Divorce and legal separation

Spain

1 What are the conditions for obtaining a divorce?

Since the reform introduced by Law 15/2005, in order to obtain a divorce in Spain there have been no requirements relating to prior separation or statutory grounds, since divorce may be ordered directly by the judicial authority (the divorce must be decreed by a final court judgment).

Divorce proceedings may be initiated at the request of one of the spouses only, both of them or one of them with the consent of the other. To obtain a decree of divorce it is enough for the following requirements and circumstances to be met:

Three months have elapsed since the marriage if the divorce is requested by both spouses or by one with the consent of the other.

Three months have elapsed since the marriage if the divorce is requested by only one of the spouses.

Divorce may be applied for without any waiting time after the marriage where there is evidence of a risk to the life, physical integrity, freedom, moral integrity or sexual freedom and integrity of the petitioning spouse or children of both or either of the parties to the marriage.

From the above it follows that it is sufficient for one spouse not to wish to continue the marriage to enable him or her to petition for and obtain a divorce without the respondent being entitled to oppose it for material reasons, once the above-mentioned period has elapsed and in the last case without even waiting for this period to elapse.

As an alternative to divorce, spouses may opt for legal separation, which is subject to the same requirements although the marriage bond remains intact. It means the couple no longer live together but does not dissolve the marriage, which can only be done by a divorce decree.

As mentioned above, proceedings for divorce (and also for legal separation), must be brought:

at the petition of one of the spouses;

at the petition of both spouses or of one of them with the consent of the other.

In the first case, the petition is accompanied by a proposal for the measures that are to govern the effects of the divorce or separation and that will be discussed during the proceedings, and the judicial authority decides if the spouses fail to reach an agreement.

In the second case, the spouses can submit a Settlement Agreement (*convenio regulador*) setting out the points on which agreement has been reached regarding the measures to be adopted in relation to the marital home, the care and maintenance of the children, the division of joint property, and any maintenance payments between the spouses. Proceedings take place before the courts, and the judge decides in cases involving unemancipated minor children. If there are no unemancipated minor children involved, the petition may be processed either: before the courts, although the decision falls to the court clerk (*Letrado de la Administración de Justicia*), or via a notary, through the execution of a public deed.

The regulations on separation and divorce are fully applicable to all marriages between persons of the same sex or different sexes, since Law 13/2005 recognises that men and women are entitled to marry, with the same requirements and effects whether the two parties are of the same sex or different sexes.

2 What are the grounds for divorce?

Since the reform introduced by Law 15/2005, divorce in Spain does not require any grounds, since maintaining the marriage bond is considered to be a manifestation of the free will of the spouses.

The only requirement is to observe a minimum length of time after the celebration of the marriage before bringing divorce proceedings (except in certain cases). This time period is as follows:

Three months after the marriage if the divorce is requested by both spouses or by one with the consent of the other.

Three months after the marriage if the divorce is requested by only one of the spouses.

Divorce may be applied for without any waiting time after the marriage where there is evidence of a risk to the life, physical integrity, freedom, moral integrity or sexual freedom and integrity of the petitioning spouse or children of both or either of the parties to the marriage.

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

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

The first effect of divorce is that the bond of marriage is dissolved. It terminates the obligation to live together and provide mutual assistance deriving from this bond, and both spouses are free again to contract new marriages.

Spanish law does not require the wife to acquire her husband’s surname as a result of marriage, as happens in other countries.

3.2 the division of property of the spouses

Divorce brings about the dissolution of the matrimonial property regime and the liquidation of any joint property that may have accumulated, culminating in the division of the common assets, a process that will be determined by the property regime governing the marriage.

3.3 the minor children of the spouses

The divorce decree does not affect relations between the parents and the children of the marriage, except as regards custody, on which the court granting the divorce has to rule, either awarding custody to one of the spouses while arranging visiting rights for the other, or else providing for shared custody by both spouses.

Joint custody may be arranged by agreement of the parents (reached either in the initial proposal for the settlement agreement, or during the proceedings), with court approval. If no agreement can be reached, a court may order joint custody at the request of one party, following a report by the Prosecution Service (*Ministerio Fiscal*), in consideration of the proper protection of the best interests of the child. In some Autonomous Communities in Spain, joint custody is preferred, which means that joint custody will be the default arrangement unless circumstances are found to exist that justify a different arrangement (this is the case in Aragon, the Basque Country and, to some extent, Catalonia). Likewise, and again taking into account the best interests of the minors, one-parent custody and even mixed or hybrid arrangements (children in the custody of different parents or some children in oneparent custody and others in joint custody) may be agreed.

The underlying principle is that divorce does not absolve the parents from their responsibilities towards their children, and that both will be required to contribute to their maintenance, exercising joint parental authority over the children concerned.

Normally this means that the spouse without custody of the children is required to make maintenance payments to the one who does have custody of them, until they become financially independent or have failed to do so for reasons attributable to them. If joint custody is granted, usually each parent pays the

ordinary expenses of the children during the period in which he or she has them (clothing, food or accommodation), while for the remaining expenses a joint account is opened into which each parent pays monthly contributions. However, if the financial circumstances of the two parents are very different, there is nothing to prevent one parent from giving a sum of money to the other so that the latter can meet the children's expenses during the time that he or she has the children.

3.4 the obligation to pay maintenance to the other spouse?

Divorce terminates the obligation to live together and provide mutual assistance; accordingly, neither spouse has the duty to support the other. However, where divorce leads to a financial imbalance for one spouse with respect to the other, so that the spouse in question is worse off than before the marriage breakdown, the adversely affected spouse is entitled to receive maintenance payments from the other to correct that imbalance.

Some territories have special arrangements in this regard.

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

Legal separation means that the spouses no longer live together, in other words it terminates the obligation of cohabitation but the marriage bond remains valid, without affecting whatever maintenance arrangements may be arrived at as being appropriate to correct any imbalance. In addition, neither spouse has the possibility any longer of using the other's assets to defray matrimonial expenses. Likewise, legal separation (and even actual separation) puts an end to the presumption of filiation whereby children born less than 300 days after the separation are presumed to be children of the husband.

5 What are the conditions for legal separation?

As with divorce, since the reform introduced by Law 15/2005, legal separation in Spain does not require any grounds, since maintaining the marriage bond is considered to be a manifestation of the free will of the spouses.

The only requirement is to observe a minimum length of time after the celebration of the marriage before bringing legal separation proceedings (except in certain cases). This time period is as follows:

Three months after the marriage if legal separation is requested by both spouses or by one with the consent of the other.

Three months after the marriage if legal separation is requested by only one of the spouses.

Legal separation may be applied for without any waiting time after the marriage where there is evidence of a risk to life, physical integrity, freedom, moral integrity or sexual freedom and integrity of the petitioning spouse or children of both or either of the parties to the marriage.

6 What are the legal consequences of legal separation?

The legal consequences of legal separation are the same as those for divorce, with the sole difference that it does not dissolve the marriage bond. A reconciliation with full restoration of the marriage is therefore possible without any need for the spouses to remarry; in order to have legal effect, any reconciliation must be notified to the court. At the same time, and if the spouses have married under a joint property regime (such as *sociedad de gananciales* , whereby one half of the earnings of each spouse is considered to be owned by the other spouse), upon legal separation this is dissolved and replaced by a separation of property regime.

7 What does the term 'marriage annulment' mean in practice?

Marriage annulment (applicable both to same-sex and opposite-sex marriages) entails a court declaration that the marriage contracted suffered from defects that made it ineffective from the outset, the court declaration meaning in effect that the marriage never existed and therefore never had legal effect. Accordingly, both spouses regain their status of single persons.

It entails the dissolution and liquidation of the matrimonial property regime and an end to the duty of cohabitation and mutual assistance.

In contrast to cases of legal separation or divorce, the non-existence of the marriage means that no compensatory allowance is payable, since this requires a valid marriage to have existed; this situation is mitigated by the possibility of the spouse who had acted in good faith being awarded a payment in damages where the other spouse had acted in bad faith in contracting the marriage.

The legal effects already produced prior to the court judgment annulling the marriage continue to apply to the children. These effects are therefore the same as in cases of separation or divorce.

In addition to the declaration of annulment by a civil court, in Spain recognition is also given to the civil effects of ecclesiastical court decisions declaring the annulment of canonical marriage or pontifical decisions concerning brief, unconsummated marriage, which require a validation procedure (similar to the exequatur procedure), this being handled by the Courts of First Instance (*Juzgados de Primera Instancia*) (where they exist, those specialising in family matters. The basis for such recognition lies in the Agreement between the Spanish State and the Holy See concerning legal affairs, signed on 3 January 1979.

8 What are the conditions for marriage annulment?

The conditions that lead to the annulment of a marriage are as follows:

1. That one of the spouses did not give his/her consent to the marriage being contracted.

2. That the marriage was contracted despite the existence of one of the impediments to marriage, namely:

One of the parties to the marriage was an unemancipated minor, except where the person in question was over 14 years of age and had obtained a court dispensation (impediment on grounds of age).

One of the parties was already bound by a marriage bond at the time the marriage was contracted (bigamy).

The parties are lineal ascendants or descendants or one of them is an adopted child of the other (consanguinity).

One of the parties is related to the other up to the third degree – uncle/aunt with nephew/niece – except where a court dispensation has been obtained (consanguinity).

3. That one of the parties had been convicted of the murder, or of being an accomplice to the murder, of the previous spouse of either of the two parties, except where a pardon has been granted by the Ministry of Justice.

4. That the marriage took place without the presence of a judge, mayor or other official or without the presence of witnesses. However, the validity of the marriage would not be affected either by the incompetence of the person officiating at the marriage or by the latter's holding no legitimate appointment, provided that at least one of the spouses had acted in good faith and that the official had exercised his functions publicly.

5. That one of the parties had contracted the marriage while being in error as to the identity of the other or as to such of his personal qualities as might have been decisive in giving his or her consent to contracting the marriage.

6. That one of the parties had contracted the marriage under duress or through grave fear.

9 What are the legal consequences of marriage annulment?

The annulment of the marriage establishes that it has been invalid since it was contracted. As a result, the spouses regain their status of single persons. However, any effects already produced in an annulled marriage between the time it was contracted and the date of the annulment decree remain valid where the children and the spouse or spouses who acted in good faith are concerned.

When the matrimonial property is liquidated, the spouse who acted in bad faith does not share in any profits of the spouse who acted in good faith.

On the other hand, if there was cohabitation, the party who had acted in good faith can obtain compensation to correct any financial imbalance that may have been caused by the decree of annulment.

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

In Spain, family mediation is regulated at State level, in the Law on mediation in civil and commercial matters: Law 5/2012 of 6 July 2012, transposing into Spanish law Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008, on certain aspects of mediation in civil and commercial matters. The general principles governing mediation are: voluntary nature and free choice, impartiality, neutrality and confidentiality. In addition to these principles there are rules or guidelines to guide the actions of the parties in mediation, such as good faith and mutual respect, and their duty of cooperation and support to the mediator.

The above-mentioned Law 5/2012 regulates 'mediation in cross-border disputes', meaning those in which at least one of the parties is domiciled or habitually resident in a State other than that in which any of the other affected parties are domiciled, where they agree to resort to mediation or where mediation is mandatory under the applicable law. This also covers conflicts anticipated or resolved by mediation agreement, regardless of the place in which the agreement was made, where, following a change of residence by either party, it is intended to enforce the agreement or some of its consequences in the territory of a different State. In cross-border disputes between parties residing in different Member States of the European Union, domicile is determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001 (Brussels I).

Family mediation is conceived in Spanish law as an alternative to strictly judicial resolution of family disputes.

Many autonomous communities, through their respective autonomous parliaments, have enacted laws on family mediation, generally – with the exception indicated – as a provision promoted by public social welfare bodies: Andalusia – Law 1/2009, of 27 February 2009, on family mediation in Andalusia; Aragon – Law 9/2011, of 24 March 2011, on family mediation in Aragon; Asturias – Law 3/2007 of 23 March 2007 on family mediation; Canary Islands – Law 15 /2003 of 8 April 2003 on family mediation; Cantabria – Law 1/2011, of 28 March 2011, on mediation in the Autonomous Community of Cantabria; Castile-La Mancha – Law 4/2005, of 24 May 2005, on the specialist family mediation social service; Castile-Leon – Law 1/2006 of 6 April 2006 on family mediation in Castile-Leon; Catalonia (particularly significant in this autonomous community, as it has developed its legislative competence in this area, providing in Article 233(6) of the Civil Code of Catalonia that the judicial authority may refer the spouses for an information session on mediation, where it considers that given the circumstances of the case it is still possible to reach an agreement); Valencia – Law 7/2001 of 26 November 2001, regulating family mediation in Valencia; Galicia – Law 4/2001 of 31 May 2001 on family mediation; Balearic Islands – Law 14/2010, of 9 December 2010, on family mediation in the Balearic Islands; Madrid – Law 1/2007, of 21 February 2007, family mediation in Madrid; and the Basque Country – Law 1/2008 of 8 February 2008 on family mediation.

At State level, Law 15/2005 of 8 July 2005, amending the Civil Code and the Civil Procedure Law as regards separation and divorce, introduced a new rule 7 in Article 770 of that Law, governing proceedings for separation and divorce (except by 'mutual agreement') and marriage annulment, under which the parties may by mutual agreement request a stay of proceedings, subject to the general arrangements for civil proceedings laid down in Article 19(4) of the Civil Procedure Law, for submitting to mediation.

In cross-border matrimonial proceedings, Article 55 of Regulation (EC) 2201/2003 (Brussels II a) applies, whereby, upon request from a central authority or from a holder of parental responsibility, the central authorities are to cooperate on specific cases to achieve the purposes of the Regulation. To that end, they must take all appropriate steps to, inter alia, facilitate agreement between holders of parental responsibility through mediation or other means.

Mediation is also possible in cases of international child abduction, although here the mediation process must be as fast as possible and any action must be concentrated in the fewest possible sessions. The suspension of the mediation process may never exceed the period provided for by law to resolve the abduction case. If mediation leads to an agreement (which could also cover other matters), it must be approved by the judge, taking into account the legislation in force and the best interests of the child. However, jurisdiction in matters related to child abduction is different from that covering family proceedings; the former is the prerogative of courts in provincial capitals, whereas the latter may be exercised by courts in any judicial district. Consequently, if the agreement covers a variety of matters, it may need to be approved by separate judges (i.e. the court in the provincial capital for matters related to child abduction and the relevant family judge for the other aspects).

In civil proceedings in the field of family law, which fall under the jurisdiction of the courts dealing with violence against women (*Juzgados de Violencia sobre la Mujer*), mediation is forbidden.

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?

(a) Where to lodge my petition

Once the international jurisdiction of the Spanish courts to hear the case has been established (set out in Regulation 2101/2003 – marriage annulment, legal separation, divorce and parental responsibility; Regulation 4/2009 – maintenance; as from 29 January 2019, Regulation (EU) 2016/1103 on matrimonial property regimes, and Article 22c of the Judiciary Act (*Ley Orgánica del Poder Judicial* – LOPJ) – for matters not provided for in the Regulations or where they make reference to domestic law), within Spanish territory, a petition for divorce, legal separation or marriage annulment (except those processed by a notary in cases of legal separation or divorce by mutual agreement with no minor children involved) has to be filed before the Court of First Instance. In some judicial districts, there are Courts of First Instance specialising in family law. Specifically, this is the Court of First Instance:

In the place where the marital home is located

If the spouses are living in different judicial districts, the petitioner can choose between the court of:

the last marital home,

or the residence of the respondent;

or if the respondent has no fixed domicile or place of residence, the petition may be filed in the place where the respondent is or last resided, as the petitioner chooses.

Failing all the above criteria, the petition should be filed before the Judge of First Instance (*Juez de Primera Instancia*) for the petitioner's domicile.

Where the petition for divorce or legal separation is filed jointly by both spouses, they can do this before the judge:

for the place where they last lived together,

or for the domicile of either of the petitioners.

Applications to have preliminary provisional measures adopted can be heard by the judge of first instance for the applicant's domicile.

For information on the Spanish judicial institutions, see

https://www.mjusticia.gob.es/es/justicia-espana/organizacion-justicia/cartografia-judicial/cartografia-partidos

For cases handled by a notary (an alternative to proceedings before the courts when the parties do not have unemancipated minor children – even though, in such cases, the decision is taken not by the Judge, but rather by the court clerk), the relevant public deed must be executed by the Notary for the place where the spouses last lived together or the domicile or habitual residence of either of the petitioners.

(b) Formalities and documents

Where court is the chosen route, the petition for marriage annulment, legal separation or divorce has to be submitted in writing and signed by the petitioner's lawyers (the *letrado* and the *procurador*). The services of these professionals may be shared where the spouses are filing jointly for legal separation or divorce.
Petitions for legal separation, marriage annulment or divorce must be accompanied by:
The marriage certificate and the birth certificates of any children; it is not sufficient simply to produce the family register (*Libro de Familia*).
Documents on which the petitioning spouse or spouses are basing their case.
Documents required to assess the financial situation of the spouses and, if applicable, of the children, such as tax returns, pay slips, bank certificates, title deeds or certificates of registration of property, where the parties are petitioning on matters relating to property.
Proposal for a Settlement Agreement if the legal separation or divorce is being applied for by means of a Joint Petition.
If the notary is the chosen route (legal separation or divorce by mutual agreement without unemancipated minor children), the above documents are necessary for the deed to be executed, and although the notary is present, the spouses must be accompanied by a practising lawyer for the execution of the public deed.

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

Spain recognises the right of Spanish citizens, nationals of other European Union Member States and foreigners in Spain to free legal aid if they can prove that they have insufficient means to engage in legal action.
Individuals are entitled to legal aid if they lack sufficient assets and have resources and gross income, calculated annually for all headings and per family unit, that do not exceed the following thresholds:
(a) Twice the public multi-purpose income index (IPREM) in force at the time of application for persons who are not members of any family unit.
(b) Two and a half times the public multi-purpose income index in force at the time of application where they are a member of any type of family unit of fewer than four people.
(c) Three times this index for family units of four people or more.

Calculation of the IPREM

The application must be submitted to the Bar Association (*Colegio de Abogados*) in the same locality as the court or tribunal that will be holding the main hearing, or to the court in the applicant's domicile; in the latter case the judicial body will transmit the application to the territorially competent Bar Association.
The Bar Associations are designated as the receiving authority for applications in cross-border disputes. In such disputes, the authority issuing the application is the Bar Association for the habitual residence or domicile of the applicant.
A European citizen whose State is a party to the European Agreement on the Transmission of Applications for Legal Aid may apply to the central authority designated by their country for the implementation of the agreement.
The application must be made before initiating the proceedings or, if the party applying for legal aid is the respondent, before contesting the application. However, both the petitioner and the respondent may subsequently apply for legal aid after proving that their financial circumstances have changed.
When there are insufficient common assets and one of the spouses is unable to obtain legal aid because the financial position of the other prevents it, the latter may be obliged to bear all or part of the costs of the litigation under a procedure known as 'litis expensas' (litigation expenses under special arrangements for divorce proceedings).

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

Decisions handed down by Spanish courts in proceedings for legal separation, divorce and marriage annulment are open to appeal. Appeals must be lodged within twenty days before the Court of First Instance which handed down the contested decision, before which the appeal is formally drawn up; the matter falls within the jurisdiction of the corresponding Provincial Court (*Audiencia Provincial*). In certain cases, after the appeal ruling has been handed down, an appeal in cassation and, where appropriate, an extraordinary appeal for breach of procedure may be lodged before the Civil Chamber of the Supreme Court (*Tribunal Supremo*).
In Spain, decisions handed down in proceedings relating to marriage annulment, legal separation and divorce are not subject to provisional enforcement when they are appealed (except decisions governing the obligations and property relations related to the main subject of the proceedings), although the appeal does not suspend the effect of measures ordered in the judgment and that are directly enforceable even though an appeal has been lodged against the judgment. Moreover, if the appeal relates solely to the measures referred to in the decision, the judgment on the marriage annulment, legal separation or divorce will be declared final even if an appeal has been lodged.
In proceedings for legal separation and divorce brought jointly by the spouses, the court judgment or decision that gives effect to the legal separation or divorce and approves in its entirety the proposal for a Settlement Agreement presented to the judge for his approval, is not open to appeal, except by the Prosecution Service, if it is involved, which may lodge an appeal in the interests of any minor or incapacitated children. In such proceedings by Joint Petition, a court decision rejecting the petition for divorce or legal separation or any or all of the measures proposed by the spouses is open to appeal. In these cases, the appeal against the decision on the measures will not suspend their effectiveness or have any effect on the binding nature of the judgment in relation to the legal separation or divorce.
As regards provisional and preliminary measures that a judge may adopt before or during the proceedings for legal separation, marriage annulment or divorce, decisions adopting such measures are not open to appeal, even though the decisions handed down do not constitute a definitive judgment and are not at this stage binding. Decisions on provisional measures are reviewed not by means of an appeal but through the judgment that finally concludes the proceedings for legal separation, marriage annulment or divorce.

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?

The legislation applicable in this matter is Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II a), which is in force in all the Member States (and in the United Kingdom until 31.12.2020; in the future it will depend on the agreement reached during the negotiation phase), except for Denmark. The legislation applicable in this regard in Denmark is the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.
If the only aim is to update the data in the Civil Register of a Member State (and of the United Kingdom until 31.12.2020) on the basis of court decisions relating to proceedings for divorce, legal separation or marriage annulment handed down in another Member State (and in the United Kingdom until 31.12.2020), and if, under the legislation of that Member State, those decisions are no longer open to judicial appeal, it is sufficient simply to submit an application to that effect to the Register of Births, Marriages and Deaths in each country, accompanied by:
a copy of the decision, which should meet the necessary requirements for establishing its authenticity according to the law of the country that issued it;
a certificate conforming to the standardised official model issued by the national court or tribunal or competent authority in the Member State (and in the United Kingdom until 31.12.2020) in which the decision was delivered;

a document testifying to the papers having been properly served on the respondent or certifying that the latter accepted the decision, in the case of a decision delivered in absentia.
If seeking to obtain recognition in Spain for a decision in relation to a divorce, marriage annulment or legal separation that was delivered in one of the Member States (and in the United Kingdom until 31.12.2020), with the exception of Denmark, an application for recognition would need to be filed, without any need for the decision in question to be binding in the Member State in which it was delivered, before the Judge of First Instance in the place of residence of the person against whom the application for recognition or for a declaration of non-recognition is being filed. If the respondent does not live in Spain the application may be filed wherever he or she is in Spain or in his or her last place of residence in Spain or, failing all the above, in the place of domicile of the petitioner.
The application should be submitted in writing with the services of a lawyer and public prosecutor and accompanied by the same documents as in the previous case.
Recognition in Spain of decisions delivered in Denmark is governed by Spanish law. The process begins with the filing of an application directly to the Court of First Instance of the place of domicile of the person against whom recognition is sought.

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?

The procedure for applying for a decision not to be recognised is the same as that for applying to have it recognised. If the decision was recognised in accordance with Council Regulation No 2201/2003, an objection can be filed only after notification of the decision granting recognition and an appeal will need to be lodged with the relevant Provincial Court within the statutory deadline.
If the matter concerns a decision delivered in Denmark, the objection has to be filed while it is still before the Court of First Instance while the Court is considering the other party's petition for its recognition. In all cases, it is necessary to have the services of a lawyer and public prosecutor to formally present the objection.

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?

Following the entry into force of Regulation (EU) No 1259/2010 on 21 June 2012, and in accordance with Articles 5 and 8 thereof, the spouses may choose the law applicable to their separation or divorce from among those specified in the Regulation. In the absence of a choice by them, divorce and legal separation shall be subject to the law of the State:
(a) in which the spouses are habitually resident at the time the petition is filed; or, failing that,
(b) in which the spouses were last habitually resident, provided that the period of residence did not end more than one year before the petition was filed and that one of the spouses still resides in that State at the time the petition is filed; or, failing that,
(c) of which both spouses are nationals at the time the petition is filed; or, failing that,
(d) where the court with which the petition has been filed is located.
The above legislation is applicable to divorce, although in terms of the effects it produces, the applicable law may be different:
As regards the matrimonial property regime, and until 29 January 2019 (when Regulation 1103/2016 will apply) the applicable law is (if no matrimonial property regime has been established in a matrimonial property agreement) the common personal law of the spouses at the time of marriage (common nationality). Failing that, it is the personal law (pertaining to their nationality) or the law of the habitual residence of either spouse, chosen by both spouses in a certified deed executed before the celebration of the marriage. In the absence of the above, the law of the common habitual residence immediately after the marriage was celebrated applies. Lastly, in the absence of any such joint residence, the supplementary property regime shall be that of the place where the marriage was celebrated. As from 29 January 2019, Regulation 1103/2016 shall be fully applicable, which means that if no choice has been made, the matrimonial property regime of the law of: a) the State where the first common habitual residence of the spouses was at the time of marriage, or, failing that, (b) the State corresponding to the spouses' common nationality at the time of their marriage or, failing that (c) the State with which the two spouses have the closest links at the time of the marriage, taking all circumstances into account, shall apply. If the spouses have more than one common nationality at the time of the marriage, the criterion of the law of common nationality does not apply.
Matters relating to child custody are governed by the Hague Convention of 19 October 1996 by the law of the authority making the decision.
In the matter of provisional and precautionary measures, logically, the same law should be applied that governs the legal separation, marriage annulment or divorce in each case, except as regards urgent measures that may be adopted in relation to persons or property located in Spain, even where there is no jurisdiction to hear the case.
Regarding maintenance (including use of the family home and, where applicable, a compensatory allowance), in the absence of an agreement on the choice of applicable law, the law pertaining to the habitual residence of the maintenance creditor applies.
As regards providing evidence of the foreign law in Spain, if this were the case, its content and validity will need to be proved; the Spanish court can establish this by whatever means it deems necessary in order to apply it.
Finally, it must be stressed that proceedings brought in Spain are always governed by Spanish procedural law, regardless of the law applicable to divorce, legal separation or marriage annulment.

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