

Divorce - Slovenia

TABLE OF CONTENTS

- 1 What are the conditions for obtaining a divorce?
- 2 What are the grounds for divorce?
- 3 What are the legal consequences of a divorce as regards:
 - 3.1 the personal relations between the spouses (e.g. the surname)
 - 3.2 the division of property of the spouses
 - 3.3 the minor children of the spouses
 - 3.4 the obligation to pay maintenance to the other spouse?
- 4 What does the legal term “legal separation” mean in practical terms?
- 5 What are the conditions for legal separation?
- 6 What are the legal consequences of legal separation?
- 7 What does the term “marriage annulment” mean in practice?
- 8 What are the conditions for marriage annulment?
- 9 What are the legal consequences of marriage annulment?
- 10 Are there alternative non-judicial means for solving issues relating to the divorce without going to 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?
- 12 Can I obtain legal aid to cover the costs of the procedure?
- 13 Is it possible to appeal against a decision relating to divorce/legal separation/marriage annulment?
- 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?
- 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?
- 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?



1 What are the conditions for obtaining a divorce?

Slovenian law recognises: a) divorce on the basis of an agreement between the spouses and b) divorce on the basis of an action.

a) In the case of **divorce on the basis of an agreement between the spouses, the court grants a divorce under Article 64 of the Marriage and Family Relations Act (Zakon o zakonski zvezi in družinskih razmerjih, ZZZDR)** provided that they have reached an understanding on the care, upbringing and subsistence of any children they may have together and on the children’s contact with the parents (where the opinion of a Social Services Centre (center za socialno delo) must be sought), and if they have submitted, in the form of an enforceable notarial record, an agreement on the division of their joint property, on which of them shall remain or

become the tenant of their apartment, and on the maintenance of the spouse who has no means of subsistence and is unemployed through no fault of their own.

b) Where a marriage has for whatever reason become 'unendurable', either spouse may request a divorce **by filing a divorce action**. In this case, it is the court that also decides on the care, upbringing and subsistence of any children the spouses may have together, and their contact with the parents. Before deciding, the court is obliged to seek the opinion of a Social Services Centre.

In both cases, upon receiving a request for divorce on the basis of an agreement as well as upon receiving a divorce action, the court orders the competent Social Services Centre to conduct a counselling interview, which both spouses are obliged to attend in person without the presence of proxies. The Social Services Centre reports to the court on the outcome of the counselling interview.

2 What are the grounds for divorce?

- The Marriage and Family Relations Act recognises only one ground for divorce: that the *marriage has become unendurable*. This means that the marriage has broken down so thoroughly and irretrievably that it can no longer be saved. A marriage is only deemed to be 'unendurable' when the relations between the spouses have not merely broken down temporarily but, for serious reasons, thoroughly and irretrievably. Unendurability is assessed in line with the situation at the time of the hearing, taking into account all the circumstances that have led to the current situation. The court also establishes unendurability when the defendant spouse agrees to divorce.
- A marriage may be terminated at the request of either spouse, and there is no requirement for the marriage to be unendurable for both partners.
- The issue of the fault for the fact that a marriage has become unendurable is not raised, nor does the court establish it in the course of proceedings. A marriage may also be terminated at the request of the spouse responsible for the fact that the marriage has become unendurable.

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

The legal consequences of divorce are set out in detail below:

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

A person who changes their name upon marriage may, within six months of the final divorce judgement or judgement terminating the marriage, submit a declaration to the effect that they wish to revert to the surname they had prior to the marriage. This declaration may only be submitted by a person who did not further change their surname in the course of the marriage (Article 17 of the Personal Name Act (Zakon o osebnem imenu, ZOI-1)). The issue of changing a surname is an administrative matter which is decided not by a court but by an administrative body.

3.2 the division of property of the spouses

In the division of joint assets, **the legal presumption is that the share of the spouses in the joint assets is equal**; however, the spouse that considers they will be placed at a disadvantage through the division of assets into equal shares may request that their share be determined in proportion to their contribution to the joint assets. In doing so, the court takes account not only of the income of each spouse, but also other circumstances, such as the assistance that one spouse gave to another, the care and upbringing of any children, the performance of domestic work, the maintenance of assets, and any other form of work and participation in the administration, maintenance and increase in the joint assets.

3.3 the minor children of the spouses

CARE AND UPBRINGING OF CHILDREN

Ø In the event of a divorce on the basis of an agreement, the spouses must **agree on the upbringing and care of any children**, while the court assesses whether this agreement is in the interests of the children. They may agree

- that both will or will continue to care and bring up their children,
- or that all children will be entrusted into the care and upbringing of one of the parents,
- or that some of the children will be entrusted to one parent and the other children to the other parent.

If the parents fail to reach an agreement on the matter themselves, a Social Services Centre shall assist them in reaching an agreement.

If the parents *reach an agreement on care and upbringing*, they may propose that the court issue a decision on this in a non-litigious procedure.

If they do not reach agreement or if the agreement is not in the interests of the children, the court shall not terminate the marriage on the basis of an agreement; instead, a divorce action shall be required.

If, even with the assistance of a Social Services Centre, the parents fail to agree on the upbringing and care of children, **the court shall decide at the request of one or both parents** as follows:

- that all children are to be entrusted into the care and upbringing of one of the parents;
- that some of the children are to be entrusted to one parent and the other children to the other parent;
- or, in exceptional cases, that all or some of the children are to be entrusted into the care and upbringing of a third person.

In doing so, the court must seek the opinion of a Social Services Centre prior to its decision and, when reaching a decision, consider the child's opinion if it is expressed by the child themselves or by a person the child trusts, and who has been chosen by the child themselves, and provided the child is capable of understanding its meaning and consequences.

Ø In the event of a divorce on the basis of an **action** and in order to regulate relations between the divorced spouses and their joint minor children, the court shall decide on the care and upbringing of the children after establishing how the interests of the children are to be served best. In this case as well, the parents may agree on the care and upbringing of their joint children in the interests of those children. The same shall apply *mutatis mutandis* to the care and upbringing of children in this case as to care and upbringing in the case of a divorce reached on the basis of agreement. The decision on who minor children will live with after divorce, on their contact with the parent with whom they will not be living and on maintenance is a constituent part of the divorce judgement.

CONTACT

- Parents must attempt to reach agreement on how contact is to be arranged.
- If **they have reached an agreement**, they may propose that the court issue a decision on this in a non-litigious procedure; if the court establishes that the agreement is not in the children's interests, it rejects the proposal.
- If the parents **are unable to reach an agreement**, the court decides at the proposal of one or another parent (in the case of divorce on the basis of an agreement between the spouses, the spouses must enclose an agreement on contact with the agreement, with the court entering their agreement in the judgement on the agreed divorce), where they must submit to the court proof of the Social Services Centre to the effect that they have first tried to reach agreement.
- The court decides on contact *ex officio* only when the issue involves contact after a divorce action or after the termination of the children's parents' marriage.
 - Contact is decided at the first instance by district courts (*okrožna sodišča*) in a non-litigious procedure, unless they decide in tandem with disputes on the care and upbringing of children; in this case, the issue of contact is resolved in civil proceedings.
 - In deciding on contact, the interests of the child are of paramount importance: contact shall be deemed not to be in a child's interest if it imposes psychological pressure on the child or if it jeopardises the child's physical and mental development.
 - In reaching a decision, the court shall also consider the child's opinion, if it is expressed by the child themselves or by a person the child trusts and who has been chosen by the child themselves, and provided the child is capable of understanding its meaning and consequences.
 - A child also has the right to contact with other persons who are family relations and have a close personal bond with the child (e.g. the child's grandparents and (half-)brothers or (half-)sisters).

MAINTENANCE of spouses and children

- Spouses may, regarding the maintenance of children, **reach an agreement by signing a child maintenance agreement**, which must be signed before the court; in this instance, the court issues a special decision in a non-litigious procedure. Where the agreement is not in the child's interest, the court rejects the proposal to issue a decision approving the agreement.

- Where the spouses **have not reached an agreement** either by themselves or with the assistance of a Social Services Centre, they may request that the court decide. Prior to reaching a decision, the court must seek the opinion of a Social Services Centre and must also take into account the opinion of the child, if he or she has expressed an opinion and if he or she is capable of understanding its importance and consequences.
- Parents are obliged to support their children until they reach full age, or a child of full age until the child finishes regular schooling and until they reach the age of 26, as far as their material and gainful capacities allow in order to ensure that the child's interests are served (overall development of the child). Child support is allotted in line with the needs of the child requiring support and taking into account the material and gainful capacities of the person liable to provide support.
- Child support is allotted in line with the needs of the child requiring support and taking into account the material and gainful capacities of the person liable to provide support. In allotting child support, the court is obliged to take into account the interests of the child, so that the child support is adequate for ensuring their favourable physical or mental development. Child support is adjusted once a year in line with the consumer price index in Slovenia.
- A spouse or extra-marital partner is obliged to support their partner's minor child if either of the child's parents are unable to support the child and they live with their partner's minor child.
- Children of full age are obliged to support their parents if the latter do not have sufficient means of support and are unable to acquire such means, and if a dependent parent cannot be supported by their spouse.

3.4 the obligation to pay maintenance to the other spouse?

- A spouse who has no means of support and is unemployed through no fault of their own has the right to maintenance.
- Maintenance may be requested during divorce proceedings or in a special action within one year of final termination of the marriage if the conditions for maintenance existed at the time of the divorce and they still exist at the time the spouse requests maintenance.
- The spouses may reach an agreement on maintenance in the event of divorce by concluding a maintenance agreement before a notary public in the form of an enforceable notarial record.
- Maintenance is determined for an indeterminate period or for a fixed period as required to allow the spouse to find a new position and arrange their affairs.
 - Maintenance is allotted in line with the claimant's needs and the capacities of the person paying the maintenance. It is determined as a monthly sum and in advance, and may be requested from the moment a maintenance action is filed. In exceptional cases, it may be paid as a one-off sum.
 - The court rejects a maintenance request if the maintenance payment to the person entitled to it would be unfair for the person liable to pay the maintenance in light of the reasons that led to the marriage being unendurable, or if the person entitled to the maintenance committed a criminal offence against the person liable to pay it or anyone of their close family prior to or after the divorce proceedings.
 - A spouse is not obliged to support the other spouse if so doing would jeopardise their own ability to support themselves or any minors whom they are obliged to support by law.
 - Maintenance is adjusted in line with the consumer price index of Slovenia once a year.

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

A 'cohabiting union' (življenjska skupnost) is an essential element of a marriage (Article 3 of the Marriage and Family Relations Act). The termination of a cohabiting union (prenehanje življenjske skupnosti), or legal separation, means the permanent termination of the essential elements of the mutual relations existing between the spouses. When a cohabiting union ends, the economic union and the intimate and emotional ties between the spouses come to an end, as may the common household, etc.

5 What are the conditions for legal separation?

The law does not specify the conditions for legal separation. Courts decide on legal separation in each individual procedure in line with the circumstances and specific features of the case in question.

6 What are the legal consequences of legal separation?

Legal separation has no effect on the existence of a marriage; this means, therefore, that it is only the cohabiting union that is terminated and not the marriage. An action or a proposal to end a marriage by agreement are required to terminate a marriage. With legal separation, the spouses bring the creation of joint assets to an end. A dependent spouse may request maintenance by means of an action within one year of legal separation.

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

Annulment means that, at the time the marriage was entered into, the conditions required by law for a marriage to be deemed valid were not in place (e.g. there was no free will, consent was forced or given in error, the marriage was not contracted in accordance with the prescribed procedure, was contracted between close relatives, or was entered into by a severely mentally ill person or with insufficient forethought). The legal consequences of the marriage cease to have effect on the day the judgement on annulment becomes final.

8 What are the conditions for marriage annulment?

Ø A marriage does not become invalid ipso iure, but must be annulled by means of a judgement.

Ø Slovenian law distinguishes between a **relatively and absolutely invalid marriage**. The distinction lies in the group of persons that may request a marriage annulment.

a) The reasons for **relative invalidity** are the following:

- severe mental impairment or impaired judgement on the part of a spouse when the marriage was contracted (requested by one or the other spouse, but only after the situation has come to an end);
- consent to the marriage was forced or given in error (spouse who was forced or who entered into marriage in error);
- the marriage was contracted by a person under the age of 18 (parents or guardian).

b) The reasons for **absolute invalidity** are the following: (persons entitled to file an action are, in addition to both spouses, certain other persons deriving a direct legal benefit from the annulment of the marriage, (e.g. other inheritors of a deceased spouse may, upon that spouse's death, file an action to annul a marriage so that the living spouse loses their right of inheritance); moreover, beneficiaries may also file an action after the annulment of the marriage); an action may also be filed by a state prosecutor:

- severe mental impairment or impaired judgement on the part of a spouse, with this state of affairs still persisting at the time the annulment is requested;
- a spouse was married to another person at the time the marriage was contracted;
- the spouses are related in a direct or collateral line up to and including the fourth degree;
- the spouses were not present at the contracting of the marriage or one spouse and a proxy of the other were not present;
- the spouses did not enter into marriage with the intention of maintaining a joint household.

9 What are the legal consequences of marriage annulment?

The legal consequences of marriage annulment have effect on the day the judgement on annulment becomes final. With regard to property relations between spouses, the maintenance of a dependent spouse, the returning of gifts between the spouses and the relationship of the spouses to their joint children, the legal consequences are the same for annulment as for divorce.

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

The Mediation in Civil and Commercial Matters Act (Zakon o mediaciji v civilnih in gospodarskih zadevah), which entered into force in June 2008, regulates **mediation in disputes** involving civil-law, commercial, labour-related, *family* and other property-law relationships in relation to claims which parties may freely assert and settle, unless a separate law provides otherwise for any of these types of dispute. A marriage itself cannot be terminated without the intervention of a court; an action or a proposal to terminate a marriage by agreement must be filed.

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?

- Under Article 32 of the Civil Procedure Act (Zakon o pravdnem postopku), **district courts** are responsible for deciding on matrimonial disputes (regarding divorce or marriage annulment – Slovenian law does not recognise a separate claim for legal separation).

An extract from the marriage register and extracts from the register of birth certificates must be enclosed with the action or proposal, while a personal identity document must be presented at the hearing.

- The spouses must also enclose the following with the proposal for the termination of a marriage by agreement:
 - an agreement on the care, upbringing and support of any children the spouses may have together, and their contact with the parents (the opinion of a Social Services Centre must be sought);
 - an agreement on the division of joint assets in the form of an enforceable notarial record;
 - an agreement on who will remain or become the tenant of the former joint household;
 - an agreement on maintenance of the spouse who has no means of support and is unemployed through no fault of their own.

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

A court partly or wholly exempts a party from the payment of court fees if payment would significantly reduce the funds available for their own support or that of their family members. Foreign citizens are exempt from the payment of court fees if so determined by an international treaty or where conditions of reciprocity exist (Articles 10 and 11 of the Court Fees Act/Zakon o sodnih taksah, ZST-1).

A party may apply for legal aid to cover the costs of a lawyer and expert; the decision on whether to grant legal aid shall be made by the district court covering the area in which the applicant permanently resides. In this procedure, the court assesses the criteria (e.g. substantive, financial) with reference to the provisions of the Free Legal Aid Act (Zakon o brezplačni pravni pomoči).

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

An appeal against a judgement relating to divorce or marriage annulment may be made to a higher court (višje sodišče), generally within 15 days. A judgement granting a divorce on the basis of a proposal by the spouses to terminate the marriage by agreement may be contested:

- if there were essential violations of the provisions of the civil proceedings;
- if the party filed the proposal in error or as a result of force or trickery;
- if the legal conditions for divorce on the basis of a proposal to terminate the marriage by agreement have not been met.

A revision (extraordinary legal remedy) is not permitted in matrimonial disputes.

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?

Under Article 21 of Regulation (EC) No 2201/2003, a judicial decision issued in another Member State is recognised without a requirement for any special recognition procedure to be initiated.

Each interested party may request that a decision on the recognition or non-recognition of a judicial decision be issued. In this case, the party must file a request for a declaration of enforceability at the competent district court in Slovenia.

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 laws of Slovenia apply to the procedure of filing a request.

A party that requests or contests the recognition of a judicial decision, or files a request for a declaration of enforceability, must submit:

- a copy of the judicial decision that meets the conditions necessary for conforming its authenticity;
- confirmation, on a standard form, of the judicial decision in the matrimonial dispute.

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?

The provisions of Regulation (EC) No 2201/2003 (Brussels II bis) apply primarily and directly to issues of international jurisdiction involving citizens or residents of EU Member States.

If both spouses are citizens of different countries when the action is filed, the cumulative laws of the countries of which they are citizens are applied, in accordance with the provisions of Slovenian domestic law (Article 37(2) of the Private International Law and Procedure Act/Zakon o mednarodnem zasebnem pravu in postopku).

If a marriage cannot be terminated under the law of the countries of which the spouses are citizens, the law of Slovenia is applied to the termination of marriage if one of the spouses was permanently residing in Slovenia at the time the action was filed.

If one of the spouses is a citizen of Slovenia without permanent residence in Slovenia, and the marriage cannot be terminated under the law specified in Article 37(2) of the Private International Law and Procedure Act, the law of Slovenia is applied to termination.

Related links

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<https://www.uradni-list.si/>

<http://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/preciscenaBesedilaZakonov>

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