Divorce

When a married couple decide to separate permanently, one of the spouses, or both together, will generally institute divorce proceedings.

In most countries divorce is decided by a court, and that court's judgment dissolves the marriage.

If the couple has children, besides the separation of the spouses, the divorce will lead to a reorganisation of the relationship between each of them and the children they have in common.

It will also lead to a division of the assets owned in common by the spouses, and if necessary to the payment of a contribution or maintenance by one spouse to another, or to support the children.

In the European Union, there are rules for working out to which court an application for divorce must be filed when the couple separates. These rules are particularly useful for couples where the spouses are of different nationalities, or where the spouses have lived in different Member States during the marriage.

The rules also allow a divorce pronounced in one country of the European Union to be more easily recognised in another Member State and have effect there.

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Divorce - Belgium

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There are two kinds of divorce in Belgium: divorce on the grounds of the irretrievable breakdown of the marriage, and divorce by mutual consent.

A divorce on the grounds of irretrievable breakdown can be obtained in two ways:

- By proving the irretrievable breakdown of the marriage, by any legal means (Article 229(1) of the Civil Code (*Code civil*/*Burgerlijk Wetboek*)). A breakdown is irretrievable where it has made it impossible for the spouses to continue to live together or resume living together.
- On the basis of a de facto separation that has lasted some time. The marriage is deemed to have irretrievably broken down where the application for divorce is submitted jointly by both spouses **after more than six months of de facto separation**. If the de facto separation has lasted for less than six months and the spouses wish to submit a joint application for divorce, the marriage is deemed to have irretrievably broken down once the spouses have appeared before the court for a second time, following a period of reflection, and have repeated that they wish to divorce (Article 229(2) of the Civil Code). **Unilateral application after more than a year of de facto separation**: the marriage is deemed to have irretrievably broken down where the application for divorce is submitted by only one spouse after more than a year of de facto separation. If the de facto separation has lasted for less than a year and one of the spouses wishes to submit a unilateral application for divorce, the marriage is deemed to have irretrievably broken down once the spouse submitting the application has appeared before the court for a second time, following a period of reflection, and has repeated that he or she wishes to divorce (Article 229(3) of the Civil Code).

Divorce by mutual consent can be granted only if the spouses submit a comprehensive prior agreement determining all the effects of the divorce and both spouses continue to express their desire to end the marriage by mutual consent up to the point when the divorce is granted. The comprehensive prior agreement consists of a settlement setting out what the spouses have agreed with regard to their respective assets (Article 1287 of the Judicial Code (*Code judiciaire*/*Gerechtelijk Wetboek*)) and a divorce agreement relating to the place of residence of each spouse during the proceedings, parental authority, management of the assets of the couple’s children and access rights during and after the divorce, maintenance contributions of each spouse for their children, and any maintenance payments between the spouses during and after the divorce (Article 1288 of the Judicial Code).

2 What are the grounds for divorce?

There are two kinds of divorce in Belgium: divorce on the grounds of the irretrievable breakdown of the marriage (Article 229 of the Civil Code) and divorce by mutual consent (Article 230 of the Civil Code).

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

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

Divorce breaks the bond of marriage for the future. The former spouses are no longer each other's legal heirs. They are free to remarry. In Belgium, marriage has no effect on the surname of the spouses. However, a married person is entitled to use the other spouse's surname. Following divorce, a person can no longer use the surname of a former spouse in everyday and professional life, with the exception of a trade name in certain circumstances.

3.2 the division of property of the spouses

The joint ownership of property is dissolved. In the event of a divorce on the grounds of irretrievable breakdown, the spouses lose all the benefits that they have conferred on one another in any prenuptial agreements and since they married, and the benefits of any contractual appointments as heirs, unless otherwise agreed. In the event of divorce by mutual consent, the spouses determine their respective rights in advance through the comprehensive prior agreement between them (see question 1).

3.3 the minor children of the spouses

Dissolution of the marriage by divorce has no effect on the rights of children born within the marriage (Article 304 of the Civil Code). Once the marriage has been dissolved by divorce, authority over the children and the management of the children's assets is exercised by the spouses jointly, or by the spouse to whom the children are entrusted by an approved agreement between the parties, or by an order of the presiding judge of the court made in interlocutory proceedings (*référé*/*kort geding*) (Article 302 of the Civil Code). The spouses are responsible, according to their means, for the children's accommodation, maintenance, supervision, education and training, up to the age of majority of the children or the completion of their education (Article 203 of the Civil Code), and must contribute their share of the ordinary and extraordinary costs resulting from that obligation (Article 203 *bis* of the Civil Code). Such a contribution is usually made in the form of a maintenance payment determined either by the courts or by agreement.

3.4 the obligation to pay maintenance to the other spouse?

Divorce on the grounds of irretrievable breakdown: The spouses can agree a maintenance payment following the divorce, its amount and the terms under which the agreed amount may be reviewed. In the absence of agreement, the court can, at the request of the spouse in need, order a maintenance payment to be made by the other spouse. The court can refuse the request for a maintenance payment if the respondent proves that there was a serious fault on the part of the applicant that made it impossible to continue living together. A maintenance payment can under no circumstances be granted to a spouse who has been found guilty of acts of physical violence towards the other spouse. If the respondent proves that the applicant's state of need is the result of his or her own decision and was not motivated by the needs of the family, the court can excuse the respondent from having to pay maintenance, or can reduce the amount of the payment (Article 301(1), (2) and (5) of the Civil Code). The amount of the maintenance payment should at least meet the beneficiary's needs, but cannot exceed one-third of the income of the spouse obliged to make the payment. Maintenance is payable for a period no longer than the length of the marriage. This period can be extended in exceptional circumstances (Article 301(3), (4), (6), (8) and (9) of the Civil Code).

Divorce by mutual consent: The spouses determine their respective rights in advance through the comprehensive prior agreement between them (see question 1). During and after the divorce proceedings, they can agree the amount of any maintenance payment and the terms under which this amount is to be indexed and reviewed (Article 1288, first paragraph, subparagraph 4, of the Judicial Code).

In all cases, the maintenance payment can be increased, reduced or terminated by the court if the amount is no longer appropriate as a result of new circumstances beyond the control of the parties. In the event of divorce on the grounds of irretrievable breakdown only, the court can also adjust the amount of the maintenance payment if the divorce results in a change in the financial position of the spouses.

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

Legal separation (*séparation de corps*/*scheiding van tafel en bed*) does not break the bond of marriage, but reduces the mutual rights and obligations of the spouses: it removes the obligation to live together, and divides the property.

5 What are the conditions for legal separation?

The conditions for legal separation are the same as those for divorce.

6 What are the legal consequences of legal separation?

Legal separation does not break the bond of marriage, but reduces the mutual rights and obligations of the spouses. With regard to the spouses themselves, legal separation removes only the obligation to live together and the obligation to assist one another (*devoir d'assistance*/*bijstandsplicht*). The obligation of fidelity and the obligation of material support (*devoir de secours*/*hulpplicht*) remain (Article 308 of the Civil Code). Legal separation results in the division of the property (Article 311 of the Civil Code). With regard to children, the effects of legal separation are the same as those for divorce. Spouses who have separated do not qualify for maintenance payments, but they can invoke the obligation of material support (Article 213 of the Civil Code).

The effects of legal separation by mutual consent are the same as those for divorce by mutual consent and are governed by the prior agreements between the spouses, although the bond of marriage is not broken. The obligations of fidelity and material support also remain.

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

Nullity of marriage is a civil penalty applied when a marriage has taken place in breach of the law, despite the prior checks carried out by the registrar.

8 What are the conditions for marriage annulment?

There is 'absolute' nullity of a marriage in the following cases:

- One of the spouses is a minor and has not been released from the age requirement (Article 144 of the Civil Code): the minimum age to marry is 18 years.
- Lack of consent (Article 146 of the Civil Code).
- Sham marriage (Article 146 *bis* of the Civil Code): there is no marriage where a combination of circumstances reveals that the intention of at least one of the spouses was clearly not to form a lasting partnership, but simply to obtain an advantage in terms of residence conferred by the status of spouse.
- Forced marriage (Article 146 *ter* of the Civil Code): there is no marriage where the supposed marriage is entered into without the free consent of both spouses and the consent of at least one of the spouses was given as a result of violence or threat.
- Bigamy (Article 147 of the Civil Code).
- Breach of an impediment to a marriage based on family ties by blood or marriage, or on a court order requiring a presumed biological father to make maintenance payments, or on family ties by adoption (Articles 161 to 164, 341 and 3561, first and second paragraphs, and Article 35313 of the Civil Code).
- Lack of authority of the public official who solemnised the marriage (Article 191 of the Civil Code) (optional absolute nullity).
- Clandestine marriage (Article 191 of the Civil Code) (optional absolute nullity).

There is 'relative' nullity of a marriage in the case of a defect of consent of one or both spouses or mistaken identity (Articles 180 and 181 of the Civil Code).

9 What are the legal consequences of marriage annulment?

Annulment, the declaration of nullity, has the effect of voiding the marriage with regard to both the past and the future. It has retroactive effect to the date of the marriage. All the effects of the marriage disappear. The marriage is deemed never to have taken place.

Where the spouses married in good faith, in other words where they were unaware of a ground for annulment, the court can rule that the marriage be annulled only with regard to the future, with its past effects being retained. Where only one spouse married in good faith, the effects of the marriage can benefit that spouse only.

Those effects of the marriage that benefit children are retained, even where neither spouse married in good faith. Any children born during the annulled marriage or within 300 days of the annulment continue to be considered the children of the husband in the annulled marriage.

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

The law provides for two forms of mediation: voluntary mediation, where the parties engage the services of a mediator themselves, without the intervention of a court, and judicial mediation, proposed by the parties or the court in the course of judicial proceedings, which are then suspended. Mediation can be employed in disputes relating to marriage obligations (Articles 201 and 203 of the

Civil Code), the rights and obligations of spouses (Articles 221 to 224 of the Civil Code), the effects of divorce (Articles 295 to 307 *bis* of the Civil Code), parental authority (Articles 371 to 387 *bis* of the Civil Code), divorce on the grounds of irretrievable breakdown (Article 229 of the Civil Code), divorce by mutual consent (Articles 1254 to 1310 of the Judicial Code) and de facto cohabitation. Each party is free to propose recourse to the voluntary mediation process (Article 1730 et seq. of the Judicial Code). The court hearing the case can also order judicial mediation at any stage of the proceedings (Article 1734 et seq. of the Judicial Code). In both cases, where the parties come to an agreement as a result of mediation, the agreement can be submitted to the court for approval. Approval can be refused only if the agreement is contrary to public policy or to the interests of minor children.

The granting of a divorce remains the responsibility of the courts.

11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

An application for divorce or legal separation on the grounds of irretrievable breakdown or an application to convert a legal separation into a divorce is heard by the court of first instance (*tribunal de première instance*/*vredegerecht*) of the place of the last marital residence or of the place where the respondent has his or her address (*domicile*/*woonplats*) (Article 628, first paragraph, subparagraph 1, of the Judicial Code).

In the event of divorce by mutual consent, the spouses choose a court of first instance (Article 1288 *bis*, second paragraph, of the Judicial Code).

An application for marriage annulment is heard by the court of first instance of the place where the respondent has his or her address (Article 624 of the Judicial Code).

In the event of divorce on the grounds of irretrievable breakdown, the application is lodged: 1. by means of notice served by a bailiff (*huissier de justice*/*gerechtsdeurwaarder*), pursuant to Article 229(1) of the Civil Code; 2. jointly, pursuant to Article 229(2) of the Civil Code, by means of a joint application, in accordance with Article 1026 et seq. of the Judicial Code, signed by each spouse or at least a lawyer or notary (Article 1254(1) of the Judicial Code); or 3. unilaterally, pursuant to Article 229(3) of the Civil Code, by means of an application for ordinary adversarial proceedings, in accordance with Articles 1034 *bis* to 1034 *sexies* of the Judicial Code. In all cases, the document instituting the proceedings must contain, in addition to the information usually required, a detailed description of the facts and a statement giving particulars of any children (Article 1254(1) of the Judicial Code). The marriage certificate, birth certificates of any children, and proof of the identity and nationality of each spouse must also be submitted, unless they appear in the population register or register of foreign nationals (Article 1254(2) of the Judicial Code).

A divorce by mutual consent is requested by means of an application to the court (*requête*/*verzoekschrift*). In addition to the documents required for a divorce on the grounds of irretrievable breakdown, the prior agreements concluded by the parties and, where applicable, an inventory of their property must also be submitted.

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

The ordinary rules apply. See the factsheet on ‘Legal aid’.

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

Any decision granting or refusing an application for divorce or legal separation on the grounds of irretrievable breakdown or an application for marriage annulment can be challenged within one month of the date of service of the judgment, whether it is a judgment given in default of appearance or a judgment given after both parties have been heard (Article 1048, first paragraph, and Article 1051, first paragraph, of the Judicial Code).

An appeal (*appel*/*hoger beroep*) against a judgment granting a divorce will be admissible only if it is based on non-compliance with the legal conditions for granting divorce or on the reconciliation of the spouses. Such an appeal can be lodged by the public prosecutor within one month of the judgment. In that case, it is served on both parties. It can also be lodged by one spouse or both spouses, separately or jointly, within one month of the judgment. In that case it is served on the public prosecutor and, if lodged by one spouse only, on the other spouse. An appeal that is based on reconciliation must in all cases be lodged jointly by both spouses within one month of the judgment. Such an appeal is served on the public prosecutor (Article 1299 of the Judicial Code). An appeal against a judgment refusing a divorce or legal separation by mutual consent will be admissible only if it is lodged by both parties, separately or jointly, within one month of the judgment (Article 1300 of the Judicial Code).

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?

Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (the 'Brussels IIa Regulation') has been in force since 1 March 2005. The Regulation applies within the European Union (with the exception of Denmark). A judgment given in a Member State must be automatically recognised in the other Member States without any special procedure being required (Article 21(1) of the Brussels IIa Regulation). No special procedure is required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State (Article 21(2) of the Brussels IIa Regulation). A judgment relating to a divorce, legal separation or marriage annulment will not be recognised if such recognition is manifestly contrary to public policy, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence, or if it is irreconcilable with a judgment given earlier in proceedings between the same parties (Article 22 of the Brussels IIa Regulation). During the review, the jurisdiction of the court of origin may not be reviewed (Article 24 of the Brussels IIa Regulation) and under no circumstances may a judgment be reviewed as to its substance (Article 26 of the Brussels IIa Regulation). In addition, the recognition of a judgment may not be refused because Belgian law would not allow divorce on the same facts (Article 25 of the Brussels IIa Regulation). The documents to be produced so that a foreign court's judgment can be recognised are listed in Article 37 of the Brussels IIa Regulation.

Where the Brussels IIa Regulation does not apply, judgments made after 1 October 2004 are subject to the provisions of the Belgian Code of Private International Law (*Code de droit international privé*/*Wetboek van Internationaal Privaatrecht* — Article 126 (2) of the Code). Under Article 22 of the Code, recognition is automatic without any legal proceedings being required. A foreign court's judgment will not be recognised where the effect of recognition is manifestly contrary to public policy, where the rights of the defence have been infringed, where the judgment results from an infringement of the law, where the judgment is still open to appeal, where the judgment is irreconcilable with a Belgian judgment or with a judgment previously given abroad that can be recognised in Belgium, where the foreign proceedings were instituted after proceedings were instituted in Belgium between the same parties and relating to the same subject-matter and which are still pending, where only the Belgian courts had jurisdiction to hear the proceedings, where the jurisdiction of the foreign court was based solely on the presence in the country to which that court belonged of the respondent or of property not directly connected with the dispute, or where recognition is frustrated by one of the grounds for refusal listed restrictively in the Code (in the area of personal and family law, the only such grounds are name, adoption and repudiation) (Article 25(1) of the Code). During the review, under no circumstances may the foreign judgment be reviewed as to its substance (Article 25(2) of the Code). The documents to be produced so that a foreign court's judgment can be recognised are listed in Article 24 of the Code.

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 fundamental principle of both the Brussels IIa Regulation and the Code of Private International Law is automatic recognition without any special procedure being required. However, where recognition is based on the Brussels IIa Regulation, any interested party may, in accordance with the procedures provided for in Section 2, apply for a decision that the judgment be or not be recognised (Article 21(3) of the Brussels IIa Regulation). Where the Brussels IIa Regulation does not apply, any interested person, or the public prosecutor, may, in accordance with the procedure in Article 23 of the Code, apply for a declaration that the judgment must be recognised, in whole or in part, or cannot be recognised (Article 22(2) of the Code).

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?

Article 55(1) of the Code contains the choice-of-law rule for divorces and legal separations with an international dimension. Divorce and legal separation are governed:

1. by the law of the country in whose territory both spouses are habitually resident at the time when the application is lodged;

2. if both spouses are not habitually resident in the same country, by the law of the country in whose territory the spouses had their last common habitual residence, provided one of them is habitually resident in that country at the time when the application is lodged;

3. if neither of the spouses is habitually resident in the country where they had their last common habitual residence, by the law of the country of which both spouses are nationals at the time when the application is lodged;

4. in other cases, by Belgian law.

The concept of 'habitual residence' is defined in Article 4(2) of the Code. 'Common habitual residence' does not necessarily mean residence at the same address or in the same municipality, but rather residence in the same country. The law indicated in Article 55

(1) of the Code cannot be applied where that law does not recognise the institution of divorce. In that case, the law to be applied is the law indicated by the next alternative criterion in paragraph 1 (Article 55(3) of the Code).

Spouses also have a limited opportunity to choose the applicable law themselves: they can opt for the law of the country of which both are nationals at the time when the application is lodged, or for Belgian law (Article 55(2) of the Code). This choice can be made at the latest during the first appearance before the court hearing the application for divorce or legal separation.

The applicable law indicated in Article 55 of the Code determines the rules governing: the admissibility of an application for legal separation; the grounds and conditions of the divorce or legal separation or, in the case of a joint application, the conditions of consent, including the way in which this is expressed; the obligation for the spouses to agree on measures relating to the person, maintenance and property of the spouses and children for whom they are responsible; and the dissolution of the bond of marriage or, in the event of separation, the degree of relaxation of that bond (Article 56 of the Code).

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Divorce - Bulgaria

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1 What are the conditions for obtaining a divorce?

Bulgarian law recognises the following ways of terminating marriage through divorce:

- divorce by mutual consent under Articles 50 and 51 of the Family Code (*Semeen kodeks*);
- divorce by petition on the grounds of a serious and irretrievable breakdown in the marriage under Article 49 of the Family Code;
- no-fault divorce by petition on the grounds of a serious and irretrievable breakdown in the marriage on submission of an agreement between the spouses under Article 49(4) of the Family Code;

In a divorce by mutual consent, the two spouses make a joint petition to the district court (*rayonen sad*), by which they submit the agreement under Article 50 of the Family Code. In this agreement, the spouses must settle matters concerning the residence of the children, the exercise of parental rights, access to and maintenance of the children, the division of property, the use of the family home, maintenance between the spouses and the family name. The settlement has to be endorsed by the court after it has verified whether the children's interests are protected. If the court determines that the agreement is deficient or the children's interests are not properly protected, the court will allow time for the remedy of these defects. If the defects are not remedied within the time limit allowed, the court will dismiss the divorce petition.

In the case of divorce by petition on the grounds of a serious and irretrievable breakdown in the marriage, the petition is lodged by one of the spouses. The petition is examined by the district court (*rayonen sad*) with jurisdiction over the respondent's place of residence. The court is required to rule of its own motion on the issue of fault for the breakdown of the marriage and on the exercise of parental rights, access to and maintenance of the children born of the marriage, the division of property, the use of the family home, maintenance between the spouses and the use of the husband's surname. These rules apply if the parties have not concluded a nuptial agreement which settles the above-mentioned relations in the event of divorce.

In the case of divorce by petition, the spouses may declare that they have reached a settlement in which they are bound to agree on the matters concerning the exercise of parental rights, access to and maintenance of the children born of the marriage, the division of property, the use of the family home, maintenance between the spouses and the use of the husband's surname. The court will rule on the matter of fault only if expressly requested to do so by a party or the parties to the case, but is nevertheless required to establish that there are grounds for terminating the marriage, namely a serious and irretrievable breakdown.

2 What are the grounds for divorce?

For divorce by mutual consent:

The basis for granting a divorce by mutual consent is the declaration by the spouses of their solemn and unwavering mutual consent to the termination of the marriage. The court does not examine the spouses' motives for terminating the marriage.

For divorce by petition:

The basis for granting a divorce by petition is the serious and irretrievable breakdown of the marriage. There is no legal definition of 'serious and irretrievable breakdown of the marriage'. According to legal theory and the interpretative case-law of the Supreme Court of Cassation (*Varhoven kasatsionen sad*), a serious and irretrievable breakdown of the marriage applies where the marriage bond exists formally but is totally devoid of the substance dictated by public morality and the law. A serious and irretrievable breakdown of the marriage is an objective state that has to be established on a case-by-case basis. All means of proof, including oral evidence, are admissible. The law does not lay down absolute preconditions for a serious and irretrievable breakdown of the marriage. The case-law accepts, although the list is not exhaustive, adultery, a prolonged *de facto* separation, alcohol abuse and abuse of other intoxicating substances, physical and mental cruelty and persistent neglect of the family. The new Family Code no longer requires the court to rule of its own motion on matters concerning fault for the breakdown of the marriage, with the exception of cases in which the party or parties have expressly requested a ruling on this matter. Nevertheless, in the absence of an agreement, the matter of fault remains decisive for a ruling on matters concerning the exercise of parental rights, access to and maintenance of the children born of the marriage, and use of the family home.

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

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

After the divorce, the court may restore the premarital surname of one of the spouses.

3.2 the division of property of the spouses

The new Family Code lays down several possible property regimes between the spouses during the marriage: statutory matrimonial property regime; statutory separate property regime; and contractual regime.

1. The matrimonial property regime is the indivisible joint ownership of all assets, including cash deposits, acquired during the marriage. These assets are jointly owned by both spouses, regardless of whose name they were acquired under, if acquired by means of a joint contribution by both spouses. The joint contribution of the spouses may take the form of the investment of funds and labour, childcare and housework. Joint contribution is presumed subject to proof to the contrary.

Each spouse's personal property consists of assets acquired before the marriage and inheritances and gifts acquired during the marriage. Chattels (movable property) acquired by a spouse during the marriage for his or her normal personal use or the exercise of his or her profession are personal property.

Following the divorce, matrimonial property is transformed into normal property.

2. Separate property regime:

The rights acquired by each of the spouses during the marriage are held personally by that spouse, but upon termination of the marriage by petition each spouse is entitled to obtain a portion of the value of the rights acquired by the other spouse during the marriage, to the extent that the claiming spouse contributed by labour, by his or her financial means, by taking care of the children, by housework or otherwise. The expense of meeting family needs is borne by both spouses; the spouses incur shared liability for obligations assumed for ongoing family needs.

3. Contractual regime;

Under the new Family Code, spouses may conclude a nuptial agreement, an option that is new to Bulgarian law. A nuptial agreement may be concluded by spouses either before or during their marriage. The nuptial agreement is limited to stipulations regarding the division of property between the parties, such as: the parties' rights to the property acquired during the marriage; the parties' rights to the property they owned before the marriage; the manner in which the property, including the family home, is managed and disposed of; the sharing of expenses and obligations by the parties; the property-related consequences in the event of divorce; the spouses' maintenance during the marriage and in the event of divorce; the maintenance of the children born of the marriage. A stipulation transforming any premarital property of one of the parties into matrimonial community property is inadmissible. A nuptial agreement may not contain provisions on pre-death arrangements, except with regard to the spouses' shares in agreed matrimonial community property upon dissolution. The statutory matrimonial property regime applies to any property relations which are not settled by the nuptial agreement.

Regardless of the regime chosen by the spouses, the general regime applies to disposal of the family home, i.e. when the family home constitutes personal property of one of the spouses, disposal requires the consent of the other spouse unless the two spouses own another home which is co-owned or personally owned by each one of them. In the absence of consent, disposal can take place with the authorisation of the district judge if it is established that the disposal is not detrimental to the children who have not reached the age of majority and to the family. When a divorce is granted, if the family home cannot be used separately by the two spouses, the court will award its use to one of them if he or she has requested this and has a housing need. Where there are children born of the marriage who have yet to reach the age of majority, the court will rule of its own motion on the use of the family home, and may award such use to the spouse who has been awarded the exercise of parental rights, for as long as he or she exercises them.

After the divorce, the former spouses cease to be one another's legal heirs and forfeit all benefits under pre-death arrangements. After the divorce, gifts of property of significant value made in relation to or during the marriage by one spouse or their close relatives to the other spouse may be revoked, save where this is contrary to public morality. The petition to revoke the gift may be lodged up to one year after the divorce is granted.

The statutory matrimonial property regime applies where the persons entering into marriage have not chosen a regime for their property relations and if they are minors or persons with limited legal capacity. The property regime is recorded in a Spousal Property Relations Register. The property regime may be modified during the marriage. The modification is noted in the record of civil marriage and in the register. Nuptial agreements and the applicable statutory property regime are recorded in a central electronic register with the Registry Agency. The register is publicly accessible. When one or both spouses engage(s) in a

transaction with a third party, where a property regime is not recorded in the register, the statutory matrimonial property regime applies.

3.3 the minor children of the spouses

The accepted legal term in Bulgarian legislation is ‘exercise of parental rights’.

In its decision to grant a divorce dissolving the marriage, the court is required to rule on issues relating to the exercise of parental rights, access to and maintenance of the children born of the marriage, and the use of the family home. When doing so, it takes account of the interests of the children. The court decides which of the spouses is to exercise parental rights, laying down measures concerning the exercise of those rights, contacts between the children and the parents and the maintenance of the children. When determining which parent will exercise parental rights, the court assesses all the circumstances pertaining to the interests of the children, hearing the parents and, if they are over ten years of age, the children.

3.4 the obligation to pay maintenance to the other spouse?

Under Article 83 of the Family Code, maintenance is granted only to a spouse not at fault for the divorce. Maintenance is payable for no more than three years after the termination of the marriage, unless the parties have agreed a longer period. The court may extend these periods if the former spouse receiving the maintenance is in particular hardship and the other spouse can pay the maintenance without particular difficulty. A former spouse’s right to maintenance is terminated on remarriage. In practice, cases in which ex-spouses are awarded or ordered to pay maintenance are extremely rare.

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

The concept of legal separation does not exist in current Bulgarian legislation.

In case-law, *de facto* separation simply means that the spouses are neither living together nor sharing a household. It does not have the same meaning as ‘legal separation’.

5 What are the conditions for legal separation?

See 4.

6 What are the legal consequences of legal separation?

See 4.

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

Annulment is one of the means afforded by Bulgarian law for terminating a marriage. The annulled marriage has all the legal consequences of a valid marriage prior to its termination by judicial procedure. A marriage may be annulled only by judicial procedure: the marriage's nullity may not be relied upon until it has been ordered by the court.

8 What are the conditions for marriage annulment?

For a marriage to be annulled, one of the spouses must:

- have been under eighteen years of age when the marriage was contracted;
- still be married to another person;
- have been declared legally incapable or suffering a mental illness or mental handicap constituting grounds for them to be declared legally incapable;
- suffer from a disease which gravely endangers the life or health of offspring or the other spouse, unless the disease endangers only the other spouse and that spouse is aware of it;
- be a direct ascendant or descendant of the other spouse;
- be a brother or sister, nephew, niece or other collateral relative to the other spouse up to the fourth degree, including the other spouse;
- be the adoptive parent or adopted child of the other spouse;
- have been coerced into contracting the marriage by the threat of a serious and imminent danger to their own life, health or honour or that of their family.

9 What are the legal consequences of marriage annulment?

Depending on the defect of the marriage, the petition for its annulment may be lodged by the spouse affected by the defect; it may also be lodged by the prosecutor, by the spouse from the first marriage, or by the public prosecutor and the spouse. Article 97 of the Family Code expressly and exhaustively lists the persons empowered to bring an action for annulment and the time limits for doing so.

The consequences of annulment of the marriage are identical to those of divorce for the personal and property relations between the spouses, as well as for the relations between the spouses and their children. For the annulment of a marriage, bad faith is equivalent to fault in the case of divorce. Children conceived or born during the annulled marriage are considered to have been born in wedlock and enjoy the presumption of paternity.

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

The only way to terminate a marriage by divorce is by lodging a petition or application with a court.

Where the parties opt for mediation, the court proceedings are suspended.

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?

As court of first instance, a district court (*rayonen sad*) has natural jurisdiction over petitions for divorce on the grounds of fault and for annulment. These courts also hear applications for divorce by mutual consent of the spouses. The petitions should be lodged with the court for the respondent's place of residence. The court is not required to check of its own motion that it has jurisdiction, but it is required to transfer the case to the competent court if the respondent submits an objection within the time limit for responding to the petition.

Judgment by default is not possible in matrimonial cases.

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

The parties to the case can obtain legal aid on the usual terms for the provision of legal aid. These are laid down in the Legal Aid Act (*Zakon za pravnata pomosht*).

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

A decision granting a divorce by mutual consent is not subject to appeal.

On being served with a decision on a petition for annulment or a petition for divorce, a party has two weeks in which to lodge an appeal with the provincial court. The decision on divorce becomes effective even if an appeal has been lodged against the part concerning fault.

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?

Council Regulation (EC) No 2201/2003, as implemented by Article 621 of the Code of Civil Procedure (*Grazhdanski protsesualen kodeks*), applies in this case. The competent court is the provincial court exercising jurisdiction over the permanent address of the opposing party, and if the opposing party does not have a permanent address within the territory of the Republic of Bulgaria, the competent court is the court exercising jurisdiction over the place of residence of the interested party, and where the interested party does not have a place of residence within the territory of the Republic of Bulgaria, the competent court is Sofia City Court (*Sof iyski gradski sad*).

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?

Council Regulation (EC) No 2201/2003, as implemented by Articles 622 and 623 of the Code of Civil Procedure, applies in this case.

The party opposing recognition of the decision may appeal against the recognition order or, as appropriate, the order granting enforcement of the decision. The order is subject to appellate review by the Sofia Court of Appeal (*Sofiyski apelativen sad*), whose decision in turn is subject to cassational appeal before the Supreme Court of Cassation.

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 law applicable to the annulment of a marriage is that of the place in which it was contracted.

Personal relations between spouses are governed by their common domestic law. If they are of different nationalities, their relations are governed by the law of the state in which they have their common habitual residence. Failing that, their relations are governed by the law of the state with which the two spouses together have the closest ties.

Property relations between spouses are governed by the law applicable to their personal relations.

The divorce of spouses of the same foreign nationality is governed by the law of the state of which they are citizens when the petition for divorce is lodged. The divorce of spouses of different nationalities is governed by the law of the state in which they have their common habitual residence when the petition for divorce is lodged. When the spouses have no common habitual residence, Bulgarian law applies.

Last update: 24/11/2015

Divorce - Czech Republic

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1 What are the conditions for obtaining a divorce?

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

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

a final court decision approving the agreement on custody and visitation rights for a minor child who has not acquired full legal capacity for the period following the divorce;

a written agreement with officially verified signatures settling financial matters and rights and duties from their common residence as well as any maintenance duty for the period following the divorce.

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

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

2 What are the grounds for divorce?

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

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

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

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

3.2 the division of property of the spouses

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

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

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

3.3 the minor children of the spouses

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

3.4 the obligation to pay maintenance to the other spouse?

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

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

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

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

Legal separation does not exist in the Czech Republic.

5 What are the conditions for legal separation?

See question 4.

6 What are the legal consequences of legal separation?

See question 4.

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

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

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

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

8 What are the conditions for marriage annulment?

See question 7.

9 What are the legal consequences of marriage annulment?

A marriage that is annulled by a court is considered never to have been concluded from the very beginning (*ex tunc).* However, until such time as the court declares it to be void, it is regarded as valid. The same provisions govern the rights and responsibilities

of the spouses concerning their children and their property after a marriage has been annulled as in the case of a divorce. A marriage annulment means that any declaration made by the alleged spouses concerning their surname also becomes void. Both spouses subsequently return to their original surnames and have no right to choose their surnames. After the annulment of a marriage the surnames of any children remain unchanged. The presumption of fatherhood remains with the mother's spouse even after the marriage has been annulled.

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

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

11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

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

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

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

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

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

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

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

14 What should I do to have a decision on divorce/legal separation/marriage annulment issued by a court in another Member State recognized in this Member State?

Unless **the decision issued in another EU Member State** (apart from Denmark) **falls within the temporal scope of Council Regulation (EC) No. 2201/2003** (Brussels II bis), the decision will be recognised without any special procedure. The Registry Office will simply take account of the decision and make an additional record in the appropriate register automatically on submission of the required documents, i.e. the final decision of a court in another EU Member State or a certified copy thereof, concerning a

divorce, legal separation or annulment of the marriage with an official translation into Czech and the certificate referred to in Article 39 of the Brussels II bis Regulation (or Article 33 of Brussels II bis). The courts that decided on the divorce, legal separation or annulment of the marriage will issue a certificate at the request of a party to the proceedings. The requirement to submit this certificate may be waived if all the facts that would otherwise be contained in the certificate can be found in the decision itself, or in other documents submitted (e.g. if the decision submitted is endorsed as being final).

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

If the **decision was issued in another EU Member State prior to 1 May 2004 and at least one of the parties to the proceedings is a citizen of the Czech Republic**, decisions on marital matters are recognised on the basis of a special decision of the Supreme Court of the Czech Republic. Foreign decisions, endorsed as being final, or other documents required (e.g. marriage certificate) are submitted to the Supreme Court of the Czech Republic with an official translation into Czech and provided with the appropriate higher authentication (superlegalisation, apostille), unless otherwise laid down in an international treaty. Further details on these proceedings can be found on the website of the Supreme Court of the Czech Republic – see link below.

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

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

15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?

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

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

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

16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?

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

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

Related links

Association of Mediators of the Czech Republic

Association of Marriage and Family Advisors of the Czech Republic

Supreme Court of the Czech Republic – recognition of foreign judgments

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Last update: 17/09/2019

Divorce - Germany

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1 What are the conditions for obtaining a divorce?

Pursuant to Section 1564, first sentence, of the Civil Code (*Bürgerliches Gesetzbuch*, BGB), a marriage may be dissolved by divorce only by judicial decision on the petition of one or both spouses.

A marriage can be dissolved if it has broken down (Section 1565(1), first sentence of the Civil Code). Here it is a matter of the current state of the marriage and the prognosis for the future. The legislator has drawn up the following assumptions for the breakdown of the marriage:

- The marriage is regarded as having broken down if the parties are no longer cohabiting and it is not to be expected that they will resume matrimonial cohabitation (Section 1565(1), second sentence, of the Civil Code).
- Pursuant to Section 1566 of the Civil Code, it is irrebuttably presumed by the court that the marriage has broken down if the spouses have lived apart for a certain time and if:
- both spouses petition for divorce and have already lived apart for a year, or
- one of the spouses petitions for divorce and the other consents to divorce, and they have already lived apart for a year, or
- one of the spouses petitions for divorce and the other does not consent to divorce, but the spouses have already lived apart for three years.
- Where the spouses have not yet lived apart for one year, the marriage may be dissolved by divorce only in a few exceptional cases, for instance if the continuation of the marriage would be unreasonable for the petitioner for reasons that lie in the person of the other spouse (e.g. in the case of physical abuse by the other spouse) (Section 1565(2) of the Civil Code).

2 What are the grounds for divorce?

The only ground for divorce recognised by German law is the breakdown of the marriage. There is no divorce based on the fault of one of the spouses.

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

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

The divorced spouse retains the married name as determined by the spouses. Spouses may, by declaration to the registry of births, deaths and marriages, reassume their birth name or the name that they had until the determination of the married name, or attach their birth name or the name they had at the time of the determination of the married name before or after the married name (Section 1355(5) of the Civil Code).

3.2 the division of property of the spouses

3.2.1 Aufteilung der Wohnung und der Haushaltsgegenstände:

In principle, the following applies pursuant to Sections 1568a and 1568b of the Civil Code concerning the joint home and the division of the household effects after the divorce: the spouse more dependent on the use of the home or the household effects can demand the assignment of the home or the household effects from the other spouse. In this respect, the circumstances of both spouses and the best interests of their children must be taken into account.

In the case of rented accommodation, the spouse who is permitted to remain in the home takes over the tenancy arrangement – irrespective of whether previously both or only one of the spouses was the tenant.

In the case of home ownership, the following applies:

- If only one of the spouses is the owner of the former home, the other has a right of use only in exceptional cases, in particular if this is necessary to avoid unfair hardship, see Section 1568a(2) of the Civil Code.
- If the home is jointly owned by the spouses, the principle referred to in the first paragraph applies.

In both cases, both the spouse to whom the home has been assigned and the spouse who may no longer use his or her property have a claim for a tenancy agreement to be concluded between them and for a typical local rent to be agreed.

Concerning household effects, a distinction is to be made between those jointly owned by the spouses and those belonging to just one of them:

- In the case of household effects belonging to them jointly, the principles referred to in the first paragraph relating to this question apply. The spouse who has to relinquish the household effects can demand appropriate compensation for this.
- The other spouse has no claim to household effects belonging to only one spouse.

3.2.2 Zugewinnausgleich:

If the spouses live under the statutory matrimonial property regime and they do not reach agreement on the settlement of their assets on divorce, the accrued gains can be equalised on the application of one of the spouses in a separate judicial procedure (Sections 1372 *et seq.* of the Civil Code). This takes place as follows:

The starting point for the calculation is the value of the assets of each spouse on marriage (initial assets, Section 1374 of the Civil Code) and at the end of the property regime (final assets, Section 1375). Assets inherited or donated to one spouse during the marriage are to be added to that spouse's initial assets. The relevant reference date for the calculation of the final assets is the day on which the divorce petition was served on the other spouse. Accrued gains are the amount by which the final assets of a spouse exceed the initial assets (Section 1373). The person with the lower accrued gains is entitled to half the difference in value compared to the accrued gains of the other person (equalisation claim) (Section 1378(1)). The claim to equalisation of the accrued gains involves payment of a sum of money. The person entitled to equalisation as a rule cannot demand the transfer in their favour of specific assets belonging to the person required to pay the equalisation claim. However, in exceptional cases, the family court (*F amiliengericht*) may also transfer individual assets (Section 1383). However this is possible only if

- this is reasonable for the person required to pay the equalisation claim and
- this enables gross inequity to be avoided for the person entitled to equalisation, which would other arise through the equalisation of accrued gains in cash.

The value of these transferred assets is offset against the equalisation claim.

Instead of the statutory property regime, the spouses may, under German law, also opt for the property regime of the separation of property in notarial form (Section 1414), the community of property (Sections 1415 to 1518) or the optional regime of the community of accrued gains (Section 1519).

3.2.3 Folgen betreffend die Altersversorgung der Ehegatten

Pension rights accrued by the spouses during the marriage (e.g. entitlement to benefits from the statutory pension scheme, the civil service pension scheme, the occupational pension scheme or from private retirement and disability pension schemes) are in each case divided in half on divorce by means of the equalisation of pension rights. This ensures that both spouses share equally the rights acquired by them during their marriage and that each spouse receives independent pension rights.

3.3 the minor children of the spouses

3.3.1 Elterliche Verantwortung

If parents have joint parental responsibility, it continues after the divorce. Except in cases where the child is at risk, the question of parental responsibility will not be examined or decided on by the court unless one of the parents applies to the family court for transfer of parental responsibility or part of parental responsibility to that parent alone. Such an application must be granted if the other parent agrees and the child of at least 14 years of age does not object or if cancellation of joint parental responsibility and transfer to the applicant is likely to be in the child's best interest (Section 1671(1) of the Civil Code). German law generally assumes that it is in child's best interest to have contact with both parents, and therefore grants the child a right to contact with both parents and provides that both parents have a right and a duty of contact (Section 1684(1)). This applies irrespective of the allocation of parental responsibility.

3.3.2 Unterhaltsansprüche

Parents have a duty to maintain their children (Section 1601 of the Civil Code). Children are entitled to be maintained if they are incapable of maintaining themselves (Section 1602). The parents' duty of maintenance is subject to their ability to pay (Section 1603). However, parents' duty of maintenance in respect of their children is understood broadly, i.e. as regards the ability to pay, it is the achievable income, not merely the available income that matters (Section 1603(2)). Fundamentally, parents must pay maintenance for their children in proportion to their earning power and financial circumstances. However, a parent looking after a child fulfils their maintenance obligation as a rule in the care and upbringing of the child (Section 1606(3)). After the divorce of the parents, it is therefore as a rule only the parent in whose household the child does not live who is liable to pay cash maintenance.

Maintenance of the child covers all the child's living requirements, including the cost of an appropriate education (Section 1610).

3.4 the obligation to pay maintenance to the other spouse?

The spouses must each provide for themselves after the divorce (Section 1569 of the Civil Code). They are accordingly required to engage in appropriate gainful employment (Section 1574(1)). Where this is necessary to obtain appropriate gainful employment, they must undergo education, further training or retraining if it is likely that that education will be successfully concluded (Section 1574(3) of the Code).

However, divorced spouses are entitled to maintenance in the following circumstances:

- as long as, and to the extent that, they cannot be expected to engage in gainful employment because they are looking after a child for whom they have joint responsibility (Section 1570 of the Civil Code) or by reason of illness or other infirmities or weakness of their physical or mental capacity (Section 1572),
- as long as, and to the extent that, they can no longer be expected to engage in gainful employment because of their age at a certain point in time, in particular at the time of the divorce or the end of the care or upbringing of a child of the spouses (Section 1571),
- as long as, and to the extent that, the divorced spouse is undergoing education, further training or retraining in order to make up for gaps in his or her education or disadvantages caused by marriage; they must commence the education, further training or retraining as soon as possible in order to achieve appropriate gainful employment which will provide a long-term living, and the education must be expected to be successfully concluded (Section 1575 BGB),
- as long as, and to the extent that, they are unable to find appropriate gainful employment after the divorce (Section 1573(1)),
- as long as, and to the extent that, they cannot be expected to engage in gainful employment for other serious reasons and it would be grossly unreasonable to refuse maintenance, taking account of the interests of both spouses (Section 1576),
- to the extent that the income from appropriate gainful employment is insufficient to cover the full cost of maintenance (Section 1573(2)).

The level of the maintenance is determined by the matrimonial living conditions and also covers the costs of appropriate insurance against sickness and the need for care as well as, under certain circumstances, old age and reduced earning capacity too (Section 1578). If the spouse who is obliged to provide maintenance is incapable, on the basis of their earnings and financial circumstances and having regard to their other obligations, of providing maintenance to the party entitled to it without endangering their own proper maintenance, they need provide maintenance only to the extent that this is reasonable, having regard to the needs and to the earning power and financial circumstances of the divorced spouses (Section 1581, first sentence).

The maintenance may be reduced and/or limited in time where continued payment of a maintenance claim without restriction would be inequitable (Section 1578b). The possibility for a reduction/time limit under Section 1578b of the Civil Code extends in particular to Sections 1570-1573, whereby, according to Section 1570, the considerations of equity necessary for the prolongation of the maintenance for care after the child’s 3rd birthday, for reasons relating to the child or parents, represent a special time limit arrangement.

The interests of a child of the spouses entrusted to the spouse entitled to maintenance for care or upbringing must be taken into account in the evaluation under Section 1578b of the Civil Code. In addition, consideration must be given to the extent to which disadvantages caused by marriage have arisen with regard to the possibility for the spouse to take care of their own maintenance. Disadvantages exist if the income earned by the spouse entitled to maintenance is lower than it would have been without the marriage. According to Section 1578b(1), third sentence, of the Civil Code, such a disadvantage may arise from childcare and from the organisation of household management and gainful employment. When assessing the disadvantages caused by marriage, all circumstances of the specific individual case must be taken into account in the comprehensive assessment, including the duration of a marriage.

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

Either spouse may live separately, if they so wish, without any particular formalities. Sections 1361 to 1361b of the Civil Code contain regulations concerning the duration of living apart (see question 6).

5 What are the conditions for legal separation?

The spouses must live apart. The spouses are living apart if they do not have a joint household and one of them recognisably does not intend to establish one as they refuse marital cohabitation (Section 1567(1) of the Civil Code).

6 What are the legal consequences of legal separation?

If the spouses are living apart or if one of them intends to do so, one spouse may demand that the other spouse leaves them the matrimonial home, or a part of it, for their sole use (allocation of the home), provided this is necessary in order to prevent

unreasonable hardship. (Section 1361b of the Civil Code). If one spouse has physically abused or threatened the other, the injured or threatened spouse will usually be allocated the whole home. The allocation of the home does not serve to prepare for or facilitate the divorce.

Use of the household effects may also be regulated for the period of the separation (Section 1361a). Either spouse may require the other to give them the household effects which belong to them. However, this does not apply if the person required to relinquish these effects needs them to maintain their new separate household and this is equitable in the particular circumstances (e.g. transfer of the washing machine to the spouse with whom the children are living).

In addition, while the spouses are living apart, one spouse may demand from the other the maintenance appropriate with regard to the standard of living and the earnings and property situation of the spouses, in accordance with Section 1361 of the Civil Code. Maintenance during separation is the result of marital solidarity and is intended to ensure that spouses are not in need as the result of a separation. In addition, this also opens up the opportunity for the spouses to return to married life, irrespective of the economic constraints. The spouses are therefore still responsible for one another to a comparatively large extent, so only limited requirements exist for economic autonomy and the obligation to earn a living. A spouse living separately is entitled to maintenance if this person is not in a position to meet their needs from their income and assets.

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

No 'marriage annulment' exists. A marriage can be annulled by court decision following an application (Sections 1313 *et seq.* of the Civil Code). Marriage annulment proceedings are rare in practice.

8 What are the conditions for marriage annulment?

The grounds for marriage annulment are violations of the law or vitiated consent on marriage. They are listed exhaustively in Section 1314 of the Civil Code.

9 What are the legal consequences of marriage annulment?

The consequences of marriage annulment correspond to those in the case of a divorce (Section 1318 of the Civil Code). See the comments under question 3 in this respect.

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

In the event of divorce, parents are entitled to advice in the context of children's and youth services from the youth welfare office (*Jugendamt*). The advice is intended to assist parents who are separated or divorced in creating the conditions for carrying out their parental responsibilities in a way oriented towards the best interests of the child or young person. The parents are supported, with appropriate involvement of the child or young person concerned, in developing a plan for consensus-based provision of parental care. There is a database of all advice centres at https://www.dajeb.de/. It is also possible to resolve conflict and come to an amicable agreement with the aid of mediation. More information about family mediation is available at https://www.bafm-mediation.de/.

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?

Only dissolution of marriage (divorce), marriage annulment or the establishment of the existence or non-existence of a marriage between the participants exist under German law (Section 121 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG).

The application in matters of marriage must generally be lodged at the local court (*Amtsgericht*)/family court (*Familiengericht*) (Sections 111 and 121 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, Section 23b of the Judicature Act (*Gerichtsverfassungsgesetz*)). Geographical jurisdiction is based on Section 122 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. Representation by a lawyer is mandatory.

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

A person whose personal and financial circumstances are such that they are unable to afford the costs of conducting proceedings, or who can afford to pay only part of the costs or can pay them only in instalments, can apply for legal aid for proceedings before the family courts. Approval is conditional upon the intended legal action or defence having sufficient prospects of success and not appearing malicious. This ensures that those who are financially less well-off also have access to the courts. Depending on the available income, legal aid pays the party's own contribution to the court costs, in whole or in part. The costs of legal

representation are assumed if the court assigns a lawyer. You can find further information in the brochure on legal aid and advice ‘ *Beratungshilfe und Prozesskostenhilfe*’ on the webpage of the Federal Ministry of Justice and Consumer Protection under https://www.bmjv.de.

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

An appeal may be lodged against the decision pronouncing the divorce or the annulment of marriage under Section 58 *et seq.* of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. The Higher Regional Court (*Oberlandesg ericht*) rules on the appeal.

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?

Such a decision (unless issued in Denmark) is automatically recognised in Germany under Council Regulation (EC) No 2201/2003 of 27 November 2003 (the ‘Brussels IIa’ Regulation), i.e. without separate recognition proceedings. Brussels IIa generally requires the divorce, annulment or nullity proceedings to have been instituted after 1 March 2001 (see Article 64, Brussels IIa for the exceptions to this). It is primarily the predecessor to Brussels IIa, i.e. Brussels II, which applies to old cases. Decisions from Denmark still usually require separate recognition proceedings.

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?

Where Council Regulation (EC) No 2201/2003 of 27 November 2003 applies, the court with jurisdiction to hear an application for non-recognition of such a decision is generally the local court (family court) of the place of the higher regional court in the district of which:

- the respondent or the child concerned by the decision is normally resident, or
- where no such jurisdiction applies, there is a manifest interest in the determination or there is a need for care,
- or otherwise the Pankow/Weißensee Family Court.

An exception applies in Lower Saxony, where jurisdiction for all higher regional court districts according to these criteria is concentrated centrally in the Local Court of Celle.

The procedural requirements of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction apply.

16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?

In Germany and now 16 other Member States of the European Union, the law applicable to divorce in situations involving a conflict of laws is governed by the provisions of the ‘Rome III Regulation’ (Council 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 designated under the Rome III Regulation is then to be applied whether or not it is the law of a participating Member State.

Last update: 31/10/2019

Divorce - Estonia

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1 What are the conditions for obtaining a divorce?

A divorce may be granted by a registry office or a notary by mutual agreement between the spouses on the basis of a joint written application, or by a court on the basis of an action brought by one spouse against the other. The latter scenario applies if the spouses disagree about the divorce or the circumstances relating to the divorce, or if a registry office is not competent to grant divorce.

2 What are the grounds for divorce?

A registry office or a notary may grant a divorce by mutual agreement between the spouses on the basis of a joint written application and if both spouses reside in Estonia.

A divorce may be granted by a court on the basis of an action brought by one spouse against the other, if conjugal relations have definitively terminated. Conjugal relations have ended if the spouses no longer have a matrimonial coexistence and there is reason to believe that the spouses will not resume cohabitation. Termination of conjugal relations is presumed if the spouses have lived apart for at least two years.

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

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

Divorce does not affect the personal relations between the spouses. Upon divorce, the court or registry office may restore the person’s previous surname on application; otherwise the surname taken upon marriage is retained.

3.2 the division of property of the spouses

Upon divorce, the spouses’ property is divided according to the property regime between them. In the case of joint property, the spouses generally divide it between them in equal shares according to the provisions on the termination of common ownership. The composition of the property is established as at the time the property regime ends. There is no obligation on the spouses to

divide their property upon divorce. Until their joint property is divided, the spouses jointly exercise the rights and perform the obligations relating to it. In addition, the spouses have the right to jointly possess any objects forming part of their joint property. When the property regime under which any growth of assets is shared comes to an end, the acquired assets of both spouses are ascertained and the financial claim arising from the duty to share acquired assets is determined.

If the spouses wish to divide their property upon divorce, the property is divided according to the property regime chosen or pursuant to a marital property agreement. If the spouses have signed a marital property agreement, this terminates at the time of the divorce. Upon termination of the marital property agreement in the event of divorce, any rights and obligations arising from the marital property agreement terminate. Property is distributed according to the marital property agreement.

3.3 the minor children of the spouses

The divorce as such does not affect parental responsibility and the parents retain joint custody.

In general, parents should agree on who the child will live with, who will be involved in raising the child and to what extent, as well as how and for how long maintenance is to be provided. The monthly support payment for one child may not be less than half of the minimum monthly wage established by the Estonian Government.

If the parents do not wish or are not able to exercise the right of joint custody, each parent has the right to apply to a court for the right of custody of the child to be partially or fully transferred to him or her. Changes in the right of custody do not affect the obligation to provide maintenance.

3.4 the obligation to pay maintenance to the other spouse?

A divorced spouse is entitled to receive maintenance:

1) until the child reaches three years of age if, after divorce, the divorced spouse is unable to maintain himself or herself due to caring for the spouses' child;

2) if, after divorce, the divorced spouse is unable to maintain himself or herself due to his or her age or state of health and if the need for assistance arising from age or state of health existed at the time of the divorce. Maintenance due to age or state of health can also be demanded from the other divorced spouse in cases where the need for assistance due to age or state of health already existed at the time the spouse lost the right to receive maintenance from the other spouse on other grounds provided for by law. The maintenance is to be paid for as long as the person entitled to the maintenance cannot be expected to earn income.

The father of a child is required to provide maintenance to the mother of the child for the eight weeks preceding and the twelve weeks following the birth of the child.

A court may release a divorced spouse from the obligation to provide maintenance for reasons provided for by law.

A divorced spouse entitled to receive maintenance may only request the legal obligation to provide maintenance be performed after having filed the action.

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

The spouses are deemed to be legally separated where they do not have a joint household or matrimonial coexistence and at least one of the spouses is clearly unwilling to resume or create it.

5 What are the conditions for legal separation?

The spouses live apart.

6 What are the legal consequences of legal separation?

If spouses are legally separated, either spouse may:

1) claim from the other spouse any objects which were used in the interests of the family if the spouse needs the objects in his or her separate household and he or she has a legitimate interest in continuing to use them. Any standard family household furnishings owned jointly by the spouses are divided between them on the basis of the principle of equity. In general, both spouses may file a claim to obtain the personal effects under their individual ownership. Any property in common ownership (i. e. in particular, in the common ownership of the spouses) is divided fairly and taking into account the interests of each spouse and the children;

2) require the other spouse to transfer the family's shared accommodation or a part of it for his or her sole use if this is necessary in order to avoid major personal conflicts. Although, first and foremost, this should be based on the preferential rights of

the owner of the dwelling, the dwelling may also be left to be used by the spouse who is not the owner, if the court deems it necessary when taking into account the means of both spouses and the interests of the children.

If the spouses are legally separated, each spouse is to provide maintenance in the form of regularly paid amounts of money to cover the costs incurred by the other spouse in the interests of the family.

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

Annulment of marriage means that the marriage is considered to have been void from the very start. Marriage may only be annulled by court judgment.

8 What are the conditions for marriage annulment?

Annulment of marriage may only be based on the grounds for invalidity of marriage specified in the Family Law Act (*perekonnasea dus*), i.e. a court may annul a marriage by means of an action if:

1) the requirement concerning the minimum age for marriage or concerning active legal capacity was violated at the time of the marriage;

2) the prohibition on marriage set out in the Act was violated at the time of the marriage;

3) the formal requirements set out in the Act were violated at the time of the marriage;

4) at least one spouse had a temporary mental disorder or was incapable of exercising his or her will for any other reason at the time the marriage was contracted;

5) the marriage was contracted fraudulently or under duress, including by concealing the state of health or other personal details of a spouse, where those details are relevant to the validity of the marriage;

6) it was not the intention of one or either of the spouses to perform the obligations arising from the status of being married, but the marriage was contracted for other purposes, particularly with the intention of obtaining an Estonian residence permit (marriage of convenience).

7) the spouses are of the same sex as a result of gender reassignment carried out during the marriage.

In addition, a marriage is deemed to be void, if:

1) the marriage is between persons of the same sex;

2) the fact that the marriage has been contracted was confirmed by a person who does not have the competence of a registrar, or

3) at least one party has not expressed a desire to enter into marriage.

9 What are the legal consequences of marriage annulment?

Upon the annulment of a marriage, the marriage is considered to have been void from the very start, unless the marriage was annulled due to a marriage between persons of the same sex, in which case the marriage is annulled based on the entry into force of a court ruling. Persons whose marriage has been annulled no longer have the rights and obligations with regard to each other which arise from marriage (including those arising from any marital property agreement, which is also considered void).

If a marriage is annulled because one of the prospective spouses concealed from the other prospective spouse that they were already married, or influenced the other spouse to marry through fraud or under duress, a court may order that person to pay support to the person with whom he or she was in a void marriage by applying the rules concerning the provision of maintenance to a spouse. At the request of the party unlawfully induced to marry, a court may apply the provisions concerning marital property to the property regime of the parties (i.e. joint property of spouses).

Children from an annulled marriage shall have the same rights and obligations as children from a marriage.

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

A registry office or a notary may grant a divorce on agreement of the spouses. The legal consequences of a divorce (e.g. division of marital property) may be set out in an agreement between the spouses involved.

In the event that the spouses have any disputes with regard to the circumstances of the divorce, there are no extrajudicial means for finding a solution.

11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

An application for a divorce may be submitted to:

1) the registry office of the place of residence of one of the spouses (if the residence of both spouses is in Estonia);

2) a notary;

3) the court of first instance whose jurisdiction covers the place of residence of the defendant (a county court).

An application for the annulment of marriage should be filed with the court of first instance (county court) of the place of residence of the defendant.

A divorce is granted by a registry office on the basis of a joint personal written application by the spouses. The spouses should confirm in the application that they have no disputes regarding children, the division of joint property or maintenance orders. Divorce applications should be accompanied by a document certifying the marriage. If a spouse is unable for valid reasons to appear personally at the registry office in order to submit the joint application, he or she may submit a separate application that has been certified by a notary. Documents in a foreign language should be submitted to a registry office with a translation certified by a notary, consular official or sworn translator. Any document certifying marriage that has been issued in a foreign country must be legalised or bear an apostille, unless otherwise provided for in an international agreement.

A divorce is granted by a notary on the basis of a joint personal written application by the spouses. Divorce applications should be accompanied by a document certifying the marriage. If a spouse is unable for good reasons to appear personally at the notary's office in order to submit the joint application, he or she may submit a separate application that has been certified by a notary. Documents in a foreign language should be submitted to a registry office with a translation certified by a notary, consular official or sworn translator. Any document certifying marriage that has been issued in a foreign country must be legalised or bear an apostille, unless otherwise provided for in an international agreement.

In a matrimonial matter to be adjudicated by an Estonian court, the action is to be filed with the court whose jurisdiction covers the joint place of residence of the spouses or, if there is no such residence, with the court whose jurisdiction covers the place of residence of the defendant. If the place of residence of the defendant is not in Estonia, the action is to be filed with the court whose jurisdiction covers the place of residence of a minor child of the parties or, in the absence of a minor child of the parties, with the court whose jurisdiction covers the place of residence of the plaintiff. When filing an action for divorce, legal separation or annulment of a marriage with the court, the statement of claim must meet all the formal requirements set out in the Code of Civil Procedure (*tsiviilkohtumenetluse seadustik*) with regard to a civil action. The statement of claim and any documentary evidence should be submitted to the court in writing or electronically, in Estonian and in A4 format.

In the statement of claim, the name of the court should be indicated, as should the personal details of the petitioner and the defendant (spouses) and of their joint minor children. It should also be indicated who will provide for the children's maintenance and raise them and with whom the children will live; the statement of claim should also contain a proposal regarding the future arrangement of parental rights and child-raising. In addition, the factual circumstances that constitute the basis for the action should also be indicated; the plaintiff should also list and present any evidence that they may possess.

In addition to the above, if joint property is divided the composition and location of the property should be indicated in the statement of claim, the value of all the plaintiff's belongings should be determined and a proposal should be made for the division of the joint property. If the spouses have signed a marital property agreement, this should be appended to the statement of claim.

The statement of claim must be signed by the plaintiff or his or her representative. If this is done by a representative, an authorisation document or another document certifying the representative's powers should also be included.

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

If the person requesting legal aid is unable to pay the procedural expenses due to his or her financial situation or is able to pay them only in part or in instalments, and if there is sufficient reason to believe that the intended participation in the proceedings will be successful, the court may release him or her from the obligation to pay procedural expenses in full or in part and leave these expenses to be covered by the state.

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

An appeal may be filed against a judgment regarding divorce, legal separation or marriage annulment under the general provisions governing appeal proceedings, if the appellant finds that the judgment of the court of first instance is based on an error in law (e.g. the court of first instance has incorrectly applied a legal provision of substantive law or procedural law).

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?

In accordance with Council Regulation (EC) No 2201/2003, a judgment on divorce made in one Member State is recognised automatically in the other Member States of the European Union (except for Denmark) without any special procedure being required.

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?

In order to contest the recognition of a decision on divorce, legal separation or annulment of marriage, the court of appeal of the Member State as indicated in the list published in Council Regulation (EC) No 2201/2003 should be addressed.

In Estonia, a circuit court fulfils this function.

The procedure and deadline for appealing a court decision will be set out in the court decision.

16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?

In the event of divorce, the legislation of the country in which the common place of residence of the spouses is located is to be applied. If the spouses reside in different countries but have the same citizenship, the general legal consequences of the marriage are defined by the legislation of the country whose citizens they are. If the spouses reside in different countries and have different citizenship, the general legal consequences of the marriage are determined on the basis of the law of the country of their last common residence, provided that one of the spouses resides in that country. If, on the basis of the above, the law applied to the general legal consequences of the marriage cannot be determined, the law of the country with which the spouses have the strongest link in any other manner is applied.

If divorce is not permitted under the law mentioned above or is only permitted under very strict conditions, Estonian law is applied instead if one of the spouses resides in Estonia or holds Estonian citizenship or if he or she was resident in Estonia or held Estonian citizenship at the time the marriage was contracted.

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Divorce - Ireland

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1 What are the conditions for obtaining a divorce?

Either of the spouses concerned was domiciled in Ireland on the date of the institution of the proceedings.

OR

Either of the spouses was ordinarily resident in Ireland throughout the period of one year ending on that date.

(Section 39 (1) (a) & (b) of the Family Law (Divorce) Act, 1996)

2 What are the grounds for divorce?

The court (the Circuit Court concurrently with the High Court - Sec. 38 [1]) should be satisfied that:

At the date of the institution of the proceedings that the spouses have lived apart form one another for a period of, or periods amounting to, at least four years during the previous five years,

AND

That there is no reasonable prospect of reconciliation between the spouses,

AND

That such provision as the court considers proper in the circumstances exists or will be made for the spouses and any dependent members of the family.

(Section 5 (1) of the Act.)

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

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

The marriage, the subject of the decree, is thereby dissolved and a party to that marriage may marry again - Section 10 (1).

3.2 the division of property of the spouses

On granting a decree of divorce the court may make a property adjustment order - Section 14 (1) of the Act -property can be sold, divided equally or individually or transferred to the sole name of either party.

3.3 the minor children of the spouses

Upon the grant of a decree of divorce, the court may give such directions as it considers proper regarding the welfare, custody of, or right of access to, any dependent member of the family concerned who is an infant - Section 5 (2) of the Act. The welfare of the child is paramount.

(For more details, please see Factsheet on “Parental responsibility - Ireland”).

3.4 the obligation to pay maintenance to the other spouse?

On granting a decree of divorce the court may make a maintenance order in favour of either spouse which shall cease upon the remarriage of the receiving spouse - Sec. 13 of the Act

The Court may also make a pension adjustment order in favour of either spouse - Section 17 of the Act

(For more details, please see Factsheet on “Maintenance Claims - Ireland”).

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

A Legal (judicial) separation facilitates estranged spouses to re-arrange their lives to live permanently apart from each other.

A decree of judicial separation enables the court granting it to make extensive ancillary orders relating to children, support payments, capital payments, pension rights, the family home and other property. A decree of judicial separation does not dissolve a marriage. Thus estranged spouses who obtain a decree of ‘legal separation’ who wish to remarry must first obtain a decree of divorce.

(Section 8 of the Judicial Separation and Family Law Reform Act, 1989.)

5 What are the conditions for legal separation?

Any one or more of the following:

1. that the spouse has committed adultery.

2. Unreasonable behaviour and cruelty of the spouse.

3. desertion by the spouse or 1 year.

4. that the spouses have been living apart for 1 year and both spouses consent to the application.

5. that the spouses have been living apart for 3 years.

6. that the marriage has broken down to an extent where the court is satisfied that a normal marital relationship has not existed for at least 1 year.

(Sec. 2 of the Judicial Separation and Family Law Reform Act, 1989.)

6 What are the legal consequences of legal separation?

Legal separation ends the duty of cohabitation without dissolving the marriage. The wife may continue to use her husband’s name.

At a financial level, the duty to support the other spouse is maintained and maintenance support may be awarded, although any attribution of fault cannot be taken into account. However, as in the case of a divorce the judgement entails the dissolution and liquidation of the matrimonial relationship.

The inheritance rights are maintained, except in the event of a spouse separated from bed and board on the grounds of his/her exclusive fault.

The parties may apply to the court to have the decree rescinded. The court will rescind the decree where it is satisfied that a reconciliation has taken place and the parties intend to resume cohabitation.

Conversion of legal separation into divorce:

At the request of one of the spouses, a judgement handed down for legal separation can be converted ipso jure into a divorce if the legal separation has lasted three years. In this case, the judge grants the divorce and rules on its consequences.

If the legal separation was granted upon joint request, it can be converted into a divorce only by a further joint request.

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

It means that each party to an annulled marriage is as though he/she was never married to the other.

8 What are the conditions for marriage annulment?

One of the following is required:

- Either spouse was domiciled in Ireland on the date of the institution of the proceedings
- Either spouse was ordinarily resident in Ireland for 1 year on that date
- Either spouse died before that date

and

- was domiciled in Ireland at the time of death or
- had been ordinarily resident in Ireland for 1 year on that date.

9 What are the legal consequences of marriage annulment?

The marriage is considered never to have existed. Each party is free to remarry. The parties have no succession rights to one another nor do they have any obligations of maintenance or support to one another. Any children born to the couple during the marriage are regarded as non-marital.

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

Financial and property issues and issues regarding dependant offspring may be compromised by mediation without recourse to the Court but the Court alone may grant a Judicial Separation or a Divorce Decree.

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?

The Circuit Court, concurrently with the High Court, has jurisdiction to determine application for divorce/judicial separation /annulment.

Application for divorce/judicial separation in the Circuit Court is commenced by way of Civil Bill in the relevant Circuit Court office and the procedure is governed by Order 59 Rule 4 of the Circuit Court Rules 2001.

Application for divorce/judicial separation in the High Court is commenced by the way of Special Summons which is issued out of the Central Office. The procedure is governed by Order 70A of the Rules of the Superior Courts (S.1 No. 343 of 1997). Application for nullity in the High Court is commenced by filing a Petition in the Central Office. The procedure is governed by Order 70 of the Rules of the Superior Courts.

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

Yes - through the Legal Aid Board, subject to means testing.

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

The decision of the High Court on an appeal from a decision of the Circuit Court in divorce/judicial separation/nullity proceedings is final and conclusive and not appealable - Sec. 39 of the Courts of Justice Act, 1936.

An appeal lies from all decisions of the High Court to the Supreme Court in divorce/judicial separation/nullity proceedings which commence in the High Court.

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?

Apply to the Court (Circuit or High) in Ireland pursuant to Sec. 29 (1)(d)/(e) of the Family Law Act 1995 for the particular declaration. The application in the Circuit Court is by way of Civil bill. The application in the High Court is by way of Special Summons.

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 Irish Courts because of the Constitutional Status of Divorce will determine whether or not a divorce granted abroad is capable of recognition in Ireland - i.e. The High Court or the Circuit Court.

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 conditions for obtaining a divorce in Ireland are those set forth in Section 38 of the Family Law (Divorce) Act, 1996.

A spouse who does not live in Ireland or who is not Irish may apply for a Divorce in Ireland if he/she fits either of the conditions detailed in Sec. 39 (1) (a) & (b) of the Family Law (Divorce) Act, 1996. Irish Divorce Jurisdiction is based on residence and not nationality.

Related links

Courts Service Ireland

Oasis : Information on Public Services

Last update: 18/11/2019

Divorce - Greece

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1 What are the conditions for obtaining a divorce?

Divorce requires a court decision that is no longer open to appeal (Articles 1438 *et seq.* of the Civil Code (*Αστικός Κώδικας*)).

There are two types of divorce proceedings:

1. In a divorce by consent (*συναινετικό διαζύγιο*), the spouses agree to dissolve the marriage between them, by means of a written agreement signed by them and by their lawyers, or by their lawyers alone provided the lawyers have been specifically granted the power to act on their behalf . The couple must have been married no less than six months. If there are no minor children, the marriage is dissolved out of court, i.e. the conclusion of the above agreement is sufficient. However, if there are minor children, that agreement must be accompanied by another written agreement between the spouses which regulates the custody of the children and communication with them. All of these agreements are submitted to the competent single-member court of first instance (*Μονομελές Πρωτοδικείο*), which ratifies the agreements and declares the dissolution of the marriage by the procedure followed in non-contentious cases.
2. In a contested divorce (*διαζύγιο κατ' αντιδικία*), on stated grounds establishing the breakdown of the marriage, one of the spouses brings an action seeking dissolution of the marriage before the single-member court of first instance of the place, or both spouses bring such actions separately.

2 What are the grounds for divorce?

In a contested divorce the grounds for divorce (Article 1439 of the Civil Code) are as follows:

1. There is a breakdown of the marital relationship, caused by the respondent or by both spouses, such that there is good reason to believe that the continuation of the marital relationship would be intolerable to the applicant. There is a presumption of breakdown, which the respondent may seek to rebut, in cases of bigamy, adultery, desertion of the applicant, attempt on the applicant's life by the respondent, or domestic violence committed by the respondent against the applicant. If the spouses have been separated continuously for at least two years, there is an irrebuttable presumption of breakdown, and divorce may be sought even if the breakdown was caused by the applicant.
2. If one of the spouses is declared missing presumed dead, the other may petition 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)

When a marriage is dissolved by divorce, the spouses are no longer under an obligation to live together and to take decisions jointly. Spouses who have adopted their spouse's surname generally revert to their own name, unless they wish to retain their spouse's name on the ground that they have acquired a professional or artistic reputation under that name. All responsibility of spouses for the fulfilment of their mutual obligations comes to an end. Bigamy disappears as an impediment to marriage. During the marriage, time-limits were suspended in the case of claims made by one spouse against the other; this suspension now ends. The divorce does not put an end to the relationship by marriage between blood relations of one spouse and blood relations of the other.

3.2 the division of property of the spouses

In a divorce, each of the spouses is entitled to recover the movable property which belongs to him or her, or which is presumed to belong to him or her even if it has actually been used by both spouses or only by the other spouse, provided the other spouse does not rebut the presumption; this is so even if the item might be considered necessary to the other spouse. If a spouse in possession of an item refuses to hand it over to its owner, the owner may bring an action *in rem*, an action for possession, or an action invoking the law of obligations. After dissolution of the marriage a spouse who is the owner of the family home may bring an action *in rem* or an action under the law of obligations against a spouse who is making use of the home. Joint ownership is ended by the divorce, and each of the spouses receives what he or she is entitled to under the rules on joint ownership and the distribution of common property. Where an item of property was acquired by one of the spouses during the marriage, the other spouse has a claim to a share in it.

3.3 the minor children of the spouses

When a marriage is dissolved by divorce, the court can settle the exercise of parental responsibility in one of the following ways:

(a) it may assign parental responsibility or custody to one of the parents;

(b) it may assign parental responsibility or custody to both parents jointly;

(c) it may apportion parental responsibility between the parents; or

(d) it may assign parental responsibility to a third party.

Divorced parents continue to be under an obligation to support children who are minors and who have no income from work of their own or from their own property, or whose own income is not sufficient to maintain them. This obligation is apportioned by the parents or, in the event of dispute, by the court.

3.4 the obligation to pay maintenance to the other spouse?

When a marriage is dissolved by divorce, a former spouse who cannot maintain himself or herself from his or her own income or property is entitled to claim maintenance from the other:

1. if at the time the divorce is pronounced the age or state of health of the spouse making the claim is such that he or she cannot be required to take up or continue to carry on a suitable occupation in order to support himself or herself;
2. if the spouse making the claim has care of a minor, and is thereby prevented from carrying on a suitable occupation;
3. if the spouse making the claim cannot find appropriate regular employment, or needs vocational training; in either of these cases the entitlement lasts no more than three years from the time the divorce is pronounced; or
4. in any other case where the award of maintenance at the time the divorce is pronounced is necessary on equitable grounds.

Maintenance may be denied or restricted for good cause, especially if the marriage has lasted a short time, or if the spouse who might be entitled to maintenance is to blame for the divorce or has voluntarily brought about his or her own poverty. Entitlement to maintenance comes to an end if the person entitled remarries or cohabits. Entitlement to maintenance does not come to an end if the spouse obliged to make payments dies. It does, however, come to an end if the person entitled to receive payments dies, unless the entitlement relates to a past period or instalments are outstanding at the time of death.

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?

The annulment of a marriage means that by reason of some irregularity a marriage which had full legal effect is annulled by court judgment and thereby ceases to have any effect, save only that any children born in the annulled marriage continue to be considered children born in wedlock. The rules on the annulment of any voidable act also apply to the annulment of a voidable or void marriage (Articles 1372 *et seq.* of the Civil Code).

8 What are the conditions for marriage annulment?

A marriage may be annulled on the ground that one of the positive requirements for marriage was not met, or that there was some absolute impediment, or that the marriage is voidable by reason of mistake or duress.

A positive requirement is said to be lacking if the couple’s declarations are not made in person, or are conditional or subject to a time-limit; if the spouses are minors, and the marriage has not been authorised by the courts; if either of them has a court-appointed guardian who does not consent to the marriage, and no authorisation has been obtained from the court; or if either of them at the time of the celebration of the marriage is not aware of what he or she is doing or is deprived of the use of reason owing to mental illness. There is an absolute impediment if the spouses are blood relations in the direct ascending or descending line, without limitation of degree, or collaterally, within the fourth degree; if they are relations by marriage in the direct ascending or descending line, without limitation of degree, or collaterally, within the third degree; or in case of bigamy or adoption.

Nullity is remedied after the marriage if the spouses consent to the marriage fully and freely; if unauthorised minors are subsequently given the authorisation of the court; if an unauthorised minor reaches the age of 18 and acknowledges the marriage; if a disqualified spouse thereafter becomes qualified and acknowledges the marriage; if the guardian, or the court, or a disqualified

spouse being now qualified, acknowledges the marriage; or if a person who acted in consequence of mistake or duress acknowledges the marriage after the mistake or duress has ended. There is no marriage if no declaration of marriage has been made before the mayor and witnesses, in the case of a civil wedding, or in the case of a religious wedding if the marriage has not been solemnised before a priest of the Eastern Orthodox Church or before a minister of another denomination or faith known in Greece. In that event the marriage has no legal effect, and an action seeking a declaration of its non-existence may be brought by anyone with a legal interest in the matter.

9 What are the legal consequences of marriage annulment?

In principle the effects of the marriage are nullified retrospectively. This applies to all personal, family and property relations between the spouses. Thus the nullity of the marriage removes the spouses' right to inherit from one another on an intestacy, and does so from the outset. It also nullifies all legal transactions between the spouses and third parties that were entered into in their capacity as a married couple, either on the basis of the needs of their life together as man and wife or for purposes of the management of the other spouse's property, subject however to the good faith of third parties who had dealings with the couple. If at the time the marriage was celebrated the spouses or either of them were unaware of the nullity, the nullity operates with respect to that spouse for the future only; a spouse who at the time the marriage was celebrated was unaware of the nullity is entitled to maintenance from the other spouse if the other spouse was aware of the nullity from the beginning, and from the other spouse's successors if the other spouse should die after the annulment of the marriage, subject to the same rules that govern divorce, which apply by analogy. The same entitlement to maintenance is also enjoyed by a spouse who was coerced into marriage by threats, or contrary to law, or contrary to accepted morals, if the marriage is annulled or ends with the death of the other spouse (Article 1383 of the Civil Code).

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

No.

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?

The single-member court of first instance (Article 17(1) of the Code of Civil Procedure (*Κώδικας Πολιτικής Δικονομίας*)) has jurisdiction to dissolve marriages by divorce on grounds of breakdown caused by one or both spouses, or on the ground that one spouse is missing presumed dead; to annul a void or voidable marriage; to declare that no marriage exists; and during the course of the marriage to rule on relations between the spouses arising out of the marriage. The court procedure followed is that laid down for matrimonial disputes, which was amended by Law 4055/2012.

In cases of divorce by consent the appropriate court is likewise the single-member court of first instance, but here the procedure followed is that for non-contentious cases. The court with jurisdiction is that of the place where the spouses' last place of joint residence is situated (Article 39 of the Code of Civil Procedure); or the place where their habitual residence is situated, in so far as one of them still resides there; or the place where the respondent is habitually resident (Article 22 of the Code); or in the event of a joint application, the place where either of the spouses is habitually resident; or the place where the applicant is habitually resident, if he or she has resided there for at least a year immediately before the application was made, or for at least six months if he or she is a Greek national or both spouses are of Greek nationality. Any crossaction will be heard by the same court. Actions seeking maintenance may be joined to actions for divorce, annulment or recognition of the non-existence of a marriage, and will then be judged together with them by the single-member court of first instance with jurisdiction, following the procedure for matrimonial matters and subject to the limitations imposed by that procedure. Finally, actions seeking a determination of parental responsibility and of arrangements for communication may also be joined to an application and judged by the single-member court of first instance in accordance with the special procedure set out in Articles 681B *et seq.* of the Code.

The application is lodged with the secretariat of the court; the secretary will set a date for the hearing and enter that date on the copies of the application. The applicant's lawyer will instruct the court bailiff to serve a copy with the date of the hearing and a summons to appear at the time and place appointed by the court. The bailiff will serve the copy of the application on the respondent. The bailiff must serve the copy of the application within 60 days if the respondent is domiciled or resident in Greece, and within 90 days if the respondent is domiciled or resident abroad or if the respondent's address is not known. If service has to be made abroad to a person whose address is known, the provisions to be applied, by analogy, to the service of the application initiating proceedings, are those set out in the EU Regulations, and more specifically in Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, or the Hague Convention of 15 November 1965, where applicable, or rules set out in bilateral or multilateral treaties.

The substantive law applicable to the personal property relations of the spouses, to divorce and to legal separation (Articles 14, 15 and 16 of the Civil Code) is as follows, in order of precedence:

1. the law of their last common nationality during the marriage, provided that at least one of them still holds it;
2. the law of their last joint habitual residence during the marriage; or
3. the law with which they have the strongest links.

Relations between parents and a child (Articles 18 and 19 of the Civil Code) are regulated by the following, in order of precedence:

a) the law of their last joint nationality;

b) the law of their last joint habitual residence; or

c) the law of the nationality of the child; if the child has both Greek and foreign nationality, the law applied is that of Greece, and if the child has more than one foreign nationality the law applied is the law of the state with which the child has the strongest links.

In accordance with the principle of the *lex fori*, the procedural law applicable is Greek procedural law, but this is overridden by European Community law and by other international treaties in accordance with Article 28 of the Constitution. The lawyers representing the parties must be given specific power to act on the party's behalf or must appear in court together with the party represented. The marriage certificate, certificate of marital status and other documentary evidence must be produced in court during the taking of evidence. Witnesses are examined and submissions made in open court. In the case of a divorce by consent, the parties must declare that they wish to dissolve their marriage by means of a written statement signed by them or their authorised lawyers or both, and an agreement must be lodged concerning the arrangements for the custody of their children and communication with them. The court ratifies the agreement and declares the dissolution of the marriage. The statements of the parties are assessed at the court's discretion. The court will not hear the parties on oath, and will not take witness evidence from the parties' children, but witnesses and experts must give evidence on oath. A court hearing an action for divorce tries to reconcile the parties. The fact that the respondent fails to appear does not affect the judgment of the case. If one of the parties dies while the judgment is still open to appeal, the lawsuit fails. In the case of an application for annulment of a marriage, which may also be brought by the public prosecutor, the public prosecutor will be asked to make submissions. If a party dies, the proceedings are suspended, and may be resumed by that party's successors. If an action for annulment of a marriage or for recognition of the non-existence of a marriage is brought by the public prosecutor, it is directed against both parties, and if either of them has died it is directed against that party's successors.

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

Yes, on certain conditions. In particular, legal aid is available if it is shown that a party cannot afford to pay for the expenses of the trial without thereby encroaching on the means necessary for the maintenance of that party and his or her family, provided the action is not found to be manifestly unjustified or inadvisable. Applications have to be made to the judge before whom the case is pending, or before whom it is to be brought; in the case of the multi-member court of first instance the application is made to the president of the court, and in matters unrelated to a trial the application is made to the district civil court (*ειρηνοδικείο*) of the applicant's place of residence (Articles 194 *et seq.* of the Code of Civil Procedure).

The application should summarise the subject-matter of the proceedings, the evidence that will be produced at the trial, and the evidence confirming that the conditions for legal aid are met. A number of supporting documents should be attached:

1. a certificate issued (free of charge) by the mayor or chairman of the village council of the applicant's domicile or permanent residence, stating the applicant's occupational, financial and family situation;
2. a certificate issued (free of charge) by the tax inspector of the applicant's domicile or permanent residence, stating that in the last three years the applicant submitted an income tax declaration, or a declaration for any other direct tax, and that after examination the declaration was approved; and

The court deciding on the application may summon the respondent free of charge. The presence of lawyers is not necessary. If the court finds it probable that the conditions referred to above are satisfied, it grants the benefit of legal aid. This has to be done for each lawsuit separately. It applies to that lawsuit through any levels of appeal, and also covers the enforcement of the final judgment. A party whose entitlement to legal aid has been recognised in this way is provisionally exempted from the obligation to pay the expenses of the court and the costs of the proceedings in general, i.e. notaries' and bailiffs' fees, witnesses' expenses, and the fees of experts, lawyers and any other representatives, and from the obligation to provide security for such expenses. Provisional exemption may also be granted for only a part of the expenses.

Legal aid does not affect the obligation to pay any costs awarded to the adverse party. If requested by the applicant the court may, in the legal aid decision or thereafter, designate a lawyer, notary or bailiff to assist the aided person. They are obliged to accept the instruction, and the decision itself serves as authorisation to act.

The benefit of legal aid comes to an end upon the death of the person entitled, but acts that cannot be deferred may be done thereafter under the instructions given previously. In addition, legal aid may be withdrawn or restricted by the court of its own motion, or on a proposal from the public prosecutor, if it is shown that the conditions for granting it were never satisfied, or no longer apply, or have been changed. Payment of costs is governed by Articles 190 to 193 of the Code of Civil Procedure.

Thus if the judgment awards costs against the aided person's adversary, the stamp duty, the enforceable copy and other fees are collected in accordance with the law on the collection of public revenue, while the costs owed to the aided person, his or her lawyers or other legal representatives or officers of the court are awarded to the people concerned, and are collected in accordance with the procedures for enforcement. In the same way costs awarded against the aided person are collected as soon as any of the conditions for the provision of legal aid have come to an end and this has been confirmed. If the parties secured legal aid by means of false declarations or false information, the judge who decides to withdraw the benefit of legal aid will impose a financial penalty from EUR 100 to EUR 200, which is paid into the Legal Professionals' Insurance Fund; this does not put an end to their obligation to pay the sums from which they were exempted, nor does it prevent any criminal prosecution.

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

Yes. The unsuccessful party may lodge an appeal, before the court of appeal (*Εφετείο*) of the place, against a judgment relating to divorce, or annulment of a void or voidable marriage, or recognition of the non-existence of a marriage, within thirty days of the date on which the judgment is served if he or she is domiciled or habitually resident in Greece; or within sixty days if he or she is domiciled or habitually resident abroad or if his or her residence is not known; and if the judgment has not been served, within three years of its publication. If the party entitled to appeal has died, the time-limit for appeal begins to run on the date on which the judgment is served on his or her universal successors or legatees.

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?

Council Regulation (EC) No 2201/2003 concerning recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, currently in force, lays down the principle that decisions taken in one EU Member State are to be recognised in the other Member States, without any special procedure being necessary. Anyone who wants to have a decision on divorce, legal separation or marriage annulment recognised in Greece should apply to the single-member court of first instance either of the place of habitual residence of the person against whom the judgment is to be enforced or of the place of enforcement.

A date is set for the hearing, and a copy of the application has then to be served on the other party with the document setting the date and a summons to appear at the hearing. The court may not review the jurisdiction of the court that delivered the judgment. It considers whether recognising the decision would be contrary to its own public policy; whether the document instituting proceedings was served on a defaulting party in sufficient time to enable the respondent to defend himself or herself, or failing that whether the respondent has accepted the judgment unequivocally; and whether the judgment is irreconcilable with an earlier judgment given in proceedings between the same parties in the Member State in which recognition is sought, or in another Member State or in a non-member state if the judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought. If the court is satisfied, it recognises the judgment.

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 challenge a Greek decision recognising a judgment delivered by a court in another EU Member State, the competent court is the court of appeal that hears appeals against decisions of the relevant lower court. The time-limit for appeals is one month from the date of service of the decision, except where the party against whom recognition is sought is habitually resident in a Member State other than that in which the declaration of enforceability was given, in which case the time for appealing is two months from the date of service of the decision. This time-limit cannot be extended on account of distance. If the party against whom recognition is sought fails to appear, the court must stay the proceedings so that it can be ascertained that the said party has been properly summoned in due time, or that all feasible steps have been taken to this end. The decision of the court of appeal may be challenged on points of law before the Supreme Court (*Άρειος Πάγος*).

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 substantive law applicable to divorce is as follows, in order of precedence:

1. the law of the parties' last common nationality, provided one of them still holds it;
2. the law of the parties' last common habitual residence during the marriage; or
3. the law with which they have the strongest links.

In accordance with the principle of the *lex fori*, the procedural law applicable is Greek procedural law, but this is overridden by European Community law in accordance with Article 28 of the Greek Constitution.

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Divorce - Spain

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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:

1. Three months have elapsed since the marriage if the divorce is requested by both spouses or by one with the consent of the other.
2. Three months have elapsed since the marriage if the divorce is requested by only one of the spouses.
3. 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:

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

2. Three months after the marriage if the divorce is requested by only one of the spouses.
3. 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:

1. Three months after the marriage if legal separation is requested by both spouses or by one with the consent of the other.
2. Three months after the marriage if legal separation is requested by only one of the spouses.
3. 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 (*Juzga dos 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:

1. 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).

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

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

4. 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.

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 http://www.mjusticia.gob.es/cs/Satellite/Portal/es/administracion-justicia/organizacion-justicia/organizacion-juzgados.

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 (*Audienci a 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 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 on the basis of court decisions relating to proceedings for divorce, legal separation or marriage annulment handed down in another Member State, 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 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, 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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Divorce - France

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1 What are the conditions for obtaining a divorce?

There is one type of non-judicial divorce:

- divorce by mutual consent 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 or ‘accepted divorce’,
- divorce due to irretrievable breakdown of the marriage,
- divorce on the grounds of fault.

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 can be chosen if the spouses agree on the principle of the breakdown and on all the consequences of the divorce. With their lawyers, they draw up an agreement that is signed by both parties and their lawyers after a cooling-off period. If they have any children, the latter must be informed of their right to be heard. If any child asks to be heard, the parties must then submit an application for divorce by judicial mutual consent to the family judge (*juge aux affaires familiales*) so that the child can be heard.
- Divorce by judicial mutual consent can be applied for by spouses only where a child who has the necessary intellectual capacity asks to be heard and where they agree on the principle of the breakdown and on all its consequences. In this case, they are not required to reveal the grounds for the divorce and only have to submit, for the judge’s approval, a draft agreement setting out the consequences of the divorce. The judge will refuse approval only in cases where the interests of the children or one of the spouses are insufficiently protected.

- Accepted divorce can be applied for by one of the spouses and accepted by the other or it can be applied for jointly by both spouses. Unlike divorce by mutual consent, the spouses accept the principle of divorce but cannot agree on its consequences. The judge must therefore rule in this regard.
- Divorce due to irretrievable breakdown of the marriage can be applied for by one spouse provided that the couple have not been living together for two years on the date when 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 applied for by one spouse due to acts attributable to the other spouse where such acts constitute a serious or repeated infringement 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. when there is no longer any possibility of appeal.
- Each spouse is thereafter free to remarry.
- Following the divorce, each spouse forfeits the right to use the surname of the other spouse. However, one spouse may continue to use the other spouse's surname, either with the latter's agreement or with the judge's authorisation, if they can provide reasons why this is particularly important for them or for their 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 marital benefits that take effect during the marriage or on gifts of existing assets. In contrast, it does lead to automatic revocation of the marital 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 divorce by judicial or non-judicial 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 can agree to this liquidation before the divorce is granted, but they are not obliged to do so. In this case, the liquidation takes place after the divorce is granted.

3.3 the minor children of the spouses

Divorce has no particular consequences on the rules regarding the exercise of parental authority, which therefore, in principle, continues to be entrusted to both parents. The judge may, however, 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 for exercising parental authority must be determined (habitual residence, access rights, etc.).

Each parent 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 of the full or partial direct payment of costs incurred for the child. It can also be paid in the form of a right of use and habitation.

3.4 the obligation to pay maintenance to the other spouse?

NB: The payment of maintenance by one spouse to the other is an interim 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 payment (*prestation compensatoire*) or damages from the other spouse. This can be set amicably in a divorce by judicial or non-judicial mutual consent or by the judge in other cases.

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

Exceptionally, the compensatory payment may be set as a life annuity, which may, in the event of changes in the resources or needs of the spouses, be revised downwards.

- Damages can be awarded to a spouse if the divorce has particularly severe consequences for him/her:
  - where he/she is the respondent in a divorce due to irretrievable breakdown of the marriage and has not applied for divorce; or
  - where the divorce is granted against the other spouse and the blame lies entirely with the latter.

(See ‘Maintenance claims - France’).

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

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

5 What are the conditions for legal separation?

- The types and procedure are the same as for judicial divorce, but legal separation by non-judicial mutual consent does not exist.
- In principle, the spouse against whom an application for legal separation is made can file a cross-petition for divorce or legal separation and, conversely, the spouse against whom an application for divorce is made can file an application for divorce or legal separation.
- In the event of an application for divorce due to irretrievable breakdown of the marriage, there is no possibility of a cross-petition for legal separation, with only an application for divorce being possible.
- When an application for divorce and an application for legal separation are filed concurrently, the judge must first consider the application for divorce. Only if the judge decides not to grant the divorce will the application for legal separation be examined. When both applications are made on the grounds of fault, the judge will consider them simultaneously and, if they are both accepted, 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, but the duties of assistance, fidelity and support remain. In addition, unless otherwise decided by the court, the wife may continue to use her husband’s surname. The duty of support means that one spouse may be required to pay a maintenance allowance to the other spouse 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. The maintenance allowance may be replaced by a capital sum if the assets of the spouse making the payment permit this.
- As regards the assets, the judgment results in dissolution and liquidation of the matrimonial property regime, as in the case of a divorce.
- If one of the spouses dies, the inheritance rights of the other spouse remain unchanged and the latter benefits from the legal provisions applying to a surviving spouse. However, in a legal separation by judicial mutual consent, the spouses may include a waiver of their inheritance rights in the agreement.

Conversion of a legal separation into a divorce

At the request of one of the spouses, a legal separation judgment is automatically converted into a divorce judgment when the legal separation has lasted for 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 allocation of fault cannot be changed.

In all types 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 granted through judicial mutual consent, it can only be converted into a divorce by mutual consent.

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

The annulment of a marriage, which requires a judgment, retroactively erases all the effects of the marriage as if it had never existed.

This is different from divorce or legal separation, which has effects only in the future.

8 What are the conditions for marriage annulment?

The grounds for a marriage annulment differ depending on whether this involves a relative nullity (where a defect of consent or failure to obtain the authorisation of persons who should have authorised the marriage is invoked) or an absolute nullity (in the case of non-fulfilment of a public policy requirement).

Types of relative nullity

There are three possible cases:

- mistaken identity or mistake as regards a person's essential qualities;
- coercion;
- failure to obtain the authorisation of persons whose authorisation was necessary.

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

An application for annulment is admissible only if made within five years of the date of the marriage (or five years of the date when the person concerned reached the legal age to agree to the marriage).

Types of absolute nullity

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

The application may be made by anyone who has an interest in taking action or the public prosecutor, within thirty years of the date of the marriage (or five years of the date when the person concerned reached the legal age to agree to the marriage).

9 What are the legal consequences of marriage annulment?

The effects are the same for both relative nullity and absolute nullity.

- The personal and financial effects of the marriage are erased as the marriage bond is deemed never to have existed. For example, if one of the spouses has died, annulment of the marriage will deprive the other spouse of any inheritance right.

  However, this principle can be mitigated if one or both of the spouses acted in good faith at the time of the marriage. In this case, the 'putative' marriage remains null and void, but is treated as if it had simply been dissolved. Consequently, all the civil, personal and financial effects occurring prior to the annulment judgment are maintained.

- As regards children, the annulment of the marriage of their parents has no legal effects and their situation is the same 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 non-judicial mutual consent procedure, which requires the involvement of two lawyers and a notary but no judge, except in cases where a child who has the necessary intellectual capacity asks to be heard.

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

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

Following such mediation, parties who have reached agreement can submit their agreement to the judge for approval or choose the divorce by non-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 judicial divorce or legal separation

This application must be filed by a lawyer with the registry of the regional court (*tribunal de grande instance*).

The court with territorial jurisdiction is:

- the court in the family's place of residence;
- if the spouses live separately and exercise joint parental responsibility, the court in the place of residence of the spouse with whom any minor children live;
- if the spouses live separately and parental authority is exercised by only one of them, the court in the place of residence of that spouse;
- in other cases, the court in the place of residence of the spouse who did not lodge the application;
- in the case of joint applications, the spouses choose the court in the place where one or other spouse lives.
- Application for annulment
  The application for a marriage annulment is made to the regional court in the place where the respondent lives. It takes the form of a summons served by a court officer.
- 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 submitted

- Application for judicial divorce or legal separation

In all divorce cases, the spouses must provide all the information needed to identify them and their health insurance fund, plus information on the services and organisations that pay them benefits or pensions or any other allowances.

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

In the case of divorce by judicial mutual consent, the application need not indicate the grounds for the divorce, but it 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 grounds for the divorce, but it must include, where appropriate, requests made for interim measures.

- Application for annulment

No specific documents are required, but the applicant must submit documents proving that the ground(s) invoked can result in 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 depending on financial means (see 'Legal aid - France').

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

These court decisions are open to the normal types of appeal.

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 marriage annulment decisions.

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. 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 an action 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 a divorce or legal separation may be chosen by the spouses.

In the absence of such 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 seized; or, failing that
- where the spouses were last habitually resident, provided that the period of residence did not end more than one year before the court was seized, insofar as one of the spouses still resides in that State at the time the court is seized; or, failing that
- of which both spouses are nationals at the time the court is seized; 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 the 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 seized.

Related links

Ministry of Justice website

Legifrance website

Last update: 10/01/2020

Divorce - Croatia

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1 What are the conditions for obtaining a divorce?

The precondition for obtaining a court decision on divorce is the initiation of the appropriate court proceedings for divorce (civil or non-contentious) by the authorised person or persons (*locus standi*), pursuant to the provisions of Article 50, Article 369 and Article 453 of the Family Proceedings Act (*Obiteljski zakon*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia), No 103/15, hereinafter: ObZ 2015). If the spouses have a minor child in common, the petition for a divorce by mutual consent must be accompanied by the appropriate attachments (report on the mandatory consultation and plan for joint parental control - Article 55 in conjunction with Article 456 ObZ 2015). Similar regulations apply when the spouses have a minor child in common and just one of the spouses petitions for a divorce (report on the mandatory consultation and proof of participating in the first family mediation meeting - Article 57 in conjunction with Article 379 ObZ 2015).

2 What are the grounds for divorce?

The preconditions for divorce are governed by the provisions of Article 51 of the ObZ 2015 Pursuant to the aforementioned legal provisions, the court dissolves a marriage: 1. if there is an agreement between the spouses regarding divorce, 2. if it has been determined that the marital relationship between the spouses has broken down severely and permanently, or 3. if a year has passed since the "termination of the marital union".

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

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

One legal consequence of marriage termination is the cessation of the individual rights and duties of the spouses (Articles 30-33 Obz 2015). The Family Proceedings Act expressly lays down that in the event of a termination of the marriage (by annulment or divorce), each of the former spouses may keep the surname they had at the moment the marriage was terminated (Article 48 Obz 2015).

3.2 the division of property of the spouses

Before the dissolution of marital property (in agreement or by judicial termination - in noncontentious proceedings), the most commonly occurring issue is that of differentiating rights and objects that are part of the matrimonial property from rights and objects that are the individual assets of one or the other spouse (differentiating the three sets of assets). These issues are resolved by initiating civil proceedings on the basis of the appropriate provisions of the ObZ (Article 34-39 and Article 43-46 ObZ 2015), if the spouses were unable to reach an agreement on the division of mutual property relations (marriage contract - Article 40-42 ObZ 2015), with the alternative application of the Act on Ownership and Other Real Rights, Civil Obligations Act, Land Registration Act, Companies Act, Execution Act and the Civil Procedure Act (Articles 38, 45 and 346 Obz 2015).

3.3 the minor children of the spouses

The legal consequences of the termination of a marriage that apply to minor children include several important issues: which parent the child will live with after the marriage has been terminated, establishing the arrangements with the other parent, child maintenance, how the remaining areas of parental care will be organised (representing the child, performing legal acts, management and disposal of the child’s assets, education and health of the child, etc.). The spouses may come to an agreement regarding these legal consequences of divorce (agreement on joint parental care) and hence select a simpler and faster non-

judicial divorce proceeding. (Articles 52, 54-55, 106, 453-460 ObZ 2015). If the spouses do not produce an agreement on joint parental care that contains an agreement on the relevant legal consequences of divorce, the decision on these matters is automatically issued by the court in a judicial proceeding initiated by a divorce action (Articles 53-54, 56-57 and 413 ObZ 2015). Nevertheless, the possibility exists that the parents might come to an agreement on the legal consequences of divorce during judicial divorce proceedings. In this event the court will reach its decision on the grounds of the parents' agreement, if it feels that this agreement is in the best interest of the child (Article 104/3 in conjunction with Article 420 ObZ 2015).

3.4 the obligation to pay maintenance to the other spouse?

The Family Proceedings Act provides for the possibility of a spouse requesting maintenance before conclusion of the divorce trial. If no maintenance request was submitted during the divorce trial, a former spouse may institute an action to request maintenance within six months of final termination of the marriage, if the conditions for maintenance existed at the time of conclusion of the divorce trial and continuously existed until the conclusion of the maintenance trial (Articles 295-301, 423-432 ObZ 2015). The legal conditions for maintenance are that the claimant does not have sufficient means to support him or herself or is unable to realise it from his or her assets, and is unable to work or find employment, provided that the spouse paying the maintenance has sufficient means and capacities to fulfil this commitment (Article 295 ObZ 2015). Maintenance is determined for a fixed period of time. The provisions of Article 298 ObZ 2015 states that the maintenance of a spouse may continue for up to a year, depending on the duration of the marriage and on the possibility of the claimant obtaining an adequate livelihood in the foreseeable future in another way. ObZ 2015 also provides for the modalities of paying maintenance. Pursuant to the provisions of Article 296 ObZ 2015 maintenance is determined as a regular monthly sum paid in advance. However, it is possible that the court, at the request of one or both spouses, orders payment as a one-off sum, depending on the circumstances of the case. In accordance with the provisions of Article 302 ObZ 2015, spouses may conclude a maintenance agreement in the event of divorce (Articles 302, 470-473 ObZ 2015).

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

There is no term equivalent to "legal separation" in Croatian family law. A corresponding term to "legal separation" found in current legislation would be "termination of the marital union" (*prestanak bračne zajednice*). The "termination of a marital union" occurs if the spouses terminate all mutual relations normally existing in cohabitation, i.e. if they no longer have the wish to live as spouses and to share and realise the specific content of conjugal life. The termination of a marital union has meaning in the realm of marital law since, in accordance with Article 51 ObZ 2015, one of the legal foundations of marriage termination is that one year has passed since the termination of the marital union. The termination of the marital union also has a specific meaning when determining property relations between spouses since, pursuant to Article 36, ObZ 2015, the property that spouses have acquired through work during the marital union (as opposed to within the duration of the marriage), or which originates from this property, is deemed to be matrimonial property.

5 What are the conditions for legal separation?

There is no term equivalent to "legal separation" in Croatian family law. A corresponding term to "legal separation" found in current legislation would be "termination of the marital union" (*prestanak bračne zajednice*). The Family Proceedings Act does not provide conditions for the "termination of the marital union" since marital union is a legal standard and represents the content of conjugal life. The termination of the marital union ensues if the spouses terminate all mutual relations that otherwise comprise conjugal life, i. e. if they no longer have the wish to live as a married couple and to realise the specific content of such a relationship (e.g. they cease to communicate, etc.). The termination of a marital union is most commonly manifested in practice by one of the spouses leaving the common home and leaving the other spouse.

6 What are the legal consequences of legal separation?

There is no term equivalent to "legal separation" in Croatian family law. A corresponding term to "legal separation" found in current legislation would be "termination of the marital union" (*prestanak bračne zajednice*). "Termination of the marital union" has meaning in the area of matrimonial law since, pursuant to Article 51 ObZ 2015, one of the legal grounds of marriage termination is that more than one year has passed since "termination of the marital union". "Termination of the marital union" also has a specific meaning when defining the property relations of spouses since, pursuant to Article 36 ObZ 2015, the property that the spouses have acquired through work during the marital union (as opposed to within the duration of the marriage), or which originates from this property, is deemed to be matrimonial property. The logic governing such legislature is that the duration of the marital union does not have to coincide exactly with the duration of the marriage, especially when the marriage ends in divorce. As a rule, the termination of the marital union occurs before divorce proceedings are started. Divorce proceedings may therefore be ongoing after the "termination of the marital union", and usually are (especially if legal remedies were employed in the proceedings).

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

“Marriage annulment” (*poništaj braka*) is one of the grounds for the marriage termination (Articles 47 ObZ 2015) and constitutes one of three marital disputes regulated by the Croatian legal system (Article 369 Obz 2015). “Marriage annulment” represents a family-law sanction on a marriage that was entered into contrary to the provisions regulating marriage validity (Article 25-29 ObZ 2015), and is effected in judicial proceedings instituted by an action (Article 369 Obz 2015). The provisions on “marriage annulment” apply if a marriage is not valid (Articles 29, 49, 369-378 Obz 2015).

8 What are the conditions for marriage annulment?

A marriage entered into contrary to the provisions of Articles 25 to 28 ObZ 2015 (marriage was entered by under-age persons, persons who did not have the capacity to distinguish right and wrong, persons deprived of the legal capacity to make statements regarding their personal situation, persons who are blood relatives, who have been adopted, or if the bride or groom have a previously existing marriage or stable partnership) is invalid and the provisions on “marriage annulment” apply to it (Article 29 Obz 2015).

9 What are the legal consequences of marriage annulment?

The legal consequences of “marriage annulment” are regulated in the same manner as in the termination of marriage by divorce (see response to question no. 3).

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

In the Croatian legal system, divorce is regulated as judicial proceedings, and there is no possibility of non-judicial divorce proceedings. Nevertheless, one of the fundamental principles of family law, which is particularly important in divorce proceedings, is the principle of resolving family relationships consensually, which encourages the consensual resolution of family relationships and emphasises that this is the task of all bodies providing professional help to the family or deciding on family relationships (Article 9 ObZ 2015). Family law therefore provides for two types of non-judicial proceedings, the objective of which includes the consensual resolution of divorce-related matters: mandatory counselling (Article 321-330 ObZ 2015) and family mediation (Articles 331-344 Obz 2015). Mandatory counselling is undertaken by a team of experts from the Department of Social Services and constitutes a form of support for family members (e.g. spouses intending to start divorce proceedings, and who have a minor child in common) to reach consensual decisions on family relationships, taking particular care to protection family relationships involving any child (e.g. devising a plan on joint parental care - an agreement on the legal consequences of divorce, which must lay down in detail: the place and address of the child’s residence, the time the child will spend with each of the parents, how information will be shared regarding consent for important decisions, how important information about the child will be shared, the amount of maintenance as an obligation of the parent with whom the child does not reside, as well as how future issues will be resolved) and on the legal consequences of failing to reach an agreement and starting court proceedings to decide on the child’s personal rights. Family mediation is a process in which parties try to consensually resolve family disputes with the help of one or more family mediators. The main purpose of the process is to establish a plan on joint parental care and other agreements connected to the child, as well as with all other issues of a material and non-material nature.

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?

Spouses without a minor child in common can initiate a judicial action by one spouse lodging an application for divorce, or both spouses lodging an application for a consensual divorce (Article 50 ObZ 2015). In both these cases, the non-judicial proceeding of mandatory counselling (a form of expert help to family members in reaching consensual decisions on family relationships, carried out by a team of experts from the Department of Social Services) is not implemented (Articles 321-322 ObZ 2015) and the spouses enter (judicial or nonjudicial) court divorce proceedings immediately, which is relatively easy and quick. All the above applies as appropriate to marriage annulment court proceedings when the spouses do not have a minor child in common.

Spouses with a minor child in common may institute court proceedings by one spouse initiating an action or both spouses submitting an application for a divorce by mutual consent (Article 50 ObZ 2015). However, before instituting divorce proceedings (by action or submitting an application for a divorce by mutual consent) when there is a minor child in common, the spouses are obliged to take part in the non-judicial proceeding of mandatory counselling (a form of expert help to family members in reaching consensual decisions on family relationships, carried out by a team of experts from the Department of Social Services) (Articles 321-322 ObZ 2015). The purpose of such procedures is to provide spouses with professional help that includes composing an agreement on joint parental care - an agreement on the legal consequences of divorce, which must lay down in detail: the place and address of the child’s residence, the time the child will spend with each of the parents, how information will be shared regarding consent for important decisions, how important information about the child will be shared, the amount of maintenance as an obligation of the parent with whom the child does not reside, as well as how future issues will be resolved). Parents may compose the agreement on joint parental care during the mandatory counselling process, however they may also compose it

independently or during the family mediation procedure (non-judicial process in which the parties try to consensually resolve disputes from family relationships with the help of one or more family mediators - Article 331 ObZ 2015). By composing an agreement on joint parental care the spouses can initiate a simpler and faster non-judicial divorce proceeding which is launched by submitting an application (Articles 52, 54-55, 106, 453-460 Obz 2015). Spouses with a minor child in common are obliged to submit a report on the mandatory counselling referred to in Article 324 ObZ 2015 with their application for a divorce by mutual consent, as well as an agreement on joint parental care, as referred to in Article 106 ObZ 2015) (Article 456 Obz 2015).

If the spouses do not compose an agreement on joint parental care that contains an agreement on legal consequences of divorcementioned above, the decision on these matters is issued by the court *ex officio* in a judicial proceeding initiated by a divorce action (Articles 53-54, 56-57 and 413 ObZ 2015). If the spouses have a minor child in common, they are obliged to attach a report on mandatory counselling from Article 324 ObZ 2015 to their divorce action, as well as proof of participation in the first family mediation meeting (Article 379 ObZ 2015).

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

In Croatian legal aid and the possibility of exemption from payment for court proceedings and exemption from payment of court fees are regulated by the Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia), No 143/2013 - hereinafter ZBPP). Persons may qualify for primary legal aid in all proceedings, including marital disputes and other family-law proceedings, provided that they meet the legal requirements (Articles 9-11 ZBPP). Persons may qualify for secondary legal aid in family-law proceedings and in other proceedings laid down in the law, provided that they meet the legal requirements (Article 12-25 ZBPP). The matter of obtaining the decision granting an exemption from the payment of court proceedings for specific proceedings, including family-law proceedings, is regulated by the provisions of Article 13(3) ZBPP. The matter of obtaining the decision granting an exemption from the payment of court fees for all proceedings, including family-law proceedings, is regulated by the provisions of Article 13(4) ZBPP. Particular emphasis should be paid to the provisions: a) regulating the providing of secondary legal aid without determining the finantial situation of the person in question (Article 15 ZBPP), b) which regulate the process for obtaining secondary legal aid (Articles 16-18 ZBPP), c) which regulate the scope of providing secondary legal aid (Article 19 ZBPP), d) which regulate procedural questions and other questions important for obtaining free legal aid (Articles 20-25 ZBPP). At the same time, attention is drawn to Article 6 of the Court Fees Act (*Zakon o sudskim pristojbama*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia), Nos 74/95, 57/96, 137/02, (26/03), 125 /11, 112/12, 157/13, 110/15), with regard to parties that are always exempt from court fee payment.

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

It is possible appeal a judgment relating to divorce or marriage annulment. Both parties have this right during proceedings. The Family Proceedings Act does not expressly regulate the appeal in matrimonial disputes, but the provisions of Article 346 stipulate the alternative application of the provisions of the Civil Procedure Act (*Zakon o parničnom postupku)* (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia), Nos 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25 /13 and 89/14 - hereinafter: ZPP).

In Article 348, the ZPP regulates appeals against a verdict, while Article 378 regulates the appeals against a decision. On legal remedies, ObZ 2015 stipulates that a revision is not permissible (Article 373 ObZ 2015) against second instance verdicts rendered in a matrimonial dispute.

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 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, (Regulation Brussels IIa), a judgment given in a Member State is recognised in the other Member States without any special procedure being required (Article 21(1)), however pursuant to Article 21(3), any interested party may apply for a decision that the judgment be or not be recognised. In that event, applications for recognition or non-recognition are subject to the territorial jurisdiction of the relevant court from the list notified by each Member State to the Commission pursuant to Article 68 in the form provided for by Article 37 of Regulation Brussels IIa. Additionally, it should be noted that, without prejudice to Article 21(3) Regulation Brussels IIa, no special procedure is required to update the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that 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?

The applications for recognition or non-recognition (Article 21 (3) Regulation Brussels IIa) are are subject to the territorial jurisdiction of the relevant court from the list, as stated in the response to question No 14. In this event the procedure under section 2, Chapter III Regulation Brussels IIa is applied.

The legal remedy, i.e. an appeal under Article 33 Regulation Brussels IIa is submitted to second instance (county) courts via the first instance court which rendered the decision (court of local jurisdiction from the above-mentioned list).

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 applicable law for a divorce is that of the country of which the spouses are citizens at the time the action is filed.

If at the time the action is filed, the spouses are citizens of different countries, the cumulative laws of the countries of which they are citizens are applied, Article 35 (2) Act on the Resolution of Conflicts of Law with Regulations of Other Countries in Certain Relations (*Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia), Nos 53/91, 88/01). If a marriage cannot be terminated under the law of the countries of which the spouses are citizens, Croatian law is applied to the termination of marriage, if one of the spouses was permanently residing in Croatia at the time the action was filed.

If one of the spouses is a Croatian citizen without permanent residence in Croatia, and the marriage cannot be terminated under the law specified in Article 35(2) of the Act on Resolution of Conflicts of Law with Regulations of Other Countries in Certain Relations, Croatian law is applied.

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Divorce - Italy

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1 What are the conditions for obtaining a divorce?

The law lays down the legal requirements for divorce (see section 2). The court must verify that the legal requirements for issue of the divorce order are met.

These checks must be carried out even if the two spouses lodge a joint application for divorce; the agreement of the spouses is not in itself a ground for divorce – in reality, therefore, there is no such thing in Italy as a divorce by mutual consent: the court must always establish the facts underlying the application before granting a divorce.

If the marriage was contracted under the Civil Code, the divorce dissolves it, and if the parties were married in church, with the marriage being duly recorded in the civil register of births, marriages and deaths, the divorce terminates its effects in civil law. The public prosecutor must take part in the proceedings.

Sources: Law No 898 of 1 December 1970, as amended by Law No 436 of 1 August 1978, by Law No 74 of 6 March 1987 and by Law No 55 of 6 May 2015.

2 What are the grounds for divorce?

Either spouse may apply for divorce on any of the following grounds:

1) where, after the wedding has taken place, the other spouse is sentenced by final judgment for a particularly serious crime, whether committed before or after the wedding, namely:

sentenced to life imprisonment or to a term of imprisonment of more than 15 years, which may be the sum of a number of sentences, for intentional offences, with the exception of political offences or offences committed for ‘motives of special moral and social value’ (*motivi di particolare valore morale e sociale*);

sentenced to a custodial sentence for incest (Section 564 of the Criminal Code) or sexual offences under Sections 609-*bis* (sexual abuse), 609-*quater*, 609-*quinquies*, or 609-*octies* (which were inserted by Law No 66 of 1996);

sentenced to a custodial sentence for murdering a son or daughter or for the attempted murder of the spouse or of a son or daughter;

sentenced to a custodial sentence, where the person has been found guilty on two or more counts of grievous bodily harm, failure to fulfil family support obligations, mistreatment in the family or of minors, or undue influence on persons not of sound mind at the expense of the spouse or children, except where the applicant for divorce has also been convicted as an accessory to the offence or where the couple have resumed cohabitation;

2) in cases where:

the other spouse has been acquitted of the offences of incest or sexual abuse mentioned in points 1b) and c), if the court establishes that the respondent is unfit to continue or return to living with the family;

the couple have been legally separated, either by mutual consent or on the application of one of the parties, for an uninterrupted period of

1. at least twelve months since the couple appeared before the court in legal separation proceedings

2. six months in the event of separation by mutual consent, including when a disputed judgment is mutually settled
3. or six months from the certified date given in the separation agreement reached following negotiations attended by a lawyer, or from the date of the deed setting out the separation agreement concluded before a civil registrar;

criminal proceedings regarding one of the offences listed under points 1b) and c) were discontinued because the offence was time-barred, but the divorce court establishes that the offence in itself would otherwise have given rise to criminal liability;

criminal proceedings regarding the offence of incest ended with a finding that there was no criminal liability because the act did not create ‘a public scandal’;

the other spouse, being a foreign national, has obtained the annulment or dissolution of the marriage abroad or has entered into a new marriage abroad;

the marriage has not been consummated;

one of the spouses has officially changed sex: in this case the divorce application may be submitted either by the person who has changed sex or by the other spouse.

In summary, apart from the ‘criminal law’ scenarios (which include, in addition to convictions for serious offences, cases where the person is acquitted on the grounds of diminished responsibility, cases where the offence is time-barred, and cases of incest where the objective requirement for criminal liability is missing), the possible grounds for divorce are: legal separation; annulment, dissolution or a new marriage entered into by the other spouse abroad; non-consummation of the marriage; and change of sex.

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

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

The granting of a divorce entails the following.

Firstly, the marriage relationship is dissolved: each party reverts to single status and is free to remarry.

The woman loses the husband’s surname, if she has added it to her own; however, on application, the court may allow the woman to retain her husband's surname in addition to her own, where this is shown to be in her interest or in the children’s interest for reasons that merit protection.

Divorce does not break the ties of affinity, and in particular it does not set aside the impediment to marriage constituted by affinity in the direct line (Section 87(4) of the Civil Code).

Foreign spouses do not lose the citizenship they acquired through marriage.

3.2 the division of property of the spouses

The divorce dissolves the joint estate established by law (*comunione legale*, which includes all purchases made by the spouses jointly or separately during the marriage, apart from the personal items listed in Section 179 of the Civil Code) and also any fund set aside for the needs of the family (*fondo patrimoniale*). However, such a fund continues to exist until any children have reached the age of majority. Divorce has no effect on joint property governed by other arrangements (*comunione ordinaria*, for example goods acquired prior to the marriage *pro rata*, or during the marriage where at the time of the marriage it was provided that the spouses’ property would be held separately (*separazione dei beni*)): the link in respect of joint property of this kind may be dissolved on application by one of the spouses.

A parent who lives with a minor child may be granted the right to continue to live in the former couple’s home where it is in the child’ s interest to remain in that home.

3.3 the minor children of the spouses

The court granting the divorce will award joint custody of minor children; only in exceptional cases are the children placed in one parent’s exclusive custody. The court also establishes the rules on the time to be spent by the minor children with the non-cohabiting parent. It gives instructions regarding the administration of the children’s property and sets the monthly contribution towards the minor children’s maintenance to be paid to the cohabiting parent.

3.4 the obligation to pay maintenance to the other spouse?

When granting the divorce, the court, on application by a party, orders regular payment of maintenance to a party who lacks sufficient means or who is unable to procure them for objective reasons. The obligation to pay maintenance ceases if the recipient remarries. Where both parties are in agreement, support may also be paid in a single transaction by transferring ownership rights on a property to the benefiting spouse (for more details see ‘Maintenance claims – Italy’).

Spouses who fail to pay maintenance in the event of separation or after divorce commit the offence of failing to assist their family (Section 570 of the Criminal Code).

There are other effects. A spouse who is divorced but has not remarried and who is entitled to maintenance is also entitled to a share of any severance payment made to the other spouse. In the event of the death of a former spouse, the surviving former spouse is entitled to receive any survivor’s pension, or to share such a pension with any subsequent surviving spouse, and to receive a payment from the deceased’s estate, if he or she is in financial hardship. The law also allows a spouse entitled to maintenance to register a judgment mortgage or apply for seizure of the assets of the spouse required to pay support.

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

Legal separation means that the law no longer requires the spouses to live together. Mere *de facto* separation is without effect (except in situations arising prior to Reform Law No 151 of 1975).

Legal separation does not cancel the marriage relationship but weakens it.

Legal separation may be by order of the court or by mutual consent.

Sources: the substantive rules are set out in the Civil Code (Sections 150 *et seq.*; on questions regarding inheritance see Sections 548 and 585).

5 What are the conditions for legal separation?

Judicial separation – i.e. separation by order of the court – requires a finding that the spouses are no longer able to live together.

Where this condition is met, the court will issue a separation order on the request of one of the two spouses, even against the other’ s wishes.

In exceptional cases, the court may also place responsibility for the separation on one of the spouses: this has implications for the award of maintenance during separation and after divorce, and for inheritance rights. The public prosecutor must take part in the proceedings.

Legal separation by mutual consent is based on an agreement between the spouses, but becomes effective only after approval by the court, which is responsible for ensuring that the agreements reached by the spouses meet the family’s overriding interests. In particular, where an agreement regarding child custody and support is not in the interest of the children, the court will reconvene the parties and request the necessary changes. If the parties fail to comply, the court may refuse to approve the separation.

6 What are the legal consequences of legal separation?

Personal relationships: legal separation (by order of the court or by mutual consent) removes the requirement for all forms of assistance associated with living together. It also removes the presumption of paternity. The wife does not lose the husband's surname if she has added it to her own, but at the husband’s request the court may forbid her to use it where such use may cause him serious harm. Likewise, the court may allow the wife to refrain from using the husband’s surname where such use may be to her detriment.

Ownership of joint property: the joint estate is dissolved upon a declaration of the absence or presumed death of one of the spouses, the annulment, dissolution or cessation of the civil effects of the marriage, legal separation, judicial separation of assets, the mutually agreed change to the matrimonial relationship, or one of the spouses being declared bankrupt.

In the event of legal separation, the property owned jointly by the spouses is dissolved when the court authorises the spouses to live separately, or from the date on which the minutes of the mutually agreed separation between the spouses are signed before the presiding judge, provided they are approved. The order authorising the spouses to live separately is sent to the civil registrar so that the dissolution of the joint estate can be recorded.

Parental responsibility: the court granting the separation rules on the custody of any minor children and establishes the amount of child support payable by the non-cohabiting parent (or, in the exceptional case of sole custody, the parent to whom custody is not granted). In the award of the right to live in the family home, the parent living with the child is given priority (for more details see ‘Parental responsibility’).

Awarding of maintenance: if requested, the court grants the spouse not responsible for the separation the right to maintenance from the other spouse, if he or she does not have sufficient independent means. A spouse in need is still entitled to receive maintenance, i.e. a regular sum needed for subsistence, even if he or she is responsible for the separation (for more details see 'Maintenance claims – Italy').

Automatic adjustment of maintenance payments for inflation is expressly provided for in the case of divorced couples; case-law has extended this to separated couples.

The measures set out in the court order concerning custody of the children and calculation of maintenance payments for children and for a spouse are open to subsequent amendment. Failure to make the maintenance payments is an offence under Section 570 of the Criminal Code.

Separation with and without responsibility: separated spouses who are not held responsible for the separation continue to enjoy the same inheritance rights as spouses who are not separated.

Spouses held responsible for a separation are entitled only to maintenance from the deceased's estate, and only if at the time of the inheritance proceedings they were entitled to maintenance payments from the deceased spouse (Sections 548 and 585 of the Civil Code).

Other effects: in the event of non-compliance, the separation order gives an entitlement to the registration of a judgment mortgage; and, on the entitled person's application, the court may order the seizure of the assets of the liable spouse or issue an order for attachment of earnings.

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

Under Sections 117 *et seq.* of the Civil Code, a marriage may be declared null and void in any of a number of disparate cases. The subject is best considered in terms of invalidity, looking at the grounds for invalidity and the law applicable in each case.

A marriage is invalid if it is vitiated by one of the defects set out in law, but the defect must be invoked by bringing an action in court.

An action for annulment of a marriage is not transferred to heirs unless the judgment is already pending. The public prosecutor must take part in the proceedings.

Sources: the substantive rules are contained in Sections 117 to 129-*bis* of the Civil Code.

8 What are the conditions for marriage annulment?

A marriage may be invalid for any of the following reasons (Sections 117 *et seq.* of the Civil Code):

1. one of the spouses was still in a previous marriage; the invalidity is absolute and imprescriptible; an application may be brought by either spouse, by a direct relative in the ascending line, by the public prosecutor, or by anyone with a legitimate interest.

2. *impedimentum criminis*: a marriage is entered into by two people one of whom has been convicted of the murder or attempted murder of the spouse of the other; the invalidity is absolute and irremediable, and may be invoked by either spouse, by the public prosecutor or by anyone with a legitimate interest.

3. the marriage cannot be contracted owing to the mental infirmity of one of the spouses; the order declaring such infirmity may be issued even after the wedding, where the infirmity is shown to have existed at the time of the wedding; the marriage may be contested by a guardian, by the public prosecutor or by anyone with a legitimate interest.

4. one of the spouses was not of sound mind (*incapacità naturale*); the marriage can be challenged by a spouse who, though not certified as incompetent, proves that he or she contracted the marriage while of unsound mind; the application may not be lodged if the couple has lived together for more than a year since the applicant regained his or her mental faculties.

5. one of the spouses was under age; an application may be brought by either spouse, by the public prosecutor, or by the parents; the minor's right to lodge the application lapses one year after coming of age.

6. there were ties of kinship, affinity, adoption or affiliation; this ground of invalidity may be invoked by either spouse, by the public prosecutor or by anyone with a legitimate interest, except where a year or more has passed since the wedding and the case is one in which authorisation for the marriage could have been sought despite the ties.

7. duress, fear and error: consent was extorted under duress, or was due to exceptionally serious fear of events outside the spouse's control; or there was mistaken identity, or an error regarding an essential personal prerequisite of the other spouse, pursuant to Section 122 of the Civil Code; applications may be brought by the spouse whose consent was defective on one of

these grounds, unless the spouses have lived together for one year after the threat of violence or the source of the fear has come to an end, or after the error was discovered.

8. simulation: the marriage may be contested by either of the spouses where they contracted marriage having agreed not to meet the obligations or exercise the rights deriving from it; the application for annulment must be brought within one year of the wedding; it cannot be brought if the spouses have lived together as husband and wife after the wedding, even for only a short time.

9 What are the legal consequences of marriage annulment?

If the spouses acted in good faith (i.e. they were unaware of the impediment when they married), the marriage is deemed valid until it is annulled, and the annulment is effective only from the time it is ordered (the 'putative marriage' principle (*matrimonio putativo*)). A marriage declared null and void has the effects of a valid marriage with respect to any children, even if both spouses acted in bad faith.

The court may also require one of the spouses to make periodic payments to the other, for no more than three years, where the other spouse does not have adequate means and has not remarried.

Where only one of the spouses acted in good faith, the marriage has effects for the benefit of that spouse and any children. The spouse who acted in bad faith is required to pay fair compensation corresponding to maintenance for three years and to pay further maintenance if no other persons have an obligation to provide support.

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

By way of Decree-Law No 132 of 12 September 2014, which was converted into Law No 162/2014, the Italian government made provision for two new alternative procedures that do not involve the courts:

1) the parties may draw up a *negotiation agreement* in the presence of a lawyer, and thus have the possibility of amicably resolving their dispute out of court, with the assistance of lawyers. This possibility is available to spouses seeking to arrive at a mutually agreed separation, to cease the civil effects of their marriage or dissolve it, or to amend the conditions governing their separation or divorce, even if they have children who are not yet of age or who are of age but have serious disabilities or are not financially independent. By going down this route, couples are able to prevent court proceedings from being initiated (Sections 2 and 6);

2) if they do not have any children who are not yet of age or who are of age but have serious disabilities or are not financially independent, spouses have recently been given the possibility of reaching, before a civil registrar, an agreement confirming their legal separation or the dissolution or cessation of the civil effects of their marriage, or amending the conditions governing their separation or divorce (Section 12).

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?

The rules on divorce proceedings also apply to legal separation proceedings, *mutatis mutandis*. To a lesser extent, Sections 706 *et seq.* of the Code of Civil Procedure apply.

The proceedings take the form of a special fact-finding procedure governed by rules different from those applying to ordinary proceedings, particularly in the preliminary stage (this is basically a two-tier process: the conciliation phase and the examination-litigation phase).

The competent court is the general court (*tribunale*), sitting as a panel of judges, of the place of the spouses' last joint residence or of any other place indicated by law (Section 706 of the Code of Civil Procedure), or, where the respondent cannot be contacted or resides abroad, of the place of residence or domicile of the applicant; and where both parties live abroad, any court in the country may hear the case. Where divorce is by mutual consent, the spouses may choose the place of residence or domicile of either.

Proceedings: the petition for separation or divorce takes the form of an application to the court (*ricorso*) which is lodged with the office of the clerk of the court having jurisdiction. Any supporting documents should be enclosed with the application but may also be produced at the hearing. The applicant is responsible for ensuring that the other spouse is notified of the application and of the order of the presiding judge setting the date for the hearing of the spouses. If the attempt at conciliation during the first hearing is unsuccessful, the presiding judge will make interim orders in the interests of the spouses and their children, and set a date for a hearing before the trial court, which will examine the case in accordance with the ordinary rules of evidence.

Divorce by joint application: a joint application requires that the spouses agree both to the divorce and to the conditions regarding their children and financial relations. The proceedings are simplified.

Sources: Law No 898 of 1970 as amended; in the case of legal separation, Sections 706 to 711 of the Code of Civil Procedure also apply.

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

It is possible to obtain legal aid (*patrocinio a spese dello Stato*) and therefore to have legal representation without payment of the lawyer's fees and the other court costs. Legal aid is also available to foreign nationals lawfully residing in Italy. The eligibility conditions can be found in Law No 1990/217 and in the fact-sheet on legal aid. Applications for legal aid must be submitted to the relevant bar association (*consiglio dell'ordine degli avvocati*); see the bar association websites (e.g. for the bar association of Rome) and the Ministry of Justice's website.

Sources: Law No 217 of 1990, as amended by Law No 134 of 2001.

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

It is possible to appeal against legal separation, divorce or annulment orders. Non-final rulings in divorce proceedings (e.g. rulings on the spouses' status) or in separation proceedings (e.g. rulings on responsibility or on maintenance payments) cannot be challenged at a later stage, i.e. together with an appeal against the final judgment: they must be challenged within the ordinary legal time limits.

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?

Regulation (EC) No 2201/2003 of 27 November 2003 applies. It provides for a standard procedure in all EU Member States.

Recognition is automatic. There is therefore no need for any special procedure to update a Member State's registry of marriages, births and deaths following a final divorce, legal separation or annulment ruling.

However, any interested party may apply for a declaration to the effect that the foreign judgment must or must not be recognised. The specific grounds for non-recognition are set out in the Regulation. The action, in the form of an application to the court (*ricorso*) , must be lodged with the court of appeal (*corte di appello*) with territorial jurisdiction in the place of implementation of the ruling as provided by the internal law of Italy. The court rules without delay, with or without hearing the other party, and the ruling is notified to the applicant.

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?

Either party may challenge a decision on recognition before the court of appeal which issued the decision, within one month of its notification (two months if the other party is resident in another country). At this second stage, both parties must be heard in accordance with the ordinary adversarial principle, and the ordinary rules of litigation apply.

The ruling delivered on this objection may in turn be appealed before the Court of Cassation (*Corte di Cassazione*, see the Annexes to the Regulation).

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?

Legal separation and divorce are governed by the national legislation common to both spouses at the time the application for separation or divorce is made; in the case of spouses of different nationalities, the court will seek to determine the law that applies according to the country in which the couple has spent most of its married life; the court is free to exercise a measure of discretion in this regard.

Where the applicable foreign law makes no provision for legal separation or divorce, Italian law applies (Section 31 of Law No 218 of 1995), that is to say that the *lex fori* prevails in such cases. It should be noted that Italian law applies irrespective of whether the applicant is an Italian national, and that Italian law may also be invoked by a non-national in a mixed marriage or a marriage of two non-nationals.

Italian spouses who have lodged applications for legal separation or divorce in Italy are subject to Italian law even if they are not resident in Italy. Spouses of a different nationality are subject to the law of the country in which most of their marital life takes place; however, where the law of the country in question does not provide for legal separation or divorce, the Italian court will apply Italian law.

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Divorce - Cyprus

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1 What are the conditions for obtaining a divorce?

In the case of a religious marriage, divorce proceedings can be initiated only after notice has been given to the bishop of the district in which the applicant resides. An application for divorce may be lodged three months after notification is sent to the competent bishop. No notification needs to be sent where the ground for the divorce is disappearance or mental illness.

2 What are the grounds for divorce?

- Adultery

- Immoral, disgraceful or any other repeated unforgivable behaviour resulting in serious deterioration of the marital relationship, which makes it intolerable for the applicant to live with his/her spouse.
- An attempt against life, e.g. physical abuse.
- Mental illness for three years that makes co-habitation intolerable.
- Final sentencing to a term of imprisonment longer than seven years
- Disappearance
- Sexual incapacity present at the time of marriage and which continues for at least six months and up to and including the time the action is brought.
- Unjustified desertion for two years. Long periods of absence, exceeding two years in aggregate. An invitation to return must have been sent.
- Change of religion or denomination, or exercise of moral force or attempt to proselytise the spouse into joining a sect.
- Persistent refusal to have a child despite the other spouse's desire to do so.
- Irretrievable breakdown.
- Separation for five years.

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

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

Divorce dissolves a marriage, but does not bring about a change of surname automatically. It is up to the party concerned to make a sworn statement to change his/her name.

3.2 the division of property of the spouses

Divorce has no consequences for property disputes. Any property dispute must be pursued by means of a separate application, as the procedures are distinct.

3.3 the minor children of the spouses

There are none, since the divorce proceedings are separate from and independent of the custody proceedings, unless the divorce was granted on grounds of an attempt on the life of the children or physical abuse of the children.

Divorce has no consequences for questions relating to the spouses' minor children (e.g. alimony, parental responsibility, communication). Separate applications must be lodged for these matters.

3.4 the obligation to pay maintenance to the other spouse?

Divorce does not of itself entail an obligation to pay maintenance to the other spouse. A separate application should be lodged upon separation.

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

The term 'legal separation' does not exist in Cypriot family law.

5 What are the conditions for legal separation?

Not applicable.

6 What are the legal consequences of legal separation?

Not applicable.

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

It means that, as of the date of the annulment judgment, the marriage is declared void and legally ineffective.

8 What are the conditions for marriage annulment?

Under Article 17 of the Law on Marriage, Law 104(I)/2003, as amended by Law 66(I)/2009, a marriage is not valid if it took place:

(a) before the final dissolution or annulment of any pre-existing marriage of either of the parties, including a religious or civil marriage;

(b) between relatives in a relationship of lineal or collateral consanguinity up to the fifth degree;

(c) between relatives by marriage in the direct or collateral line up to the third degree;

(d) between an adopter and an adoptee or their descendants;

(e) between a child born out of wedlock and the father who has recognised the child or his blood relatives.

9 What are the legal consequences of marriage annulment?

If a marriage is void or declared invalid by an irrevocable court judgment, it becomes completely ineffective as of the date of rendering of the judgment.

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

There are currently no such means. A draft law on mediation in family affairs is currently being prepared by the Law Commissioner.

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?

The application for the dissolution/annulment of marriage should be made at the family court (*oikogeneiakó dikastírio*) of the district (*eparchía*) in which one or both of the parties reside. The application must comply with Model 1 of the Procedural Regulations of the Supreme Court of 1990 (*Týpo 1 ton Diadikastikón Kanonismón tou Anótatou Dikastiríou tou 1990*). Proof of postage of the notification sent to the competent bishop or proof of receipt of a registered letter relating to the notification by the competent bishop, as well as the parties' marriage certificate, should be submitted along with the application as evidence.

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

Yes. An application should be filed with the competent family court.

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

Yes, it is possible to appeal against a decision relating to divorce or marriage annulment before the second-instance family court (*d evterováthmio oikogeneiakó dikastírio*).

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?

An application should be lodged before the competent family court of the Republic of Cyprus based on Regulation 44/2001.

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?

One can object by applying to the family court with which the application is filed for recognition and registration of the other Member State's decision.

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 family courts in the Republic of Cyprus acquire jurisdiction to handle a case relating to the dissolution or annulment of a marriage in these cases only where the parties to the case have resided in Cyprus for at least three months. The court will apply Cypriot law.

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Divorce - Latvia

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1 What are the conditions for obtaining a divorce?

Cases in which a marriage may be dissolved are detailed in the Family Law part of the Civil Law of Latvia and in Division P of the Notaries Law. The general framework of the institution of marriage is stipulated in the Family Law part of the Civil Law.

In Latvia, marriage may be dissolved only by a court or a notary (*notārs*). A court can dissolve a marriage upon application by one or both spouses. A notary can dissolve a marriage if the spouses have reached agreement on the dissolution of their marriage and have no joint minor child or joint property, or, where the spouses have a joint minor child or joint property, if they have entered into a written agreement on guardianship of the joint minor child, access rights, the child’s means of support, and the division of the joint property.

One of the prerequisites for a divorce of this kind, therefore, is an agreement between the spouses on the guardianship of a child born within the marriage, the child’s means of support, and the division of joint property.

If a marriage is to be dissolved by a court, the court must find that the marriage has broken down. A marriage is considered to have broken down if the spouses are not cohabiting and it cannot be expected that they will resume cohabitation.

One of the prerequisites for a dissolution by a notary is an agreement between the spouses on the guardianship of a child born within the marriage, the child's means of support and the division of joint property. If the spouses fail to reach an agreement, these claims have to be settled in court concurrently with an application for divorce.

2 What are the grounds for divorce?

Dissolution of marriage by a notary

A marriage may be dissolved if it has broken down and the spouses have reached agreement on the dissolution of their marriage, and a notary receives a joint application signed by both spouses. If the spouses have a joint minor child or joint property, a written agreement on guardianship of the joint minor child, the child's means of support, access rights and the division of joint property must be attached to the application.

Dissolution of marriage by a court

A marriage may be dissolved by a court in cases where the spouses have not reached agreement on the dissolution of their marriage and one of the following conditions is met:

The spouses have lived separately for more than three years: the spouses live separately, there is no joint household and one of the spouses is determined not to revive the joint household, thus denying the possibility of marital cohabitation. A joint household may be lacking even if the spouses live in a joint property.

If the spouses have been living separately for less than three years, the court may dissolve the marriage only if:

the reason for the breakdown of the marriage is physical, sexual, psychological or economic violence by one of the spouses against the spouse who is requesting the dissolution of marriage, or against his other child, or against the joint child of the spouses;

one spouse consents to an application by the other for the dissolution of the marriage;

one of the spouses has started living together with another person, and a child has been born or is expected within that partnership.

Where in the circumstances just described the court believes that the marriage can still be preserved, divorce proceedings may be postponed for up to six months with a view to a possible reconciliation of the spouses.

Where before they have lived separately for three years one of the spouses applies for a divorce on grounds other than the three listed above, the court may not dissolve the marriage before the statutory term of three years of separation, and must postpone examination of the case with a view to a possible reconciliation of the spouses.

If the spouses have been living separately for less than three years, a notary may dissolve the marriage only if both spouses agree to the dissolution of their marriage and have submitted an application for dissolution to the notary in accordance with the procedure laid down in the Notaries Law.

A court may not dissolve a marriage even if it has broken down if and to the extent that the preservation of the marriage is necessary in exceptional circumstances in the interests of a joint minor child of the spouses.

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

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

As soon as a judgment granting a divorce comes into effect or as soon as a certified notary has issued a divorce certificate, the rights and obligations arising from the legal relationship between the spouses cease to exist. Divorce may impose new obligations and rights on the former spouses. Once the marriage is dissolved, either party may enter into another marriage.

According to the Civil Law, a spouse who changed their surname upon entering into marriage is entitled to use their married surname after dissolution of the marriage, or alternatively, if they so request, a court or a notary will allow them to use their unmarried surname.

On application by the other spouse, a court may forbid a a spouse who contributed to the breakdown of the marriage from retaining the married surname, provided that this does not prejudice the interests of a child.

3.2 the division of property of the spouses

A notary may dissolve a marriage if the spouses have reached prior written agreement on the division of any joint property and if the agreement is attached to the application for divorce.

When a marriage is dissolved by a court, the spouses may agree on a division of joint property. If the spouses fail to reach an agreement, their claims will be settled by the court on the basis of the Civil Law or of the provisions of the marriage contract. The Civil Law provides for two types of property relationship, namely relationships determined by legislation and relationships determined by the marriage contract, and these define the procedure for the division of property in the event of divorce.

Where the property relationships are those determined by the legislation, in the event of a division of property each of the spouses has the right to retain the property that belonged to him or her before the marriage and any separate property he or she acquired during the marriage. Everything acquired during marriage by the spouses together, or by either of them using the resources of both, is the joint property of both spouses. It will be assumed that joint property belongs to both spouses equally, unless either of them can substantiate and prove that it should be divided in a different proportion.

Where the property relationships are determined by the marriage contract, the contract may provide for separate ownership or for joint ownership of all property of the spouses, and the division of property will then be decided in accordance with the procedure laid down in the legislation for the appropriate contractual property relationship.

3.3 the minor children of the spouses

In cases of divorce the issues arising from the legal relations within the family that have been described above, and in particular those arising from the legal relations of parents and children, may not be considered separately.

If the marriage is dissolved by a notary, the spouses have to agree not only on the divorce but also on guardianship, access rights and the maintenance of the children. A prior written agreement on the guardianship of a joint minor child, access rights and the child's maintenance must be submitted together with an application for divorce.

If marriage is dissolved by a court, the spouses have to agree on the guardianship of a joint minor child, access rights and the child' s maintenance. If no such agreement has been concluded, unless the claims have already been settled, the claims have to be brought together with the application for divorce; the court cannot grant the divorce otherwise.

Consequences of the divorce with regard to parental responsibility

The responsibility to take care of a child does not end if the child no longer lives with one or both of the parents.

If the parents live separately, their joint responsibility continues. The care and supervision of the child must be ensured by the parent with whom the child is living.

Parents are to take decisions jointly on issues that may have a significant effect on the child's development. Disputes between the parents are settled by the orphans' court (*bāriņtiesa*), unless the legislation provides otherwise.

Joint guardianship of parents is terminated when an agreement between the parents or a court decision establishes the separate guardianship of one parent.

If a child is under the separate guardianship of one parent, that parent has the rights and obligations arising from the guardianship. The other parent must have access rights (the right to maintain contact and private relationships with the child).

Consequences of the divorce with regard to maintenance of a child

The issue of child maintenance must be determined during the divorce proceedings. Parents are obliged to provide maintenance for a child commensurate with their ability and financial circumstances. The duty to provide for a child rests with the father and the mother until such time as the child is able to provide for itself. The responsibility to provide maintenance for a child does not end if the child lives separately from the family or if the child no longer lives with one or both of the parents. Upon the dissolution of their marriage a child's parents may mutually agree on the maintenance of a child, but if the parents fail to reach agreement the dispute is settled by the court during the divorce proceedings.

3.4 the obligation to pay maintenance to the other spouse?

The Civil Law states that at the time when a marriage is dissolved, or even thereafter a, former spouse may claim from the other spouse payments commensurate with the other spouse's financial circumstances in order to ensure the first spouse's previous level of welfare. The duty to ensure the previous level of welfare of a former spouse ends when:

- the time that has passed since the divorce or annulment of the marriage is the same as the duration of the dissolved marriage, or in the case of a marriage that has been annulled, the duration of cohabitation;
- the former spouse enters into a new marriage;
- the income of the former spouse ensures his or her maintenance;

- the former spouse avoids acquiring the means of his or her own maintenance through his or her own work;
- the former spouse who was required to maintain the other former spouse has not got sufficient means of subsistence or has become work-incapacitated;
- the former spouse to be maintained has committed a crime against the other former spouse or against the life, health, liberty, property or honour of the other spouse or of one of the other spouse's relatives in the ascending or descending line;
- the former spouse has left the other former spouse in a helpless state when it was possible to help;
- the former spouse has deliberately brought a false accusation of a crime against the other former spouse or one of his or her relatives in the ascending or descending line;
- the former spouse lives wastefully or immorally;
- the former spouse who was required to maintain the other former spouse dies or is declared dead, or the other former spouse dies or is declared dead;
- there are other important reasons for ending the duty.

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

The term 'legal separation' does not exist in the Latvian legal system.

5 What are the conditions for legal separation?

The term 'legal separation' does not exist in the Latvian legal system.

6 What are the legal consequences of legal separation?

The term 'legal separation' does not exist in the Latvian legal system.

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

A marriage may be annulled if it was concluded in breach of legislative provisions that prevented it from being concluded lawfully. From the moment that a judgment annulling a marriage comes into effect, the parties are deemed never to have been married, and the marriage is considered null and void from the time it was concluded. It may be noted that a marriage may be annulled even after a divorce.

8 What are the conditions for marriage annulment?

A marriage may be annulled only in the following cases stipulated by the legislation:

- the marriage was not registered by an official of a registry office or by a minister of religion of one of the denominations listed in the Civil Law;
- the marriage was concluded fictitiously, without the intention of establishing a family;
- the marriage was concluded before both spouses had reached the age of eighteen years, or in certain cases before one of the spouses had reached the age of sixteen years, after which the marriage may be valid if it was entered into with an adult and parents or guardians consented; however, such a marriage cannot be annulled if a child has been conceived after the marriage or if both spouses have attained the minimum age by the time of a court judgment;
- at the time the marriage was entered into, one of the spouses was in a condition that prevented him or her from understanding the significance of his or her actions or from controlling his or her actions;
- the marriage was concluded between persons who are within the forbidden degrees of kindred, namely, relatives in the direct ascending or descending line, a brother and a sister, or a half-brother and half-sister;
- the marriage was concluded between an adopter and an adoptee, except where the legal relations established by adoption have been terminated;
- the marriage was concluded between a guardian and a minor, or between a trustee and a person under trusteeship, before the relations of guardianship or trusteeship were terminated;
- one of the spouses was already married.

In all these cases, an application to have the marriage annulled may be brought at any time without limitation, by any interested party or by the public prosecutor. If the marriage has been terminated by death or divorce, only persons whose rights are affected may bring an application for annulment. If both spouses have died, an application for the annulment of their marriage can no longer be brought.

9 What are the legal consequences of marriage annulment?

A spouse whose marriage is annulled resumes his or her unmarried surname. If at the time the marriage was contracted a spouse was not aware of the fact that the marriage ought to be annulled, he or she may ask the court to be allowed to retain his or her marital surname.

If at the time the marriage was contracted one of the spouses was aware that it might be annulled, the other spouse is entitled to claim from the former not only the means necessary to maintain his or her previous level of welfare but also compensation for moral damages.

When a marriage is annulled, the circumstances in which a former spouse is relieved of the obligation to ensure the other spouse's previous level of welfare are the same as in the case of a divorce (see question 3.4).

As far as division of property upon annulment of marriage is concerned, each of the former spouses is entitled to keep his or her premarital property and any property acquired by him or her during cohabitation. Jointly acquired property is to be divided equally among the former spouses.

If at the time the marriage was contracted neither of the spouses was aware of the fact that the marriage ought to be annulled, property will be divided in accordance with the provisions of the Civil Law governing the division of property acquired during lawful marriage. If, however, only one spouse was not aware of the fact that the marriage ought to be annulled, the procedure concerning the division of property acquired during lawful marriage in the event of divorce applies only to the spouse who was not aware that the marriage ought to be annulled.

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

In Latvia, marriage may be dissolved by a notary upon a joint application by both spouses. The procedure for dissolution of marriage by a notary is laid down in Division P of the Notaries Law. A certified notary will dissolve the marriage in cases where the spouses have agreed to the divorce and have no joint minor child or joint property, or if the spouses have a joint minor child or joint property and have entered into a written agreement on the guardianship of the joint minor child, access rights, the child's maintenance and the division of the joint property.

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?

Dissolution of marriage by a notary

If a marriage is to be dissolved by a notary, there is no specific territorial jurisdiction – the parties may approach any notary anywhere in the country. This does not include cross-border cases where jurisdiction is governed by Council Regulation (EC) No 2201/2003. If under European Union legislation or other international legislation a crossborder divorce does not fall within Latvian jurisdiction, a certified notary may not initiate the divorce proceeding and must inform the spouses accordingly.

In crossborder divorce cases the law that is applicable is determined in accordance with Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

An application for a divorce made to a notary must indicate the following:

- the given name, surname and personal identity number of each spouse (if a spouse has no personal identity number, the year, day and month of birth);
- the year, day and month of the wedding and the number of the entry in the register;
- the country in which the marriage was registered and the authority, or the religious denomination and minister of religion, before whom it was contracted;
- whether the spouses have joint minor children and whether they have reached agreement on the guardianship of the joint minor children, the exercise of rights of access, and maintenance;
- whether the spouses have joint property, and whether they have reached agreement regarding the division of such property;
- the surnames of the spouses after the divorce.

The application must enclose an original of the marriage certificate, or a copy or extract issued by a civil registry office, or a statement from a registry office.

If the spouses have a joint minor child or joint property, a written agreement on the guardianship of the joint minor child, the child's maintenance, access rights and the division of joint property must be attached to the application.

Dissolution of marriage by a court

An application for divorce or an annulment of marriage has to be brought in the district or city court (*rajona (pilsētas) tiesa*) that has jurisdiction — usually the court of the declared place of residence of the defendant, or failing that the de facto place of residence of the defendant. An application may be brought in the court of the declared place of residence of the plaintiff, or failing that the de facto place of residence of the plaintiff, if:

- minor children are residing with the plaintiff;
- the marriage to be dissolved is with a person who is serving a prison sentence;
- the marriage to be dissolved is with a person who does not have a declared place of residence and whose de facto place of residence is unknown, or who lives abroad.

Rules on jurisdiction in matters of divorce, legal separation and annulment of marriage when one of the spouses is habitually resident in another Member State, or is a citizen of another Member State, are laid down in 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, repealing Regulation (EC) No 1347/2000.

Once it has been determined which is the appropriate Member State, the domestic civil procedure of that Member State applies.

Rules on jurisdiction in matters of divorce are also laid down in bilateral international agreements on legal assistance and legal relations which have been concluded with nonEU countries and which are binding on Latvia.

Under Section 128 of the Law on Civil Procedure a court application must indicate the following:

- the name of the court to which the application is submitted;
- the given name, surname, personal identity number and declared place of residence of the plaintiff (if the plaintiff has no declared place of residence, the plaintiff's de facto place of residence); in the case of a legal person, the name, registration number and registered office; the plaintiff may also indicate another address for correspondence with the court;
- the given name, surname, personal identity number, declared place of residence and any declared additional address of the defendant or interested party, or failing that a de facto place of residence; for a legal person, the name, registration number and registered office; the personal identity number or registration number of the defendant is to be indicated if known;
- the given name, surname, personal identity number and address for correspondence with the court of the representative of the plaintiff, if the action is brought by a representative, or in the case of a legal person, the name, registration number and registered office;
- in a claim for recovery of money, the name of the credit institution and account number to which payment may be made, if any;
- the subject-matter of the claim;
- the amount of the claim, if the claim can be assessed in terms of money, showing the manner of calculation of the amount being recovered or disputed;
- the facts on which the plaintiff bases his or her claim, and evidence which corroborates such facts;
- the law on which the claim is based;
- the claims of the plaintiff;
- a list of the documents appended to the application;
- the date on which the application was drawn up, and any other information that may be relevant.

Under Section 235.^{1} of the Civil Procedure Law, an application for divorce must also indicate the following:

- since when the parties have been living separately;
- whether the other spouse agrees to the divorce;

- whether the parties have reached agreement regarding the guardianship of children, the procedures for exercising the access rights of the other parent, maintenance, and the division of the property acquired during marriage, or whether they are submitting claims to the court in these respects.

The application must be signed by the plaintiff or his or her representative. In a matter of divorce or annulment, a party's representative has to have specific authorisation to handle the matter. Authorisation to act in a matter of divorce or annulment also covers any other related claims.

The following must be attached to the application:

- a true copy of the application, to be sent to the defendant;
- a document showing that the State fee and other court expenses have been paid in accordance with the procedure and in the amount laid down by law;
- a document or documents attesting to the circumstances on which the claim is based (such as a certificate of marriage registration).

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

In general, the State provides legal aid if a person's means or level of income prevents them from providing for the protection of their rights, or if they suddenly find themselves in a situations and financial circumstance that prevent them from doing so (e. g. owing to a natural disaster, force majeure or other circumstances outside their control), or the person is entirely dependant on the State or the local authority, thus making it objectively difficult for the person to protect their rights. Legal aid is granted in accordance with the provisions of the State Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*).

Legal aid generally covers expenditure related to the preparation of procedural documents, legal consultation during proceedings, representation in court, and enforcement of a court judgment.

Latvia also provides legal aid in accordance with Council Regulation (EC) No 2201/2003.

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

At first instance, a case is handled by a district or city court (*rajona (pilsētas) tiesa*). A decision may be appealed to the regional court (*apgabaltiesa*), and may also be challenged on a point of law (*kasācija*).

If a marriage is to be dissolved by a notary, it is worth pointing out that the truthfulness of documents certified in accordance with the statutory procedure cannot be called into question. They may be contested by bringing a separate action.

Any complaint that a certified notary has acted incorrectly in the performance of his or her duties, or has refused to perform his or her duties, must be submitted to the regional court to whose supervision the notary is subject within one month from the day when the notary performed the action complained of or refused to perform the action demanded.

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?

A judgment on divorce, legal separation or marriage annulment given in another Member State has to be recognised in Latvia under Council Regulation (EC) No 2201/2003. That Regulation states that a judgment given in a Member State is to be recognised in other Member States without any special procedure being required.

In order to secure the recognition in Latvia of a judgment on divorce, legal separation or marriage annulment given in another Member State, any interested party may, in compliance with the procedures provided for in Council Regulation (EC) No 2201 /2003, apply for a decision that the the judgment is to be recognised, or not to be recognised, by submitting an application for recognition (*atzīšana*) or for recognition and enforcement (*atzīšana un izpildīšana*) of the foreign judgment to the district or city court of the place where the judgment is to be enforced, or of the defendant's declared place of residence, or failing that the court of the defendant's de facto place of residence.

A decision on the recognition or the recognition and enforcement of a judgment given by a foreign court is taken by a judge sitting alone, on the basis of the application submitted and the documents attached thereto, within 10 days of the day of submission of the application, without summoning the parties. The judge may refuse to recognise the judgment in Latvia only on one of the grounds of non-recognition listed in Article 22 of Council Regulation (EC) No 2201/2003. These allow a judgment given in another Member State to be refused recognition in Latvia in the following cases:

- if such recognition is manifestly contrary to the public policy of Latvia;

- where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the defendant to arrange for his or her defence unless it is determined that the defendant has accepted the judgment unequivocally;
- if the judgment is irreconcilable with a judgment given in proceedings between the same parties in Latvia;
- if the judgment is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in Latvia.

Under Section 638 of the Civil Procedure Law, an application regarding the recognition of a judgment must indicate the following:

- the name of the court to which the application is submitted;
- the applicant's given name, surname, personal identity number (or, failing that, other identification data) and address for correspondence with the court; in the case of a legal person, the name, registration number and registered office;
- the defendant's given name, surname, personal identity number (or, failing that, other identification data), declared place of residence and any declared additional address, or, failing that, the defendant's de facto place of residence; in the case of a legal person, the name, registration number and registered office;
- the subjectmatter of the application and the circumstances upon which the application is based;
- the applicant's request that the judgment given by the foreign court be recognised, or recognised and enforced, in whole or in part;
- the authorised representative and his or her address, if a representative has been appointed to handle the case in Latvia;
- a list of the documents appended;
- the date and time that the application was drawn up.

Under Article 37 of Council Regulation (EC) No 2201/2003 an application regarding the recognition of a judgment given by a court of another Member State must be accompanied by the following:

- a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
- if the judgment was given in default, a document which establishes that the defendant was served with the document instituting the proceedings (for divorce, legal separation or marriage annulment); alternatively, the applicant may submit a document indicating that the defendant has unequivocally accepted the judgment given in default;
- a certificate issued by a competent authority or a court of the Member State of origin of the judgment in accordance with Article 39 of Council Regulation (EC) No 2201/2003.

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?

Under Council Regulation (EC) No 2201/2003, there are two ways in which an interested party may object to the recognition in Latvia of a judgment given in another Member State regarding divorce, legal separation or annulment of marriage.

Firstly, under Article 21 of Council Regulation (EC) No 2201/2003, any interested party may apply to a court for a decision that a judgment given in another Member State should not be recognised in Latvia.

Secondly, the defendant in a case concerning recognition of a judgment may contest recognition of the judgment in Latvia even when another person has already submitted an application for recognition of the judgment, and where on the basis of that application the district or city court has already recognised the judgment. The defendant may raise objections to the recognition in Latvia of a judgment given in another Member State by challenging the district or city court's decision recognising the judgment. Under Article 33 of Council Regulation (EC) No 2201/2003, a district or city court's decision recognising a judgment given by a court of another Member State may be challenged before a regional court by submitting an ancillary objection (*blakus sūdzība*) to the court that took the decision, and sending the application to the respective regional court. The defendant or the applicant may bring a regional court's decision on the recognition of a judgment before the Senate of the Supreme Court (*Augstākās tiesas Senāts*) by submitting an ancillary objection to the court that took the decision and sending the application to the Civil Cases Division of the Senate of the Supreme Court.

The defendant may object to the recognition of a judgment given in another Member State only on the basis of one of the grounds of non-recognition set out in Article 22 of Council Regulation (EC) No 2201/2003 (see question 14).

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 procedure for determining the law applicable is laid down in Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III Regulation).

Related links

http://www.tiesas.lv

http://www.llrx.com/features/latvia.htm English

http://www.vvc.gov.lv/

http://www.tm.gov.lv

Last update: 07/02/2019

Divorce - Lithuania

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1 What are the conditions for obtaining a divorce?

Divorce arrangements are set out in Chapter 4 of Part 2 of Book III “Family rights” of the Civil Code of the Republic of Lithuania (hereinafter – ‘Lithuanian Civil Code’)(Civilinis kodeksas).

Article 3.51 sets out the conditions for obtaining divorce by mutual consent of the spouses. A marriage may be dissolved provided that all of the following conditions are met:

1. over a year has elapsed since the marriage took place;
2. the spouses have signed a divorce settlement agreement (division of property, child maintenance, etc.);
3. both of the spouses have full legal capacity.

In the cases provided for in this Article, divorce is obtained under a simplified procedure.

Article 3.55 of the Lithuanian Civil Code sets out the conditions for a divorce at the request of one of the spouses, which must be filed with the district court of the place of residence of the applicant. In this case, a marriage may be dissolved if at least one of the following conditions is met:

1. the spouses have been separated for over a year;
2. one of the spouses was declared legally incapacitated by a court judgment after the marriage took place;
3. the whereabouts of one of the spouses have been recognised as unknown by a court judgment;
4. one of the spouses is serving a prison sentence of more than a year for committing a non-premeditated crime.

Article 3.60 of the Lithuanian Civil Code sets out the conditions for a divorce on grounds of fault by one (or both) of the spouses. A spouse may apply for a divorce if the marriage has broken down through the fault of the other spouse. A spouse is recognised as being at fault for the breakdown of the marriage if he or she has substantially breached his or her obligations in marriage as set out in Book Three (Family Law) of the Lithuanian Civil Code (Civilinis kodeksas), making married life together impossible as a result. A marriage is presumed to have broken down through the fault of the other spouse if he or she has been convicted of a pre-meditated crime or has committed adultery or is abusive towards the other spouse or other members of the family or has deserted the family and has not been caring for it for over a year.

The respondent in divorce proceedings may dispute his or her fault and put forward evidence that the applicant is responsible for the breakdown of the marriage. Having considered the circumstances of the case, the court may declare that both spouses are at fault for the breakdown of the marriage. If the court finds that both spouses are at fault for the breakdown of the marriage, the consequences are the same as for the dissolution of a marriage by mutual consent.

2 What are the grounds for divorce?

A marriage is ended by the death of one of the spouses or by termination under law. A marriage may be dissolved by a mutual consent of the spouses, on the application of one of the spouses or through the fault of one or both spouses.

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

A marriage is considered to be dissolved from the day on which the divorce judgment enters into force. Within three working days of the entry into force of the divorce judgment, the court must send a copy of that judgment to the local civil registry office, which registers the divorce.

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

After a divorce, a spouse may retain his or her married surname or revert to the surname he or she had before the marriage. Where a marriage is dissolved through the fault of one of the spouses, the court may, at the request of the other spouse, prohibit the spouse at fault from retaining his or her married surname, except where the spouses have children together.

3.2 the division of property of the spouses

The division of the spouses' property depends on the matrimonial property regime, which may be established by law or by contract. In the absence of a marriage contract, the property of the spouses is covered by the statutory property regime. Matrimonial property regimes are governed by Chapter VI of Part III of Book III of the Lithuanian Civil Code.

3.3 the minor children of the spouses

If the marital home is owned by one of the spouses, the court may establish usufruct and allow the other spouse to remain in the marital home if minor children will continue to live with him or her after the divorce. Usufruct remains valid until the child reaches (the children reach) the age of majority. If the marital home is rented, the court may transfer the tenancy to the spouse with whom the minor children will live or a spouse who is incapable of working and may evict the other spouse if he or she has been ordered to live separately.

3.4 the obligation to pay maintenance to the other spouse?

When handing down a judgment in a divorce case, the court will also award maintenance payments to a former spouse in need of support, unless the issue of maintenance has been dealt with in the divorce settlement drawn up between the spouses. Spouses have no right to maintenance if their assets or income are sufficient to fully support them. It is assumed that a spouse will require maintenance if he or she is bringing up a minor child of the marriage, or if he or she is incapable of working through old age or ill health. A spouse who was unable to obtain any qualifications (complete his or her studies) because of the marriage and the common interests of the family or the need to care for the children is entitled to require the former spouse to cover the costs of completing his or her studies or retraining.

The spouse at fault in the divorce is not entitled to maintenance.

When awarding maintenance and determining the amount, the court must take into account the duration of the marriage, the need for maintenance, the assets of both former spouses, their state of health, age and capacity to work, how likely an unemployed spouse is to find employment and other important circumstances.

Maintenance payments are reduced, awarded only temporarily or refused if any of the following circumstances exist:

1. the marriage lasted for less than a year;
2. the spouse entitled to maintenance has committed a crime against the other spouse or his or her next of kin;
3. the financial difficulties being experienced by the spouse entitled to maintenance are a result of his or her own wrongful conduct;
4. the spouse requesting maintenance did not contribute to the growth of common assets or deliberately harmed the interests of the other spouse or the family during the marriage.

The court may require the former spouse ordered to pay maintenance to the other spouse to provide an adequate guarantee that this obligation will be met. Maintenance may be awarded as a lump sum or in the form of regular monthly payments (instalments) or a transfer of assets.

If a spouse applies for a divorce because of the incapacity of the other spouse, the spouse initiating the divorce must pay for the treatment and care of the incapacitated former spouse, unless they are covered by state social security funds.

A maintenance order constitutes grounds for a forced pledge (mortgage) of the respondent's assets. If the former spouse defaults on his or her obligation to pay maintenance, his or her assets may be used to make the payments in accordance with the statutory procedure.

In the event of the death of the former spouse ordered to pay maintenance, the obligation devolves to his or her successors in so far as the inherited estate allows, irrespective of the manner of acceptance of the estate.

Where a former spouse who has been awarded maintenance dies or remarries, the payment of maintenance ceases. In the event of death, the right to claim arears or as yet unpaid maintenance payments passes to the late spouse's successors. If the new marriage is dissolved, the former spouse may apply for the renewal of maintenance payments provided that he or she is bringing up a child or caring for a disabled child from his or her previous marriage. In all other cases the duty of the spouse from the subsequent marriage to pay maintenance takes precedence over the duty of the former spouse from the previous marriage.

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

When the court issues a judgment granting legal separation, the spouses no longer live together, but their other rights and obligations are not extinguished. Legal separation may be a first step towards divorce. However, it does not mean that the spouses may not start living together again. Unlike in the case of divorce, spouses who are separated may not remarry, as they are not formally divorced.

5 What are the conditions for legal separation?

One of the spouses may apply to the court for a legal separation if certain circumstances, which may not depend on the other spouse, mean that their life together has become intolerable/impossible or could substantially harm the interests of their minor children, or the spouses are no longer interested in living together. The spouses may jointly apply to the court for a legal separation if they have signed a separation agreement providing for the living arrangements, maintenance and education of their minor children, the division of their property and mutual maintenance.

6 What are the legal consequences of legal separation?

Separation does not affect the rights and obligations of the spouses in respect of their minor children; the spouses merely live apart. When granting a separation order, the court must always issue a property adjustment order, unless those matters have been settled in the marriage contract between the spouses. The legal consequences of separation in terms of the property rights of the spouses take effect from the opening of proceedings. However, unless a spouse has been deemed to be at fault for the separation, he or she may ask the court to make the legal consequences of separation with regard to the spouses' property rights retroactive to the date on which the spouses actually ceased to live together. If one of the separated spouses dies after the separation order has been issued, the survivor retains all the statutory rights of a surviving spouse, unless the surviving spouse has been declared by the court to be at fault for the separation. The same rule applies where the court grants a separation on the basis of a joint application by the spouses, unless the separation agreement between the spouses provides otherwise. However, the surviving spouse cannot inherit the deceased spouse's estate.

When issuing a separation order, the court may order the spouse at fault for the separation to pay maintenance to the other spouse if he or she is in need of support, unless the issue of maintenance has been settled in the separation agreement between the spouses.

A separation ends if the spouses start living together again and their life together confirms their intention to live together permanently. The separation ends when the court issues an order granting the spouses' joint application to end the separation and revoking its earlier separation order.

On the resumption of their life together, the spouses property remains separate until they conclude a new marriage contract and choose a new matrimonial property regime. The end of legal separation produces legal effects for third parties only if the spouses conclude a new marriage contract and register it in accordance with the procedure set out in Article 3.103 of the Lithuanian Civil Code.

If the spouses have been separated for more than a year since the court order entered into force, either spouse may seek a divorce.

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

Only the courts can annul a marriage. A marriage that has been declared void by a court is void ab initio. The legal consequences of the annulment of a marriage (see point 9) depend on whether the spouses, or at least one of them, acted in good faith when entering into the marriage. However, in any case, the law defends the rights of children of a marriage that has been annulled (they are deemed to have been born in wedlock). After the annulment of their marriage, the parties may enter into a new marriage or register a partnership.

8 What are the conditions for marriage annulment?

A marriage may be declared void if the following conditions for a entering into a marriage are not met:

A marriage may be entered into only with a person of the opposite sex.

A man and a woman must enter into marriage of their own free will. Any threat, coercion, deceit or other absence of free will constitutes grounds for annulling the marriage.

A marriage may be entered into by persons who are aged 18 or over on the day of the marriage. At the request of a person who wishes to marry before the age of 18, the court may lower the age of consent to marriage for that person by simplified procedure, but by no more than two years. Pregnancy is an important reason for lowering the age of consent to marriage. If the person is pregnant, the court may allow marriage before the age of 16.

A person who has been declared legally incapacitated by a court judgment that has entered into force may not enter into a marriage. If it transpires that a case has been brought to court to have one of the parties to an intended marriage declared legally incapacitated, the registration of the marriage must be postponed until the judgment in that case enters into force.

A person who is married and has not obtained a divorce in accordance with the procedure laid down by law may not enter into another marriage.

Marriage between parents and children, adopted parents and adopted children, grandparents and grandchildren, siblings or half-siblings, cousins, uncles and nieces, and aunts and nephews is prohibited.

A fictitious marriage may also be annulled. A marriage entered into just for the sake of appearances and without the intention of creating a legal family relationship may be annulled on the petition of either spouse or a public prosecutor.

A marriage may be annulled if it was not entered into freely. A spouse may petition for annulment if he or she can prove that, at the time of the marriage, he or she was incapable of understanding the meaning of his or her actions or was not in control of them. An annulment may be sought by a spouse who was induced to marry by threat, duress or fraud.

A spouse who consented to marriage on account of a substantial error may seek annulment of the marriage. An error is deemed to be substantial if it concerns circumstances in relation to the other party which, if known, would have deterred the spouse from entering into the marriage. The error is presumed to be substantial if it is about: (i) the health of the other party or a sexual abnormality which makes normal family life impossible; or (ii) a serious crime committed by the other party.

9 What are the legal consequences of marriage annulment?

Children of a marriage that was subsequently annulled are deemed to have been born in wedlock. Where both spouses acted in good faith, i.e. they did not know and could not have known about the impediments to their marriage, the legal consequences of their marriage, even though it was declared void, are the same as for a valid marriage, except for the right of succession. Evidence that the spouses acted in good faith must be provided in the court judgment.

Legal consequences of annulment where one or both spouses acted in bad faith: where only one of the parties acted in good faith, the rights conferred on him or her by a void marriage are those of a married person. Where both parties acted in bad faith, the void marriage confers none of the rights or obligations of married persons on either party. Each of them is entitled to recover their own property, including gifts to the other party. If in need of maintenance, the spouse who acted in good faith is entitled to petition for maintenance from the spouse who acted in bad faith for a period not exceeding three years. The amount is to be determined by the court, taking into account the financial situation of both parties. The court may order the payment of monthly instalments or a single lump sum. If the financial situation of one of the parties changes, the interested party may apply to the court for the maintenance payments to be increased, decreased or terminated. An order to pay maintenance to the spouse who acted in good faith terminates automatically if that spouse enters into a new marriage or at the end of the three-year period for which maintenance is to be paid.

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

Lithuanian legislation provides for no alternative non-judicial means of resolving issues relating to the divorce, so these can be resolved only by 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?

An application for a divorce by mutual agreement of the spouses must be filed with the district court (apylinkės teismas) of the place of residence of one of the spouses. The application must state the grounds for the divorce and how the applicant will fulfil his or her obligations towards the other spouse and their minor children and must give any other of the particulars specified in Article 384 of the Lithuanian Code of Civil Procedure (Civilinio proceso kodeksas).

An application for a divorce at the request of one of the spouses, must be filed with the district court of the place of residence of the applicant.

An application for a divorce on grounds of fault by one of the spouses must be filed with the district court of the place of residence of the respondent. Where the applicant has minor children living with him or her, the application for divorce may also be filed with the district court of the place of residence of the applicant.

An application for annulment of a marriage must be filed with the court of the place of residence of the respondents or one of the respondents.

Applications for legal separation are examined by the court of the place of residence of the respondent.

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

The Law of the Republic of Lithuania on state-guaranteed legal aid (Lietuvos Respublikos Valstybės garantuojamos teisinės pagalbos įstatymas) governs the provision of free legal aid to low-income earners. Such legal aid also covers family matters.

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

Yes A decision relating to divorce/marriage annulment may be appealed in accordance with the general provisions governing appeal 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?

A court decision on divorce/legal separation/marriage annulment issued in another Member State is recognised in the Republic of Lithuania under Council Regulation (EC) No 2201/2003. Under that Regulation, judgments issued in one Member State are recognised in other Member States without any special procedure.

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?

Under Council Regulation (EC) No 2201/2003, an interested party may oppose the recognition in the Republic of Lithuania of a decision on divorce, legal separation or marriage annulment issued in another Member State.

In accordance with Article 21 of Council Regulation (EC) No 2201/2003, any interested party may file an application with the district court (apylinkės teismas) for a judgment issued in another Member State not to be recognised in Lithuania.

A person in respect of whom recognition of a judgment is sought may also oppose its recognition in Lithuania in view of recognition proceedings that are already under way and following the district court's decision to recognise the judgment. Accordingly, the respondent may oppose the recognition in Lithuania of the judgment in that case by appealing against the district court's decision to recognise it. In accordance with Article 33 of Council Regulation (EC) No 2201/2003, the district court's decision on the recognition of a judgment issued in another Member State may be appealed in the regional court (apygardos teismas).

The respondent may oppose the recognition of a judgment issued by a court in another Member State on the grounds for non-recognition laid down in Article 22 of Council Regulation (EC) No 2201/2003.

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?

Legal separation and divorce are subject to the laws of the place of habitual residence of the spouses. If the spouses do not have a common place of habitual residence, the laws of the country in which they had their last common place of habitual residence apply, or failing that, the laws of the country of the court. If the laws of the country of which both spouses are citizens do not permit divorce or impose special conditions for divorce, a divorce may be obtained in accordance with the laws of the Republic of Lithuania if one of the spouses is also a Lithuanian citizen or is habitually resident in the Republic of Lithuania.

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Divorce - Luxembourg

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1 What are the conditions for obtaining a divorce?

Luxembourg law provides for two forms of divorce: divorce by mutual consent and divorce due to irretrievable breakdown of the marital relationship.

- Divorce by mutual consent

Divorce by mutual consent can be applied for jointly by the spouses where they agree on the breakdown of the marriage and its consequences.

If the spouses have property to be divided, a notary has to draw up an inventory and estimate its value. The spouses are then free to settle their respective rights to the property concerned. If, however, there is no property requiring an inventory, the services of a notary are not required.

The spouses must also agree on where they will live during the divorce proceedings, on the arrangements for their children during and after the proceedings, on the contribution that each spouse will make to the upbringing and maintenance of the children before and after the divorce and, finally, on the amount of any maintenance payments that one spouse will make to the other during the proceedings and after the divorce has been granted. This agreement must be in the form of a document (*convention*) drawn up by a lawyer or notary. The agreement must be approved by the court, which checks that it is in the best interests of the children and

that it does not have a clearly disproportionate adverse effect on the interests of one of the spouses. The approved agreement forms an integral part of the divorce judgment.

- Divorce due to irretrievable breakdown of the marital relationship

Divorce due to irretrievable breakdown of the marital relationship can be applied for by one of the spouses or, where there is agreement on the principle of divorce, but not on all its consequences, by both spouses jointly.

Irretrievable breakdown is proven where the spouses agree on the principle of divorce or where one spouse only applies for a divorce and continues with the application after a cooling-off period that cannot be longer than three months and that is renewable once.

2 What are the grounds for divorce?

Luxembourg law provides for two forms of divorce: divorce by mutual consent and divorce due to irretrievable breakdown of the marital relationship.

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

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

The divorce decree dissolves the marriage and ends the spouses' mutual obligations of fidelity, support and assistance.

Under Luxembourg law, no person may use a surname or forename other than those shown on their birth certificate: anyone who has ceased using them must resume their use. A change of civil status, for instance by marriage, does not therefore entail a change of surname by either of the spouses. Taking the surname of a spouse is not an acquired right. The other spouse must agree to the use of their surname.

The Luxembourg courts have ruled on the effect of divorce on the surname a person uses:

A divorced woman may continue to use her former husband's surname only if he authorises her to do so; he may withdraw that authorisation at any time. The former husband is entitled to object to the use of his surname entirely at his discretion, such that the courts cannot authorise a divorced woman to continue to use her husband's surname for an unlimited period, even for professional reasons, if the husband objects to such use. However, the court may, in view of the reputation that the wife has gained in her profession under her husband's surname and in order to prevent any financial damage, set a time limit for her to inform her clients of her own surname – Court of Appeal (*Cour*) 24 May 2006, P. 33, 258.

3.2 the division of property of the spouses

- The divorce decree orders the liquidation and division of the marital property of the spouses. If there is no marriage contract, the system that applies is the statutory community of marital property under which joint ownership extends only to acquisitions after the marriage. Divorce dissolves the community of marital property. There are two main stages in the division of property:
    - First, each of the spouses takes back any property that was never owned jointly, if it is in kind, or any assets that have replaced that property.
    - Second, the joint estate (assets and liabilities) is liquidated. For each spouse a statement is drawn up of what the joint estate owes to him/her and what he/she owes to the joint estate.
- Where a spouse has been convicted, by a judgment that has become final, of an offence provided for in Articles 372, 375, 376, 377, 393, 394, 396, 397, 398, 399, 400, 401, 401 *bis*, 402, 403, 404, 405 and 409 of the Criminal Code (*Code pénal*) (indecent assault, rape, intentional assault and battery, homicide and intentional bodily injury, murder, assassination, infanticide and poisoning), committed during the marriage against the other spouse or a child living in the same household, or of an attempt to commit an offence provided for in Articles 372, 375, 376, 377, 393, 394, 396, 397, 401, 403, 404 and 405 of the Criminal Code against the same persons during the marriage, he/she forfeits, at the request of the other spouse, the marital benefits given to him/her by the latter. By contrast, the innocent spouse retains the benefits given to him/her by his /her spouse, even if those benefits were meant to be reciprocal and this condition is not met.
- Where a spouse stopped working or reduced their working hours during the marriage, he/she can retroactively purchase a pension from the general pension scheme, according to the conditions and criteria laid down by the applicable civil and social security laws. To that end, the spouse can ask the court ruling on the divorce, before the divorce is granted and provided that he/she is not over 65 years of age at the time of the request, to calculate a 'reference amount' based on the difference between the respective incomes of the spouses during the period when the spouse was not working or had reduced their

working hours. The rules for calculating this amount are set out by the Grand-Ducal Regulation of 11 September 2018 on the calculation of the reference amount and on the rules for paying and refunding the amounts referred to in Article 252 of the Civil Code (*règlement grand-ducal du 11 septembre 2018 relatif au calcul du montant de référence et aux modalités de versement et de restitution des montants visés à l'article 252 du Code civil*). For the purpose of this retroactive purchase, the spouse who stopped working or reduced their working hours has a claim against the other spouse for 50 % of the reference amount, within the limits of the assets consisting of the community of marital property or jointly owned property available after the liabilities have been settled. An amount equal to this claim is payable by the creditor spouse.

3.3 the minor children of the spouses

In principle, the divorce of parents does not alter the conditions under which parental authority is exercised as this continues to be exercised jointly by both parents. They must continue to make together any important decisions concerning the life of their child (maintenance, upbringing, school guidance, etc.).

The court will only entrust exercise of parental authority to one parent where this is in the best interests of the child. In this case, the designated parent makes any decisions concerning the child on their own. However, the other parent retains the right to be informed and to monitor the maintenance and upbringing of their child. Unless there are serious grounds precluding this, this parent also has an access and residential right. As a result, if parents separate, each must maintain contact with the child and respect the latter's bond with the other parent.

In the event of divorce, the parents must continue to contribute together to the cost of the child's maintenance and upbringing, unless otherwise decided. This contribution takes the form of a maintenance allowance and does not automatically stop when the child reaches adulthood. It can be paid directly to an adult child and can be revised according to the child's needs and the changing means and expenses of each parent.

As regards the child's place of residence, there are two possible scenarios (excluding the exceptional case where the court decides to entrust the child to a third party):

- The child lives with one of the parents. In this case, the other parent is granted an access and residential right, unless there are serious grounds precluding this.
- The child lives alternately with each of the parents, in which case the court checks that this alternating residence is in the interests of the child. Alternating residence does not necessarily mean that the period of time during which the child lives with each parent is exactly the same.

Where the spouses agree on the exercise of parental authority, the domicile and place of residence of the child, the access and residential right, and the contribution to the child's maintenance and upbringing, they can submit this agreement to the court during the divorce proceedings. The court can take this agreement into account in its judgment if it considers that the agreement is in the best interests of the child and that the spouses have freely given their consent.

The parents' divorce does not deprive their children of the benefits that they would otherwise have received. In this respect, they are treated in exactly the same way as the children of nondivorced parents.

3.4 the obligation to pay maintenance to the other spouse?

The court may require one of the spouses to pay maintenance to the other spouse. This maintenance is set according to the needs of the spouse to whom it is paid and within the limits of the other spouse's capacity to contribute. If the spouses agree, the court can decide that this maintenance be paid as a lump sum the amount and terms of which it will set.

When determining the needs and capacity to contribute, the court will take the following points into account, among others:

1. age and health of the spouses;
2. length of the marriage;
3. time already spent or that will need to be spent raising children;
4. their professional qualifications and situation with regard to the labour market;
5. their availability for new jobs;
6. their existing and foreseeable rights;
7. their assets, in terms of both capital and income, after the marital property has been liquidated.

Maintenance cannot be paid for longer than the length of the marriage, except in exceptional circumstances.

Except where paid as a lump sum, maintenance can be revised and terminated.

Where a spouse has been convicted, by a judgment that has become final, of an offence provided for in Articles 372, 375, 376, 377, 393, 394, 396, 397, 398, 399, 400, 401, 401 *bis*, 402, 403, 404, 405 and 409 of the Criminal Code (indecent assault, rape, intentional assault and battery, homicide and intentional bodily injury, murder, assassination, infanticide and poisoning), committed during the marriage against the other spouse or a child living in the same household, or of an attempt to commit an offence provided for in Articles 372, 375, 376, 377, 393, 394, 396, 397, 401, 403, 404 and 405 of the Criminal Code against the same persons during the marriage, he/she forfeits, at the request of the other spouse, any right to maintenance.

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

Legal separation loosens the marital ties but does not dissolve them: the spouses no longer have to live together, but they continue to have duties of fidelity and support towards one another.

5 What are the conditions for legal separation?

The grounds for legal separation are identical to those for divorce due to irretrievable breakdown of the marital relationship.

6 What are the legal consequences of legal separation?

Legal separation always entails the separation of property. If the legal separation has lasted for three years, either spouse may apply to the court for a divorce. The court grants the divorce if the other spouse does not immediately agree to end the separation.

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

Marriage annulment means that the marriage is rendered null and void by a court decision. In other words, the marriage is deemed never to have been celebrated.

8 What are the conditions for marriage annulment?

A marriage may be annulled on several grounds:

- The marriage was contracted without the free consent of the spouses: this is the case if there was violence or the person concerned was mistaken as regards the other party's essential qualities.
- The marriage was contracted without the consent of the parents (or authorisation of the court) where one of the spouses was a minor at the time of the marriage.
- Bigamy: this is the case if either of the spouses was simultaneously married to another person.
- The spouses are related to a certain degree.
- It is a marriage of convenience for the purpose of obtaining a benefit in terms of residential status.
- The formal requirements for the marriage were not met: the marriage was not publicly contracted, or was celebrated before a person who was not a properly authorised public officer.

9 What are the legal consequences of marriage annulment?

A marriage that is annulled nevertheless has legal effects (this is known as the 'putative marriage' (*mariage putatif*) theory):

- in respect of both spouses, if they contracted the marriage in good faith;
- in respect of one spouse who acted in good faith;
- in respect of any child of the marriage, even if neither spouse acted in good faith.

However, a marriage that is annulled never has legal effects in respect of a spouse who did not act in good faith.

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

In Luxembourg, marriages may be dissolved only by court decision, and never by alternative non-judicial methods or by mediation. Family mediation may be used, however, for matters connected with the liquidation and division of joint property, maintenance obligations and contributions to the costs of the marriage, obligations to maintain children, or the exercise of parental authority.

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

- **Applications for divorce** or **legal separation** must be submitted to the district court (*tribunal d'arrondissement*) in the place where the spouses have their common domicile or, failing this, in which the respondent or, in the event of divorce by mutual consent, one of the parties has their domicile, subject to compliance with the rules laid down in 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, repealing Regulation (EC) No 1347/2000.
- **Marriage annulment applications** must be submitted to the district court in the place where the family home is located or, if the parents live separately, to the district court in the place of residence of the parent with whom the minor children habitually reside where parental authority is exercised jointly or in the place of residence of the parent who exercises this authority alone, or, in other cases, to the district court in the place of residence of the person who has not brought the proceedings. For joint applications, the parties choose the district court in the place where one or other party lives. These rules apply subject to compliance with the rules laid down in the aforementioned Regulation (EC) No 2201/2003.

Applications are heard by a family judge (*juge aux affaires familiales*).

Formalities to be observed and documents to be submitted

- In the procedure for **divorce by mutual consent**, there are several stages: if there is any property to be divided, the spouses must ask a notary to draw up an inventory and estimate of all their movable and immovable property. The spouses are free to settle their respective rights to the property concerned. In addition, they must settle various matters in an agreement, including the residence of the spouses during the proceedings, the administration of the person and property of any children, access rights, the contribution of the spouses towards the upbringing and maintenance of any children, and any maintenance to be paid by one of the spouses to the other. This agreement must be drawn up by a lawyer or notary.

The case is brought before the court through a joint application filed by both spouses with the registry. A lawyer is not required to bring the case before the court.

The application must contain:

1. its date;
2. the surnames, forenames, occupations and address(es) of the spouses;
3. the dates and places of birth of the spouses;
4. where applicable, the identity of any joint children;
5. the subject of the application;
6. a brief statement of the facts and grounds invoked.

In addition to the agreement mentioned above, the following documents must be submitted with the application:

1. marriage certificate;
2. birth certificates of the spouses;
3. birth certificates of any joint children;
4. a document proving the nationality of the spouses;
5. where applicable, the agreement designating the law applicable to the divorce of the spouses pursuant to Article 5 of Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, in accordance with the forms laid down by that Regulation. The spouses may also designate the law applicable to the divorce pursuant to Article 5 of Regulation (EU) No 1259/2010, in accordance with the forms laid down by said Regulation, in the agreement on divorce by mutual consent;
6. any other document that the spouses intend to use.

Instruments and documents that are submitted with the application and that the parties intend to use must be legalised, where applicable, where they are issued by a foreign public authority.

- In the case of **divorce due to irretrievable breakdown of the marital relationship** or **legal separation**, a lawyer must be used. The case is brought before the district court through an application filed with the registry.

The application must contain:

1. its date;
2. the surnames, forenames, occupations and address(es) of the spouses;
3. the dates and places of birth of the spouses;
4. where applicable, the identity of any joint children;
5. the subject of the application;
6. a brief statement of the facts and grounds invoked.

The application can also contain requests for interim measures concerning the person, maintenance and property of the spouses and their children.

The following documents must be submitted with the application:

1. marriage certificate;
2. birth certificates of the spouses or applicant;
3. birth certificates of any joint children;
4. a document proving the nationality of the spouses or applicant;
5. where applicable, the agreement designating the law applicable to the divorce of the spouses pursuant to Article 5 of Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, in accordance with the forms laid down by that Regulation;
6. where applicable, a draft agreement on the effects of the divorce on which the spouses are agreed;
7. where applicable, a copy of the judgment convicting a spouse of one of the offences referred to in questions 3.2 and 3.4 above;
8. any other document that the applicant(s) intend(s) to use.

Instruments and documents that are submitted with the application and that the parties intend to use must be legalised, where applicable, where they are issued by a foreign public authority.

- For a **marriage annulment** application, the case is brought before the court through an application filed with the registry. A lawyer is not required to bring the case before the court. The application must contain:

1. its date;
2. the surnames, forenames and addresses of the parties;
3. the dates and places of birth of the parties;
4. the subject of the application;
5. a brief statement of the facts and grounds invoked.

Instruments and documents that are submitted with the application and that the parties intend to use must be legalised, where applicable, where they are issued by a foreign public authority.

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

People whose income is regarded as insufficient under Luxembourg law can receive legal aid. To receive this aid, they must complete a questionnaire that can be obtained from the Luxembourg bar association (*Barreau de Luxembourg*) and send it to the president of the bar association (*Bâtonnier de l'Ordre des avocats*) of the place, who will take the decision.

Legal aid covers all costs arising from the court proceedings, procedures or actions for which it is granted. It covers, for example, stamp duties and registration costs; clerks' fees, lawyers' fees, bailiffs' expenses and fees, notaries' expenses and fees, technicians' expenses and fees, witness allowances, and translators' and interpreters' fees; fees for certificates stating the position in foreign law (*certificats de coutume*); travelling expenses; duties and fees relating to formalities for registration, mortgage and encumbrance; and where necessary costs for notices in newspapers.

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

It is possible to appeal against this kind of decision in Luxembourg. In principle, the time limit for an appeal is 40 days, but this may be extended if the applicant is resident abroad. The competent court for any appeal is the Supreme Court of Justice (*Cour supérieure de justice*).

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?

In accordance with 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, repealing Regulation (EC) No 1347 /2000, judgments regarding divorces, legal separations or marriage annulments given by the court of another Member State of the European Union are automatically recognised in the Grand Duchy of Luxembourg. No steps need to be taken to obtain recognition of a decision.

No preliminary procedure is required for the correction of civil records in Luxembourg following a judgment given by a court of a Member State of the European Union that has become final. A reference to the decision of the court granting the divorce must be entered in the margin of the marriage certificate and the birth certificates of the spouses. If the marriage was celebrated abroad, the decision of the court must be entered in the civil registers of the municipality in which the marriage was recorded, or in the civil registers of the city of Luxembourg, and a reference must also be entered in the margin of the birth certificates of each spouse.

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?

Any interested party may apply to the President of the district court for a decision refusing to recognise a judgment regarding divorce, legal separation or marriage annulment given by a court of another country of the European Union.

The President of the district court rules without delay. The person against whom the decision to refuse recognition is requested may not submit any observations at this stage in the proceedings. The application is admissible only on the following grounds:

- the judgment is manifestly contrary to public policy,
- the rights of the defendant have not been respected,
- the judgment is incompatible with a decision given in related proceedings.

Either party may appeal to the court of appeal (*Cour d'appel*) against the decision of the President of the district court. At the appeal stage both parties must be heard. The decision of the court of appeal can be appealed on points of law before the Court of Cassation (*Cour de cassation*).

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 Grand Duchy of Luxembourg applies Council Regulation (EC) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, which has applied since 21 June 2012 between Austria, Belgium, Bulgaria, Estonia (since 11 February 2018), France, Germany, Greece (since 29 July 2015), Hungary, Italy, Latvia, Lithuania (since 22 May 2014), Luxembourg, Malta, Portugal, Romania, Slovenia and Spain. This Regulation states that the spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following:

- the law of the State where the spouses are habitually resident at the time the agreement is concluded; or
- the law of the State where the spouses were last habitually resident, insofar as one of them still resides there at the time the agreement is concluded; or
- the law of the State of nationality of either spouse at the time the agreement is concluded; or
- the law of the *forum*.

Under the same Regulation, in the absence of a choice pursuant to the above paragraph, divorce and legal separation are subject to the law of the State:

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

- where the court is seized.

Where Regulation (EC) No 1259/2010 does not apply, divorce and legal separation are governed, under Luxembourg law:

- by the national law of the spouses, if they have the same nationality;
- by the law of the effective common domicile of the spouses, if they have different nationalities;
- by the law of the *forum*, if spouses of different nationalities do not have an effective common domicile.

Related links

Brochure: Le divorce au Grand-Duché de Luxembourg;

LEGILUX;

Portail de la Justice.

Last update: 10/01/2020

Divorce - Hungary

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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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Divorce - Malta

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1 What are the conditions for obtaining a divorce?

To obtain divorce in Malta, a married couple must file a joint petition, or one spouse must file a petition for divorce from the other. At the time that divorce proceedings commence, the spouses must have lived apart for a period or periods totalling at least four years during the five years immediately preceding the petition, or at least four years must have elapsed from the date of legal separation. The court must also be satisfied that there is no reasonable prospect of reconciliation of the spouses. Another condition is that the spouses and all their children must receive adequate maintenance where it is due, but this right to maintenance can be renounced by the parties at any time. A divorce pronounced between spouses who have been separated by contract or by judgement does not produce any change in what has been ordered or agreed to between the parties, except for the effects that result from divorce according to law. It should be noted that before seeking divorce it is not necessary for the spouses to have been separated by contract or by judgement.

2 What are the grounds for divorce?

The law does not refer to the grounds for divorce. However, as already stated in the reply regarding the conditions, at the date of the commencement of divorce proceedings the spouses must have lived apart for a period or periods totalling at least four years during the five years immediately preceding the request, or at least four years must have elapsed from the date of legal separation.

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

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

A divorce pronounced between spouses who have been separated by contract or by judgement does not produce any change in what has been ordered or agreed to between the parties, except for the effects that result from divorce according to law. The law of separation applies regarding surnames and therefore, the wife may, after separation, choose to revert to her maiden name, but this choice must be done by declaration in the public deed of separation, and in the case of judicial separation the wife shall make this declaration by means of a note filed in the records of the case before judgement. When divorce is pronounced, all civil effects and the obligation of the parties to live together cease. Moreover, the spouses' succession rights also cease, with effect from the date of the granting of the decree or judgement of divorce becoming *res iudicata.*

3.2 the division of property of the spouses

A divorce pronounced between spouses who have been separated by contract or by judgement does not produce any change in what has been ordered or agreed to between the parties. Section 66D(5) of the Maltese Civil Code provides that where the community of acquests or the community of residue under separate administration shall have ceased, the parties shall have a right, in any case, if they both agree, to divorce without liquidating the assets which they hold in common.

3.3 the minor children of the spouses

When divorce is pronounced this has no effect on the parents' rights and obligations in regard to their children or in regard to any agreement reached between the parties on the care and custody of the children. However, one of the parties may claim that the other party is not fit to have the custody of their minor children, and when the court makes such a declaration, the party declared unfit will not be able, upon the death of the other party, to take over the custody of the minor children without court authorisation. Maintenance in favour of the minors remains in force until they reach their eighteenth year: in the event that the child continues his studies, maintenance continues up to 23 years unless otherwise agreed.

3.4 the obligation to pay maintenance to the other spouse?

A divorce pronounced between spouses separated by contract or judgement does not change what has been ordered or agreed to between them. Therefore, the obligation of maintenance is not removed through divorce unless the parties decide otherwise. The court may, in the judgement accepting the petition for divorce, and at the request during the hearing of the case of the party to whom maintenance was due — for that party or for the children — from the other party, order that the payment of maintenance from the other party be safeguarded by means of an appropriate and reasonable guarantee, in accordance with the circumstances of the parties. That guarantee shall not be of an amount exceeding the amount of maintenance for five years. This request may also be made at any time after the said judgement, when maintenance is due.

Where a petition for divorce is filed in the competent civil court by either of the spouses, or by both spouses after having agreed that their marriage is to be dissolved, and where the spouses are not separated by means of a contract or a court judgement, before granting leave to the spouses to proceed for divorce, the court shall summon the parties to appear before a mediator, either appointed by it or with the mutual consent of the parties, for the purpose of attempting reconciliation between the spouses, and where that reconciliation is not achieved, and where the spouses have not already agreed on the terms of the divorce, for the purpose of enabling the parties to conclude the divorce on the basis of an agreement. The said agreement shall be made on some or all or of the following terms:

- care and the custody of the children;
- access of the two parties to the children;
- maintenance of the spouses or of one of them and of each child;
- residence in the matrimonial home;
- division of the community of acquests or the community of residue under separate administration

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

Legal separation refers to the filing by one of the spouses of the relevant action against the other spouse and the Court delivers a judgement on the rights and obligations that the spouses have when they are legally separated.

5 What are the conditions for legal separation?

The conditions for the granting of legal separation are one or more of the following:

- Adultery;
- Acts of domestic violence;
- Excesses, cruelty, threats or grievous injury by one party against the plaintiff, or against any of his or her children;
- The spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down;
- Desertion.

6 What are the legal consequences of legal separation?

With regard to **maintenance**, the spouse against whom the separation is pronounced is required to supply maintenance to the other party and the children until they reach the age of eighteen years and up to the age of twenty-three years if they are remain in full-time education, training or learning. The amount due to the other party and children is established by taking into consideration all the circumstances of the spouses and the children, including the following:

- the needs of the children, after considering all their circumstances;
- any disability, whether such disability is physical or mental;
- circumstances of illness which are of such seriousness and gravity as to compromise the ability of the spouses or of the children to maintain themselves;
- whether the earning capacity of the party to whom maintenance is due was diminished by reason of that party having, during the marriage, taken care of the household, the other party and the upbringing of the children of the marriage;
- all income or benefits that the spouses, or one of the spouses, receive according to law;
- the accommodation requirements of the spouses and of the children;
- the amount which would have been due to each of the parties as a benefit, including, but not limited to, a benefit under a pension scheme, which by reason of the separation that party will forfeit the opportunity or possibility of acquiring.

The matrimonial home may be given by the court on demand of one of the parties to one party, to the exclusion of the other party, and for that period and under those conditions that the court may deem fit: the court may also rule that the matrimonial home should be sold when it is satisfied when both parties and their children will have alternative and appropriate accommodation and that the proceeds of the sale shall be assigned to the parties as the court deems fit; or, if the matrimonial home belongs to both parties, it shall assign the matrimonial home to one party and the latter shall compensate the other party for the financial loss sustained.

When delivering a judgement of personal separation, the court shall also direct to which of the spouses **custody** of the children shall be entrusted, the paramount consideration being the welfare of the children. However, the court may, at the request of one of the parties, declare that the other party is not fit to have the custody of the minor children of the parties, and where the court issues such a declaration, the party so declared, upon the death of the other party, shall not be entitled to assume the custody of the minor children without the authorisation of the court.

The wife may, on separation, choose to revert to her maiden **surname** but a declaration of such choice shall be made in the public deed of separation, and in the case of a judicial separation, by a note filed in the records of the case before judgment.

In all cases, the effects of personal separation shall not cease in regard to **third parties**, except from the day on which the deed is registered in the Public Registry.

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

Marriage annulment means that the marriage has no effect. That marriage is declared void.

8 What are the conditions for marriage annulment?

A marriage is null if:

- the formalities required for its validity by the law of the country where the marriage is celebrated are not observed;
- if the consent of either of the parties is obtained by violence, whether physical or moral, or fear;

- if the consent of either of the parties is invalidated by reason of an error concerning the identity of the other party;
- if the consent of either of the parties is obtained by fraud about some quality of the other party which could of its nature seriously disrupt matrimonial life;
- if the consent of either of the parties is invalidated by a grave lack of discretion of judgment on matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage;
- if either of the parties is impotent, whether such impotence is absolute or relative, but only if such impotence is antecedent to the marriage;
- if the consent of either of the parties is obtained with a view to the positive exclusion of the marriage itself, or of any one or more of the essential elements of matrimonial life, or of the right to the conjugal act;
- if either of the parties subjects his or her consent to a condition referring to the future;
- if either of the parties, although not interdicted or infirm of mind, did not have at the time of contracting marriage, even on account of a transient cause, sufficient powers of intellect or volition to elicit matrimonial consent;
- if the marriage has not been consummated.

9 What are the legal consequences of marriage annulment?

The effects of a valid marriage shall be deemed to have always existed with reference to the children born or conceived during a marriage that is declared to be null and void, as well as with reference to children born before such marriage and acknowledged before the judgment declaring the annulment. If only one of the spouses acted in good faith, such effects shall apply in his or her favour and in favour of the children. If both spouses acted in bad faith, the effects of a valid marriage shall apply only in favour of the children born or conceived during the marriage declared to be null and void. The spouse who was responsible for the nullity of the marriage is bound to pay maintenance to the other spouse in good faith for a period of five years: this duty shall cease if the party who acted in good faith marries during the said period.

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

No, there are no other alternatives; this can only be done in court.

11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

An application for divorce, for judicial separation or annulment of a civil marriage must be filed in the Civil Court (Family Section), while a registration of an annulment granted by the Ecclesiastical Tribunal in Malta must be filed in the Court of Appeal. The divorce, separation and annulment of civil marriage application must be sworn on oath. The reply to the application must be filed within twenty days. The documents which have to be attached vary according to what one wants to prove. However, in the case of a registration of an annulment by the Ecclesiastical Tribunal, a copy of the judgement delivered by the Metropolitan Tribunal of Malta, the decree issued by the Regional Tribunal of Second Instance, the decree of enforcement and a certificate of marriage must be attached.

Each party to an action for separation may, at any time during the case but not after the case has been adjourned for judgement, demand, by means of an application, that the petition for separation made in that case be instead considered as a petition for the pronouncement of divorce.

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

Yes, legal aid may be given as long as the requirements laid down in Section 912 of the Code of Organisation and Civil Procedure are observed.

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

Yes, it is possible to appeal a decision relating to divorce, judicial separation or annulment. However, it should be kept in mind that the decree for the registration of an annulment granted by the Ecclesiastical Tribunal of Malta cannot be appealed.

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?

A decision by a foreign court regarding the status of a married person or affecting that status is recognised for all purposes of Maltese law if the decision is given by a competent court of the country in which one of the parties in the proceedings is domiciled or is a citizen. This is effected in Malta in the Public Registry (**Evans Building, Merchant's Street, Valletta VLT 2000).**

Apart from Maltese law, European law applies as well, that is to say 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, repealing Regulation (EC) No 1347/2000. Article 22 of this Regulation refers to the grounds of non-recognition for judgments relating to divorce, legal separation or marriage annulment, that is:

'(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;

(b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally;

(c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought; or

(d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which 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 Civil Court (Family Section) is where one opposes a recognition of a decision on divorce, judicial separation or annulment. The applicable procedure is the one laid down in Malta by Cap 12 of the Laws of Malta.

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 courts of civil jurisdiction have jurisdiction to hear and decide on petitions for divorce only if at least one of the following requirements is satisfied:

- at least one of the spouses was domiciled in Malta at the date of the filing of the petition for divorce in the competent civil court; or
- at least one of the spouses had his/her ordinary residence in Malta during a one-year period immediately before the petition for divorce is filed.

Last update: 22/03/2017

Divorce - Netherlands

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1 What are the conditions for obtaining a divorce?

A petition for divorce may be filed by one of the spouses (a unilateral petition) or by both spouses (a joint petition). The procedure is the same (see question 11).

In either case the parties must be represented by a lawyer during the proceedings. A petition for divorce is dealt with by the district court (*rechtbank*) of the place where the petitioner or one of the petitioners is resident. A petition for divorce may be filed at any time following the marriage; the parties are not required to have been married for a certain period of time. The divorce takes effect when the court order is entered in the register of births, marriages and deaths (*burgerlijke stand*). The divorce can be entered in the register only once the order is no longer open to appeal (becomes *res judicata*). The divorce must be entered in the register within six months of the order becoming *res judicata*, otherwise the order loses its effect, in which case the divorce can no longer be entered in the register. If the marriage took place abroad and the foreign marriage certificate was not filed in a Dutch register, the Dutch divorce order is to be entered in the special register of births, marriages and deaths of the municipality of The Hague.

2 What are the grounds for divorce?

Under Dutch law, the sole ground for divorce is the irretrievable breakdown of the marriage. A marriage is deemed to have broken down irretrievably if the spouses find living with one another intolerable and there is no prospect of proper marital relations being restored. Where a petition is filed by just one of the spouses, the petitioner must submit that the marriage has broken down irretrievably, and if this is denied by the other spouse the petitioner must produce evidence. Whether the marriage has broken down irretrievably is determined by the court. In the case of a joint petition, the divorce order will be granted on the basis that both spouses believe that their marriage has irretrievably broken down.

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

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

Divorce can have implications for the use of an ex-spouse’s surname. Once a divorce is final, a divorced person may remarry or enter into a civil partnership.

3.2 the division of property of the spouses

Statutory regime (joint ownership of all property)

The Netherlands has a fairly unusual regime for dealing with income and property during a marriage. The ordinary arrangement, laid down by statute, is joint ownership of all property (*algehele gemeenschap van goederen*). In principle, all property acquired by either spouse before or during the course of the marriage forms part of the joint property. The two spouses' assets are merged. In principle, all debts incurred before or during the marriage are likewise joint liabilities, irrespective of which spouse incurred the debt. A creditor can recover the debt from the spouses' joint property. The property ceases to be joint property upon divorce, i.e. when the divorce order is entered in the registers of births, marriages and deaths. The spouses' assets are no longer merged, and the joint property must be divided. It has to be established what each spouse is entitled to from the joint property. The general rule is that each of the spouses is entitled to half. The spouses may decide to depart from this rule, and make other arrangements, in a divorce settlement (*echtscheidingsconvenant*) or at the time of division (*verdeling*).

Prenuptial and postnuptial agreements

Spouses may choose a regime other than the ordinary statutory arrangement if they enter into a prenuptial agreement or (rarely) a postnuptial agreement. These agreements *also* lay down the rules for the division of property in the event of divorce.

3.3 the minor children of the spouses

Custody

Following a divorce, both parents continue to have joint custody of any children, as they did during the course of their marriage. The court may be asked to grant custody to one parent in exceptional cases only. A petition for sole custody may be filed by either parent or by both. A parent who is not granted custody has a right to visit the child. Either parent or both may petition the court to lay down rules governing visiting rights.

Child maintenance

If the parents continue to share custody following the divorce, the intention is that they should come to an agreement on how the financial burden of raising their children is to be shared. They may also petition the court to record what they have agreed. If they are unable to reach agreement, the court may determine a sum to be paid as maintenance. If one of the parents is granted sole custody, he or she may petition the court to ascertain how much the other parent should contribute toward the children's everyday living costs. As a general rule the parents are expected to organise payment themselves. For further information in this regard, please see the website of the National Agency for the Collection of Maintenance Payments (*Landelijk Bureau Inning Onderhoudsbijdragen*) (http://www.lbio.nl/).

3.4 the obligation to pay maintenance to the other spouse?

The spouses' obligation to maintain each other continues after the dissolution of the marriage. Where an ex-spouse's income is not sufficient to meet his or her living costs, and he or she cannot reasonably be expected to earn the necessary level of income, he or she may petition the court to order the other ex-spouse to make maintenance payments towards his or her living costs. The court may do this in the divorce order or in a subsequent order. When calculating maintenance payments, the court considers the needs of the spouse who will be receiving the payment and the means of the other spouse. Non-financial factors may also be taken into account, such as the duration of the marriage, or how long the spouses lived with one another. If the court sets no limit on the duration for which maintenance is to be paid, the duty to pay maintenance will cease after 12 years. In cases where the spouse requiring maintenance is experiencing particular financial difficulty, he or she may petition the court to extend this period. In principle, if a marriage was short (less than five years) and produced no children, the period over which maintenance payments must be made will not exceed the duration of the marriage itself. If the spouses or former spouses are in agreement regarding maintenance payments they can record the agreement in a divorce settlement.

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

A legal separation (*scheiding van tafel en bed*) is a legal means by which spouses cease living with one another without actually ending the marriage between them. Legal separation is of interest to spouses who wish to separate and address the legal consequences of doing so, but who wish to remain married, perhaps for religious or financial reasons. Legal separation leaves the way open for a reconciliation, yet can also serve as a stepping stone in the dissolution of the marriage. A legal separation takes effect when the court order is entered in the matrimonial property register. As in the case of divorce, this must be done within six months.

5 What are the conditions for legal separation?

The sole ground for legal separation is the irretrievable breakdown of the marriage.

6 What are the legal consequences of legal separation?

The implications of legal separation for the matrimonial property, child custody (visiting rights), maintenance payments and pensions are the same as those for divorce. The marriage continues to exist. The law stipulates that spouses that are party to a legal separation do not inherit each other's property in the event of death. If, following a legal separation, the spouses decide that they do wish to part ways entirely, they can still apply for a divorce. Parties to a legal separation may live with a new partner and build a new life, but they cannot remarry or enter into a civil partnership.

Where following a legal separation a petition for divorce is brought unilaterally, certain restrictions apply. Unilateral petitions are subject to a three-year waiting period. This period may be reduced to one year by the court in certain cases. The three-year period commences on the date that the legal separation is entered in the register. If a petition for divorce following a legal separation is brought jointly, there is no waiting period. The dissolution of the marriage takes effect when the order is entered in the register of births, marriages and deaths.

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

A marriage may be annulled only by a court order. Annulment proceedings are commenced by the lodging of a petition. A marriage entered into by the parties is therefore never automatically null and void: a marriage continues to be valid until it is annulled. The law indicates what constitutes grounds for annulment and who may file a petition.

8 What are the conditions for marriage annulment?

The law provides the following grounds for a nullity petition: the parties married despite the presence of:

- impediments to marriage (minimum age requirements, lack of consent to the marriage of a minor, bigamy, prohibited degree of kinship);
- duress or mistake;
- a sham marriage;
- mental disorder of one of the spouses;
- lack of competence of the registrar; or
- insufficient witnesses.

9 What are the legal consequences of marriage annulment?

An annulment has retroactive effect and applies from the time of marriage. This means that, following annulment by the court, the marriage will be treated as if it never existed. An exception will be made in certain circumstances, in which case annulment has the same effect as divorce. For instance, the children born of an annulled marriage remain related to both parents. Another exception relates to a putative spouse, i.e. a spouse who was unaware that the marriage was defective. Please see also the conditions for marriage annulment, as listed under question 8. A spouse in good faith may, for example, request that the other spouse pay maintenance.

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

Mediation is common in divorce cases in the Netherlands. With the help of a mediator and, where necessary, the spouses' lawyers, the spouses can try to come to an agreement regarding the divorce and its consequences. These arrangements are laid down in a divorce settlement (*echtscheidingsconvenant*), which is a written document. The settlement may cover issues such as the division of property, any duty to pay maintenance to a spouse, and a parenting plan. The court may incorporate the settlement drawn up during the mediation process into its order.

There is an Association of Family Lawyers and Divorce Mediators (*Vereniging van Familierechtadvocaten en Scheidingsbemiddelaars*) whose members specialise in fields such as divorce and maintenance payments. They also specialise in divorce mediation and everything that that entails. For further information, please refer to: http://www.vas-scheidingsbemiddeling.nl/.

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?

Petition

Divorce proceedings always commence with a petition to the court (*verzoekschrift*). This petition must specify the surname, first names and domicile or place of residence of the spouses. If minor children are affected by the divorce, the same details must be provided in respect of those children. The petitioner may also apply for ancillary relief (*nevenvoorzieningen*). This petition is related to the divorce. The court can grant ancillary relief for the following, among other things:

- custody and visiting rights in relation to minor children;
- maintenance of a child or spouse;
- division of the matrimonial property or enforcement of the regime agreed in a prenuptial or postnuptial agreement;
- use of the marital home; and
- pension equalisation.

The petitioner's lawyer (*advocaat*) must file the petition with the district court (*rechtbank*). If the petitioner lives in the Netherlands, the petition can be filed with the court in the district where the petitioner lives. If the petitioner does not live in the Netherlands, but the other spouse does, the petition must be sent to the court in the district where the other spouse lives. If both spouses live outside the Netherlands, the petition must be filed with the District Court of The Hague.

Which documents need to be submitted?

- original extracts (issued within the last three months) from the population register, for both spouses, indicating nationality, civil status and, in the case of non-Dutch nationals, the date of entry into the Netherlands; in cases where one of the spouses is a Dutch national and the other is not, the date of settlement in the Netherlands must be specified;
- original extracts from the register of births (issued within the last three months) for any minor children;
- an original extract from the marriage register (which can be obtained from the town hall in the place of marriage, and must have been issued within the last three months); in the case of marriages that took place abroad, the original marriage certificate or an older extract will suffice; and
- if minor children are involved, a parenting plan; a parenting plan lays down arrangements agreed between the parents with regard to their children, and may make provision for the day-to-day care of the children, their education, sports attendance, medical care, arrangements for special days such as holidays and public holidays, finances, and practical arrangements (picking up and dropping off the children).

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

If the litigant is unable to bear the costs or the full costs of a lawyer or mediator, he or she may be eligible for legal aid, subject to certain conditions. The Legal Aid Board (*Raad voor de Rechtsbijstand*) grants legal aid only through mediators that are registered with the Board. For further information regarding the eligibility conditions, please refer to http://www.rvr.org/.

Entitlement to legal aid also applies to cross-border disputes if the applicant lives outside the Netherlands but within the EU. This is regulated by the European Directive on legal aid in corssborder disputes (OJ L 26, 31.1.2003). A request for legal aid can be submitted to the Legal Aid Board in The Hague using the standard form established under the Directive, which is identical in all Member States. If necessary, the Legal Aid Board can help applicants to choose a lawyer. For further information, please refer to: http://www.rvr.org/.

In certain cases, where a treaty exists, a litigant living outside the EU may be able to obtain legal aid in the Netherlands. The following treaties are relevant in this respect: the Hague Convention on Civil Procedure (1954), the European Agreement on the Transmission of Applications for Legal Aid (1977) and the Hague Convention on International Access to Justice (1980). These treaties include a provision that essentially stipulates that nationals of the contracting States are eligible for legal aid in all of the other contracting States, under the same conditions as nationals of those other States. Where such cases arise in the Netherlands, a declaration of lack of insufficient means (*verklaring van onvermogen*) must be requested from the competent authority in the litigant's habitual place of residence. The application for legal aid and the declaration of insufficient means will be sent by this authority to the competent authority in the country where legal aid is to be granted. The latter will then assess whether the litigant is entitled to legal aid.

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

Yes, an appeal can be lodged with the registry of the court of appeal (*gerechtshof*) within three months of the date of the divorce order. The ruling of the court of appeal can usually be challenged on a point of law in the Supreme Court (*Hoge Raad der Nederlanden*). Litigants require legal representation in these proceedings also.

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?

On 1 March 2005, what is known as the 'Brussels II *bis* Regulation' (or the 'Brussels IIa Regulation') entered into force in the EU Member States; its full name 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, repealing Regulation (EC) No 1347/2000. The Brussels II *bis* Regulation applies to divorce, legal separation and marriage annulment. Under the terms of the Regulation, divorce orders issued in the other Member States (with the exception of Denmark) are recognised in the Netherlands without any special procedure being required (Article 21(1)). Similarly, no special procedure is required for updating civil-status records, e.g. when a marginal note recording a divorce has to be entered on a marriage certificate.

Any interested party may institute legal proceedings to determine whether or not a divorce order from another country is to be recognised. The Brussels II *bis* Regulation provides a number of grounds for refusing to recognise the divorce. For instance, recognition of the divorce must not be contrary to public policy. It will also be considered whether the defendant (the party that did not file a divorce petition) was duly informed of the proceedings. The judgment itself, however, cannot be reviewed. Pursuant to the Brussels II *bis* Regulation, the court of the Member State where the judgment originated must, at the request of any interested party, issue a certificate with regard to said judgment (using a standard form). This certificate includes information regarding the country of origin of the judgement, the details of the parties, whether the judgment was given in default of appearance, the type of judgment, e.g. divorce or legal separation, the date of the judgment, and which court delivered the judgment.

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?

If an interested party wishes to oppose the recognition of a foreign divorce order in the Netherlands, he or she may file a petition for non-recognition with the judge of interim relief (*voorzieningenrechter*) of the court in the district where he or she is habitually resident.

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?

On 1 January 2012, Book 10 of the Dutch Civil Code (*Burgerlijk Wetboek*) entered in force. Book 10 of the Civil Code includes the conflictoflaw rules that determine the law applicable.

The main rule is that the courts will always apply the divorce law of the Netherlands, irrespective of the nationality and habitual residence of the spouses. If, for example, a petition for divorce is filed in the Netherlands by a married couple both of whom are Belgian nationals living in the Netherlands, the divorce law of the Netherlands is applied automatically. The only instance in which this is not the case is when the spouses choose which law is to be applied to the divorce. The spouses can specifically opt for their common national law to be applied during the divorce proceedings, rather than Dutch law. A Belgian couple can therefore opt for Belgian divorce law to be applied.

Last update: 27/11/2019

Divorce - Austria

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1 What are the conditions for obtaining a divorce?

Three forms of divorce are available under Austrian Law: fault-based divorce, divorce following separation for at least three years and divorce by consent.

A spouse can petition for divorce if, as the result of serious marital misconduct or dishonourable or immoral conduct on the part of the other, the marriage has broken down so irretrievably that there is no prospect of a resumption of a true marital relationship.

If the couple have been living apart for three years, either spouse may petition for divorce on the grounds that the marriage has broken down irretrievably.

If the spouses have been separated for at least six months, they both admit that the marriage has broken down irretrievably and they mutually consent to a divorce, they may jointly petition for divorce.

2 What are the grounds for divorce?

The basic ground for divorce is the irretrievable breakdown of the marriage. The breakdown may be the result of serious marital misconduct on the part of one partner, in particular where one spouse has been unfaithful or has inflicted physical violence or serious psychological suffering on the other. Even if the behaviour cannot be regarded as marital misconduct because it is due to a mental disturbance, but the marriage has nevertheless broken down so irretrievably that there is no prospect of a resumption of a true marital relationship, or if one spouse is mentally ill or suffers from a highly infectious or repulsive disease, the other spouse may petition for divorce. In all such cases the spouse petitioning for divorce must prove the grounds on which he or she relies. However, if the spouses have been separated for three years, marital misconduct need not be asserted or established.

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

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

As a rule, both spouses retain the surname they used when they were married. However, if either spouse adopted the other’s surname on marriage, they may go back to using their previous name.

3.2 the division of property of the spouses

In principle, the spouses can agree to divide up their property as they wish. They may do this by mutual renunciation (meaning that the legal separation of property during the marriage is maintained after the marriage has been dissolved), by the division of any property held in common under a property agreement or by the transfer of property from one spouse to the other.

If the spouses have not reached agreement on their property, either of them may ask the court to divide certain property belonging to both spouses. What are known as 'matrimonial assets' and 'matrimonial savings' will be divided between them. Matrimonial assets are the matrimonial home and household effects and any other things actually used by both spouses in their day-to-day lives while they were married. Matrimonial savings are all assets accumulated by the spouses while they were living together as a married couple.

Anything which the spouses brought to the marriage or inherited or were gifted by a third party is excluded from the division of the property, as is anything which one spouse alone used for personal purposes or for his or her occupation, as well as companies and shares in companies, unless they were merely investments.

The court must distribute the property equitably, with due regard for all relevant circumstances, and in particular the importance and size of each spouse's contribution towards the acquisition of the matrimonial assets and the accumulation of the matrimonial savings, as well as the welfare of the children. A spouse's contribution can include the provision of upkeep, contribution of earnings, running the joint household, the care and upbringing of the children they have in common and any other matrimonial support.

3.3 the minor children of the spouses

Since the 2001 Act Amending the Act on Children (*Kindschaftsrechts-Änderungsgesetz*) came into force on 1 July 2001, separated parents have had extensive scope to make their own parental responsibility arrangements. In the event of divorce, both parents usually retain joint parental responsibility for underage children. However, if they wish to retain full joint parental responsibility as in marriage they must file an agreement on the child's primary place of residence with the court within a reasonable time limit. The parents may also enter into an agreement before the court under which one parent has sole parental responsibility or one parent's parental responsibility is limited to specific matters.

Since the 2013 Act Amending the Act on Children and Names (*Kindschafts- und Namensrechtsänderungsgesetz*), the court may award joint parental responsibility against the wishes of one or both parents, if it finds that this is in the child's best interests. The parents must also then agree which parent the child will live with. If joint parental responsibility is not in the child's best interests, the court must decide which parent is to be awarded sole parental responsibility.

3.4 the obligation to pay maintenance to the other spouse?

The spouse who was solely or predominantly at fault must pay the other spouse sufficient maintenance to maintain their lifestyle if the latter has insufficient income from assets or from work which they can reasonably be expected to do in the circumstances. If both spouses are to blame for the divorce, but neither is more to blame than the other, the spouse unable to maintain himself or herself may be awarded a contribution towards his or her maintenance, if that is equitable with regard to the needs, assets and earnings of the other spouse. Any such compulsory contribution may be subject to a time limit. In the event of divorce by consent, the spouses can freely agree whether one should pay the other maintenance, or whether they mutually waive any maintenance claims.

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

There is no such arrangement under Austrian law.

5 What are the conditions for legal separation?

See answer to Question 4.

6 What are the legal consequences of legal separation?

See answer to Question 4.

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

Austrian marriage law provides for 'nullity of marriage' (*Ehenichtigkeit*). A marriage is null and void if it was not contracted in the prescribed form, if one of the spouses was legally incapacitated, unconscious or temporarily mentally disturbed when the marriage was contracted, or if the marriage was contracted solely or primarily for the purpose of enabling one spouse to take the other's

surname or to acquire his or her nationality without any intention of creating a marital relationship. A marriage is also null and void if one of the spouses was living in lawful matrimony with a third party when the marriage was contracted or if the marriage was unlawfully contracted between blood relations.

A marriage may be annulled by court judgment if, at the time it was concluded, the legal capacity of one of the spouses was limited and his or her legal representative did not consent to the marriage, if one of the spouses did not know that they were entering into matrimony or if they did know but did not wish to declare their willingness to enter into matrimony, if one of the spouses was mistaken as to the identity of the other spouse, or about any circumstances pertaining to the other spouse that would have prevented them from entering into matrimony had they known of the situation and properly appreciated the implications of marriage, if they were induced into entering into matrimony by malicious deception as to essential facts, or if they were unlawfully forced by threats to enter into matrimony.

8 What are the conditions for marriage annulment?

See answer to Question 7.

9 What are the legal consequences of marriage annulment?

If a marriage is annulled, it is treated as if it had never taken place. It is enough for only one of the spouses to have been unaware of the marriage's nullity when it was contracted for the rules which apply in the event of divorce to govern the situation between the spouses in relation to their property. Any children born of a marriage will be regarded as legitimate even after the marriage has been annulled.

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

Divorce or annulment can only be granted by the courts, but problems in connection with the divorce may be settled out of court (e. g. through mediation).

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?

Disputes relating to divorce or annulment, or the existence or non-existence of a marriage fall within the jurisdiction of the District Courts (*Bezirksgerichte*). Such disputes fall within the exclusive jurisdiction of the District Court for the district in which the spouses are or were last habitually resident together. If, when the petition was filed, neither spouse was habitually resident in that district or if they had no joint habitual residence in Austria, the court in the district where the respondent is habitually resident or, if the respondent has no habitual residence in Austria, the court in the district where the petitioning spouse is habitually resident or, failing that, the District Court of Central Vienna (*Bezirksgericht Innere Stadt Wien*) has sole jurisdiction. Such disputes fall within the domestic jurisdiction of the Austrian courts if either spouse is an Austrian national, if the respondent or, in the case of a petition for annulment from both spouses, if at least one of them is habitually resident in Austria, or if the petitioner is habitually resident in Austria and either both spouses had their last joint habitual residence in Austria or the petitioner is a stateless person or was an Austrian national at the time marriage was contracted. Although this is an exclusive jurisdiction, a different place of jurisdiction may be agreed.

Divorce petitions must comply with the general formalities for a petition. Petitions for divorce by consent, on which a ruling is handed down under the non-contentious procedure, must be signed by both spouses. In all cases, a marriage certificate must be enclosed. It is also advisable to attach any other documents that support the petition.

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

It is possible to apply for legal aid in divorce cases in accordance with the general rules on legal aid (see 'Legal Aid – Austria'). In divorce proceedings there is a relative requirement for legal representation, meaning that a party who does not wish to appear before the court in person can be represented only by a lawyer.

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

Appeals may be lodged against rulings by a court of first instance on divorce or annulment or on whether a marriage did or did not exist before the relevant superior court, i.e. the Regional Court (*Landesgericht*) which acts as the court of second instance for the competent District Court.

Rulings by the appeal court may be appealed against on a point of law only if the decision depends on resolving a question of substantive law or procedural law which is important in terms of maintaining legal consistency or legal certainty or developing the law, for example because the appeal court deviates from the case-law of the Supreme Court or there is no such case-law or it is inconsistent.

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?

Such decisions (unless from Denmark) are recognised in Austria automatically, that is without any special recognition procedure being required, in accordance with Council Regulation (EC) No 2201/2003 of 27 November 2003 ('Brussels IIa' Regulation). Brussels IIa generally requires the divorce, dissolution or annulment proceedings to have been instituted after 1 March 2001 (see Article 64 Brussels IIa for the exceptions to this). Old cases are governed primarily by the Regulation that preceded Brussels IIa. Decisions from Denmark still generally require separate recognition proceedings.

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?

An application for non-recognition of a decision dissolving a marriage that has been handed down abroad must be made to the District Court in the district where the parties have or last had their joint habitual residence. If neither party was habitually resident in that district or if they had no joint habitual residence in Austria, the District Court in the district where the respondent is habitually resident or, if the respondent has no habitual residence in Austria, the District Court in the district where the petitioner is habitually resident or, failing that, the District Court of Central Vienna (*Bezirksgericht Innere Stadt Wien*) has jurisdiction (§ 76 of the Austrian Law on Jurisdiction (*Jurisdiktionsnorm*)).

Proceedings are governed by the Act on Judicial Proceedings in Non-Contentious Matters (*Außerstreitgesetz*). Under Article 37 Brussels IIa, the petitioner must produce a copy of the judgment and the certificate issued by the competent court or authority of the Member State of origin under Article 39 Brussels IIa.

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 law to apply to the dissolution of marriage in cases with a connection to the law of another State is determined by Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 343, of 29 December 2010 (Regulation 'Rome III'). The rules on conflict of laws in Rome III have universal application, meaning that they apply even where the law to be applied is not the law of a participating Member State.

Last update: 24/10/2019

Divorce - Poland

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1 What are the conditions for obtaining a divorce?

In order to obtain a divorce a divorce petition must be lodged with the regional court with jurisdiction over the last joint place of residence of the spouses. The court hands down a judgment after a hearing. A separation decision is not a condition for divorce. It must be found that the marriage has broken down completely and irretrievably.

2 What are the grounds for divorce?

The grounds for divorce are that a marriage has broken down completely and irretrievably. Both conditions must be met (Article 56 (1) of the Family and Guardianship Code).

However, even if the marriage has broken down completely and irretrievably, divorce cannot be pronounced if this would harm the interest of underage children born to the marriage or if it would be incompatible with the rules of social co-existence for other reasons. Nor is divorce permitted when the petition is lodged by a spouse who bears sole responsibility for the breakdown of the marriage, unless the other spouse agrees to the divorce or their refusal to consent to the divorce is, in the circumstances, incompatible with the rules of social coexistence.

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

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

A divorced spouse who changed their surname when they married may revert to their surname before marriage up to three months after a divorce decree becomes final. To that end a declaration must be submitted to the head of the registry office or a consul. In addition, a divorced spouse is free to remarry.

3.2 the division of property of the spouses

Upon marriage joint property of the spouses is established by law (statutory joint ownership), which covers the property acquired by one or both spouses throughout the duration of statutory joint ownership (joint property). Property not caught by statutory joint ownership constitutes the personal property of the spouse. At the request of either spouse, the court may divide the joint property in the divorce decree as long as division of property does not cause excessive delay in the proceedings. Both spouses have equal shares in the joint property. For important reasons, however, either spouse may request the court to divide the joint property according to the extent to which each spouse has contributed to the acquisition of that property.

If the spouses share accommodation, in the divorce decree the court determines how the accommodation is to be used while the divorced spouses continue to share it. In extraordinary circumstances in which one of the spouses makes cohabitation impossible by their grossly reprehensible conduct, the court may order their eviction at the request of the other spouse. If both parties so request, the court may also decide in the divorce decree to divide the shared accommodation or to award the accommodation to one of the spouses if the other agrees to leave the place without being provided with replacement accommodation and substitute facilities, in so far as it is possible to divide or award the accommodation in this way. When deciding upon the shared accommodation, the court takes into account, first and foremost, the needs of the children and the spouse to whom parental responsibility is entrusted.

3.3 the minor children of the spouses

In a divorce decree the court decides on the parental responsibility for any minor children of both spouses and on contact between the parents and the children. It also determines the amount to be paid by each spouse for the children's maintenance and upbringing. The court takes into account a written agreement between the spouses on the manner in which parental responsibility is to be exercised and on contact arrangements with the child after divorce, as long as the agreement is in the best interest of the child. Siblings should be brought up together unless otherwise required in the best interest of the child.

In the absence of agreement between the spouses, the court, taking into account the child's right to be brought up by both parents, decides upon the manner in which parental responsibility is to be exercised and contact arrangements after the divorce. The court may entrust the exercise of parental responsibility to one parent, limiting the parental responsibility of the other to specific obligations and rights with regard to the child(ren), if this is in the best interest of the child.

If both spouses so request, the court may refrain from deciding on contact arrangements.

3.4 the obligation to pay maintenance to the other spouse?

A divorced spouse who has not been found to be solely responsible for the breakdown of the marriage and who is in financial difficulties may demand from the other spouse maintenance that corresponds to their reasonable needs and the financial capacities of the other spouse.

If one of the spouses has been found to be solely responsible for the breakdown of the marriage and the divorce entails a substantial deterioration in the financial situation of the other spouse, the court may order, following a request by the non-responsible spouse, that the solely responsible spouse be obliged to contribute to the reasonable needs of the non-responsible spouse, even if the latter is not in financial difficulties.

The maintenance obligation towards a spouse expires when that spouse remarries. However, where a divorced spouse who has not been found to be responsible for the breakdown of the marriage is obliged to pay maintenance, the maintenance obligation also expires 5 years after the divorce decree, unless the court extends this five-year period, at the request of the person entitled to maintenance, due to exceptional circumstances.

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

It is a formal separation, i.e. it is decreed by the court under Articles 61^{1} to 61^{6} of the Family and Guardianship Code.

5 What are the conditions for legal separation?

The condition for separation is finding that a marriage has completely broken down. Even if a marriage has broken down completely, however, the separation may not be granted if this would harm the interest of underage children born to the marriage or if the separation would be incompatible with the rules of social co-existence for other reasons. If the spouses have no common minor children, the court may issue a separation order if both parties so request.

6 What are the legal consequences of legal separation?

The legal consequences of separation are, as a rule, the same as those of a divorce. However, a separated spouse cannot remarry.

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

'Marriage annulment' means the cancellation of all the effects of a marriage with retroactive effect. The marriage is treated as if it had never existed. The only exception is that children from an annulled marriage retain the status of children born in wedlock.

8 What are the conditions for marriage annulment?

The reasons for annulling a marriage are listed in the Family and Guardianship Code: These include:

- a spouse is below the marriageable age (Article 10 of the Family and Guardianship Code),
- a spouse is completely legally incapacitated (Article 11 of the Family and Guardianship Code),
- a spouse is mentally ill or has an intellectual disability (Article 12 of the Family and Guardianship Code),
- a spouse is already married to another person (Article 13 of the Family and Guardianship Code),
- the spouses are related by lineal consanguinity, collateral consanguinity (brothers and sisters, including stepbrothers and stepsisters, and brothers and sisters born out of wedlock) or lineal affinity (Article 14 of the Family and Guardianship Code); However, for important reasons the court may allow the marriage be entered in spite of lineal affinity,
- the spouses are related by adoption (Article 15 of the Family and Guardianship Code),
- a statement has been submitted that when entering into the marriage a spouse was, for whatever reason, unable to consciously express his or her will, mistaken as to the identity of the other party or under an unlawful threat (Article 15^1 of the Family and Guardianship Code),
- if a marriage was contracted by proxy, the authorising party may request that the marriage be annulled if no court decision was issued allowing marriage to be contracted through a proxy, or if the power of attorney was invalid or effectively revoked. It is impossible to invoke this ground for annulment, however, if the spouses cohabited.

Each of the causes mentioned above must have existed when the marriage was entered into. Additionally, if the grounds for annulment ceased to apply, a marriage entered into cannot be annulled irrespective of the earlier existence of such grounds.

9 What are the legal consequences of marriage annulment?

A judgment annulling a marriage is constitutive and has consequences for third parties (*erga omnes*). There are two types of consequences:

- *ex tunc* , i.e. consequences that go back to the date on which the marriage was entered into, for example, the spouses return to the marital status they had before the marriage and revert to their previous surnames, the spouse and the family of the other spouse are no longer related by affinity and statutory inheritance is impossible;
- *ex nunc*, i.e. consequences that arise only after the judgment annulling the marriage becomes final, for example, with regard to property relations.

The consequences of marriage annulment for the relationship between the spouses and the children from their marriage and for property relations between the spouses are governed by the relevant divorce rules. Importantly, a spouse who entered into a marriage in bad faith is deemed to be the spouse responsible for the breakdown of the marriage.

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

Spouses in Poland can turn to family mediation. Its primary aims are to resolve conflicts between spouses in such a way as to avoid divorce or separation. If this is impossible, however, mediation is designed to work out the terms of a divorce (property issues, childcare). Mediation services are provided mainly by non-governmental organisations, foundations and associations. Spouses can also benefit from various forms of family therapy, assistance of psychologists, psychotherapists, support groups, etc. Mediation is also possible when court proceedings are pending.

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?

Applications for divorce, separation or marriage annulment must be lodged with the regional court (sąd okręgowy) having jurisdiction over the last common place of residence of the spouses. In the absence of such a court, applications must be lodged with the regional court having jurisdiction over the place of residence of the applicant.

A court fee is charged on such applications.

The following documents must be attached to an application: copies of civil status documents (marriage certificate, children’s birth certificates), document authorising a lawyer to represent a party (if that person has elected to choose his or her own lawyer) and other certificates that may be relevant to the case (medical certificates), certificates issued by public bodies, administrative decisions, etc.

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

Yes. A party whose financial situation does not allow them to pay the requisite fee may apply to the court for full or partial exemption from court costs, and may also request the court to appoint a lawyer ex officio for them.

A person applying for full or partial exemption from court costs or ex officio appointment of a representative must attach to the application a statement of his or her financial situation (on the appropriate form, available from the court), proof of earnings (income) and other information on property and family circumstances.

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

Yes, in all these cases it is possible to appeal to a court of second instance. Spouses may appeal to appeal courts against the decisions of regional courts.

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?

In accordance with 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 (hereinafter referred to as the 'Brussels IIa Regulation'), such decisions are automatically recognised in Poland without any special recognition procedure being required (Article 21 of the Brussels IIa Regulation).

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?

Any interested party may apply for a decision that a judgment be or not be recognised (Article 21(3) of the Brussels IIa Regulation). In Poland, such applications are submitted to regional courts. The local jurisdiction is determined by reference to the place of habitual residence of the person against whom an application for a decision that a judgment be or not be recognised is lodged. If neither of the places referred to above is located in Poland, the local jurisdiction is determined by reference to the place of enforcement (Article 29(2) of the Brussels IIa Regulation).

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?

Poland is a party to many international agreements that govern the above issue. Such rules take precedence over Polish private international law. Thus, different rules may be applicable whenever spouses are of different nationalities. In the absence of an international agreement, the Private International Law Act of 14 February 2011 is applicable. In accordance with Article 54 of this Act, a marriage is dissolved under the common native law of the spouses applicable at the time when a request for marriage dissolution is submitted. In the absence of a common native law of the spouses, the applicable law is the law of the country in which both spouses reside at the time when a request for marriage dissolution is submitted. If the spouses do not share a place of residence at the time when such a request is submitted, the applicable law is the law of the last country in which both spouses shared a place of residence, provided that one of the spouses still has his or her habitual residence there. In other cases, marriages are dissolved under Polish law.

Last update: 25/10/2019

Divorce - Portugal

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1 What are the conditions for obtaining a divorce?

In Portugal, a divorce can be obtained by mutual consent or by a contested action.

The first method involves the agreement of both spouses to the dissolution of the marriage and, in principle, to the payment of maintenance to the spouse in need, the exercise of parental authority with regard to minor children, and the disposal of the marital home.

A contested divorce is applied for in court by one of the spouses against the other, based on legally established facts which, regardless of the blame attached to the spouses, prove the irretrievable breakdown of the marriage.

2 What are the grounds for divorce?

In a divorce by mutual consent, the spouses do not have to give the reason for their application.

The following are further grounds for a contested divorce:

a) *De facto* separation for one full year. It is understood that *de facto* separation exists for these purposes when there is no communal life between the spouses and one or both of them intends not to re-establish it;

b) A change in the mental faculties of the other spouse which has lasted for more than one year and which, because of its seriousness, compromises the possibility of communal life;

c) Absence, without any news from the absentee, for a period of not less than one year;

d) Any other facts that, regardless of the fault attached to the spouses, prove the irretrievable breakdown of 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)

Divorce dissolves the marriage and has the same legal effects as dissolution by death, apart from the exceptions set out in law.

The effects of divorce are produced from the moment when the respective ruling becomes final and unappealable, but are backdated to the date on which the action was brought as regards the property-related relationships between the spouses.

If the process proves the *de facto* separation of the spouses, either of them may request that the effects of the divorce be backdated to the date on which the separation began, as decided on in the ruling.

Despite divorce, a spouse who has adopted the surname of the other spouse may retain it provided that the latter consents or the court gives its authorisation, bearing in mind the reasons stated. The consent of the former spouse may be given through a notary document, a document drawn up in court (a written record, in proceedings, of the declaration of intent of the party) or a declaration before a registry office official. The application for court authorisation to use the surname of the former spouse may be submitted within the divorce proceedings or in separate proceedings, even after the divorce has been decreed.

3.2 the division of property of the spouses

In the event of divorce, neither spouse may receive more than they would have received if the marriage had been entered into under the system of common ownership of property acquired *ex post facto*.

Each spouse loses all the benefits received or to be received from the other spouse or a third party with regard to the marriage or in consideration of the state of being married, whether this stipulation is prior to or after the celebration of the marriage. The donor may determine that the benefit accrues to the children of the marriage.

The effects of the divorce as regards the property-related relationships between the spouses are produced from the moment that the divorce ruling becomes final and unappealable, but are backdated to the date when the action was brought.

If the *de facto* separation of the spouses is proved in the proceedings, either of them may request that the effects of the divorce be backdated to the date on which the separation began, as decided on by the ruling.

The court may rent the marital home to either of the spouses at their request, whether it is jointly owned or owned by the other spouse, taking into particular account the needs of each spouse and the interests of the children of the marriage. Rental is subject to the rules on the renting-out of accommodation, but the court may define the conditions of the agreement, having heard the spouses, and may terminate the rental at the landlord's request when supervening circumstances so justify. The arrangements set, whether by approval of the agreement between the spouses or by court order, may be amended under the general terms of voluntary jurisdiction.

3.3 the minor children of the spouses

In the case of divorce, legal separation, declaration of nullity or marriage annulment, the arrangements for the children, the maintenance due to the latter and the method of paying maintenance will be governed by an agreement between the parents, subject to approval by the court (or the Public Registrar in proceedings for separation and divorce by mutual consent).

In the absence of an agreement, the court will take a decision in accordance with the interests of the minor, including that of maintaining a close relationship with both parents, encouraging and accepting agreements or making decisions that encourage ample opportunities for contact with both parents and the sharing of responsibility between them. Custody of the minor may be given to either parent, a third person or a re-education or care establishment.

For further information, please see the factsheet relating to ‘Parental responsibility’.

3.4 the obligation to pay maintenance to the other spouse?

Each spouse must provide towards their sustenance following divorce. Either spouse is entitled to maintenance, regardless of the type of divorce. For obvious reasons of fairness, the right to maintenance may be denied.

In setting the maintenance amount, the court must take account of the length of the marriage, the contribution made towards the family finances, the age and state of health of the spouses, their professional qualifications and employment possibilities, the time they will possibly have to spend on bringing up their joint children, their earnings and income and, in general, all circumstances affecting the needs of the spouse receiving the maintenance and the possibilities of the person paying the maintenance.

The court must give precedence to any maintenance obligations relating to a child of the debtor spouse over the obligation to the former spouse arising from the divorce.

The creditor spouse has no right to demand that the standard of living they enjoyed during marriage be maintained.

For further information, please see the factsheet on ‘Maintenance’.

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

Legal separation does not dissolve the marriage but extinguishes the duties of cohabitation and assistance, without prejudice to the right to maintenance.

With regard to property, separation produces the effects which the dissolution of the marriage would produce.

Legal separation ends with the reconciliation of the spouses or the dissolution of the marriage.

5 What are the conditions for legal separation?

The conditions for legal separation, whether contested or by mutual consent, are the same as those for divorce by contested action, *mutatis mutandis*.

6 What are the legal consequences of legal separation?

As indicated in the answer to question No 4, legal separation extinguishes the duties of cohabitation and assistance, without prejudice to the right to maintenance. With regard to property, legal separation produces the effects that would be produced by dissolution of the marriage.

The provisions on divorce apply, *mutatis mutandis*, to legal separation.

Legal separation may be converted into divorce, although this is not a precondition for divorce or a stage in divorce proceedings.

Indeed, if the spouses have not been reconciled one year after the ruling decreeing the legal separation (whether contested or by mutual consent) became final and unappealable, either of them may apply for the separation to be converted into a divorce. If the conversion is applied for by both spouses, the period specified does not need to be observed and a judgment is handed down directly.

If the conversion is requested by one of the spouses, the other will be notified in person or via their legal representative to lodge an appeal - which may only be based on reconciliation of the spouses - within a period of 15 days. After evidence has been presented, the judge hands down a judgment on the appeal within 15 days.

The conversion of legal separation into divorce may also be requested at any civil registry office. The request, founded in fact and in law, must be submitted via an application lodged at the registry office providing the evidence and attaching documentary proof.

The respondent is summoned to lodge an appeal within 15 days, give evidence and attach documentary proof.

If there is no appeal and it is considered that the facts indicated by the applicant have been acknowledged, the registrar, after checking that the legal requirements are fulfilled, declares the application granted.

If an appeal is lodged, the registrar schedules an attempted reconciliation, to be held within 15 days, and may order the performance of legal acts and the production of the evidence necessary to verify the legal requirements.

If the respondent has lodged an appeal and it proves impossible to reach an agreement, the parties are notified to plead and request the production of new evidence within eight days. The case is then referred to the judicial court of first instance with jurisdiction over the matter within the constituency to which the registry office belongs.

With the case referred to the court of law, the judge orders the presentation of evidence and schedules the hearing.

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

‘Marriage annulment’ means terminating the legal effects of the marriage by invoking a significant defect affecting the marriage.

8 What are the conditions for marriage annulment?

Marriages entered into in the following circumstances can be annulled:

a) where there is some invalidating impediment (absolute or relative);

b) where there is a lack of consent or consent invalidated by an error or by duress on the part of one or both of the spouses;

c) without the presence of witnesses, when required by law.

The following are absolute invalidating impediments, hindering the marriage of the person in question to any other:

a) being under the age of sixteen;

b) known dementia, even during lucid periods, and prohibition or incapacitation on account of a mental disorder;

c) a previous undissolved marriage, whether Catholic or civil, even if the respective entry has not been made in the register of births, marriages and deaths.

The following are relative invalidating impediments, hindering the marriage of the persons in question to one another:

a) direct line consanguinity;

b) consanguinity in the second degree of the collateral line;

c) affinity in the direct line;

d) the previous conviction of one of the spouses of being the perpetrator of or accomplice in an attempt, even if not successful, to murder the spouse of the other party.

The marriage can be annulled on grounds of lack of consent:

a) if at the time the marriage was celebrated, one of the parties was not aware of their actions owing to accidental disability or other causes;

b) if one of the parties was misled with regard to the physical identity of the other party;

c) if the declaration of consent was extorted by physical coercion;

d) if consent has been simulated.

The error invalidating consent is only relevant for the purposes of annulment when it is based on essential personal qualities of the other spouse and is excusable, and it is proven that the marriage would not reasonably have been concluded without it.

Marriages celebrated under moral coercion can be annulled if one of the parties is being seriously and unlawfully threatened and their fear of consummation is justified.

If someone, knowingly and unlawfully, extorts the declaration of consent from the other party with the promise of freeing them from unforeseeable harm or harm caused by others, this is equivalent to an unlawful threat.

The declaration of consent, in the act of celebration, constitutes the presumption not only that the spouses wish to marry, but that their consent is not vitiated by error or coercion.

9 What are the legal consequences of marriage annulment?

The annulment of a civil marriage, when contracted in good faith by both spouses, takes effect in relation to these and to third parties when the respective ruling becomes final and unappealable.

If only one spouse entered into the contract in good faith, then only that spouse can claim the benefits of marital status and oppose them to third parties, provided that this is simply a reflection of the relationship between the spouses.

The spouse who enters the contract of marriage in excusable ignorance of the defect causing nullity or annulment or whose declaration of consent has been extorted by physical or moral coercion is considered to have entered into the marriage in good faith.

State courts are solely responsible for the judicial knowledge of good faith. The good faith of the spouses is assumed.

Once the marriage has been declared null or annulled, the spouse in good faith retains the right to maintenance after the decision becomes final and unappealable or the decision is registered.

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

Before starting the divorce process, the Civil Registry Office or the court must inform the spouses of the existence and objectives of family mediation services.

Family mediation is a non-judicial method to resolve conflicts arising within family relationships, in which the parties, with their personal and direct participation and aided by the conflict mediator, try to reach an agreement.

The use of this alternative means of dispute resolution can resolve conflicts resulting from the regulation, amendment and failure to comply with the exercise of parental responsibility, divorce and legal separation, conversion of legal separation into divorce, reconciliation of separated spouses, assignment and amendment of provisional or definitive maintenance, assignment of the family home, denial of the right to use the surname of the other spouse and authorisation to use the surname of the former spouse.

The Family Mediator is a professional licensed by the Ministry of Justice (*Ministério da Justiça*) who is responsible for conducting meetings with independence and impartiality to help the parties reach an agreement amongst themselves.

Divorce by mutual consent can be applied for at the civil registry office, except in situations arising from an agreement obtained within the proceedings for a contested divorce and provided that the application for divorce by mutual consent is accompanied by a detailed list of the couple's communal property, agreement on the disposal of the marital home, agreement on the payment of maintenance to the spouse in need of maintenance and a certificate of the court judgment regulating the exercise of parental responsibility or agreement on the exercise of parental responsibility with regard to any minor children, where this has not been previously ruled on by the courts.

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?

Separation and divorce by mutual consent

Separation and divorce by mutual consent are applied for at the civil registry office by both spouses, by mutual agreement. The application must be accompanied by the following documents:

a) a detailed list of the communal property specifying their respective values, or, if the spouses choose to share this property, an agreement on sharing or an application to draw up such agreement;

b) a certificate of the court judgment ruling on the exercise of parental authority or an agreement on the exercise of parental authority with regard to any minor children, where this has not been previously ruled on by the courts;

c) an agreement on the payment of maintenance to the spouse in need of maintenance;

d) an agreement on the disposal of the marital home;

e) a certificate of the prenuptial agreement, if one exists.

Unless otherwise specified in the documents submitted, it is understood that the agreements apply both to the period of the proceedings and to the subsequent period.

Proceedings for legal separation or divorce by mutual consent are brought by submitting an application signed by the spouses or their representatives to the civil registry office. The application is lodged with the above-mentioned documents and a certificate containing a full copy of the record of marriage.

Having received the application, the registrar invites the spouses to a meeting during which they must check that the legal prerequisites are met. At the meeting, the spouses are informed of the existence of family mediation services; if the spouses still intend to divorce, the agreements are considered and the spouses are invited to amend them if they do not duly protect the interests of one of them or of the children. Legal acts may be performed and evidence taken for this purpose. If the legal requirements are met and the aforementioned procedures observed, the registrar grants the application.

When an agreement is submitted on the exercise of parental authority over minor children, the proceedings are referred to the Public Prosecution service at the court of first instance having jurisdiction in the matter within the judicial district in which the civil registry office is situated, so that this service can give an opinion on the agreement within 30 days.

If the public prosecution service considers that the agreement does not duly protect the interests of the minors, the applicants can alter it as required or submit a new agreement. In the latter case, the agreement will be resubmitted to the public prosecution service. If the latter considers that the agreement duly protects the interests of the minors or if the spouses have altered the agreement as indicated by the public prosecution service, the divorce will be decreed.

In cases in which the applicants do not agree with the alterations indicated by the public Prosecution Service and still intend to divorce and/or the agreements submitted do not sufficiently protect the interests of one spouse, approval will not be granted and the divorce proceeding will be forwarded to the court in the district where the civil registry office is situated.

After receiving the case, the judge considers the agreements that the spouses have submitted, inviting them to amend them if they do not protect the interests of either of them or their children.

The judge will then determine the consequences of divorce on issues which the spouses have not amended. If any of the agreements do not sufficiently protect the interests of either of the spouses they may, for this purpose and for the consideration of the proposed agreements, order the performance of acts and the production of the evidence required. When determining the consequences of divorce, the judge should not only encourage but also take into account the agreement of the spouses.

Divorce by mutual consent is then decreed and recorded in the corresponding registry.

Applications for legal separation or divorce by mutual consent are submitted to the court, provided the parties do not attach any of the aforementioned agreements to it.

In this case, the divorce application is lodged in court. Once the application has been received, the judge considers the agreements that the spouses have submitted, inviting them to amend them if the agreements do not protect the interests of either of them or their children. The judge determines the consequences of divorce on the issues which the spouses have not agreed upon, and may, for this purpose and for the consideration of the agreements submitted, order the performance of acts and the production of the evidence required. In determining the consequences of divorce, the judge should not only encourage but also take into account the agreement of the spouses. Divorce by mutual consent is then decreed and recorded in the corresponding registry.

Contested separation or divorce

Applications for contested separation or divorce are submitted to the family and minors division (*Juízo de Família e Menores)* or, if no such division exists, to the local civil division (*Juízo Local Cível*) or the general division (*Juízo de Competência Genérica*) with territorial jurisdiction. Territorial jurisdiction is defined according to the domicile or residence of the applicant (the person bringing the action).

The provisions on divorce apply, *mutatis mutandis*, to legal separation.

Legal separation ends with the reconciliation of the spouses or the dissolution of the marriage.

Either spouse may request a contested divorce on the grounds of *de facto* separation for one full year, a change in the mental faculties of the other spouse which has lasted for more than one year and which, because of its seriousness, compromises the possibility of communal life, the absence, without any news from the absentee, for a period of not less than one year, and other facts that, regardless of the fault attached to the spouses, prove the irretrievable breakdown of the marriage.

The aggrieved spouse has the right to seek compensation for the damage caused by the other spouse under the general terms of civil liability and in the ordinary courts.

The spouse who filed for divorce on the grounds of a change in the mental faculties of the other spouse must compensate them for the personal injury caused by the dissolution of marriage; the application must be lodged in the divorce proceedings themselves.

If the grounds for divorce are a change in the mental faculties of the other spouse which has lasted for more than a year and which, owing to its seriousness, compromises the possibility of communal life, and the absence, without any news from the absentee, for a period of not less than one year, then only the spouse who invokes the change in mental faculties or the absence of the other spouse can file for divorce.

Where the spouse able to file for divorce is prohibited from doing so, the action may be brought by their legal representative, authorised by the family council; where the legal representative is the other spouse, the action may be brought, on behalf of the holder of the right to act, by any of their relatives in the direct line or up to the 3rd degree of the collateral line, provided this is also authorised by the family council.

The right to divorce is not transferred by death, but the author’s heirs may continue the action for the purposes of the estate if the applicant dies during the proceedings; to the same effect, the action may continue against the respondent’s heirs.

Once the petition has been presented, if the action can proceed the judge will appoint a time for an attempted reconciliation and both the applicant and the respondent will be summoned to attend in person.

If reconciliation fails, the court will seek the agreement of the spouses for divorce by mutual consent; if an agreement is reached or if the spouses opted for divorce by mutual consent at any point in the process, the process will follow the course of that type of divorce, *mutatis mutandis*.

If the judge is unable to obtain the agreement of the spouses regarding divorce or separation by mutual consent, he will seek to obtain the agreement of the spouses on maintenance and the regulation of the exercise of parental responsibility. The judge will also seek to obtain the agreement of the spouses on the use of the marital home during the period while the process is pending, where applicable.

In an attempt to reconcile or at any other point during the proceedings the parties may agree to divorce or legal separation by mutual consent, provided the necessary prerequisites are met.

When the agreement of one party is lacking or reconciliation proves impossible, the judge orders the respondent to submit their defence within 30 days; at the time of notification, a duplicate of the original petition is delivered to the respondent.

If the whereabouts of the respondent are unknown, all efforts provided for in procedural law have been made to locate them, and all have proven equally unsuccessful, the day appointed for reconciliation shall be void and the respondent shall be summoned by public notice to submit their defence.

After the deadline for submission of the defence has passed, the process follows the terms of the common procedure. During that procedure, the object of the dispute is identified and the basis of evidence announced. The final hearing takes place during this process along with production of evidence. Upon conclusion of the final hearing, the case is closed and sent to the judge, who hands down a decision within 30 days.

Legal separation may be applied for in a counterclaim, even if the applicant has filed for divorce; if the applicant has filed for legal separation, the respondent may also file for divorce in counterclaim. In these cases, divorce should be decreed if the application of the action and the counterclaim are granted.

Annulment of marriage

Marriage annulment may not be invoked in any terms, either judicial or non-judicial, until it is recognised by a judgment in an action brought specifically for this purpose.

This action is brought in the family and minors division by submitting an initial application which, in the form of pleadings, identifies the parties, describes the relevant facts and concludes with a request.

The legal entitlement to bring such action varies depending on the grounds of the claim *(please see the answer to question 8).*

The spouses or any of their relations in the direct line or up to the fourth degree in the collateral line, the heirs and adoptive parents of the spouses and the public prosecution service have the legal right to bring or continue an action for annulment based on an invalidating impediment. In addition, the guardian or trustee in the case of minority, prohibition or incompetence due to a mental disorder and the first spouse of the offender in the case of bigamy may also bring or continue an action.

Annulment due to misrepresentation may be applied for by the spouses themselves or by any persons prejudiced by the marriage. In other cases involving a lack of consent, annulment proceedings may be brought only by the spouse whose consent is lacking. However, the latter’s relations by marriage in the direct line and their heirs or adoptive parents may continue the action if the applicant dies during the proceedings.

Annulment proceedings based on defects in consent may be brought only by the spouse who was the victim of the error or of duress, but their relations by marriage in the direct line and their heirs or adoptive parents may continue the action if the applicant dies during the proceedings.

Annulment proceedings based on a lack of witnesses may be brought only by the public prosecution service.

Annulment proceedings based on an invalidating impediment should be brought:

a) In cases of minority, prohibition or incompetence due to a mental disorder or known insanity, where brought by the incompetent person, within six months of their having reached majority, their prohibition or incompetence having been removed or their insanity having ceased; where brought by another person within three years of the celebration of the marriage, but never after the attainment of majority, the removal of the incapacity or the cessation of the insanity;

b) In the case of conviction for the murder of the spouse of one of the parties, within three years of the celebration of the marriage;

c) In other cases, within six months of the dissolution of the marriage.

Only the public prosecution service may bring the action before the marriage is dissolved.

Annulment proceedings based on the existence of a previous undissolved marriage may not be brought or continued when proceedings are pending to declare the nullity or annulment of the first marriage of a bigamist.

Annulment proceedings based on a lack of consent of one or both of the parties may be brought only within three years of the celebration of the marriage or, if the applicant was unaware of this, within six months of the moment when they become aware of this.

Annulment proceedings based on defects in consent will lapse if not brought within six months of the cessation of the defect.

Annulment proceedings based on a lack of witnesses may be brought only within one year of the celebration of the marriage.

The marriage certificate and possibly (if age is the ground for the application) the birth certificate of the party in question must accompany the initial application.

After the deadline for submission of the defence, the process follows the aforementioned terms of the common procedure.

The annulment is considered to be resolved and the marriage considered valid from the moment of its celebration if any of the following events takes place before the annulment judgment becomes final and unappealable:

a) if a child of non-marriageable age confirms their marriage before an officer of the civil registry and two witnesses, after they have reached majority;

b) if a person who is legally incapacitated or disabled by a mental disorder confirms their marriage, in the terms of the previous paragraph, after their disability or incapacity has been lifted or, in the case of insanity, after the insane person has judicially checked their state of mental health;

c) if the first marriage of a bigamist is declared nullified or annulled;

d) if the lack of witnesses is due to justified circumstances, such as those recognised by the registrar, provided there are no doubts about the celebration of the act.

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

Yes, the legal aid scheme applies in all courts, whatever the form of the proceedings.

For further information, please see the factsheet on ‘Legal aid’.

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

Yes. In these actions it is always possible to appeal.

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?

If the decision in question was delivered in a Member State of the European Union other than Denmark, it is recognised in the other Member States in accordance with Council Regulation (EC) 2201/2003 of 27 November 2003.

If the decision was delivered in Denmark, the special process for review of a foreign judgment is applied.

In this process, the document containing the decision to be reviewed is submitted with the application and the opposing party notified has 15 days in which to submit a response. The applicant may respond within 10 days of the notice of submission of that response. Once the parties have submitted all their pleadings and the steps regarded as essential have been taken, all the documents are provided to the parties and the public prosecution service, each for 15 days.

In order for the judgment to be confirmed:

a) there must be no doubts as to the authenticity of the document recording the judgment or the soundness of the decision;

b) the judgment must have become final according to the law of the country in which it was delivered;

c) the judgment must come from a foreign court whose jurisdiction has not been invoked in breach of the law and must not involve a matter falling within the exclusive jurisdiction of the Portuguese courts;

d) it must not be possible to invoke the defence of *lis pendens* or *res judicata* based on a case in a Portuguese court, except where it was the foreign court which prevented the initiation of proceedings;

e) the respondent must have been duly served in respect of the action, under the law of the country of the court of origin, and the principles of the right of defence and equal protection of the parties must have been observed in the process;

f) it must not involve a decision whose recognition leads to a result which is manifestly incompatible with the principles of the public international order of Portugal.

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?

In the Member States of the European Union, except for Denmark, if the party concerned decides to apply for recognition of a decree of divorce, legal separation or marriage annulment, the application is submitted to the Family Proceedings Court. The court having territorial jurisdiction is determined by the internal law of the Member State in which the application for recognition has been brought.

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?

According to the national conflict-of-law rules, in divorce and legal separation the common national law of the spouses is applicable. If they are not of the same nationality, the law of their joint habitual residence is applicable; in the absence of this, the law of the country with which their family life is most closely associated is applicable.

If, however, during the marriage, there is a change in the applicable law, only a fact relevant at the time of its occurrence can provide grounds for separation or divorce.

Further information

The up-to-date provisions that apply to divorce laid down in the Civil Code (*Código Civil*), the Code of Civil Procedure (*Código de Processo Civil*) and Decree-Law No 272/2001 can be found here: http://www.pgdlisboa.pt/leis/lei_main.php.

Final Note:

The information contained in this factsheet is of a general nature and is not exhaustive. It is not binding on the contact point, the European Judicial Network in civil and commercial matters, the courts or any other persons. It is not intended to replace consultation of the applicable legislation in force.

Last update: 07/11/2019

Divorce - Romania

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1 What are the conditions for obtaining a divorce?

Divorce can be obtained by mutual consent (through a judicial, administrative or notarial procedure). In the absence of mutual consent, divorce can be granted by a court.

2 What are the grounds for divorce?

Pursuant to Article 373 of the Civil Code, a divorce may be obtained in the following cases:

- by mutual consent of the spouses;
- where the relationship between the spouses has seriously deteriorated and continuation of the marriage is no longer possible;
- at the request of one of the spouses, following a *de facto* separation that has lasted for at least two years;
- at the request of the spouse whose state of health makes the continuation of the marriage impossible.

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

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

- the status of spouse ceases to exist and each of the divorced spouses may remarry;
- on dissolution of the marriage through divorce, the spouses may agree to keep the names used during their marriage. If there is no agreement, the court may, in duly justified cases, permit the spouses to keep the names used during their marriage. If there is neither agreement nor a court ruling, each former spouse reverts to the names he or she had prior to the marriage.

3.2 the division of property of the spouses

As a result of the divorce, the matrimonial property regime ceases between the spouses from the date of filing for a divorce. However, either of the spouses – or both, jointly, in the case of a divorce by mutual consent – may request the divorce court to declare that the matrimonial property regime ceased on the date of the *de facto* separation.

If the joint property regime ceases through the dissolution of the marriage, the former spouses remain joint owners of the joint property until their respective shares are determined.

During the termination of the marital community, each of the spouses takes over his or her own property, after which the joint property is divided and the debts are settled. For this purpose, the share of property corresponding to each spouse is first determined on the basis of his or her contribution to acquiring the joint property and fulfilling the joint obligations. Unless proven otherwise, it is presumed that the spouses made an equal contribution.

Irrespective of any maintenance obligation between the former spouses, and of the provision of compensation, the spouse not at fault who suffers material loss as a result of the dissolution of the marriage may request the spouse at fault to compensate him or her. The family court decides on that request through the divorce decision.

Furthermore, following a divorce, mutual inheritance rights are lost.

3.3 the minor children of the spouses

Once the divorce decree has been issued, the family court decides upon the relationship between the divorced parents and any minor children. As a rule, following a divorce, the spouses have **joint parental authority over the children**. The family court establishes the **place of domicile** of the minor child at the house of the parent with whom he or she usually lives, while the parent separated from the child has the right to have personal contact with the child. The court establishes the **contribution** of each parent to the expenses related to the children's upbringing, education, schooling and vocational training.

If circumstances change, the family court may modify the measures concerning the rights and obligations of the divorced parents with regard to their minor children if requested to do so by either of the parents or by another family member, the child, the tutelary authority, the public institution for child protection or the public prosecutor.

3.4 the obligation to pay maintenance to the other spouse?

As a result of the dissolution of the marriage, the maintenance obligation ceases between the spouses. The divorced spouse is entitled to maintenance if he or she is in financial need owing to incapacity to work arising before or during the marriage or within a year of its dissolution (but only if the incapacity is caused by a circumstance relating to the marriage).

The spouse applying for a maintenance allowance may not also request compensation. Where the divorce has been granted due to the exclusive fault of the defendant spouse, the plaintiff spouse may receive compensation. Compensation may be granted only if the marriage has lasted for at least 20 years.

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

In Romanian law there is no concept of 'legal separation' but only of '*de facto* separation' and the judicial division of property. This is a situation that must be proven before the court. In the event of the *de facto* separation having lasted for at least two years, this is a reason for judicially issuing a divorce.

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?

A marriage is annulled owing to a breach of one of the legal requirements concerning the marriage contract. A marriage can be annulled only through a court decision. Annulment has effect with regard to the past as well as the future; the marriage is considered not to have taken place.

8 What are the conditions for marriage annulment?

Breaches of the legal provisions relating to the marriage contract, such as the following, constitute absolute grounds for annulment:

- the marriage was contracted without consent;
- the marriage was contracted between persons of the same sex;
- the marriage was contracted by a person who was already married;
- the marriage was contracted between persons related in the direct line or in the collateral line up to and including the fourth degree;
- the marriage was contracted by an insane or mentally defective person;
- the marriage was contracted without the consent of the future spouses, or such consent was not given in accordance with the legally required procedure;
- the marriage was contracted by a minor under the age of 16;
- the marriage was contracted for purposes other than that of beginning a family.

Relative grounds for annulment of a marriage are:

- when it is contracted by a 16-year-old minor based on a medical opinion, without the consent of the parents/parent having legal guardianship or without the authorisation of the person having parental rights;
- when there is a defect in consent: error (regarding the physical identity of the other spouse), fraud or violence;
- when it is contracted by a person temporarily lacking judgement;

- when the marriage was contracted between an adoptive parent and a minor under his or her guardianship.

9 What are the legal consequences of marriage annulment?

Until a final court judgement is issued, the spouse who entered in good faith into an invalid or annulled marriage retains his or her status as a spouse within a valid marriage, and the property relationships between the former spouses are subject, by analogy, to the provisions regarding divorce.

The invalidity of the marriage has no effect on the children, who maintain their status as children of the marriage. As far as parents' and children's rights and obligations with regard to each other are concerned, the provisions regarding divorce apply by analogy.

A court decision declaring a marriage invalid or annulling it is enforceable against third parties; the provisions concerning the formalities of the matrimonial property regime, the public character of the marriage contract and the unenforceability of the marriage contract are correspondingly applicable.

The invalidity of the marriage cannot be enforced against a third party in respect of an act concluded prior to it with one of the spouses, unless the disclosure formalities laid down by law concerning the action for declaring the invalidity or the action for annulment have been completed, or the third party was otherwise aware of the grounds for the invalidity of the marriage prior to the conclusion of the act.

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

Mediation is optional prior to the initiation of proceedings at a court. During the proceedings, the judicial authorities are obliged to inform the parties about the possibility and the advantages of using mediation.

Through mediation, misunderstandings between spouses concerning the continuation of the marriage, the exercise of parental rights, the establishment of the domicile of the children, the parents' contribution to the maintenance of the children, and any other misunderstandings arising from the relationship of the spouses with regard to the rights available to them under the law, can be settled. The mediator will ensure that the result of the mediation is not contrary to the best interests of the child and will encourage the parents to focus primarily on the child's needs and to assume parental responsibility for ensuring that the *de facto* separation or divorce does not hamper his or her upbringing and development.

The mediation agreement containing the parties' agreement concerning the exercise of parental rights, the parents' contribution to the maintenance of the children, and the establishment of the domicile of the children has to be subject to the permission of the court, which has the obligation to verify whether the agreement is in accordance with the child's interests.

If the spouses agree to the divorce and do not have minor children born in or out of wedlock or adopted, the public registrar or notary public in the place where the marriage was entered into or where the last joint domicile of the spouses was registered may declare the marriage to be dissolved through the agreement of the spouses and issue them with a divorce certificate.

Divorce through the agreement of the spouses may be declared by a notary public in the event too of there being minor children born in or out of wedlock or adopted, if the spouses agree on all the aspects relating to names, exercise of parental authority, establishment of the domicile of the children, ways of maintaining personal relationships, and establishment of the parents' contribution to the expenses related to the children's upbringing, education, schooling and vocational training.

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?

The application for divorce falls within the competences of the **court**.

From a territorial perspective, jurisdiction belongs to the court in the place where the spouses' last joint home is located. If the spouses did not have a joint home or if neither spouse any longer lives in the place where their last joint home was located, the application should be lodged with the court with jurisdiction for the place where the defendant's home is located. However, if the defendant does not have a place of domicile in Romania, and the Romanian courts have an international jurisdiction, the application should be lodged with the court with jurisdiction for the place where the applicant's home is located. If neither the applicant nor the defendant has his or her domicile in Romania, the parties may agree to lodge the application for divorce with any court in Romania. In the absence of such an agreement, the application for divorce should be lodged with the Court of Sector 5, Bucharest.

The application for divorce shall include, besides the remarks from the summons, the names of the minor children. The request shall be accompanied by the marriage certificate, copies of the birth certificates of the minor children and, where appropriate, the spouses' agreement following mediation.

In a situation where the application for divorce is based on the agreement of the parties, it shall be signed by both spouses or by a joint authorised representative empowered by means of an authenticated special power of attorney. If the authorised representative is a lawyer, he or she shall certify the signatures of the spouses, in accordance with the law.

Before courts of first instance, the parties must appear personally, unless one of the spouses is serving a custodial sentence, is prevented through serious illness, is placed under a court injunction, has his or her domicile abroad or is in another situation such as prevents him or her from appearing personally; in such situations, the person concerned may be represented by a lawyer, authorised representative or, where appropriate, guardian or registered representative (*curator*). If by the date of the hearing at the court of first instance, the applicant is unjustifiably absent, and only the defendant appears, the application shall be rejected as being unsubstantiated.

The divorce court shall take a decision, even if it was not requested to do so in the application for divorce, concerning the exercise of parental authority, the parents' contribution to the expenses related to the children's upbringing and education, the domicile of the children and the parent's right to have a personal relationship with the children.

An application for a marriage to be declared invalid on absolute grounds can be lodged by any interested party. The application for marriage annulment is personal in character, with no effect passed down to the heirs. However, if the application was lodged by one of the spouses, it may be continued by any of his or her heirs.

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

Legal aid can be obtained subject to the conditions laid down in Government Emergency Order No 51/2008 on legal aid in civil matters, as approved with amendments and additions by Act No 193/2008, as subsequently amended.

Legal aid may be provided, separately or cumulatively, in the form of the assistance of a lawyer; payment of the fee of the expert, translator or interpreter; payment of the fee of the enforcement officer; and in terms of exemptions from, discounts on, or instalments or deferrals of, the payment of legal fees.

In order to be eligible for full legal aid, persons shall have had a monthly net average income per family member of less than RON 300 in the last two months prior to the lodging of the application. If the income is below RON 600, the proportion of legal aid provided is 50 %. Legal aid proportionate to the applicant's needs can also be granted in other situations where the certain or estimated costs of the proceedings are likely to restrict effective access to justice, due for example to the difference between the cost of living in the Member State where the applicant resides and that of living in Romania.

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

In the new Code of Civil Procedure, the time period for appeal against a decision is 30 days from the notification of the decision.

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 applicable legislation concerning recognition of a divorce decree is Regulation (EC) No 2201/2003. The application should be lodged with the court with jurisdiction for the defendant's place of domicile or residence in Romania. If the defendant has no known residence, the application should be lodged with the court with jurisdiction for the applicant's place of domicile or residence.

15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?

A recognition decision may be opposed through the lodging of an application with the court of appeal with territorial jurisdiction or the submission of an appeal to the High Court of Cassation and Justice.

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?

To determine the law applicable to international private-law relations, the Romanian court will apply either *Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation or Article* 2957 and subsequent articles of the Civil Code.

The spouses may choose the law of the state in which they have their usual common place of domicile or had their last usual joint residence (if at least one of them lives there on the date of the agreement for choosing the applicable law), the law of the state of which one of the spouses is a citizen, the law of the state where the spouses lived for at least three years, or Romanian law.

If the spouses have not made a choice, the applicable law is that of the state in which they have their usual common place of domicile, or in the absence thereof, the law of the state where the spouses had their last usual common place of domicile (if at least one of the spouses still has his or her usual domicile in that state on the date when the application for divorce is lodged); where one of the spouses does not have a usual place of domicile, the law of the state of which they were both citizens on the date when the application for divorce was lodged applies; or, where the spouses have different citizenships, the law of the country in which they last jointly had citizenship (if at least one of them still has this citizenship on the date when the application for divorce is lodged). In all other situations, the applicable law is that of Romania.

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Divorce - Slovenia

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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

http://www.pisrs.si/Pis.web/

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

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

http://www.sodisce.si/

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Divorce - Slovakia

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1 What are the conditions for obtaining a divorce?

In the Slovak Republic, marriage can be dissolved only by a court.

2 What are the grounds for divorce?

A marriage can be dissolved by a court if the relationship between the spouses is seriously damaged and has permanently broken down, so that the marriage can no longer serve its purpose and the spouses cannot be expected to resume marital cohabitation.

The court establishes the causes of the serious breakdown of the relationship between the spouses and takes them into account in its decision on the divorce. The court always takes the interests of minor children into account in its divorce decision.

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

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

A spouse who, on marrying, took the surname of the other spouse may notify the registry office within three months after the divorce decision has become final that he/she is reassuming his/her former surname.

A spouse who, on marrying, took the surname of the other spouse and at the same time kept, as a second surname, his/her former surname may notify the registry office within three months after the divorce decision has become final that he/she is discontinuing use of the common surname.

3.2 the division of property of the spouses

The matrimonial property regime is dissolved on divorce. When the matrimonial property regime is dissolved, it is settled in accordance with the principles set out under Section 150 of the Civil Code. The matrimonial property regime may be settled by: (a) agreement; (b) a judicial decision; (c) lapse of time.

3.3 the minor children of the spouses

In a decision on the divorce of parents of a minor, the court specifies the parents' responsibilities towards the child in the period after the divorce, in particular by determining which parent will be granted custody of the child and will represent the child and administer his/her assets. The decision on parental responsibilities may be replaced by an agreement between the parents.

If the parents do not reach an agreement on contact rights in respect of the child, the court will also specify those rights in the divorce decision. Where necessary in the interest of the child, the court may restrict or prohibit a parent's contact with the child.

In addition, the court specifies how the parent who has not been granted custody of the child is to contribute towards the child's maintenance, or approves the parents' agreement on the amount of maintenance.

3.4 the obligation to pay maintenance to the other spouse?

A divorced spouse who is unable to provide for himself/herself may demand from the former spouse a contribution towards essential maintenance according to the latter's ability and capacity. If the spouses fail to agree, the decision regarding such maintenance contribution is to be made by the court upon a petition lodged by either of them.

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

Slovak national law does not provide for legal separation.

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?

Besides divorce, marriage can also be declared invalid by a judicial decision. Such marriage is deemed not to have been concluded from the beginning (*matrimonium nullum*). In addition, the court may declare that the marriage never existed (*non matrimonium*).

8 What are the conditions for marriage annulment?

a. Circumstances giving rise to marriage annulment are as follows:

- existence of another marriage;
- family relationship between ascendants and descendants and between brothers and sisters, including a family relationship established by adoption;
- insufficient age, in the case of a minor over 16 but under 18 years of age;
- mental disorder resulting in the restriction of legal capacity;
- a marriage declaration that was not made freely, seriously, explicitly and unambiguously.

Where a marriage is concluded despite the existence of any of the above disqualifying circumstances, it is deemed to have come into existence (existing marriage) until a judicial decision annulling it becomes final.

b. Marriage does not come into existence if the marriage declaration was made:

- under coercion;
- by a minor under 16 years of age;
- before a registry office not authorised to receive it, except for the cases specified in Section 4(2) and (3), or before a mayor or a member of a municipal council not authorised to officiate;
- before a church authority or a religious community not registered in accordance with the relevant special legislation, or before a person not authorised to pursue the activities of a clergyman of a registered church or religious community;
- abroad before an authority not designed to do so;
- by a proxy without a valid authorisation, or if the authorisation had been withdrawn in accordance with this Act.

9 What are the legal consequences of marriage annulment?

Marriage that has been declared invalid by a judicial decision is deemed not to have been concluded.

The rights and duties of spouses in respect of their common child, and their property relations following a judicial decision on marriage annulment are governed by the same provisions that apply to divorced parents. Following a judicial decision on marriage annulment, the declaration made by the spouses concerning their common surname also ceases to be valid and each spouse has to reassume his/her former surname.

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

Only a court can declare marriage to be dissolved. Associated issues may be resolved by applying Mediation Act No 420/2004.

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?

Petitions for divorce, marriage annulment or a declaration that the marriage never existed are lodged with a district court.

The court having territorial jurisdiction is the court in whose area of jurisdiction the spouses had their latest common residence, if at least one of them resides in the area of jurisdiction of the court. Otherwise, the general court of the respondent has jurisdiction. If jurisdiction cannot be determined in this way, the general court of the petitioner has jurisdiction.

The petition must fulfil the formalities set out in Section 127 of Act No 160/2015, the Code of Civil Dispute Procedure (Civilný sporový poriadok) and in Sections 25 and 26 of Act No 161/2015, the Code of Uncontested Civil Procedure (Civilný mimosporový poriadok).

The petition must state to which court it is addressed, who the petitioner is, which matter it concerns and the purpose sought, and it must be signed. In addition, the petition must state the names of the parties, their representatives (if they have one), a faithful and full description of the key facts and a list of the evidence the petitioner intends to rely on; the petition should also make it clear what the petitioner is seeking. The petitioner must attach to the petition the documentary evidence on which he/she relies.

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

The provision of legal aid is governed by Act No 327/2005 on the provision of legal aid to people in financial need.

A court fee has to be paid for divorce proceedings. Any party to the proceedings may request exemption from payment of the court fees.

Upon a petition, the court may exempt the party, in whole or in part, from payment of the court fees, if justified by the party's circumstances and if the case does not involve arbitrary or manifestly unsuccessful assertion or protection of a right. Unless the court decides otherwise, the exemption applies to the entire procedure and has retroactive effect; however, fees paid before the decision on exemption was issued are not refunded.

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

An appeal may be lodged against such a judicial decision within 15 days of the service of the decision.

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?

A petition must be lodged for the recognition of a decision. The court with jurisdiction is the Regional Court in Bratislava.

Final decisions in matrimonial matters issued in other Member States (except Denmark) after 1 May 2004 are recognised pursuant to 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, repealing Regulation (EC) No 1347/2000. Decisions are recognised without any special procedure being required; in particular no special procedure for amending the entry in the records of the registry office is required. However, the interested party may apply for a special decision to be issued on the recognition of a foreign decision in matrimonial matters. The Regional Court in Bratislava has jurisdiction regarding the recognition of foreign decisions.

As for decisions issued in Denmark or decisions issued in other Member States before 1 May 2004, it is necessary to lodge a petition for the recognition of a foreign final decision in matrimonial matters, if at least one of the parties is a Slovak national. Such a procedure is initiated by a petition, which may be lodged by a person designated as a party in the foreign decision. The Regional Court in Bratislava has jurisdiction regarding the recognition of foreign decisions.

15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?

A decision on the recognition or non-recognition of a foreign decision may be appealed. The appeal must be lodged with the Regional Court in Bratislava and is decided on by the Supreme Court.

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 dissolution of marriage by divorce is governed by the applicable law of the State of which the spouses were nationals when the procedure was initiated. If the spouses are of different nationalities, the dissolution of marriage by divorce is governed by Slovak law.

Last update: 20/08/2019

Divorce - Finland

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1 What are the conditions for obtaining a divorce?

Divorce petitions are handled by district courts (käräjäoikeus). Either spouse or both spouses together can file for divorce.

Divorce can be granted after a six-month cooling-off period. No cooling-off period is required if the spouses have lived separately for at least two years before filing for divorce.

2 What are the grounds for divorce?

There is no need to list reasons for wanting a divorce in the petition. District courts do not examine the personal relations of the spouses or the reasons for filing for divorce. See question 1.

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

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

The spouses keep their married surname upon divorce. If a spouse’s surname has changed as a result of marriage, he or she can apply for it to be changed after the divorce.

3.2 the division of property of the spouses

The granting of a divorce and the division of property are separate matters. Once a marriage is dissolved, the spouses can agree on the division of property between themselves or ask a court to appoint an executor. The general rule is that all assets of the spouses are divided equally. The general rule can be deviated from on the basis of a prenuptial agreement or similar. The division can also be adjusted if the outcome would be considered unreasonable otherwise. Marital property can be divided as soon as the cooling-off period begins.

3.3 the minor children of the spouses

Matters such as custody, living arrangements, maintenance and visiting rights regarding any minor children that the spouses have together can be settled in conjunction with a divorce petition. See 'Parental responsibility - Finland' and 'Maintenance claims – Finland'.

3.4 the obligation to pay maintenance to the other spouse?

When granting a divorce, the court can, upon application, order one spouse to pay maintenance to the other if this is considered to be reasonable. (See 'Maintenance claims - Finland'). However, this happens rarely.

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

The Finnish legal system does not recognise legal separation. In practice, legal separation means that the spouses live separately, at different addresses.

5 What are the conditions for legal separation?

See question 4.

6 What are the legal consequences of legal separation?

See question 4.

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

There are no provisions on marriage annulment in Finnish legislation. However, the public prosecutor must bring a case for the spouses to be granted a divorce immediately should it come to light that the spouses are close relatives or that one of the spouses was already legally married at the time of entering into the marriage.

8 What are the conditions for marriage annulment?

See question 7.

9 What are the legal consequences of marriage annulment?

See question 7.

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

Divorce petitions must always be filed with a district court. However, the law stipulates that spouses must always strive to settle any family disputes first by negotiating and coming to a mutual agreement; to do so, spouses can request assistance from the family mediators of their local social services board (sosiaalilautakunta) District courts also have a duty to inform spouses that a family mediation service is available. Mediators try to help spouses to reach a mutual understanding on how family disputes can be resolved in the most satisfactory way for all family members. Mediators can also assist spouses in drawing up agreements and in initiating other procedures for resolving a dispute. Mediators have a special duty to consider the interests of any minor children in the family. Mediation is always voluntary.

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?

Both spouses can file for divorce jointly, or one of the spouses can file individually. To file for divorce, a written divorce petition must be submitted to a district court in a locality where either of the spouses has his or her place of residence. Divorce petitions can be filed in person or via an authorised representative. Petitions can also be sent to the district court by post, fax or e-mail.

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

Legal aid is available for divorce cases. More information on legal aid in Finland is available here.

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

Judgments of divorce can be appealed in a Court of Appeal (hovioikeus).

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?

As a rule, the recognition of a divorce judgment issued in another Member State is based on Council Regulation (EC) No 2201 /2003.

Under the Regulation, a judgment given in a Member State is recognised in the other Member States without any special procedure being required. However, any interested party may apply for a decision that the judgment be or not be recognised.

Applications regarding the recognition of judgments are handled by district courts.

However, in the case of divorces filed in Nordic countries, the Nordic Marriage Convention of 1931 is applied. In terms of European Union Member States, parties to this Convention include Finland, Sweden and Denmark. A divorce judgment given in accordance with the Nordic Marriage Convention is valid in all Nordic countries without any separate confirmation.

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 is the same as that described in question 14.

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?

Finnish law is applied to all divorce cases that are filed in Finland.

Last update: 27/01/2020

Divorce - Sweden

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1 What are the conditions for obtaining a divorce?

One of the spouses or both of them together may apply for a divorce. The divorce must be preceded by a six-month period for reconsideration in certain circumstances. This is the case:

- if both spouses request it;
- if one of the spouses lives permanently with a child of theirs who is under the age of 16 and is in that spouse's custody; or
- if only one of the spouses wishes for the marriage to be dissolved.

In certain exceptional cases, however, couples covered by the above points also have the right to divorce without a period for reconsideration. This is the case if the couple has been living apart for two years. One spouse also has the right to a divorce without first having a period for reconsideration if it is found to be likely that the spouse was forced to enter into the marriage, or if the spouse entered into the marriage before the age of 18 without the proper official licence. If the marriage was entered into even though the spouses are closely related to one another, or if the marriage was entered into even though one of the spouses was already married or a partner in a registered partnership and the previous marriage or partnership had not been dissolved, each of the spouses has the right to a divorce without first having a period for reconsideration.

2 What are the grounds for divorce?

A spouse always has the right to obtain a decree for divorce and does not need to rely on any special grounds for such a decree.

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

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

If one of the spouses took the other spouse's surname, that spouse has the right to revert to the surname that he or she last used before the marriage.

3.2 the division of property of the spouses

After a divorce, the couple's property is to be distributed between them. The general principle is that the property is shared equally. The reason for dissolution of the marriage is of no importance for the division of the couple's property.

3.3 the minor children of the spouses

After a divorce, the spouses automatically continue to have joint custody of their children. Joint custody may, however, be terminated by a court:

- on the court's own initiative, if the court finds that joint custody is manifestly incompatible with the best interests of the child; or
- at the request of one of the spouses, if the court finds that it is in the best interests of the child for one of the spouses to have sole custody.

If both spouses request that joint custody be terminated, the court is obliged to comply with the request.

Both parents are responsible for the maintenance of their child. The parent who does not live with the child fulfils the maintenance obligation by paying maintenance contributions for the child to the other parent.

3.4 the obligation to pay maintenance to the other spouse?

After the divorce, each spouse is responsible for providing for themselves. Exceptions only apply in certain special situations, e.g. where one spouse has difficulty providing for themselves after a long marriage has been dissolved or if there are other special grounds.

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

There are no rules governing legal separation in Swedish law.

5 What are the conditions for legal separation?

There are no rules governing legal separation in Swedish law.

6 What are the legal consequences of legal separation?

There are no rules governing legal separation in Swedish law.

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

There are no rules governing marriage annulment in Swedish law. A marriage can be dissolved either if one of the spouses dies or if a court issues a decree for divorce.

8 What are the conditions for marriage annulment?

There are no rules governing marriage annulment in Swedish law.

9 What are the legal consequences of marriage annulment?

There are no rules governing marriage annulment in Swedish law.

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

Only the court can decide to dissolve a marriage by divorce. There are, however, alternative options for resolving the various issues that may arise in connection with a divorce.

The spouses may obtain what is known as ‘family mediation’, which aims to deal with cohabitation conflict. In this way, couples can seek help with resolving problems and conflict so that they can continue their marriage. If there is already a de facto separation, family mediation can instead help to alleviate the conflict and make it possible for the adults to work together in their parental role. Family mediation is provided by the public sector (local authorities), church bodies, and other individuals. Local authorities are responsible for ensuring that family mediation is offered to anyone who requests it.

The spouses also have the right to what are known as ‘cooperation discussions’. These discussions are not geared to the relationship between the adults, but to the children. Cooperation discussions seek primarily to reach agreement on issues relating to custody of the children, where the children will live, and access to the children. Cooperation discussions are supervised by experts. Local authorities are responsible for ensuring that cooperation discussions are offered to anyone who requests them.

If the spouses wish to make a change with regard to the custody of their children, where the children will live, or access to their children, this can be done by concluding an agreement on the matter. Such an agreement must be approved by the local authority’ s social welfare committee.

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?

There are no rules governing legal separation or marriage annulment in Swedish law.

The first condition for filing a petition for divorce with a Swedish court is that the Swedish court must have the jurisdiction to hear the case. This naturally applies where both spouses are Swedish nationals and live in Sweden. However, Swedish courts also have jurisdiction in the following cases:

- where both spouses are Swedish nationals;

- where the petitioner is a Swedish national and is resident in Sweden or has previously been resident in Sweden since he or she reached the age of 18;
- where the petitioner is not a Swedish national, but has been resident in Sweden for at least one year; or
- if the respondent is resident in Sweden.

If it is demonstrated that a Swedish court has jurisdiction to hear the divorce proceedings, the case is heard by the district court ('tingsrätt') in Sweden within the circuit of which one of the spouses is resident. If neither of them is resident in Sweden, the case is heard by Stockholm District Court ('Stockholms tingsrätt').

There are two different ways of bringing a divorce case to the district court. If both spouses wish to be divorced, they may file a joint petition. However, if only one of them wishes to obtain a divorce, the spouse who wishes to be divorced must submit a summons application to the district court. In both cases, copies of both spouses' birth certificates must be enclosed. These can be requested from the Swedish Tax Agency ('Skatteverket').

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

In a case that concerns divorce and related issues, legal aid may only be granted where there are *special grounds*.

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

There are no rules governing legal separation or marriage annulment in Swedish law.

Yes, an appeal may be lodged against a decree for 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?

According to Council Regulation (EC) No 2201/2003 [PLEASE PROVIDE LINK] concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347 /2000 (the Brussels II Regulation), a judgment given in a Member State shall be recognised in the other Member States without any special procedure being required. There are, however, certain grounds for non-recognition.

The main rule in the Brussels II Regulation is therefore that a decree for divorce or legal separation or marriage annulment that has been issued in any other Member State must automatically be treated in the same way and have the same legal effects as an equivalent Swedish decision. Even though the regulation is therefore based on the principle of automatic recognition, it is still possible for an interested party to obtain a declaration that the foreign judgment is or is not recognised in Sweden. Such an application is made to the Svea Court of Appeal ('Svea hovrätt'), which at this stage makes a decision on the application without consulting the opposite party.

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?

An application must be made to the Svea Court of Appeal ('Svea hovrätt') in order to use the opportunity provided for in the Brussels II Regulation for obtaining a declaration that the foreign judgment is recognised in Sweden (please see question 14 above) [PLEASE PROVIDE LINK TO QUESTION 14 ABOVE]. If the Svea Court of Appeal has declared in such proceedings that the judgment in question is to be recognised in Sweden, it is possible for the other party to apply for a review of that decision. An application for such a review is submitted to the Svea Court of Appeal, which will hear both parties in the remainder of the proceedings. An appeal can then be lodged with the Supreme Court ('Högsta domstolen') against the decision on the application for review by the Svea Court of Appeal.

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?

A petition for divorce that is heard by a Swedish court must always be examined under Swedish law (the *lex fori principle*).

In certain cases, however, *regard must also be had* to the provisions of foreign law. This applies in the following cases:

- Where both spouses are foreign nationals and neither has resided in Sweden for at least one year, a decree for divorce may not be issued against the wishes of one of the spouses if there are no grounds to do so under the law in the State of which one or both of the spouses is a national.

- If both spouses are foreign nationals and one of them claims that there are no grounds for dissolution of the marriage under the law of the State of which he or she is a national, a decree for divorce may not be issued if, having regard to the interests of the spouse or the children of both spouses, there are particular grounds for not doing so.

It must be stressed that, even in both the abovementioned cases, it is merely a matter of applying Swedish law, but with some degree of protection to prevent a decree for divorce being issued under Swedish law in cases where the spouses have a tenuous connection with Sweden and where there are serious grounds for not issuing such a decree.

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Divorce - England and Wales

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1 What are the conditions for obtaining a divorce?

A written application (called a petition) must be made to the court by one of the spouses. Applications for divorce are dealt with by the Family Court and spouses have to apply to that court for their divorce. The applicant has to prove that the marriage has broken down irretrievably and has to provide evidence of one of the five facts listed below.

No application for divorce can be made until at least one year after the date of the marriage, although an application for annulment can be made at any time after the marriage. However, evidence from the period within one year of the date of the marriage can be used to prove that the marriage has broken down irretrievably.

Since March 2014 same sex couples have been able to marry in England and Wales. The same conditions apply to divorce whether the married couple are opposite sex or same sex.

Since 2005 it has been possible for same–sex couples in the UK to legally formalise their relationship by entering into a civil partnership. It is open to parties to such a partnership to seek to dissolve it or to apply for a separation order when their relationship breaks down. The process is analogous to divorce, judicial separation and annulment of marriages as described below. More information can be found on the Government website.

In a same sex marriage the couple are, if two men, husband and husband, or if two women, wife and wife.

2 What are the grounds for divorce?

The sole ground for divorce is the irretrievable breakdown of the marriage. In order to show that the marriage has broken down irretrievably it is necessary to produce evidence of one or more marital 'facts'.

- that the other spouse has committed adultery with a person of the opposite sex and that the applicant finds it intolerable to live with him or her;
- unreasonable behaviour, which means that the other spouse has behaved in such a way that the applicant cannot reasonably be expected to continue to live with him or her;
- desertion, which means that the other spouse has left the applicant for a period of two years before the time of the application for divorce;
- separation of the parties for a period of two years before the application for divorce (with the consent of the other spouse);
- separation for a period of five years before the application for divorce (without the consent of the other spouse).

The court is required to inquire as far as is possible into the facts alleged by the applicant (petitioner) and into any facts alleged by the other spouse (respondent). If the court is satisfied on the evidence that the marriage has broken down irretrievably, a decree of divorce will be granted by the Judge of the Family Court.

[The fact of adultery cannot be used as evidence for civil partnership dissolution]

If the court is satisfied that the marriage has broken down irretrievably, it will first issue a 'decree nisi' (interim divorce order). After a period of six weeks an application can be made by the party that applied to the court for the divorce, to obtain the 'decree absolute' (final divorce order). Other than in exceptional circumstances, there is no time limit on an application for a decree to be made absolute (final).

However, if the application for the decree absolute is lodged more than 12 months after the decree nisi, the applicant will be required to lodge with it a written explanation:

- giving reasons for the delay;
- stating whether they and their spouse have lived with each other since the decree nisi and, if so, between what dates; and
- stating whether a wife, which for same sex married couples will include either female spouse, has, or is believed to have, given birth to any child since the decree nisi and, if so, whether or not it is alleged that the child is or may be a child of the family.

The Judge of the Family Court can require the applicant to file a sworn statement verifying the explanation the applicant has given and can make such order on the application as the Judge of the Family Court thinks appropriate.

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

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

The parties are free to remarry (or enter into a civil partnership) should they wish to do so. They may choose to keep their married surname or revert to a pre-marriage or partnership name as they wish.

3.2 the division of property of the spouses

The court, on granting a decree of divorce, nullity or judicial separation, or afterwards, can order that property should be transferred from one spouse to the other, or to a child of the family, or to another person for the benefit of a child of the family.

Courts also have the power to order the making of periodical payments, to order the sale of property, to make orders in respect of pensions, to order single lump sum payments and other orders. They have discretion as to what orders they make in any particular case, to meet the demands of that case according to its particular circumstances.

In exercising their discretion courts must consider the welfare of any child of the family under the age of 18 plus the following issues:

- the income, earning capacity, property and other financial resources which each of the spouses has or is likely to have in the foreseeable future;
- the contribution, both financial and other, made by each of the spouses to looking after the home and children is also considered
- the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future;
- the standard of living enjoyed by the family before the breakdown of the marriage;
- the age of each party and the duration of the marriage;
- any physical or mental disability suffered by either party;
- the contributions which each party has made, or is likely to make in the future to the welfare of the family;
- the conduct of the spouses, if it is such that it would be unfair to disregard it when considering how property should be divided;
- the value to each of the spouses of any benefit which that party will lose the chance of acquiring because of the divorce or annulment.

3.3 the minor children of the spouses

Following divorce, both parents will continue to have parental responsibility for the children of the marriage. Each parent will continue to have parental responsibility for any children of other relationships for whom they have parental responsibility at the time of the divorce. Both parents will have a continuing duty to maintain minor children who have lived as children of the family.

3.4 the obligation to pay maintenance to the other spouse?

The duty to maintain the other spouse will in most cases cease on the divorce being finalised (upon the granting of the divorce absolute), except in cases where there has been an order for spousal maintenance as part of the divorce proceedings. Moreover, any duty that relates to an existing court order (for instance on spousal maintenance) will remain active, and it may be possible to vary an existing order at a future date should there be significant changes to the grounds upon which the original court order is based.

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

In England and Wales, ‘legal separation’ is known as ‘Judicial Separation’. Where the court gives such an order there will no longer be any expectation on the spouse who asked for the order to continue to live with their husband or wife. However, he or she will not be able to remarry. Effectively judicial separation is an option for spouses whose marriage has broken down but who do not wish to remarry. An applicant for judicial separation is not required to prove that their marriage has irretrievably broken down. It is possible to apply for an order for divorce after an order for judicial separation has been given.

Civil partners are able to apply for a separation order, which has exactly the same effect.

5 What are the conditions for legal separation?

The applicant has to provide evidence of one or more of the facts required to prove the breakdown of the marriage, and, unlike those who seek a divorce, does not need to wait for a year to commence from the date of the marriage.

6 What are the legal consequences of legal separation?

If a party to a judicial separation dies without having made a will his or her property will be distributed under the intestacy rules and a decree for judicial separation has the same effect as a divorce. Therefore neither spouse has thereafter any right to the property of the intestate party. If a party to a judicial separation dies having made a will, judicial separation has no effect on entitlement under that will where, for instance, the surviving judicially separated party is nominated as a beneficiary under that will.

The same provisions for the division of property as are available on divorce are also available to the court with a judicial separation.

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

There are two forms of marriage annulment. The marriage can either be declared "void", which means that the marriage was never valid and never existed. Under different circumstances the marriage can be "voidable", which means that one of the spouses can apply for the marriage to be declared invalid. It is possible for the marriage to continue if both spouses are content.

8 What are the conditions for marriage annulment?

A marriage is void and invalid if:

- It does not fulfil the terms of the Marriage Acts 1949 to 1986 in that:
  - The parties are related too closely.
  - Either of the parties is under the age of sixteen.
  - The proper formalities for marriage have not been completed.
- At the time of the marriage one of the parties was already legally married or was a civil partner.
- In the case of a polygamous marriage completed outside England and Wales, where one of the spouses was domiciled in England and Wales at the time of the marriage.

A marriage is voidable in the following circumstances:

- That the marriage has not been consummated because of the incapacity of one of the spouses to be able to consummate it. This applies to opposite sex marriages only.
- That the marriage has not been consummated because of the wilful refusal of the respondent to consummate it. This applies to opposite sex marriages only.
- That one of the spouses did not consent to the marriage properly, because they were under pressure and were forced to agree, were mistaken as to the legal effects of the marriage, or were mentally incapable of appreciating the effects of the decision to marry.
- That at the time of the marriage one of the spouses was suffering from a mental illness of such a type as to make them unfit for marriage or from venereal disease in a communicable form and the petitioner was unaware of this fact at the time.
- That at the time of the marriage the respondent was pregnant by someone other than the petitioner and the petitioner was unaware of this fact at the time.
- That an interim Gender Recognition Certificate has, after the time of marriage, been issued to either party.
- That the respondent is a person whose gender at the time of marriage had become the acquired gender under the Gender Recognition Act 2004 and the petitioner was unaware of this fact at the time.

9 What are the legal consequences of marriage annulment?

If a marriage is void it is completely invalid and is treated as if it had never existed. This does not affect the status of any children.

If a marriage is voidable it is treated as being invalid from the date the order of annulment of the marriage is made absolute. The marriage is treated as being in existence up until that time.

With both void and voidable marriages the court can make arrangements for the division of property in the same way as in the case of a divorce.

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

The Government encourages the use of family mediation to resolve disputes in appropriate cases. Mediation can be appropriate for disputes relating to children and also for disputes concerning property and finance. In some areas Children and Family Court Advisory and Support Service CAFCASS (England) or CAFCASS Cymru (Wales) officers provide facilities for resolution of disputes regarding children at court. The court may adjourn a case for an attempt to be made to solve the dispute in this way.

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?

The petition application may be made at any location of the Family Court and must reflect whether the application is for a divorce, judicial separation or annulment. Details of the courts and the necessary forms can be found on the websites: Ministry of Justice, Court and Tribunal finder and the government "Get a divorce" page.

A fee will usually be payable when making an application, but there are exemptions for those receiving certian state benefits or who can show that paying the fee would cause undue hardship. Further details of Court and Tribual fees can be found here.

A party should use petition form (D8) and must send in:

- 3 copies of the petition form
- An extra copy for any named person involved in adultery
- A statement of arrangements in respect of any children under 18.
- A marriage certificate (not a photocopy) accompanied with a certified translation if appropriate.
- A fee exemption form.

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

Legal aid is not normally available for divorce or disputes relating to children and disputes relating to property unless there is domestic violence, There will also be a means and merits test. More information can be found on the Government website.

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

Where an interim order has been given, it is possible for one of the spouses to apply to the court to show evidence why it should not be made final. The court may either set it aside, order that it should be made final, order further enquiries to be made or deal with the case in another way as it thinks best.

Following a final order, save in exceptional circumstances, no further appeal is possible.

It is not possible to appeal against an order for judicial separation but it may be possible to override it where both parties agree to do so.

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?

European Union Regulation EC No 2201/2003 states that a decision leading to divorce, legal separation (judicial separation) or marriage annulment given in one Member State can be recognised in other Member States. The documents required can be obtained from the court which made the order and should be submitted to the High Court.

This Regulation does not affect issues of fault, property consequences of the marriage, maintenance or any other ancillary matters. There must be a real link between the party concerned and the Member State exercising jurisdiction.

Recognition may be refused if the decision is contrary to public policy, if given in default of appearance, if the respondent was not served with relevant documents in sufficient time, or if it is irreconcilable with a judgment in proceedings between the same parties in England and Wales, or if it is irreconcilable with an earlier judgment in another country, provided the earlier judgment can be recognised in England and Wales.

Any interested party may apply for a decision that the judgment be or not be recognised. The High Court may stay the proceedings if an appeal has been lodged against the judgment for which recognition is sought.

If the decision cannot be recognised under this Regulation the arrangements for the recognition of divorces obtained overseas are in the Family Law Act 1986. Section 46 of which says:

- The validity of an overseas divorce, annulment or legal separation obtained by means of proceedings shall be recognised if:
    - the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; and

- at the relevant date (that is at the date when the proceedings to obtain the divorce began) either party to the marriage
  - was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
  - was domiciled in that country; or
  - was a national of that country.

- The validity of an overseas divorce, annulment or judicial separation obtained otherwise than by means of proceedings shall be recognised if -
  - the divorce, annulment or judicial separation is effective under the law of the country in which it was obtained;
  - at the relevant date (that is the date when the divorce was obtained) -
    - each party to the marriage was domiciled in that country; or
    - either party to the marriage was domiciled in that country and the other party was domiciled in a country under whose law the divorce, annulment or legal separation is recognised as valid; and

- Neither party to the marriage was habitually resident in the United Kingdom throughout the period of one year immediately preceding that date.

Any person can apply to the court for a declaration that a divorce, annulment or judicial separation obtained outside England and Wales should be recognised in England and Wales. The court can deal with the application provided that the applicant

- is domiciled in England and Wales on the date when the proceedings are begun; or
- was habitually resident in England and Wales throughout the period of one year ending with that date.

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?

Subject to the conditions outlined above any person can apply to the Family Court for a declaration that a divorce, annulment or judicial separation should not be recognised in England and Wales.

Applications for recognition under the EC Regulation must be made to the High Court. The applicant must tell the respondent about the application giving him/her the opportunity to oppose the recognition of the decision by sending the papers, unless the court decides that the respondent has accepted the judgment unequivocally.

The Regulation states that any interested party may apply for a decision that the judgment be or not be recognised. The High Court may stay the proceedings if an appeal has been lodged against the judgment for which recognition is sought in the Member State where the judgment was made.

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 courts in England and Wales will always apply the law of England and Wales to cases brought before them. The courts have jurisdiction to deal with a divorce, even if the marriage took place abroad, if either of the parties to the marriage:

- is domiciled in England and Wales on the date when the proceedings are begun; or
- was habitually resident in England and Wales throughout the period of one year ending with that date.

Related links

Divorce, separation and relationship breakdown

Legal Aid

Last update: 20/02/2019

Divorce - Northern Ireland

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1 What are the conditions for obtaining a divorce?

In Northern Ireland the law relating to divorce is set out in the Matrimonial Causes (Northern Ireland) Order 1978 (“the 1978 Order”).

A husband or wife can obtain a divorce by presenting a written application (called a petition) to the court. The person applying for the divorce is called the petitioner and the other party is called the respondent. The petitioner must prove that the marriage has broken down irretrievably and provide evidence of one of five facts (see question 2 below). A divorce petition cannot be presented within the first two years of the marriage. However, evidence from that two year period can be used to prove that the marriage has broken down irretrievably.

2 What are the grounds for divorce?

The sole ground for divorce is the irretrievable breakdown of the marriage. In general, in order to show that the marriage has broken down irretrievably the petitioner must establish one or more of the following facts:

that the respondent has committed adultery. This fact cannot be relied on if, after the petitioner became aware of the adultery, s/he continues to live with the respondent for a period exceeding, or periods together exceeding, 6 months;

- that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to continue to live with him or her. This fact cannot be relied on if the parties have continued to live together for 6 months or more after the date of the last incident of unreasonable behaviour;
- that the respondent has deserted the applicant for a continuous period of two years immediately before the presentation of the petition;
- that the parties have lived apart for a continuous period of two years immediately before the presentation of the petition and the respondent consents to a divorce being granted;
- that the parties have lived apart for a continuous period of five years immediately before the presentation of the petition. The respondent's consent is not required and s/he may oppose the divorce on the ground that it will result in grave financial or other hardship.

In considering whether the respondent has deserted the petitioner or whether the parties have lived apart for a continuous period, no account will be taken of any periods (not exceeding 6 months in total) in which the parties have resumed living together. However, any such periods will not count as part of the period of desertion or separation.

If the court is satisfied on the evidence that the marriage has broken down irretrievably, it will grant a decree nisi (the court order leading to a divorce).

The divorce process is completed when the decree nisi is made absolute. An application to make the decree nisi absolute can be made six weeks and one day after the date of the decree nisi. If an application has not been made within 12 months of the decree nisi, the petitioner may be asked to file a sworn statement (an affidavit) accounting for the delay. In certain circumstances, the respondent may apply for the decree to be made absolute. The parties cannot re-marry until the decree absolute has been granted.

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

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

There are no particular rules regulating post-divorce relations. However, the parties will no longer be expected to live together and, if the wife has adopted her husband's surname, she may decide to revert to her maiden name.

3.2 the division of property of the spouses

The 1978 Order contains far-reaching provisions which allow the court to deal with the parties' property and regulate their financial arrangements, both in relation to each other or the children of the family.

The court may, on granting a decree of divorce, or afterwards, make one or more of the following:

- a periodical payments order;
- a lump sum order;
- a property adjustment order;
- a pension sharing order or an order earmarking pension funds.

Before making an order the court will have regard to all the circumstances of the case. However, its first consideration will be the welfare of any child of the family who has not attained the age of 18.

3.3 the minor children of the spouses

Following divorce, both parents will continue to have parental responsibility for the children of the marriage and will have a continuing duty to maintain minor children who have lived as children of the family.

If there is a minor child (under 16) or a child over 16 who is in continuing education or undergoing training for a trade, profession or vocation, the petitioner must complete a form (Form M4) setting out the arrangements for that child. The form encourages each party to try and reach agreement on the proposals for the child's future. However, if agreement cannot be reached, the respondent will have an opportunity to comment on the proposed arrangements and the court may exercise its powers under the Children (Northern Ireland) Order 1995 (for example to direct where the child should live).

3.4 the obligation to pay maintenance to the other spouse?

The duty to maintain the other spouse will cease on divorce, except to the extent that the court has made an order for payment or division of property.

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

A petition for judicial separation may be presented if a marriage has broken down, but, for one reason or another, the petitioner does not want to obtain a divorce. If the petitioner obtains a decree of judicial separation s/he is no longer required to live with his /her spouse. However, s/he will not be able to remarry. It is possible to apply for a divorce after a decree of judicial separation has been granted.

5 What are the conditions for legal separation?

On presenting a decree for judicial separation, there is no need to show that the marriage has broken down irretrievably.

6 What are the legal consequences of legal separation?

The spouses will no longer be expected to live together. If a decree of judicial separation is in force and one of the spouses dies without having made a will (intestate), his/her property will be distributed as if the other spouse had already died and any benefits s /he would have received will be lost. The court's powers in relation to the division of property are generally the same on judicial separation as they are on divorce. However, the court cannot make a pension sharing order.

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

A decree of nullity is granted where the petitioner proves that the marriage is either void or voidable. A void marriage is one which should never have been celebrated and which is regarded as never having any legal status. A voidable marriage is recognised and continues until it is set aside.

8 What are the conditions for marriage annulment?

A marriage is void and invalid if one of the following facts is proved:

- the parties are too closely related;
- either of the parties is under the age of sixteen;
- the proper formalities for marriage have not been observed;
- at the time of the marriage one of the parties was already legally married;
- the parties are not of different sexes (one must be male and the other female);
- in the case of a polygamous marriage entered into outside Northern Ireland, one of the spouses was domiciled in Northern Ireland at the time of the marriage.

A marriage is voidable if one of the following facts is proved:

- it has not been consummated due to the incapacity of one of the spouses;
- one of the spouses has refused to consummate it;
- one of the spouses did not validly consent to the marriage (for example because s/he was under pressure and was forced to agree or was mistaken about the nature of the ceremony);
- that, at the time of the marriage, one of the spouses was suffering from a mental illness;
- that, at the time of the marriage, one of the spouses was suffering from venereal disease in a communicable form;
- that, at the time of the marriage the wife was pregnant by someone other than the husband.

If an application for a decree of nullity is grounded on one of the last four facts, it should be brought within three years of the marriage. However, the court may, in certain circumstances, grant leave to apply outside that period.

If the application is grounded on the last two facts, the petitioner will have to prove that, at the time of the marriage, s/he was unaware of the disease or pregnancy.

The court will not annul a voidable marriage if the respondent shows:

- that the petitioner knew that the marriage could be annulled, but behaved in such a way that the s/he reasonably believed that an annulment would not be sought; and

- it would be unjust.

9 What are the legal consequences of marriage annulment?

If a marriage is void it is completely invalid and is treated as if it had never existed. If a marriage is voidable it is treated as being invalid from the date on which the decree of nullity is made absolute.

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

There are a number of agencies within Northern Ireland that provide mediation services (for example Relate). Mediation can help you deal with the practicalities of divorce, including the financial arrangements and parenting issues.

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?

Petitions for divorce, judicial separation or nullity of marriage may be presented in either the High Court or a divorce county court. However, if a respondent files an answer to a petition presented in a county court, the matter will be transferred to the High Court.

The addresses and telephone numbers of the courts are available on the Northern Ireland Courts and Tribunals Service's website.

In order to commence proceedings, you must send a set of forms to the relevant court along with:

- your original marriage certificate (not a photocopy), accompanied with a certified translation and an affidavit of law if the marriage took place outside Northern Ireland;
- the original birth certificate of any child of the family under the age of 18 (this must be in long form, setting out all the details of the parents and child);
- a copy of any court order referred to in the petition;
- an original, plus two copies of any agreement (e.g. regarding finances) that is to be made an order of court; and
- the court fee (the court office will be able to advise on the current fee).

The court office will be able to provide copies of the Forms and explain how to complete them. However, court staff cannot give legal advice or tell you what to say.

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

You are entitled to apply for legal aid. However, the level of assistance provided (if any) is subject to a financial means assessment. Even if you are assessed as being financially eligible, you may have to make a financial contribution towards the costs. By agreement this contribution may be repaid to the Legal Services Agency over a period of time. In addition to the financial eligibility criteria you must also satisfy the merits test i.e. that there must be reasonable grounds for bringing, or defending, the proceedings and it must be reasonable in all the circumstances to do so.

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

A decree absolute for the dissolution or nullity of marriage cannot be appealed if the aggrieved party had the opportunity to appeal against the decree nisi, but did not do so. Also, orders made with the consent of the parties can only be appealed with leave of the court. The appeal court has a range of powers at its disposal and may confirm, reverse or vary the original decision.

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?

Council Regulation (EC) No 2201/2003 (“the Regulation”) provides that a decision on divorce, legal separation or marriage annulment given in one Member State shall be recognised in other Member States without any special procedure (other than that set out in the Regulation itself) being required.

Any interested party can apply for the decision to be recognised and the grounds for non-recognition are strictly confined (for example, recognition may be refused if the decision is contrary to public policy).

An application for recognition must be made to the High Court in Northern Ireland.

If the Regulation does not apply, the decision may be covered by section 46 of the Family Law Act 1986, which sets out the general conditions for the recognition of an overseas divorce, legal separation or annulment.

An application for recognition of an overseas divorce, separation or annulment must be made to the High Court. The application is made by way of petition, to which a copy of the decree of divorce, separation or annulment is annexed.

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?

As the High Court deals with recognition of a divorce, separation or annulment (under both the Regulation and the Family Law Act 1986), any objection to the proposed recognition would also be dealt with in that Court. The applicant must tell the respondent about the application giving him/her the opportunity to oppose the recognition of the decision by sending the papers to him/her, unless the court decides that the respondent has accepted the judgment unequivocally. The High Court may stay the proceedings if an appeal has been lodged against the judgment for which recognition is sought in the Member State where the judgment was made.

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?

If the court in Northern Ireland decides it has jurisdiction to deal with the divorce, separation or annulment, it will apply the law in Northern Ireland.

Related links

Northern Ireland Courts and Tribunals Service

- More information on legal aid is available from the Legal Services Agency Northern Ireland website.
- More information on mediation is available from the "Relate NI" website and "UK College of Family Mediators website.

Last update: 08/01/2019

Divorce - Scotland

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1 What are the conditions for obtaining a divorce?

In Scotland a divorce must be obtained through the court. The court may grant divorce only if it established that either:

- the marriage has broken down irretrievably, or
- an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the date of the marriage, been issued to either party to the marriage.

The irretrievable breakdown of the marriage can be established in one of the four ways listed in 2 below.

2 What are the grounds for divorce?

See the answer to 1 above. The irretrievable breakdown of the marriage can be established in the following ways:

- the defender's adultery
- the defender's unreasonable behaviour
- the non-cohabitation of the parties for one year, with the consent of the other spouse
- the non-cohabitation of the parties for two years.

A simplified procedure is available for certain cases that fall into the latter two categories.

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

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

The law does not make any special provisions for personal relations between former spouses. Regarding surnames, either spouse is able to preserve their own surname when they are married. Similarly, they are entitled to retain their spouses' surname after divorce.

3.2 the division of property of the spouses

The Family Law (Scotland) Act 1985 provides for the division of matrimonial property on divorce. Matrimonial property is generally all the property acquired by the spouses during the marriage, as well as property acquired for use as a matrimonial home - or furnishings for that home - before the marriage. Matrimonial property does not include other property acquired before the marriage, property acquired by a spouse after the spouses have ceased to cohabit, or property gifted or inherited from a third party during the marriage.

Either party to the marriage can apply to the court for an order under the 1985 Act. The court can make orders for the payment of a capital sum, the transfer of property, the payment of periodical allowances, orders relating to pensions and pension compensation, and other incidental orders.

When the court makes an order, it must be guided by the following principles:

- The net value of the matrimonial property should be shared fairly.

- The court will take account of economic advantage derived by either party from contributions by the other, and of economic disadvantage suffered by either party in the interests of the other party or of the family. Contributions can be non-financial, and specifically includes looking after the home or caring for the family as well as financial contributions.
- The economic burden of caring for a child of the marriage under 16 years should be shared fairly between the parties.
- A party who has been substantially financially dependent on the other party to the marriage should be awarded financial provision to enable him or her to adjust to the loss of the support that they received. This provision can last for up to three years.
- If a party to the divorce is likely to suffer serious financial hardship as a result of the divorce, reasonable provision should be made to relieve him or her of that hardship, over a reasonable period of time.

3.3 the minor children of the spouses

As stated in the answer to question 3.2 above the economic burden of caring for a child of the marriage should be shared equally. See also the EJN factsheet for Scotland on parental responsibility.

3.4 the obligation to pay maintenance to the other spouse?

See the EJN factsheet for Scotland on maintenance claims.

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

In Scotland, under the Divorce (Scotland) Act 1976, the court can award a decree of separation. This is referred to as judicial separation. It is available for spouses who oppose divorce but who wish to stop living together. The spouses will still be married, and must continue to aliment each other - that is, they must still financially provide for each other as any married couple must.

5 What are the conditions for legal separation?

The conditions for judicial separation are identical to those for divorce. See the answer to question 1 above.

6 What are the legal consequences of legal separation?

See the answer to question 4 above. Note that judicial separation does not prevent a separated spouse from applying for a divorce.

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

Although marriage annulment is not a legal term used in Scotland, if a Scottish marriage is void, any interested party may apply to the court for a declarator of nullity. A declarator of nullity means that the marriage is considered for most purposes not to have existed. A marriage in Scotland is void if:

- Either of the parties was under the age of 16 at the time of marriage.
- The parties are related too closely - the forbidden degrees of relationship are stated in Schedule 1 to the Marriage (Scotland) Act 1977.
- At least one of the parties was already married.
- At least one of the parties was incapable of consenting to the marriage.
- A party who was capable of consenting to the marriage did so only due to force or error.

A voidable marriage is one that subsists until one of the parties to the marriage applies for a declarator of nullity. The only ground for a voidable marriage is that one of the parties is permanently incurably impotent at the time the marriage was entered into.

8 What are the conditions for marriage annulment?

Any interested party can apply to the court for a declarator of nullity of a void marriage, and either spouse can apply to the court for a declarator of nullity of a voidable marriage. See 7 above for more on void and voidable marriages.

9 What are the legal consequences of marriage annulment?

A void marriage is treated as never having existed, so there may be no need to apply for a declarator. If the court makes a declarator of nullity, it may also make orders about financial provision between the parties to the void marriage. A voidable marriage is also treated as if it had never existed if the court makes a declarator of nullity.

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

Relationships Scotland, a voluntary organisation supported by funding from the Scottish Government, provides family mediation through a network of local services to couples who have decided to divorce or separate. Mediation is a voluntary process that can help couples come to agreed solutions to practical problems. Relationship counselling is also available for couples or individuals experiencing difficulties in their relationship. The provision of appropriate advice and support to families can help them avoid courses of action that may lead to litigation. Relationships Scotland's website can be found here: Relationships Scotland

Family mediation can also be accessed through Comprehensive Accredited Lawyer Mediators: Calm Scotland.

Other alternatives include collaborative law and arbitration: Flags Scotland

It is possible to register a legally binding minute of agreement in the Books of Council and Session held by Registers of Scotland: Registers of Scotland

The Scottish Government produces the Parenting Agreement for Scotland. This is a tool to help parents agree on what is best for their children when the relationship comes to an end: Scottish Government

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?

Divorce/Legal Separation

i. An application for divorce or legal separation can be made to either the Court of Session in Edinburgh, or one of the local Sheriff Courts. The Scottish Courts and Tribunals Service contains a map showing court locations and lists addresses and contact details.

ii. Which court to use is a matter of personal choice. In order to use the Court of Session, jurisdiction must be able to be established within Scotland. In order to use one of the Sheriff Courts, jurisdiction must be capable of being established within the Sheriffdom in which that court is geographically situated. Jurisdiction is founded on place of residence or domicile. Domicile can be established where a person considers his/her home to be in a particular place in Scotland and that he/she intends to live there permanently in the foreseeable future.

iii. There are two different types of divorce application in Scotland.

iv. The **Simplified Application** can be used in circumstances where grounds for divorce can be established on the basis of parties "non-cohabitation for a period of one year" and the defender consents to the application or where there has been "non-cohabitation for a period of two years" and the defender's consent cannot be obtained. It can only be used if:

- There are no other proceedings pending in any court which could have the effect of bringing the marriage to an end;
- There are no children of the marriage under the age of 16 years;
- There is no application by either party for an order for financial provisions on divorce; and,
- Neither party to the marriage suffers from mental disorder.

v. Applications for divorce using this simplified procedure are generally made by parties without the assistance of a solicitor. This sort of application has come to be known as the "Do it yourself divorce". Guidance notes and the forms are located within the Scottish Courts and Tribunals Service website.

vi. Application for the other (ordinary) type of divorce or for separation requires to be made either in the form of a Summons in the Court of Session or by Initial Writ in the Sheriff Court. Each Court has its own set of rules which set out the form such application should take. under "Rules and Practice" on the Scottish Courts and Tribunals Service website. Chapter 49 of the Court of Session rules and Chapter 33 of the Ordinary Cause Rules for the Sheriff Court cover family cases.

Annulment

vii. An action for declarator of nullity (annulment) of a marriage must be made to the court.

Formalities and Documentation

viii. In each court you will require to pay a fee for the initial application and possibly at later stages in the procedure. If you are in receipt of legal aid or certain state benefits you may be entitled to claim exemption from payment of fees. An application form for exemption can be found in the divorce section of the Scottish Courts and Tribunals Service .

ix. With an application for divorce, separation or nullity you will require to present a marriage certificate.

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

Advice and Assistance is available on divorce matters subject to the usual statutory financial tests. **Civil Legal Aid** is also available in divorce matters, except simplified divorces, subject to the three normal statutory tests of financial eligibility, reasonableness and probable cause. Contact the Scottish Legal Aid Board (SLAB) for further information about eligibility. Scottish Legal Aid Board

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

i. An order for divorce in a simplified application made in the Sheriff Court may be appealed against by letter within 14 days of the date of the order.

ii. An order for divorce in a simplified application made to the Court of Session may not be appealed, and to remove its force and effect, an action of reduction would need to be raised within that Court.

iii. An order for divorce in the other (ordinary) type of application or for separation made in the Sheriff Court may be appealed against within 14 days from the date of the order. Orders for divorce, separation or a declarator of nullity of marriage (annulment) made in the Court of Session may be reclaimed (appealed) within 21 days of the order.

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?

Recognition of divorces, annulments and legal separations generally comes within the scope of the Brussels IIa Regulation i.e. Council Regulation (EC) No 2201/2003 of 27 November 2003. Article 21 of this Regulation sets out the basis of recognition.

i. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

ii. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

iii. Any interested party may apply to the Court of Session for a decision that the judgment be or not be recognised.

iv. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue.

Scotland has now introduced same sex marriage. As there is uncertainty on whether Brussels IIa applies to same sex relationships, provision was made, similar to Brussels IIA, on the recognition of judgments from other Member States. This can be found in the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2014 (SSI 2014 No. 362).

If the order does not fall to be recognised under 'Brussels IIa' or similar provisions then Part II of the Family Law Act 1986 and, in particular, section 46 applies. The grounds for recognition under this section are as follows:

1. The validity of an overseas divorce, annulment or legal separation obtained by means of proceedings shall be recognised if-
    a. the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; and
    b. at the date of commencement of the proceedings either party to the marriage-
        i. was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
        ii. was domiciled in that country; or
        iii. was a national of that country.

3. The validity of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings shall be recognised if-
    a. the divorce, annulment or legal separation is effective under the law of the country in which it was obtained;
    b. at the date on which the divorce was obtained -
        i. each party to the marriage was domiciled in that country; or

ii. either party to the marriage was domiciled in that country and the other party was domiciled in a country under whose law the divorce, annulment or legal separation is recognised as valid; and

c. neither party to the marriage was habitually resident in the United Kingdom throughout the period of one year immediately preceding that date.

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?

Recognition of divorces, annulments and legal separations generally comes within the scope of the Brussels IIa Regulation i.e. Council Regulation (EC)) No 2201/2003 of 27 November 2003, for which see the answer to question 14 above.

A declarator of recognition or non-recognition may be sought from the Court of Session or the Sheriff Court.

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?

If the courts in Scotland decide they have jurisdiction then they will generally apply Scots Law.

Related links

Scottish Courts and Tribunals Service

Scottish Legal Aid Board

Scottish Government

Last update: 24/04/2019

Divorce - Gibraltar

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1 What are the conditions for obtaining a divorce?

A written application (called a petition) must be made to the court by either the husband or the wife. Applications for divorce are dealt with by the Supreme Court and spouses have to apply to that court for their divorce. The applicant has to prove that the marriage has broken down irretrievably and has to provide evidence of one of the five facts listed below.

No petition for divorce can be presented within **two years** from the date of the marriage. The only exceptions to this rule are where the petitioner has suffered exceptional hardship, or the respondent has exhibited exceptional depravity, or where the petitioner was under the age of 16 at the date of the marriage.

2 What are the grounds for divorce?

The sole ground for divorce is the irretrievable breakdown of the marriage. In order to show that the marriage has broken down irretrievably it is necessary to produce evidence of one or more marital ‘facts’.

- that the other spouse has committed adultery and that the applicant finds it intolerable to live with him or her;
- unreasonable behaviour, which means that the other spouse has behaved in such a way that the applicant cannot reasonably be expected to continue to live with him or her;
- desertion, which means that the other spouse has left the applicant for a period of two years before the time of the application for divorce;
- separation of the parties for a period of two years before the application for divorce (with the consent of the other spouse);
- separation for a period of five years before the application for divorce (without the consent of the other spouse).

The court is required to inquire as far as is possible into the facts alleged by the applicant (petitioner) and into any facts alleged by the other spouse (respondent). If the court is satisfied on the evidence that the marriage has broken down irretrievably, a decree of divorce will be granted by a Supreme Court judge, provided that the judge is satisfied with the arrangements regarding any children of the divorcing parties.

If the court is satisfied that the marriage has broken down irretrievably, it will first issue a ‘decree nisi’ (interim divorce order). After a period of six weeks an application can be made by the party that applied to the court for the divorce, to obtain the ‘decree absolute’ (final divorce order). Other than in exceptional circumstances, there is no time limit on an application for a decree to be made absolute (final).

However, if the application for the decree absolute is lodged more than 12 months after the decree nisi, the applicant will be required to lodge with it a written explanation:

- giving reasons for the delay;
- stating whether they and their spouse have lived with each other since the decree nisi and, if so, between what dates; and
- stating whether, being the wife, she has given birth to any child since the decree nisi and, if so, stating the relevant facts and whether or not it is alleged that the child is or may be a child of the husband.

The judge can require the applicant to file a sworn statement verifying the explanation she has given and can make such order on the application as the judge thinks appropriate.

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

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

The marriage is dissolved so there is no further duty to cohabit or continue any further personal relationship unless the parties wish. The parties are free to remarry should they wish to do so. They may choose to keep their married surname or revert to a pre-marriage name as they wish.

3.2 the division of property of the spouses

This is determined by the court on hearing the facts of each case. Even where there is agreement between the parties, the Court retains an overall power to approve or amend the same.

3.3 the minor children of the spouses

Either before or after the Supreme Court makes the final decree, it has the power to make provision for the custody, maintenance and education of the children of the marriage or even direct that proceedings be taken to place the children under the protection of the Court. The Supreme Court cannot make absolute a decree of divorce unless it is satisfied that satisfactory arrangements have been made for any children.

3.4 the obligation to pay maintenance to the other spouse?

On pronouncing a decree nisi for divorce or any time thereafter, the Supreme Court has power to order that the husband shall pay his wife, during their joint lives, such monthly or weekly sum for the maintenance and support of the wife as the Court may think reasonable. A wife's entitlement to maintenance ceases once she remarries but any maintenance for the child of a marriage remains unaffected by the remarriage of the mother.

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

Under Gibraltar law, legal separation is referred to as “judicial separation”. Upon such an order being made there will no longer be any expectation on the spouse who asked for the order to continue to live with their husband or wife. However, he or she will not be able to remarry. Effectively judicial separation is an option for spouses whose marriage has broken down but who do not wish to remarry. An applicant for judicial separation is not required to prove that their marriage has irretrievably broken down. It is possible to apply for an order for divorce after an order for judicial separation has been given.

5 What are the conditions for legal separation?

The applicant has to provide evidence of one or more of the facts required to prove the breakdown of the marriage, and, unlike those who seek a divorce, does not need to wait for three years from the date of the marriage to commence proceedings.

6 What are the legal consequences of legal separation?

If a party to a judicial separation dies without having made a will his or her property will be distributed under the intestacy rules and a decree for judicial separation has the same effect as a divorce. Therefore neither spouse has thereafter any right to the property of the intestate party. However, if a party to a judicial separation dies having made a will, judicial separation has no effect on entitlement under that will where, for instance, the surviving judicially separated party is nominated as a beneficiary under that will.

The same provisions for the division of property as are available on divorce are also available to the court with a judicial separation.

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

There are two forms of marriage annulment. The marriage can either be declared “void”, which means that the marriage was never valid and never existed. Under different circumstances the marriage can be “voidable”, which means that one of the spouses can apply for the marriage to be declared invalid. It is possible for the marriage to continue if both spouses are content.

8 What are the conditions for marriage annulment?

A marriage is void and invalid if:

- It does not fulfil the terms of the Marriage Act.
- At the time of the marriage one of the parties was already legally married.
- The parties are not of different sexes. One married partner must be male and the other female for a marriage to be valid.

- In the case of a polygamous marriage completed outside Gibraltar, where one of the spouses was domiciled in Gibraltar at the time of the marriage.

A marriage is voidable in the following circumstances:

- That the marriage has not been consummated because of the incapacity of one of the spouses to be able to consummate it.
- That the marriage has not been consummated because of the wilful refusal of the respondent to consummate it.
- That one of the spouses did not consent to the marriage properly, because they were under pressure and were forced to agree, were mistaken as to the legal effects of the marriage, or were mentally incapable of appreciating the effects of the decision to marry.
- That at the time of the marriage one of the spouses was suffering from a mental illness of such a type as to make them unfit for marriage or from venereal disease in a communicable form and the petitioner was unaware of this fact at the time.
- That at the time of the marriage the respondent was pregnant by someone other than the petitioner and the petitioner was unaware of this fact at the time.

9 What are the legal consequences of marriage annulment?

Once a marriage is declared a nullity, it is null and void. However, where there are children of the marriage, the Supreme Court must be satisfied that suitable arrangements have been made. Provision can also be made for the payment of maintenance and custody/maintenance of any children.

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

Divorce falls solely within the jurisdiction of the Supreme Court of Gibraltar. However, some social assistance may be obtained through marriage counselling.

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?

Applications should be filed at the Supreme Court Registry, 277 Main Street, Gibraltar.

The application is made by way of a petition and should be supported by affidavit evidence exhibiting a copy of the marriage certificate, copies of the birth certificates of any children and setting out the grounds for divorce/judicial separation/nullity. Reference should also be made to the children of the marriage and the petitioner's financial circumstances. Further details can be obtained from the Supreme Court Registry, 277 Main Street, Gibraltar, telephone (+350) 200 75608.

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

Legal assistance may be available to cover the proceeding on satisfaction of relevant criteria as to income. Forms and further details are available from the Supreme Court Registry, 277 Main Street, Gibraltar.

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

Rescission of a decree of divorce or nullity may be made at any time before the decree is made absolute. In the case of judicial separation, in certain circumstances, the decree may be reversed at any time after its making. Orders regarding maintenance and the custody and maintenance of children may be varied after a decree is made absolute.

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?

European Union Regulation EC No 2201/2003 states that a decision leading to divorce, legal separation (judicial separation) or marriage annulment given in one Member State can be recognised in other Member States. The documents required can be obtained from the court which made the order and should be submitted to the Supreme Court.

This Regulation does not affect issues of fault, property consequences of the marriage, maintenance or any other ancillary matters. There must be a real link between the party concerned and the Member State exercising jurisdiction.

Recognition may be refused if the decision is contrary to public policy, if given in default of appearance, if the respondent was not served with relevant documents in sufficient time, or if it is irreconcilable with a judgment in proceedings between the same parties in Gibraltar, or if it is irreconcilable with an earlier judgment in another country, provided the earlier judgment can be recognised in Gibraltar.

Any interested party may apply for a decision that the judgment be or not be recognised. The Supreme Court may stay the proceedings if an appeal has been lodged against the judgment for which recognition is sought.

If the decision cannot be recognised under this Regulation the arrangements for the recognition of divorces obtained overseas are in the Matrimonial Causes Act. This provides that:

The validity of an overseas divorce or legal separation obtained by means of proceedings shall be recognised if:

- the divorce or legal separation is effective under the law of the country in which it was obtained; and
- at the relevant date (that is at the date when the proceedings to obtain the divorce began) either party to the marriage
  - was habitually resident in the country in which the divorce or legal separation was obtained; or
  - was domiciled in that country; or
  - was a national of that country.

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?

Divorces and legal separations in other countries are recognised by Gibraltar law if certain conditions are satisfied. If an objection is made to the recognition of such a divorce/legal separation, it may be on the grounds that one of the conditions set out in the Matrimonial Causes Act has not been made out. In such a case, it may be appropriate to make an application to the Supreme Court of Gibraltar seeking a declaration that a particular divorce/legal separation obtained in another country is not valid.

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 courts in Gibraltar will always apply the law in Gibraltar to cases brought before them. The courts have jurisdiction to deal with a divorce, even if the marriage took place abroad, if either of the parties to the marriage:

- is domiciled in Gibraltar on the date when the proceedings are begun; or
- was habitually resident in Gibraltar throughout the period of one year ending with that date.

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