not dissolving the marriage itself. Remarriage is thus not possible and the duty of support remains.

5 What are the conditions for legal separation?

- The cases and the procedure are the same as for divorce, but it cannot be done by mutual consent out of court.
- In principle, the spouse against whom an application for legal separation is made may file a cross-petition for a divorce or legal separation and, conversely, the spouse against whom an application for divorce is made may file an application for divorce or legal separation.
- In the event of a divorce on the grounds of irretrievable breakdown of the marriage, there is no possibility of a cross-petition for legal separation - only an application for divorce is possible.
- When a petition for divorce and an application for legal separation are filed concurrently, the judge will first consider the petition for divorce. Only if he or she decides not to grant the divorce will he or she examine the application for legal separation. When both applications are on the grounds of fault, the judge will consider them simultaneously and, if he or she accepts them, will grant the divorce on the basis of shared fault.

6 What are the legal consequences of legal separation?

Effects of legal separation.

- Legal separation ends the duty of cohabitation although the duties of assistance, fidelity and support remain. In addition, unless decided otherwise by a judge, the wife may continue to use her husband's name. The duty of support means that one spouse may be required to pay a maintenance allowance to the other if they should need it. The amount of this allowance is set irrespective of fault unless the spouse receiving payment seriously failed to fulfil their duties during the marriage. A maintenance allowance may be replaced by a capital sum if the assets of the spouse making the payments so permit.
- As regards the assets, the judgment automatically confers the separation of the spouses' property (Article 302 of the Civil Code).
- Should one of the spouses die, the rights of succession of the other remain unchanged and they benefit from the legal provisions established for a surviving spouse. However, in a legal separation by mutual consent in court, the spouses may decide to include a waiver of the rights of succession in the agreement.

Conversion of a legal separation into a divorce

At the request of one of the spouses, a judgement handed down for legal separation can be converted as of right into a judgment of divorce if the legal separation has lasted two years. In this case, the judge grants the divorce and rules on its consequences. The grounds for the legal separation become the grounds for divorce. The attribution of fault cannot be changed.

In all instances of legal separation, the latter may be converted into divorce by mutual consent, at the request of both spouses. However, when a legal separation is declared in court on grounds of mutual consent, it may be converted into a divorce only by mutual consent.

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

A marriage annulment (*'annulation du mariage'*), which presupposes a judgment, retroactively annuls all the effects of the marriage as if it had never existed.

This is different from a divorce or legal separation, the effects of which are felt only in the future.

8 What are the conditions for marriage annulment?

The grounds for a marriage annulment differ depending on whether it is a voidable marriage (*'nullité relative'*) (where a vitiation of consent or failure to secure the authorisation of persons who should have authorised the marriage is invoked) or a void marriage (*'nullité absolue'*) (in the case of non-fulfilment of a public policy requirement).

Voidable marriage

There are three possible cases:

- there was a mistake as to the person, or as to essential qualities of the person;
- coercion;
- failure to secure the authorisation of persons whose authorisation was necessary.

The application for annulment can be made by certain persons only: the spouse whose consent was vitiated or who was legally incapable when the marriage was contracted, and the persons who should have consented to the marriage or the Public Prosecutor.

An application for annulment is admissible only if made within five years from the date of the celebration of the marriage (or five years from the date on which the person concerned reached the legal age to consent to the marriage).

Void marriage

Total failure to secure consent, under-age marriage, bigamy, incest, absence of one of the spouses at the marriage, incompetence of the registrar and clandestine marriage.

The application may be made by any person who has an interest in taking action or the Public Prosecutor, within a period of thirty years from the date of the celebration of the marriage (or five years from the date on which the person concerned reached the legal age to consent to the marriage).

9 What are the legal consequences of marriage annulment?

The effects are identical in the case of a voidable or void marriage.

- The personal and financial effects of the marriage are annulled, since the marriage bond is deemed never to have existed. For example, if one of the spouses dies, annulment of the marriage will deprive the other of any rights of succession.

However, this principle can be mitigated if one or both of the spouses was/were acting in good faith at the time of the marriage. In this case, the 'putative' marriage (*'mariage putatif'*) remains null and void but it is treated as if it were simply dissolved. Consequently, all the civil, personal and financial effects prior to the granting of the annulment are maintained.

- As regards children, the annulment of the marriage of their parents has no legal effects and their situation is handled as in divorce cases.

10 Are there alternative non-judicial means for solving issues relating to

the divorce without going to court?

A divorce and its consequences can be settled using the divorce by extra-judicial mutual consent procedure, which requires the involvement of two lawyers and a notary but no judge, except in cases where a child asks to be heard.

In all other cases, a judge must be involved, however the parties may use family mediation before going to court or at the same time.

Mediation may also be proposed by the court. This is entrusted to a natural person or to an association, which is responsible for hearing the parties, weighing up their points of view and helping them find a solution to their dispute.

Following such mediation, parties who have reached an agreement can submit their agreement to the judge for approval or choose the divorce by extra-judicial mutual consent procedure.

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?

Where to lodge my application

- Application for divorce or legal separation

These applications take the form of a request submitted by a lawyer to the registry of the court (*'tribunal judiciaire'*).

The court with territorial jurisdiction is:

- the court of the place where the family home is located;
- if the spouses live separately and exercise joint parental responsibility, the court of the place of residence of the spouse with whom any minor children live;
- if the spouses live separately and parental responsibility is exercised by only one of them, the court of the place of residence of that parent;
- in other cases, the court of the place of residence of the spouse who did not lodge the application;
- in the case of a joint application, jurisdiction lies, according to the choice made by the spouses, with the court of the place of residence of either spouse.
- Application for annulment
A marriage annulment is requested from the regional court of the place of residence of the defendant. It takes the form of a summons served by a bailiff.
- Divorce by mutual consent through a private instrument countersigned by lawyers:
the agreement signed by the parties and the two lawyers must be filed in the official records of a notary practising in France.

Documents to be provided

- Application for divorce or legal separation

In all divorce cases, the spouses must provide all the information necessary to identify them and their health insurance fund, plus information relating to the services and organisations that provide them with payments, pensions or any other benefits.

When an application for compensatory support is made to the court, the spouses must provide a statement certifying on their honour the accuracy of their incomes, resources, assets and living conditions.

In the case of a court divorce by mutual consent, the application need not indicate the grounds for divorce but must include an annexed agreement, dated and signed by the spouses and their lawyer(s), settling all the effects of the divorce and including, where appropriate, a statement of liquidation of the matrimonial property regime (*'état liquidatif du régime matrimonial'*).

In other cases, the application need not mention either the legal basis or the grounds for the divorce but must include, where appropriate, requests made for temporary measures.

- Application for annulment

No specific documents are required, however the applicant must be able to produce documents proving that the ground(s) invoked can result in the annulment of the marriage.

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

Legal aid, whether total or partial, can be obtained following means testing (see '[Legal aid - France](#)').

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

These court decisions are subject to the normal appeals procedures.

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?

Divorce decisions are automatically recognised without the need for any specific procedures.

The same applies to decisions on marriage annulment.

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?

To oppose the recognition of such a decision, an action to have the judgment declared unenforceable (*'action en inopposabilité'*) may be submitted to the regional court (*'tribunal de grande instance'*). An unenforceability decision provides a basis on which to oppose any further request for enforcement made by the other party (i.e. a request to have a decision of another State declared enforceable in France). Refusal of such a decision is equivalent to enforcement.

The procedure is the same as for an enforcement action.

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?

Under Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, the law applicable to divorce or legal separation may be chosen by the spouses.

In the absence of this choice, the divorce or legal separation is subject to the law of the State:

- where the spouses are habitually resident at the time the court is seised; or, failing that,
- where the spouses were last habitually resident, provided that the period of residence did not end more than 1 year before the court was seised, in so far as one of the spouses still resides in that State at the time the court is seised; or, failing that,
- of which both spouses are nationals at the time the court is seised; or, failing that,
- the law of the forum.

However, if the application concerns the conversion of a legal separation into a divorce, the law applicable to

divorce will be the law applied to the legal separation, unless the spouses choose otherwise.

These rules also apply to spouses in the case of divorce by mutual consent through a private instrument countersigned by lawyers and filed in the official records of a notary. However, the spouses may not use the 'law of the forum' as no court has been seised.

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