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Divorce and legal separation

Hungary

1 What are the conditions for obtaining a divorce?

The court may grant divorce at the request of either or both spouses if their marriage has completely and irretrievably broken down. When divorce is granted, the best interest of the spouses' common minor children must be a primary consideration.

2 What are the grounds for divorce?

Divorce may be granted on the grounds that the marriage has completely and irretrievably broken down. Evidence is taken by the court in this regard. The court may order the taking of necessary evidence of its own motion as well. The spouses' final and common declaration of will (their mutual consent) for divorce made free of undue influence is indicative of the complete and irretrievable breakdown of their marriage. It can be established that the marriage has completely and irretrievably broken down particularly if the spouses no longer live together as a couple and – based on the process leading to the couple's separation and the duration they have been living separately – their reunion is unlikely.

The common and final declaration of will of the spouses for divorce made free of undue influence is considered sufficient evidence for the breakdown of the marriage. Thus, in the event of such common declaration, there is no need for a detailed examination of the abovementioned reasons leading to separation.

The spouses' decision may be considered final if they have come to an agreement in terms of exercising parental responsibility over their common children, maintaining contact between the absent parent and the child, maintenance allowance, use of the family home and – if requested – alimony for the spouse (their agreement must be approved by the court). If the spouses agree on exercising parental responsibility jointly, they do not have to agree on the terms of maintaining contact with the child. However, they do have to define the child's place of residence. As a result, the scope of issues to be agreed by spouses obtaining divorce based on mutual consent depends on whether they choose to exercise joint parental responsibility or not.

It is important to note that, in contrast to previous legislation, an agreement between the spouses on the division of matrimonial property is no longer provided for by the Civil Code.

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

The marriage ends with the divorce of the spouses. When divorce is obtained, the right of custody and maintenance of the common child, contact between the parent and the child, alimony for any of the spouses, use of the family home and, in the case of joint parental responsibility, the residence of the child is regulated by court settlement if the parties can come to an agreement – meeting the statutory requirements – or, in the absence of an agreement between the spouses, by a court judgment. The spouses do not need to agree on the division of common matrimonial property to obtain divorce from the court.

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

Following the divorce or annulment of the marriage the former spouses continue to use the same names they did during their marriage. If they have a different wish, they may make it known to the superintendent registrar following the divorce or annulment of the marriage. The former wife, however, may never use the name of her former husband with the suffix indicating her married status if she did not use that name during her marriage. At the request of the former husband, the court may prohibit his former wife to use his name in a form based on which he may be identified, if the wife was sentenced to imprisonment for an intentional criminal offence. If the former wife remarries, she may no longer use the name of her former husband with a suffix indicating her married status. She may not regain this right even if she divorces again.

3.2 the division of property of the spouses

In the case of divorce, the former spouses no longer hold a joint estate and either of them may apply for the division of matrimonial property. They may request compensation for investments from common assets into their separate assets or investments from their separate assets into common assets as well as for management and maintenance costs. No compensation may be sought for expenses if the spouses waived their rights to the funds concerned.

Compensation for separate assets used or completely used up under the matrimonial relationship may only be granted in exceptional and duly justified cases. The share of former spouses from the joint estate they hold at the time of the divorce must be allocated to them in kind, if possible. Separate assets held at the time of the divorce must also be allocated in kind. If, for any reason, this is not possible or would result in a significant loss in the value of the assets, in the event of a dispute, the method of division will be specified by the court. No compensation may be sought for common and separate assets missing, if the spouses hold no common matrimonial property at the time of their divorce and the party in debt has no separate assets either.

If common matrimonial property is divided on the basis of a contract concluded between the spouses, such contract is considered valid only if it is set down in writing in a public instrument or private instrument countersigned by a lawyer. This provision does not apply to the division of moveable property forming part of the common property of the spouses if division took place by enforcement.

If the spouses did not enter into a contract on the division of common assets or the contract concluded does not regulate all the claims that may arise from the divorce, the division of common matrimonial property and the settlement of claims may be requested by the court. The court must ensure that none of the spouses are granted undue financial benefits when settling claims to property.

3.3 the minor children of the spouses

Parents are obliged to share with their minor children the resources available for the maintenance of both of them, even at the expense of their own resources. This rule does not apply if the child can cover his or her reasonable needs from a salary earned by taking a job or from the income on the child's assets, or if the child has a direct relative who may be obliged to pay maintenance. The parent holding the right of custody provides for maintenance in kind while the absent parent provides it primarily in cash (maintenance allowance).

If a maintenance allowance is granted by order of the court, the amount payable as maintenance will be fixed. The court may provide in its judgment that the amount of the allowance payable must be adjusted each year automatically in accordance with the consumer price index published annually by the Hungarian Central Statistical Office from 1 January of the following year.

As far as practicable, matters of exercising parental responsibility over the child must be decided by common agreement between the parents.

If the parents fail to come to an agreement in these matters, the court will grant the rights of custody to the parent who, in the court's assessment, can better promote the physical, mental and moral development of the child. If the placement of the child with any of the parents would put his or her best interests at risk, the court may grant the right of custody to a third person, provided that such person seeks to exercise the right of custody himself or herself.

The child has the right to maintain direct personal contact with the absent parent. It is the right and the duty of the absent parent to maintain personal relations and direct contact with the child on a regular basis (right of access). The parent or other person holding the right of custody must not infringe upon the right of access.

The parent holding the right of custody and the absent parent must cooperate with each other – respecting the family life and right to peace of the other party – to ensure the balanced development of the child. The parent holding the right of custody must provide information to the absent parent on the development, health and studies of the child on a regular basis and may not withhold such information if requested by the absent parent.

Parents living separately exercise their rights jointly with respect to essential questions concerning the child's future, even if the right of custody is granted to one of them based on their common agreement or the decision by the court, except if the parental responsibility of the absent parent is limited or terminated by the court. Essential questions concerning the child's future involve the use or change of name of the minor child, his or her place of residence other than the residence shared with the parent with custody, his or her place of stay abroad for permanent residence or establishment, as well as the nationality, education and career of the child.

3.4 the obligation to pay maintenance to the other spouse?

A spouse may demand alimony from the other spouse following legal separation or, in the case of divorce, a former spouse may demand such alimony from the other former spouse if in need of it through no fault of his or her own, unless the (former) spouse requesting alimony did not become unworthy of it due to his or her conduct during the marriage. The payment of alimony should in no way endanger the livelihood of the former spouse obliged to pay alimony, and that of the person(s) whom the latter must maintain jointly with the former spouse requiring alimony. The obligation to pay alimony may have a limited term if it can be assumed that the party requesting alimony will no longer be in need after the expiry of such term.

If the spouse or former spouse requests alimony on account of the deterioration of his or her situation more than five years after legal separation, such request may be granted only on equitable grounds and in exceptional cases. If the spouses lived together as a couple for less than a year and have no common children from the marriage, the former spouse in need is entitled to alimony only for a period equivalent to the duration of their common life. On equitable grounds and in exceptional cases the court may order the payment of alimony for a longer period.

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

The legal separation of spouses marks the end of their common matrimonial life. Once it took place, among other things the division of matrimonial property may be sought from the court.

5 What are the conditions for legal separation?

The start and end of the common life of the spouses as a couple and, consequently, the period for which they held a joint estate, will be established by judicial discretion. When exercising its discretionary powers, the court must place the various aspects of the spouses' life as a married couple under scrutiny (sexual relationship, economic interdependence, common family home and household, expressions of the couple's unity, common children raised, relatives, taking care of the child of either spouse, etc.) Therefore, the court establishes if the spouses' common life as married couple continues or has come to an end by a joint analysis of all the interrelated economic, family, emotional and intentional factors involved. The fact that any or some of these are lacking does not necessarily mean that the common life of the spouses as a married couple has ended, especially if there is an objective reason behind such lack.

6 What are the legal consequences of legal separation?

As a result of legal separation, marking the end of their common matrimonial life, the spouses are free to seek division of the matrimonial property. At this point, the marriage is not yet legally annulled but the spouses can acquire assets independently, except for pre-existing common property. In respect of the latter, the spouses may decide only jointly since the presumption of consent no longer prevails. If the spouses have common children, they must agree in sharing parental responsibility.

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

A marriage can only be considered annulled if it has been declared annulled in a judgment delivered by the court in annulment proceedings. The ruling declaring the marriage annulled applies to every person involved. The legal consequences of the annulled marriage are laid down by legislation.

8 What are the conditions for marriage annulment?

The marriage is void if a former marriage or registered partnership of either of the parties still exists. Furthermore, the marriage is void if the parties to the marriage are each other's relatives in direct line or each other's siblings, if either party to the marriage is the descendant by birth of the sibling of the other party to the marriage, or if either party to the marriage has adopted the other party to the marriage. If either party entered into the marriage as an incapacitated subject as a result of declaration of capacity, the marriage is void. The marriage is also void if, although lack of capacity was not declared with respect to the party concerned at the time of the marriage, he or she was in a fully incapacitated state. The marriage is void if the parties to the marriage were not jointly present when they declared their intention to marry. If either party to the marriage is a minor, the marriage is void. As an exception, minors may enter into marriage with the prior approval of the guardianship and child protection authority. The guardianship and child protection authority may grant such approval only in duly justified cases and only if the minor party concerned is at least 16 years old.

9 What are the legal consequences of marriage annulment?

If both spouses entered into a marriage that was subsequently annulled in good faith, the legal consequences of the marriage in terms of property are the same as in the case of valid marriage. When the marriage is annulled, the spouses may enforce their claims to property in accordance with the same rules that apply in the case of divorce granted by the court. If only one of the spouses entered into the marriage in good faith, these rules will apply only at his or her request.

Following the annulment of the marriage, the spouses keep the name they used during their marriage. If they have a different wish, they may make it known to the superintendent registrar following the annulment. The former wife, however, may not use the name of her former husband with the suffix indicating her married status if she did not use that name during the marriage.

The annulment of the marriage does not affect the presumption of paternity.

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

In matters of marriage annulment and divorce the courts have exclusive competence.

If a marriage is annulled or divorce is granted, the court must decide on the custody and maintenance of minor children to the marriage, even in the absence of any corresponding applications, if appropriate. The court will make a decision on ancillary issues (e.g. alimony to spouses, use of the family home, division of the common matrimonial property) if an application is submitted to that effect. In the absence of an application, the court will not decide on these issues, which may be solved by the parties out of court in a contract.

Prior to or during the divorce proceedings the spouses may request mediation on their own or on the court's initiative in order to reach an agreement in matters in dispute relating to their relationship and the dissolution of their marriage. The agreement negotiated by the parties as a result of mediation may be included in the court settlement.

If needed, the court may oblige the parents asking for divorce to seek mediation with respect to ancillary issues, to ensure an appropriate arrangement in terms of parental responsibility and the necessary cooperation between the parties.

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?

To obtain a divorce, a spouse must bring divorce proceedings against the other spouse. Annulment proceedings must be brought by a spouse against the other spouse, or by the prosecutor or other third person entitled to bring proceedings against both spouses. If the party against whom proceedings were initiated is no longer alive, proceedings must be brought against an administrator appointed by the court.

Proceedings must be initiated by submitting an application, which must include the following: the competent court; the names, places of residence, and status in the proceedings of the parties and their representative(s), if any; the right to be enforced and the facts complete with evidence serving as a basis for such right; details from which the scope of authority and jurisdiction of the court can be established; and an explicit request (application) for a ruling by the court. The application initiating divorce proceedings must include details relating to the marriage, to the birth of any living children of the marriage and, if required, any data from which the entitlement to file an application can be established. As an attachment, the application must also include supporting documents for the above data as well as the document (or its copy or excerpt) outlining the facts referred to by the applicant as evidence and documents from which the scope of authority and jurisdiction of the court, as well as other circumstances that must automatically be taken into consideration, can be established, with the exception of data which can be verified with an ID card. In the latter case, this must be indicated in the application.

In accordance with the general rules on jurisdiction, the competent court in the divorce proceedings will be the court having jurisdiction over the place of residence of the defendant. If the defendant does not have a place of residence in Hungary, jurisdiction is established based on the place of stay of the defendant. If the place of stay of the defendant is unknown or is abroad, his or her last place of residence in Hungary will be considered. If this cannot be established or if the defendant did not have one, jurisdiction will be established on the basis of the claimant's place of residence or, failing that, his or her place of stay. Furthermore, the court having jurisdiction in the area where the last common place of residence of the spouses is located will also have competence in the case. This means that the claimant may freely choose to submit the application either to the court having competence in accordance with the general rules on jurisdiction or the court having competence based on the last common place of residence of the spouses.

If no competent domestic court may be appointed to proceed in the divorce case in accordance with the above rules, the Pest Central District Court will have competence.

Once matrimonial proceedings are initiated before a given court, this court will have exclusive competence in any new proceedings brought in relation to the same marriage in matrimonial matters concerning rights in property arising out of the matrimonial relationship.

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

See the topic "Legal aid".

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

An appeal may be lodged against the decision. However, no action may be brought for the judicial review or revision of judgments annulling the marriage or divorce judgments in terms of the annulment or the divorce itself.

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 21(1) of Regulation (EC) No 2201/2003, a judgment given in a Member State shall be automatically recognised in the other Member States; thus, as a general rule, no special procedure is required for recognition. In accordance with Article 37 of the Regulation, the party requesting recognition must produce the following documents:

a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

the certificate referred to in Article 39 of the Regulation issued by a court or authority of the Member State of origin on the form under Annex I to the Regulation; and

in addition, in the case of a judgment given in default of the defendant, the original or certified true copy of the document which establishes that the defaulting party was served with the document instituting the proceedings or with an equivalent document, or any other document indicating that the defendant has accepted the judgment unequivocally.

Pursuant to Article 38 of the Regulation, the court or authority may dispense with the production of the last two documents if it considers that it has sufficient information before it. The court/authority may also require a translation of such documents to be attached to the above documents which the Hungarian courts and authorities are generally able to fulfil.

Pursuant to Article 21(3) of Regulation (EC) No 2201/2003, any interested party may apply for a decision that the judgment given in another Member State be recognised. In this case, the party requesting recognition must submit its request with the above-mentioned documents attached to the competent court, which will be the district court (*járásbíróság*) operating at the seat of the regional court (*törvényszék*) of the place of residence or habitual residence of the adverse party in Hungary (the Buda Central District Court in the case of Budapest) or, if the adverse party has neither a place of residence nor a habitual residence in Hungary, the district court operating at the seat of the county court of the place of residence or habitual residence in Hungary of the party requesting recognition (the Buda Central District Court in the case of Budapest). If the party requesting recognition does not have a place of residence or habitual residence in Hungary either, the application can be filed with the Buda Central District Court. The court will apply the provisions of Articles 28-36 of the Regulation in the procedure, as appropriate.

If recognition of the judgment is necessary for making an entry into the Hungarian marriage register, in accordance with Article 21(2) of the Regulation, the request for recognition together with the documents listed above must be submitted to the superintendent registrar.

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?

Pursuant to Article 21(3) of Regulation (EC) No 2201/2003 any interested party may apply for a decision that the judgment given in another Member State not be recognised. In this case, the party contesting recognition must attach a copy of the judgment which satisfies the conditions necessary to establish its authenticity to his or her application as well as the certificate referred to in Article 39 of the Regulation issued by a court or authority of the Member State of origin on the form under Annex I to the Regulation. The competent court will be the district court operating at the seat of the county court of the place of residence or habitual residence of the adverse party in Hungary (the Buda Central District Court in the case of Budapest) or, if the adverse party has neither a place of residence nor a habitual residence in Hungary, the district court operating at the seat of the county court of the place of residence or habitual residence in Hungary of the party contesting recognition (the Buda Central District Court in the case of Budapest). If the party contesting recognition does not have a place of residence or habitual residence in Hungary either, the application can be filed with the Buda Central District Court. The court will apply the provisions of Articles 28-36 of the Regulation to the procedure, as appropriate.

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?

Council Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation is applicable in Hungary. Accordingly, in all cases with a foreign aspect, the law applied by the courts of Hungary will be the law specified by the Regulation. The Regulation – subject to limitations – grants the spouses freedom to choose the applicable law (Articles 5-7) and connecting factors are established to specify the applicable law only in the absence of a valid choice by the parties (Articles 8-10).

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