

4. SOCIAL POLICY AND FAMILY LAW: MARRIAGE, DIVORCE AND PARENTHOOD

4.2 Divorce and parenthood

Divorce laws

Core elements of existing laws on divorce and legal separation (divorce by mutual consent/fault-based, process of divorce, alimony and maintenance).

Austria

Subdivision of the grounds of divorce: divorce on the ground of fault, divorce on the grounds of irretrievable breakdown, divorce by consent.

Divorce by consent requires that the 'matrimonial partnership' (eheliche Lebensgemeinschaft) must have ceased to exist for at least six months (Sec. 55 a Austrian Marriage Act), the irretrievable breakdown of the marriage, a joint application for divorce and a written agreement with regard to the consequences of the divorce in case of a non-mutual divorce the litigious proceedings will be initiated by the claim of one spouse.

Sec. 177(1) Austrian CC provides that the parental responsibilities of both parents continue after divorce unless the parents agree otherwise, namely that one parent's parental responsibilities are restricted or completely revoked. However, if, in fact, the parents want to continue joint parental responsibilities, they must submit an agreement to the court naming the parent with whom the child will primarily reside (i.e. where the centre of the child's life will be). This will ensure that continuity of child-rearing will be maintained to the greatest extent possible. The so-called domicile parent must always be entrusted with all parental responsibilities (Sec. 177(2) Austrian CC). The court will approve the parents' agreement if it is in the best interests of the child (Sec. 177(3) Austrian CC). If the parents fail to reach an (approvable) agreement on the primary residence of the child or the attribution of parental responsibilities within reasonable time, the court will entrust one parent with sole parental responsibilities based on the best interests of the child - after having unsuccessfully tried to reach an amicable solution with the parents (Sec. 177a(1) Austrian CC). The same applies if the exercise of joint parental responsibilities later fails: either parent may petition the court to end joint parental responsibilities without substantiation at any time. Then the court will entrust one parent with sole parental responsibilities based on the best interests of the child unless a reconciliation between the parents may be brought about (Sec. 177a(2) Austrian CC).

Azerbaijan

The Family Code provides Executive Powers of each region with power for legal separation or divorce in case one of the spouse is considered missing or psychologically or physically incapable by the court decision; imprisonment for at least 3 years for committing serious crime. According to the Article 14 of the Family Code in cases of death of one of the couples they are considered divorced by the court decision. The court makes a decision on divorce in cases of mutual consent of both spouses or based on request of one of the spouses in accordance with the legal procedure (the final decision is taken not earlier than one month). Article 16 provides that if spouses have adolescent children and one of the spouses expresses is against divorce the case is brought before the court. The court takes decision on with which one of the spouses the children will stay, who and in what amount will pay legally determined child maintenance, on division of jointly earned property (Article 22).

Belgium

La rupture de la vie commune est la seule et unique cause de divorce
- Le divorce par consentement mutuel nécessite un accord concernant les conséquences de cet acte.
- Le divorce n'a aucune incidence sur l'attribution des responsabilités parentales (article 374 du Code civil belge).

Bosnia and Herzegovina

RS: The marriage ceases by annulment or divorce, or by judgment on annulment or divorce.
FBiH: Article 41 of the Family Law of FBiH prescribes that a spouse may request divorce if marital relations are seriously and permanently disturbed. A divorce may be requested by filing the suit or request for mutually consented divorce (Article 42). A husband is not entitled to file a divorce suit during his wife's pregnancy or until their child turns three years of age.
Article 224. prescribes that a spouse who does not have sufficient funds for living or cannot generate them from own property and is incapacitated for work or cannot find a job, is entitled to support by his/her spouse according to spouse's possibilities.
BD: Divorce proceedings are initiated by:
- filing the suit
- mutual consent.
Grounds - marital relations are seriously and permanently disturbed.
Guilt is not established.
Judgment will determine a contribution to the support of a spouse who is incapable of working, who does not have enough funds for living, who cannot generate them from own property, all of this in accordance with the possibilities of a spouse requested to provide support.
The court is obligated to inform an incapable spouse about this right.
Motion for support is filed up to the conclusion of divorce or annulment hearing.
Exceptionally, within one year an ex-spouse may file a suit for support, provided that the conditions for support existed during conclusion of divorce hearing. The support would be for minor children and children at regular schooling up to their 26 years of age.
The decision on support of minor children and children at regular schooling up to their 26 years of age will be made by the court even in other cases of separate life of children (e.g., annulment of marriage).
The contribution for support is determined also for a child of age who is due to illness, physical or psychological deficiencies incapable for work, does not have enough funds for living or cannot generate them from own property.

Bulgaria

The procedure for marital requests is applicable to requests for divorce, for nullifying the marriage, and for establishing the existence or non-existence of a marriage between the two parties.
Each of the spouses may file for a divorce in case the marriage is deeply and irretrievably distressed. The parties are required to appear in person at the first session of the case for a request for divorce. In case of failure to appear on behalf of the claimant the procedure is terminated. After addressing the preliminary matters and those concerning the validity of the request the court must once again direct the parties towards mediation or another way of voluntary solving of the dispute. If the parties reach agreement on starting mediation or another way of voluntary solving of the dispute the case is suspended. The renewal of the case could be requested by each of the parties within a period of six months. If such a request is not made the case is discontinued. In case of reaching an agreement, regardless of its content, the case is either suspended or transferred into a procedure for divorce by mutual consent. When the parties fail to reach an agreement on the mediation or another way of voluntary solving of the dispute the case deliberations continue. In case of a request for divorce the claimant must state all bases for the deep and irretrievable distress of the marriage. Bases that are not stated, that have appeared or become known to the spouse before the end of the verbal controversy, may not be used as basis for filing a new request for divorce.
Marital requests may be joined together. They are mandatory when issuing and reviewing requests for the exercise of parental rights, personal relations and child support, the use of the family home, the support between spouses and the family name.
Each of the parties may request from the respective court to establish temporary measures regarding the support, the family home



and the use of the property acquired during the marriage as well as regarding the care for the children and their support. In cases of marital requests decisions in non-attendance are not enacted even in case of satisfying the request. The divorce verdict enters into force even if it is appealed on the part about the fault. In case of admitting the divorce the court decrees ex officio which of the parents is to exercise parental rights, defines the measures regarding the exercise of these rights and concerning the personal relations between the children and the parents and the child support. The court awards the exercise of parental rights after reviewing all circumstances in view of the interests of the child. These rights may not be awarded to the spouse in fault for the divorce if this could affect negatively the children's upbringing and raising. The court listens to the spouses and the children if they are over the age of fourteen. If that is appropriate, the court also hears out children over the age of ten as well as friends of the family. The court could, by exception if children's interests impose this, order that the children live with grandfather, grandmother, other relatives or friends with their consent, in a receiving family or in a specialised institution. In case of allowing the divorce the court gives the family home to one of the spouses when it cannot be used separately by both of them by taking into account the interests of the children, the fault, the health condition and other circumstances. The court might give the use of the family home to the spouse who has no fault only for a limited period if there are no children under the age of 18 from the marriage and the family home is property of the spouse at fault. In the interest of children under the age of 18, the court could give the use of the family home that is property of one of the spouses or of his or her relatives, to the other spouse to whom the exercise of parental rights has been awarded for as long as those are exercised. The use of the family home that is property of one of the spouses or of his or her relatives, can also be discontinued before the expiration of the period if the user concludes another marriage. In case of a serious and firm disagreement between the two spouses the court allows the divorce without seeking out their motives to terminate the marriage. A request for a divorce by mutual consent cannot be submitted before a period of three years after the conclusion of the marriage. The spouses must present their agreement regarding the exercise of parental rights, personal relations and child support as well as regarding their property relations, the use of the family home, support between spouses and the family name. The agreement is endorsed by the court after verifying that the interests of the children are protected. If the agreement is incomplete or the interests of the children are not well protected the court gives a period in which deficiencies in the settlement are to be made good. In case deficiencies are not removed within the given period the court rejects the request for divorce.

Croatia

Divorce can be initiated by consensual request of both partners or by lawsuit of one partner. A husband cannot arraign the lawsuit if the wife is pregnant or until the child is one year of age. The court decides about divorce. If the partners have minor child they have to attend a family mediation in the process of divorce (see more below). Court will grant a divorce if it determines that the marital relations have been seriously and lastingly disrupted or if a year has passed since the marital union ceased to exist or if both spouses consensually apply for a divorce.

Maintenance:

Maintenance is the duty and right of parents and children, spouses and cohabiting partners. Marital or extramarital partners are obliged to the mutual maintenance. Renunciation of the duties and rights to maintenance has no legal effect.

Irrespective of whether the parents live together or apart, they are bound to support financially their minor child and an adult child who is in education or has finished its education and cannot find employment for a year after the completion of the education.

Parents are also bound to support financially an adult child who is not capable of work because of sickness, mental or physical impairment.

According to the Family Act minimum alimonies (for the parent who does not live with the child) are as follows:

- for the child until 6 years of age, 17% of the average net salary in Croatia which amounts to about €112.17
- for the child between 7 and 12 years old, 20% of the average net salary in Croatia amounting to about €132.63
- for the child from 13 to 18 years old, 22% of average net salary in Croatia, that is, about €145.89.

If a parent is obliged to support more children, the alimony can be lower, but not less than the minimum alimony.

A spouse who does not have the means necessary for living or cannot realize them from his or her assets and is not capable of working or cannot be employed has the right to maintenance from the spouse.

A spouse has the right to request maintenance up to the end of the main hearing in a divorce, which the court is bound to warn him/her of. Exceptionally, if in a divorce no motion for maintenance has been made, the former spouse may arraign suit seeking maintenance in the period of six months from the divorce, if the conditions for maintenance existed at the moment of the conclusion of the main hearing in the divorce suit and lasted without interruption until the conclusion of the main hearing in the maintenance suit.

Cyprus

No legal provisions exist for divorce by mutual consent. However, when spouses live separately for a continuous period of at least four years, this is recognised as a valid ground for divorce.

- Marriage covered by the provisions of the Marriage Law, can be dissolved through judicial procedure, before the Family Courts on specific grounds for divorce including the following:

- (a) when the relations of the spouses have been so strongly shaken by a ground concerning the person of the defendant or of both spouses, which justifiably render continuation of the marital relation intolerable for the plaintiff and/or
- (b) for fault-based reasons, such as adultery, acts intended to cause harm or endanger the life of the spouse, unjustified abandonment of the spouse for two years, etc and
- (c) for reasons such as insanity, disappearance of the spouse, etc.

- In the case of divorce, the Property Rights of Spouses Law stipulates that both spouses are under obligation to pay maintenance. Regardless of who was at fault for the divorce, either of the former spouses can seek maintenance from the other but only in the event that he/she is unable to support him/herself on his/her income and property and that at least one of the conditions stated in the Law, is satisfied, such as when the spouse:

- (a) is unable to work due to his/her age or health condition.
- (b) maintains the custody of a minor or adult child or other dependant person who is disabled and therefore cannot work
- (c) cannot secure a stable and appropriate job or needs vocational training, and in this case, alimony cannot exceed the period up to three years from the issue of the divorce.

In addition, there is an obligation of parents to provide maintenance to their minor child, each one according to their abilities (more details are given under section 4.2. (ii) below.

- The Property Rights of Spouses Law also stipulates that if the marriage is dissolved or if the spouses are separated, each spouse is entitled to a share in the property acquired by the other during the marriage. This share is proportionate to the amount by which each spouse can show that he/she contributed to the increase in the other's property. Housework and child upbringing is deemed to be a contribution.

Czech Republic

Irretrievable breakdown of the marriage as the sole ground for divorce (§ 24 Czech Family Code)

- A non-litigious proceeding requires a minimum duration of the marriage of one year, a factual separation of six months, a joint application and an agreement on the consequences of divorce.

- Spouses may not divorce until after a judicial decision on the regulation of the relationship between the spouses and their minor children for the period after divorce. This judgment must always include the decision on placing the child into upbringing (personal care, determination of residence) and establishing the amount of maintenance due (§ 26 Czech Family Code). In case of the parents' inability to come to an agreement the court may also decide upon the regulation of contact (visits) of the other parent. The parents' agreement concerning contact with the child need not be approved by the court. As for personal care and maintenance, the court may decide itself or approve the parents' agreement, so long as the agreement does not contravene the child's interests (§ 27 Czech Family Code).

Parental responsibility does not end by divorce for either of the parents; it is only the exercise that is changed. The parent who does not personally care for the child continues to be a legal representative of the child and his or her consent is needed in all essential matters relating to the child.

Denmark

Grounds for divorce are separation, living apart for two years due to incompatibility, adultery, violence, bigamy and child abduction. If the spouses apply for a divorce together they may obtain a divorce by consent through an administrative procedure at the regional state administration.

If only one of the spouses applies for divorce, he/she can only obtain the divorce through a judicial process. If the spouse applies for divorce on the ground of separation, the spouses must have been separated for at least one year.

Council of Europe Family Policy Database

www.coe.int/familypolicy/database



Maintenance obligations between the spouses ends with legal separation or divorce, unless the spouses agree to continue maintenance obligations or the court decides that one spouse must provide maintenance for the other for a certain period. The amount of maintenance is decided by the regional state administration, unless the spouses make an agreement.

Joint custody continues after divorce, but one spouse may apply for sole custody.

Estonia

Divorce can be granted by a vital statistics office or a court. A marriage terminates:

- upon the divorce granted by a vital statistics office, as of divorce registration;
- upon the divorce granted by a court, as of the entry into force of the court order

Vital statistics office grants a divorce upon agreement of the spouses on the basis of a joint written petition which the spouses submit in person to a vital statistics office and both spouses reside in Estonia. A vital statistics office can not grant a divorce if together with the divorce a spouse desires to resolve a dispute concerning a child or concerning the division of joint property or desires support to be ordered.

The court grants a divorce at the request of a spouse if:

- the spouses disagree about the divorce,
- together with the divorce a spouse desires to resolve a dispute (please see above) or
- vital statistics office is not competent to grant the divorce.

The divorce is granted if a court ascertains that continuation of the marriage is impossible. Upon granting a divorce, a court does, at the request of the spouses, settle disputes concerning a child and disputes concerning support or division of joint property.

The divorced spouse is required to maintain a spouse who needs assistance and is incapacitated for work and to maintain a spouse during pregnancy and child-care until the child attains 3 years of age.

Finland

The spouses have the right to a divorce after a reconsideration period of at least six months. After the reconsideration period, the spouses are granted a divorce upon their joint request or upon the request of one of the spouses. The request must be made within one year of the beginning of the reconsideration period. (Finnish Marriage Act, sec. 25 - 26.) No grounds for divorce are needed. However, the spouses have the right to divorce without reconsideration period if they have lived separated for the past two years without interruption (Finnish Marriage Act, sec. 25). In these cases the reasons for the separation are irrelevant. It is not required that the separation has been caused by a breakdown of the marriage and the court is not even allowed to investigate or question the possible reasons for the separation.

When the spouses are granted a divorce and a spouse is deemed to be in need of maintenance, the court may order the other spouse to pay him or her maintenance deemed reasonable with a view to his or her ability and other circumstances. Maintenance may be ordered to be paid until further notice or until the end of a period determined in the order. The obligation to pay maintenance in periodic instalments shall lapse if the spouse to whom the maintenance is granted remarries. (Finnish Marriage Act, sec. 48.) In practice maintenance to a spouse after divorce is not ordered to be paid very often.

France

Article 229 of the Civil Code specifies four grounds of divorce: consent, acceptance, irretrievable breakdown of marriage and tort. Divorce normally has no effect on the assignment of parental authority (Article 373-2, paragraph 1 of the French Civil Code).

The reform bill of 4 March 2002 introduced into the French Civil Code a new section on the exercise of parental authority where the parents are separated. This section draws no distinction between married and unmarried parents. The chosen criterion in the French legal provisions is separation of the parents irrespective of cause - divorce, annulment, judicial separation or even de facto separation. In all cases of parental separation, both parents generally retain parental authority (Article 373-2 of the French Civil Code), and both father and mother must keep up personal relations with the child (paragraph 2). However, if the interest of the child so requires, the court may decide to entrust the exercise of parental authority to one parent (Article 373-2-1 of the French Civil Code). The other parent then retains a right of access to the child (Article 373-2-1, paragraph 2 of the French Civil Code). The court has complete latitude to determine what is in the best interests of the child. The Court of Cassation refuses to set aside decisions taken at a lower court's discretion on this ground, but requires the family judge dealing to indicate why the best interests of the child make it necessary to vest one of the two parents with the exercise of parental authority. If the parents are married at the time of the birth of the child, the mother and the father exercise parental authority jointly (see the general declaration in Article 372, paragraph 1 of the French Civil Code, "the father and mother shall exercise parental authority jointly". This rule of joint parental authority constitutes the general principle for married parents as well as for separated or divorced parents (except in certain circumstances).
- After marriage and after the birth of a child, the two parents exercise parental authority. The same applies before marriage if they both acknowledge their parentage of the child but, if the parentage of one is certified more than a year after the birth of the child or by court order, the other parent who has acknowledged the child remains vested with the sole exercise of parental authority (see Article 372, paragraph 2 of the French Civil Code), except where the father and mother make a joint declaration before the chief clerk of the regional court or where the family judge so decides (see Article 372 para. 3).

Germany

Irretrievable breakdown of the marriage as the sole ground for divorce (§ 1565 para. 1 BGB)
- consensual divorce forms a sub-group of irretrievable breakdown
- Joint parental responsibility is generally maintained despite divorce.
No court ruling is required. A parental divorce no longer means that family courts are obliged to deal with the future arrangements regarding parental responsibilities. A court decision on parental responsibility is now only made following an application by one parent. Such an application can always be made if the parents live apart, § 1671 German CC. At the same time, the state of living apart that results from divorce does change the structure of joint parental responsibility, as the child will usually either live with the mother or the father on account of their spatial separation. The law takes account of this circumstance by means of the special provision in § 1687 German CC. Under the umbrella of the continuance of joint parental responsibility after divorce, which does not describe a reality but is a legal construct, issues regarding contact with the child, § 1684 para. 3 German CC, maintenance and upbringing, § 1628 German CC, must be clarified between the parents, pursuant to § 1687 para. 1 German CC. If the child's permanent residence is with one of the parents, as opposed to any other possible arrangement for the sharing of responsibility, § 1687 para. 1 sent. 1 German CC stipulates that the parents' mutual consent is in general no longer required, as otherwise is the case when the parents hold joint responsibility. Mutual consent is only required in matters the regulation of which is of considerable importance for the child. In matters relating to everyday life, the decisions are made solely by the parent with whom the child habitually resides, the habitual residence resulting either from the consent of the other parent or from a court decision. The term 'matters relating to everyday life' refers to frequently occurring situations requiring a decision by the parents, but whose effects on the child's development can be modified without a great deal of difficulty (e.g. § 1687 para. 1 sent. 3 German CC).⁹³ By contrast, any decisions regarding matters which have an effect on the child's development that can either not be modified or be modified only with difficulty, are of 'considerable importance' for the child.
Above and beyond the provision of § 1687 German CC, both holders of parental responsibilities are authorised in accordance with § 1629 para. 1 sent. 4 German CC to act alone on behalf of the child in the event of imminent danger, § 1687 para. 1 sent. 5 German CC.

Greece

Divorce can be granted on the ground of the irretrievable breakdown of the matrimonial bond (Article 1439 §§ 1 and 2 Greek CC), on the ground of consensual separation (divorce by consensus) and in the case of an officially declared absence.
- Art. 1510 para. 1 Greek CC provides that the parents exercise parental care jointly, without referring to the relations between them

(i.e. if they cohabit, if they are factually separated, if their marriage has been annulled, or if they are divorced). Thus, the parents continue to exercise joint parental care also after divorcing, unless they submit a petition to the court to regulate parental care. In this last scenario, the court has a wide range of possibilities: It may grant the exercise of parental care to one of the parents, or to both parents jointly, or it may distribute it between the parents, or attribute it to a third party (Art. 1513 Greek CC). Independent of the court decision on the exercise of parental care, both parents will continue to engage in parental care.

Hungary

(1) Grounds for divorce are not specifically enumerated; the marriage may be dissolved if married life has broken down completely and irretrievably

- To some extent, a divorce by mutual consent is dealt with somewhat differently: mutual consent makes it unnecessary to investigate the reasons for the breakdown of the marriage if this consent also includes an agreement on accessory issues. In such a case there is a presumption that the marriage has broken down

- Divorce generally affects the attribution of parental responsibilities. Maintaining joint parental responsibilities after divorce is rather exceptional in Hungary.

With a divorce, parental responsibilities, if they are not joint, are attributed by judicial judgment to the parent with whom the child is placed. The non-residential parent has the right to contact and the right to decide important matters affecting the child in conjunction with the holder of the parental responsibilities. If the parental responsibilities of the holder of these rights and duties comes to an end for any reason, e.g. because of the death of this parent, the divorced parent's parental responsibilities will be revived.

Pursuant to Article 18 (1) of the FLA, the court may grant a divorce at the request of either or both spouses if their marriage has completely and irretrievably broken down. Hungarian divorce law does not have a so-called principle of fault, i.e. it does not stipulate that divorce can only be granted if the marriage of the spouses has become impossible to continue due to the inappropriate behaviour of either of the parties. Another characteristic of Hungarian divorce law is that it does not enumerate any reasons for dissolution, neither in form of examples nor in an exhaustive manner. Instead, it is at the discretion of the court to decide whether in the particular case the marriage has completely and irretrievably broken down. The court has to carry out extensive inquiries and examine the entire process that has led to the breakdown of the marriage in order to decide whether it has broken down completely and irretrievably.

Article 18 (2) of the FLA permits divorce based on the parties' common declaration of will (their mutual consent). Pursuant to this provision „the complete and irretrievable breakdown of marriage is shown by the final common declaration of will by the spouses for divorce made without undue influence“. The common declaration of the spouses to this effect is considered sufficient evidence for the marriage having become shattered and impossible to continue, thus in the case of such common declaration there is no need for a detailed examination of the reasons leading to the breakdown of the marriage. However, the marriage can only be dissolved on the grounds of the parties' common declaration of will (mutual consent) if

- the parties have come to an agreement regarding the so-called ancillary issues raised between the spouses during the divorce procedure (e.g. placement and maintenance of any child of the marriage; regulation of contact between the absent parent and the child; alimony for the spouse; and the division of joint matrimonial assets) and their agreement has been approved by the court; or

- the spouses separated at least three years earlier i.e. they live in separate residences and prove that they have resolved the placement and maintenance of their child in the child's interests.

Hungarian law gives neither examples, nor an exhaustive list of grounds for divorce, and particularly does not acknowledge any so-called absolute grounds for the dissolution of marriage (given which the application for divorce would be accepted automatically, without any judicial discretion). Neither the "fault" of any of the spouses, nor the separation of the spouses constitutes a ground for divorce in itself.

Pursuant to Article 27 (1), the marriage creates a conjugal community between the spouses for the duration of their matrimonial life. In legal terms conjugal community of property means that all assets that the spouses acquire jointly or individually during the time of their matrimonial life (with certain exceptions) constitute their undivided joint property. The conjugal community of property does not extend to the assets of the spouses they already had when their marriage was solemnized; such assets will continue to be the separate assets of the husband or the wife. The law allows spouses to regulate their matrimonial property law affairs differently from the provisions of the Act by entering into a marital agreement.

In case of divorce, any of the former spouses may apply to the court for the division of the matrimonial joint property. The division of joint property does not necessarily require a court order, the spouses can agree on the method of division of their joint property out of court, within the framework of a contract.

Iceland

(1) Rights and duties of married couples are defined in the Law in Respect of Marriage (no. 31/1993). The law states that the spouses shall be equal in every respect, and shall carry the same obligations towards each other and their children. Furthermore, the law states that spouses shall be faithful to each other, support each other, and together guard the interests of their home and family. In 1996, a law on registered partnership for same-sex couples was ratified. The law provided same-sex couples that register their partnership with a similar legal status to married couples. According to Law on Registered Partnership (no. 52/2000), same-sex partners were allowed to legally adopt their partner's child. However, same-sex couples did not have legal rights to adopt a child together and they did not have rights to artificial insemination or other fertility procedures according to the law on Artificial Insemination (Adoption Law no 130/1999; Artificial Fertilisation Law no. 55/1996). By law from 2006 same-sex couples enjoy all legal rights that heterosexual couples enjoy, including the right to artificial inseminations and adoption (Eydal and Ólafsson, 2008). In June 2008 same sex couples in Iceland gained the legal right to have their partnership registered by certified representatives of recognized religious groups (e.g. priests), though it is left to each priest's/representative's discretion to decide if she/he wants to conduct marriage ceremonies for same sex couples. Hence the national church of Iceland is the first one in the world to gain the legal right to join same sex couples in matrimony (Samtökin 78 n.d.).

Age at which it is possible to be married: At the age of 18 years it is possible to be married, but the Ministry of Justice may permit the marriage of younger persons. Guardian approval is needed before a person deprived of legal competence enters into marriage without the guardian's approval.

Ireland

Section 5(1) of the Irish Family Law (Divorce) Act 1996 sets out the grounds upon which a court will grant a decree of divorce on application by either spouse. These grounds are as follows:

- at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years,
- there is no reasonable prospect of a reconciliation between the spouses, and
- such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent members of the family...

All of these grounds must be satisfied before a decree can be granted.

1. If these conditions are met, either party to a marriage may apply to court for a Decree of Divorce. If it is satisfied that the grounds are met, the court will grant the Decree of Divorce dissolving the marriage. When it grants the Decree of Divorce, the court may also make orders in relation to custody of children and access to them, the payment of maintenance and lump sums, the transfer of property, the extinguishment of succession rights, pension rights etc.

2. The fact that the parties must have been living separate lives for four out of the five years before an application for a divorce is made means that many separating couples obtain a Separation Agreement or a Judicial Separation to regulate matters between them before they seek a divorce.

3. In any application for a Decree of Divorce, the court can review any previous arrangements made by the parties such as a Separation Agreement, particularly if the circumstances of either party has changed.

4. When a Decree of Divorce is granted, it cannot be reversed. Either party can apply to court to have any orders made under the Decree - such as maintenance - reviewed by the court.

A Decree of Divorce allows both parties to a marriage to remarry. A total of 3,684 divorces were granted by the Courts in Ireland during 2007. This figure represents a 6.3% increase on the number of divorce decrees granted in 2006. Based on official marriage statistics however, Ireland's divorce rate of 16% remains low, compared to other EU countries.

- The granting of a decree of divorce does not affect the right of the father and mother of a child to continue to be joint guardians of any relevant children. The court, however, may declare either of the parties unfit to have custody of any minor child and, if it does

so, that party is not entitled to the right to custody of that minor on the death of the other party.

Italy

Under Articles 1 and 2 of the Italian Divorce Law, which deal with civil marriage and religious marriage respectively, the grounds for divorce are the breakdown of the 'material and spiritual bond between the spouses', as determined by the existence of one of the criteria exhaustively listed in art. 3 of the Italian Divorce Law. This legislative choice has been criticized as a 'non-choice', and the legislator has been reproached for being 'incoherent'. The present situation is that if the alleged irretrievable breakdown of marriage – which is the sole ground of divorce – is not based on one of the criteria exhaustively listed in art. 3, the judge cannot pronounce the decree of divorce.

In fact, the exhaustive list contained in art. 3 of the Italian Divorce Law is much more apparent than real, since the 'normal' basis for divorce is the one specified in art. 3 par. 2(b), of the Italian Divorce Law, i.e. continuous personal separation lasting for three years. Under art. 150 of the Italian Civil Code, divorce on this ground may be judicial or consensual: separation is pronounced by judgment in the former case and homologated by decree in the second case.

- Pursuant to art. 317 par. 2 of the Italian Civil Code, joint parental responsibilities expire neither as a consequence of separation, divorce or annulment, nor if only one of the parents holds custody of the child. If only one of the parents lives with the child, it is possible to differentiate the other parent's exercise of parental responsibilities (art. 155 of the Italian Civil Code and art. 6 par. 4 of the Italian Divorce Law).

The Italian legal system is uniform with respect to the actual regulation of the parent-child relationship after separation, divorce or annulment; however, it does not give specific methods, because the leading criteria are exclusively the moral and material interests of the minor. Still, the judge has wide discretionary authority in examining the minor's interests in each individual case.

The law provides for three different types of custody: exclusive custody, joint custody and alternating custody, and thus provides for differentiated modalities for exercising parental responsibilities. If there is just cause, the judge can order the minor to live with a third party or in an educational institute (art. 155 of the Italian Civil Code), or he/she can order the family custody (art. 6 par. 8 of the Italian Divorce law).

Latvia

Divorce can be obtained only by means of a court ruling on the basis of an application by a spouse or a joint application by spouses. In order to obtain a divorce, it must be established that the marriage has disintegrated or failed. A marriage is considered to have failed if no marital cohabitation exists and the spouses cannot be expected to restore cohabitation.

In order to obtain a divorce spouses have to reach mutual agreement with regard to custody over a child born within the marriage, maintenance for the child and division of joint property. If the spouses fail to reach agreement, these claims are settled in court concurrently with the divorce claim.

The term "legal separation" does not exist under the Latvian legal system.

Lithuania

Article 3.69 part 2 of the Civil Code stipulates that if marriage was terminated due to the fault of one spouse, then by the request of the other spouse the court can prohibit the spouse guilty of the breakdown of the family to carry the surname of the spouse, except the cases, when the spouses have mutual children.

- It should be noted, that in Lithuania usually women change their surnames to their spouses' surnames after getting married.

- legal institute of separation by court decision (Art. 3.73 Lithuanian CC)

- decision of separation lead to the end of the marital cohabitation but does not cease other duties and rights of the spouses

- three different grounds for divorce: mutual consent (Art. 3.51 ff. Lithuanian CC), unilateral application (Art. 3.55 ff ZGB), fault of one or both spouses (Art. 3.60 ff Lithuanian CC)

- divorce has no impact on the joint attribution of parental responsibilities (Art. 3.156 para. 2 Lithuanian CC)
- the parent with whom the child will not live together any longer has a right of contact.

Luxembourg

Il existe deux formes de divorce : divorce pour causes déterminées (fautes ou désunion irrémédiable) ou divorce: par consentement mutuel. (Cette matière est actuellement en train d'être modifiée, le gouvernement veut faire disparaître la faute dans le divorce)

1. Conditions du divorce pour causes déterminées :

A. Le divorce pour fautes :

Ce divorce peut être demandé pour cause d'excès, sévices ou injures graves d'un des conjoints envers l'autre, lorsque ces faits constituent une violation grave ou renouvelée des devoirs et obligations résultant du mariage et rendent intolérable le maintien de la vie conjugale (art. 229 c.civ.)

B. Séparation continue et effective de trois ans.

Il s'agit d'un divorce pour rupture de vie commune ou constat d'échec. Preuve de deux éléments:

- 1) l'élément matériel: l'absence de la vie commune depuis trois années et
- 2) l'élément intentionnel: la volonté de vivre séparé chez l'une des parties au moins.

Le défendeur pourrait invoquer une cause d'exceptionnelle dureté.

C. Séparation de fait de plus de 5 ans due à l'état d'aliénation mentale d'un époux: Il faut que cette aliénation mentale soit irrémédiable

Quant à l'autorité parentale pendant la procédure de divorce.

A côté de l'assignation en divorce et donc du débat de fond, les parties ont la possibilité d'introduire une demande devant le juge des référés pour régler les mesures provisoires pendant l'instance en divorce pour autant qu'ils ne l'ont pas faite dans l'assignation même de divorce. Il s'agit d'une procédure urgente et la décision sera provisoire et portera: sur la résidence séparée des époux (art.268 c.civ.); l'obligation alimentaire entre époux et pour les enfants; l'attribution du droit de garde des enfants et le droit de visite et d'hébergement de l'autre parent.

Art. 267 c. civ. (L. 27 juillet 1997) « L'administration provisoire de la personne et des biens des enfants restera aux père et mère, ainsi qu'il est prévu aux art. 372 et 389, sous réserve des décisions qui seraient rendues pour le plus grand avantage des enfants par le président, ou le juge qui le remplace, statuant en référé, sur la demande, soit des parties ou de l'une d'elles, soit du procureur d'Etat. »

Art. 267bis c. civ. (L. 15 mars 1993)

(1) Le président statuant en référé, le ministère public entendu, connaît, en tout état de cause, dès le dépôt de la demande en divorce au greffe, des mesures provisoires relatives à la personne, aux aliments et aux biens, tant des parties que des enfants. Dans l'intérêt des enfants, le juge peut tenir compte des sentiments exprimés par eux dans les conditions de l'article 388-1 (L. 27 juillet 1997).

(2) Le procureur d'Etat peut prendre tous renseignements utiles concernant la situation morale et matérielle des enfants.

(3) L'information est communiquée en copie aux parties.

(4) Lorsque le divorce a été irrévocablement prononcé et qu'une autre instance est encore pendante concernant la détermination des torts des parties ou des mesures accessoires, le président du tribunal statuant en référé est compétent, jusqu'au moment où l'instance pendante aura été vidée par une décision coulée en force de chose jugée, pour prendre les mesures provisoires définies à l'alinéa 1er sur lesquelles il n'a pu être statué définitivement au fond ou qui peuvent être nécessaires en raison de l'instance pendante.

(5) L'article 112 du Nouveau Code de procédure civile est applicable /est relatif à la demande de renseignement pour fixer une pension alimentaire.

Effets du divorce pour cause déterminé concernant les enfants

Art. 302 (L. 27.07. 1997) Le tribunal statuant sur le divorce confiera la garde des enfants, suivant ce qu'exige l'intérêt des enfants, soit à l'un ou l'autre des époux, soit à une tierce personne, parente ou non, l'autorité parentale étant exercée conformément aux art. 378 et 389.

En cas de divorce prononcé sur base des articles 229, 230, 231 et en cas de divorce par consentement mutuel, le tribunal de la jeunesse pourra toujours, dans la suite, déterminer, modifier ou compléter le droit de garde pour le plus grand avantage de l'enfant. Le droit de visite et d'hébergement ne pourra être refusé que pour des motifs graves à celui des père et mère qui n'a pas obtenu la garde des enfants.

Dans l'intérêt des enfants mineurs, le juge peut tenir compte des sentiments exprimés par eux dans les conditions de l'article 388-1."

Council of Europe Family Policy Database

www.coe.int/familypolicy/database



<p>2. Le divorce par consentement mutuel. Trois conditions sont nécessaires à savoir l'accord des deux époux pour divorcer; une durée de deux ans de mariage et chacun des époux doit avoir 23 ans au moins. Par ailleurs il est nécessaire de faire une convention réglant leur patrimoine commun respectivement quant aux effets personnels ainsi que la garde d'enfant. Le juge vérifiera les conditions notamment relatives aux enfants comme la pension alimentaire que l'un des conjoints versera à l'autre à titre d'entretien et d'éducation des enfants communs ou à titre d'entretien personnel; le droit de garde définitif des enfants communs; le droit de visite et d'hébergement de celui des parents qui n'exerce pas le droit de garde; la résidence de chacun des époux pendant le temps des épreuves et après. La durée de la procédure est d'environ 6 mois. Art. 277. (L. 15 mars 1993) Ils seront pareillement tenus de constater par écrit leur convention visant:</p> <ol style="list-style-type: none">1. La résidence de chacun des époux pendant le temps des épreuves;2. L'administration de la personne et des biens des enfants mineurs, non mariés, ni émancipés, issus de leur union ou adoptés par eux et le droit de visite sur ces enfants, tant pendant le temps des épreuves qu'après le divorce;3. La contribution de chacun des époux à l'entretien et à l'éducation desdits enfants, sans préjudice des obligations découlant du chapitre V du titre V du livre 1er du présent code;4. La pension alimentaire éventuelle à payer par l'un des époux à l'autre, pendant le temps des épreuves et après le divorce. Cette pension ne sera plus due d'office en cas de remariage du créancier d'aliments à partir du 1er du mois suivant celui du remariage. Elle ne sera plus due sur demande en cas de communauté de vie du créancier avec un tiers. Elle peut être modifiée sur demande en cas de détérioration de la situation du créancier ou du débiteur de la pension, à condition toutefois que cette détérioration soit indépendante de la volonté de celui dans le chef duquel elle a lieu. (L. 27 juillet 1997) Sont présumées vivre en communauté de vie les personnes qui vivent dans le cadre d'un foyer commun. Cette convention écrite est obligatoire. Le juge doit vérifier si la convention respecte cette obligation (C. Appel Lux. 30 juin 1993 rôle n° 14614). <p>Tant que le divorce par consentement mutuel n'est pas prononcé, une telle convention reste provisoire et pourra même encore être modifiée avant le prononcé du divorce. Le divorce devenu définitif, le juge peut modifier la convention pour autant que les intérêts des enfants sont concernés ». (Cf. jurisprudence constante: T. arr. Lux. 10.3.1983 n° 40/83 ; J.P. Esch/Alzette, 10.04.1984 n° 328/84).</p> <p>Dans toutes les formes de divorce, le juge peut même entendre les enfants voire ordonner une enquête sociale. Voir disposition générale : Art. 388-1. c. civ. (L. 27 juillet 1997)</p> <ol style="list-style-type: none">(1) Dans toute procédure le concernant, le mineur capable de discernement peut, sans préjudice des dispositions prévoyant son intervention ou son consentement, être entendu par le juge ou la personne désignée par le juge à cet effet.(2) Lorsque le mineur en fait la demande, son audition ne peut être écartée que par une décision spécialement motivée.(3) Le mineur peut être entendu seul, avec son avocat ou une personne de son choix. Si ce choix n'apparaît pas conforme à l'intérêt du mineur, le juge peut procéder à la désignation d'une autre personne.(4) L'audition du mineur se fait en chambre du conseil.(5) L'audition du mineur ne lui confère pas la qualité de partie à la procédure. <p>Pour la procédure voir: Art. 1046. n.c. proc. civ</p> <p>L'impact du divorce sur les responsabilités parentales n'est pas réglementé ??; les compétences en la matière ne sont pas explicites; - Les parents peuvent conclure un accord sur l'attribution des responsabilités parentales.</p>
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Malta

Divorce is illegal in Malta

38. Either of the spouses may demand separation on the ground of adultery on the part of the other spouse.

39. Where a law suit for personal separation has been filed by either spouse and evidence of acts of domestic violence has been produced, the court may, either on an application of one of the parties or on its own motion in order to protect the safety of the parties involved or in the best interests of the child or children or of any other minor dependants of any of the spouses, issue a protection order under article 412C of the Criminal Code and, or a treatment order under article 412D of the same Code and the provisions of those articles shall mutatis mutandis apply to an order issued under this article as if it were an order issued under the corresponding article of the said Code.

40. Either of the spouses may demand separation on the grounds of excesses, cruelty, threats or grievous injury on the part of the other against the plaintiff, or against any of his or her children, or on the ground that the spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down: Provided that separation on the ground that the marriage has irretrievably broken down may not be demanded before the expiration of the period of four years from the date of the marriage,

and provided further, that the court may pronounce separation on such ground notwithstanding that, whether previously to or after the coming into force of this article*, none of the spouses had made a demand on such ground.
41. Either of the spouses may also demand separation if, for two years or more, he or she shall have been deserted by the other, without good grounds.

Moldova

Provisions regarding the divorce can be found in Art.33-40, 44, 53, 57, 66, 67, Chapter IV of the Family Code, Art.39 para.6, of the Code on Civil procedure.

Monaco

Le divorce peut être prononcé à la demande de l'un des époux :

1° pour faute, lorsque les faits imputés au conjoint constituent une violation grave ou renouvelée des devoirs et obligations du mariage rendant intolérable le maintien de la vie commune;

2° pour rupture de la vie commune, lorsque les époux vivent séparés de fait depuis trois ans lors de la présentation de la requête en divorce;

3° pour condamnation pénale du conjoint sanctionnant une infraction qui rend intolérable le maintien du lien conjugal, à moins que l'époux demandeur n'ait connu l'infraction avant le mariage;

4° pour maladie du conjoint dont la gravité et la durée sont de nature à compromettre dangereusement l'équilibre de la famille.

Le divorce peut également être prononcé à la demande de l'un des époux, lorsque lui-même et son conjoint acceptent le principe de la rupture du mariage sans considération des faits à l'origine de celle-ci.

Le divorce peut être prononcé à la demande conjointe des époux lorsqu'ils consentent d'un commun accord au divorce.

Le texte définit la procédure applicable sur requête d'un des époux et sur requête conjointe.

S'agissant de la pension alimentaire, le droit monégasque distingue les aliments qui peuvent être versés aux conjoints appelés "prestation compensatoire" de ceux dus aux enfants, ces derniers étant désignés par les termes "part contributive à l'entretien et à l'éducation de l'enfant".

Ces deux types d'aliments peuvent être accordés au titre des mesures provisoires, dès le début de la procédure de divorce.

En cas de divorce pour faute, l'époux fautif ne peut, sauf exception, percevoir de prestation compensatoire mais peut en être redevable ainsi qu'être condamné au paiement de dommages et intérêts au profit de son conjoint.

Dans les autres cas, hormis celui de la maladie, la rupture du lien conjugal qui met fin au devoir de secours des époux peut s'accompagner, pour l'un ou pour les deux époux, du versement d'une prestation compensatoire à caractère forfaitaire et définitif dont le montant est fixé au regard de la situation des époux tant au moment du divorce que de son évolution prévisible. Les modalités de versement sont également fixées par le Tribunal.

La séparation de corps peut être prononcée dans les mêmes cas et aux mêmes conditions que le divorce. Elle emporte la séparation de biens et la suppression du devoir de cohabitation mais laisse subsister, contrairement au divorce, les devoirs de fidélité, de secours et d'assistance.

La séparation de corps s'accompagne du versement d'une pension alimentaire au profit de l'époux dans le besoin qui n'est pas celui

contre lequel elle a été prononcée, sauf exception. La fixation de cette pension et son versement son soumis aux règles des obligations alimentaires.

Lorsqu'elle a duré deux ans, la séparation de corps est, à la demande d'un époux, convertie de droit en divorce.

Montenegro

Family Law of Montenegro is regulating divorcing and a spouse may ask for a divorce of a marriage if the relationships in the marriage have seriously and permanently been disturbed or if the purpose of marriage cannot be realized for some other reasons. Spouses may require the marriage to be divorced based on their agreement. Marriage is terminated by divorce when the court decision on divorce becomes legally valid.

SPOUSAL SUPPORT (ALIMONY): A spouse who does not have sufficient means for living, who does not have the capacity to work or who cannot get employment is entitled to alimony provided by his/her spouse, in proportion to his/her financial circumstances. Spouse is entitled to request that in the judgment by which the marriage is divorced he/she is awarded alimony which shall become the burden on the other spouse, in proportion to his/her financial circumstances. When assessing the needs of a dependant child the court shall take into account his/her financial standing, level of his capacity for work, possibility to find employment, health condition, age of the child, as well as the needs for his education and other circumstances that the decision on determining the maintenance shall depend on. Support is, as a rule, awarded in form of money. Support may also be awarded in a different manner if the person providing support and the dependant agree about it. The court shall order the person obliged to provide support to pay the future amounts in the fixed determined monthly amounts of money. Ako lice koje je dužno da daje izdržavanje ostvaruje redovna mjesečna novčana primanja, sud će, na zahtjev izdržavanog lica, odrediti buduće iznose izdržavanja u procentu od zarade, penzije ili drugog stalnog novčanog primanja. If the person who is obliged to provide support has regular monthly incomes in money the court shall, at the request of the dependent, determine the future amounts of support as a percentage of the salary, pension or any other regular money income.

If the amount of support is determined as a percentage of regular monthly money incomes of the person obliged to provide maintenance (salary, compensation of the salary, pension, author's fee, etc), it, as a rule, may not be lower than 15% or higher than 50% of the regular monthly money incomes of the persons obliged to provide support.

If the person who is receiving the maintenance is a child, the amount of support should provide at least such a level of the standard of living for the child which is enjoyed by the parent of the person who is paying the support.

If a common-law marriage of a woman and a man ceases to exist, each of them, under the conditions hereof, is entitled to be provided alimony by the other partner if the common-law marriage lasted for a longer period of time.

The action for alimony may be submitted at latest within a year from the moment of cessation of the common-law marriage, but only under the conditions that the prerequisites for alimony occurred before the cessation of the common-law marriage and lasted continuously up to the closure of the main hearing in the litigation proceedings related to the alimony.

The court may reject a request for alimony, if it is requested by the partner from the common-law marriage who, without a serious cause given by the other partner, behaved rudely or disorderly in the common-law community or if he/she deserted his/her partner without a justified cause, or if his/her request would be an obvious injustice towards his/her partner.

Netherlands

Divorce can only be granted on the grounds of the irretrievable breakdown of the marriage (Article 1:151, Dutch Civil Code). Divorce by consent is possible as long as it is based on those grounds. According to Article 1:154 of the Civil Code divorce will be granted at the joint request of the spouses if the request is based on their mutual conclusion that the marriage has irretrievably broken down. Each spouse has a right to withdraw the request up until judgment is pronounced. Thus, 'divorce by consent' does not exist as an autonomous ground for divorce under Dutch law.

The court can award maintenance to a spouse if he/she has insufficient income to cover living costs, and cannot reasonably be expected to acquire such income (article 1:157, paragraph 1 Civil Code), when granting the divorce decree or in a subsequent judgment. When determining maintenance the court considers not only the needs of the recipient spouse, but also the other spouse's ability to pay. The obligation to pay maintenance can apply for up to 12 years (article 1:157, paragraphs 3 and 4 Civil Code).

Norway

The Marriage Act states that a spouse who finds that he or she cannot continue cohabitation may demand a separation. No other reason need be given for the right to separation to apply. During the separation period, the spouses are still formally married, and may consequently not contract a new marriage. The separation ceases to have legal effect if the spouses continue or resume cohabitation. During the separation time the spouses shall try how it is to live apart and reflect thoroughly upon their situation.

If the spouses have children together who is under the age of 16, they are obliged to attend mediation sessions before they can be granted a separation or a divorce. The purpose of mediation is to enable parents to reach an agreement concerning responsibility, right of access and where the child or children are to live permanently, with due emphasis on what will be the best arrangement for the child or the children.

The Marriage Act states that each of the spouses may demand a divorce when they have been legal separated for at least one year. It is not necessary for them to have agreed on a divorce. If only one of the spouses wants a divorce, she or he is entitled to one even though the other is against it. Each of the spouses may also demand a divorce if they have not cohabited for at least two years.

In Norway all separations and nearly all divorces must be dealt with by the County Governor. In Norway all separations and nearly all divorces must be dealt with by the County Governor. Divorce proceedings are only brought before courts of law in special cases, for instance when divorce is being sought because of abuse or bigamy. Even though the parties have not been separated, a court of law can grant a divorce if one of the parties has tried to kill the other or the children or has subjected them to severe abuse. The same applies if the spouse has threatened to carry out such acts.

The mutual obligations of spouses cease to exist upon separation and divorce. The same applies to a cessation of cohabitation without a separation or divorce. If the ability and opportunity of a spouse to ensure adequate support have been reduced as a result of caring for children of the marriage or of the distribution of joint tasks during cohabitation, the other spouse may be ordered to pay maintenance.

In other cases maintenance may only be ordered if there are special reasons for doing so. Maintenance shall be assessed on the basis of the need for maintenance of the person entitled thereto and the ability to pay of the person liable to pay maintenance. When there are special reasons for doing so, maintenance may be determined as a lump sum payment, alone or in addition to regular payments.

Maintenance shall be determined for a limited period not exceeding three years. If there are special reasons, maintenance may be determined for a longer period of time or without any time limit. If the marriage has lasted for a long time, maintenance shall as a general rule be determined for a longer period of time or without any time limit. Maintenance may be ordered for a period of up to three years before the claim was submitted to the authority that is to decide the matter.

The right to maintenance lapses if the person entitled thereto remarries.

The parties may enter into an agreement regarding maintenance. If the parties do not agree on the question of maintenance, each of them may demand that it be decided by the courts. If both parties so desire, the question may instead be decided by the maintenance enforcement officer. Administrative decisions of the maintenance enforcement officer may be appealed to the body immediately superior to him or to the body decided on by the Directorate of Labour and Welfare. The parties may demand a decision on the question of maintenance even if they have previously entered into an agreement regarding this question.

Poland

a. The positive prerequisite for divorce is – as provided in Article 56 § 1 Polish Family and Guardianship Code – ‘the irretrievable and complete disintegration of matrimonial life’. This complete disintegration will consist of a lack of any spiritual, physical and economic bonds between the spouses. According to the view of the Supreme Court, however, some elements of an economic bond may remain due to the specific circumstances, which do not exclude such a complete disintegration if the lack of spiritual and physical bonds is complete. However, even sporadic physical intercourse will, as a general rule, mean that the disintegration is not complete.

- In a divorce judgment, the court rules over the parental authority for the common minor children and decides the proportional amount each parent is obliged to contribute to the cost of the child's upbringing and maintenance. The court may, in particular, entrust one of the parents with the exercise of the parental authority, limiting the rights and duties of the other parent to certain activities (Art. 58 § 1 Polish Family and Guardianship Code).

Portugal

The Portuguese legal system recognises two forms of divorce: litigious (fault-based) divorce and divorce by mutual consent.

The revision of family law after the 1974 revolution introduced divorce by mutual consent (for couples married for at least three years). In this type of divorce, the couple has to agree concerning (1) the establishment of parental responsibility and custody of young children; (2) alimony obligations between the spouses, but only if one of the spouses is in need of them; (3) the family home. The court has a right to refuse the agreement and to change the decision if it considers that the interests of one of the parties, in particular those of the child, are endangered.

In the 1990s changes were introduced in the procedure for divorce by mutual consent. In 1995 Decree 163/95 established that for couples with no children (or in cases where parental responsibility had been decided), divorce by mutual consent could be performed by the civil authorities outside court; and in 1998 divorce by mutual consent after three years of marriage was changed to divorce by mutual consent "at any time" (with a period for "reconciliation"). In August 2001, the Council of Ministers approved a decree that eased divorce regulations further. Decree 272/2001 (13 October 2001) established that divorce by mutual consent could be performed exclusively by the civil authorities; in the case of couples with dependent children, the agreement drawn up by the civil authorities has to be assessed by the Public Prosecutor.

Litigious divorce can be applied for on two grounds: the violation of conjugal obligations and duties, and the break up of shared married life. In this type of divorce, it is the courts who decide upon parental responsibilities concerning young children, on the rights to the family home, on compensation for moral damage caused by the divorce, on the right to alimony and the levels involved and on distribution of property. There are no legal norms concerning the level of maintenance obligations, so, ultimately, it is the judge who decides. He is obliged to take into account the financial capacity of the person (who cannot lose more than one-third of his/her salary) as well as the needs of the child. If the parent does not comply with the maintenance obligations the custodian of the child has to bring the matter to court and the court may order payment to be deducted directly from the debtor's salary or assets.

Changes to the law on divorce were recently approved by the Parliament (2nd of July). Changes include the following:

a) Divorce by mutual consent will no longer include a period for conciliation. As established in previous legislation it may be performed exclusively by the civil authorities. However, if there are any items where consent is not achieved, then the divorce process must be presented in court, with the Judge acting as mediator.

b) In case of "litigious" divorce, the term "litigious" and the idea of fault-based divorce are abolished. Litigious divorce is considered as "divorce without consent". Divorce may be obtained after one year of separation (instead of three years as in the previous law) or less than a year in cases of domestic violence.

- With the abolishment of the concept of "fault-based" divorce, the recognition of guilt of one of the spouses and its consequences on alimony and other obligations are also eliminated. However, the ongoing proposal suggests that the spouse who has clearly contributed more significantly to family life shall be given a compensation credit (this concerns the situation of spouses with a full or high commitment to household work and childcare during marital life).

- Regarding alimony and maintenance for spouses the proposed law establishes that a spouse's right to maintenance is temporary even though it can be renewed periodically. The main principle is that each spouse be self sufficient as regards his/her survival (at present the concept of "fault" may be a criterion for the establishment of maintenance); moreover, the spouse that receives maintenance from the other spouse is not necessarily entitled to the standard of living he/she had during marriage.

c) In all couples with children the concept of "parental power" will be replaced by the concept of "parental responsibility regulation". It will also be assumed that parental responsibilities will be exercised jointly by both parents, except in cases where the court establishes that this regime is not the one which best protects the child's interests. Joint parental responsibility will be implemented by parents regarding "events of particular importance", while decisions related to "events of everyday life" will be taken by the



parent with whom the child lives (at present the "shared custody" regime may be taken up by parents who prefer to do so and reach an agreement to share custody and responsibility, but there is no explicit regulation of decision-making).

- The living arrangements of the child will be based on the receptivity of each parent to promote regular relationships with the other parent.
- The non fulfilment of "joint parental responsibilities" agreed upon by both parents or established by the court will be considered as a crime of disobedience.

c) Before the procedure of divorce the Court or the Civil Authorities must inform both members of the couple about family mediation services

On-going Debate

The above mentioned changes, approved by Parliament on the 2nd of July, are also being hotly debated by family associations, political parties and the Catholic Church. An on-line petition for the revision of the proposed law has been launched by the "Family Forum" (an association of several family associations). The petition considers that the law is unfair regarding "divorce without consent" and also suggests that the changes regarding "joint parental responsibilities" might tend to increase conflicts between parents.

Romania

The marriage will ending by death of one of the spouses or by divorce. Concerning the ending a marriage though divorce, the Romanian Family Code stipulate 2 ways: friendly divorce by mutual agreement and justified divorce.

As far as the dissolution of the marriage is concerned, we show that Articles 37 and 38 in the Family Code are worded as follows:
"Art. 37 - (1) The marriage is dissolved by the death of one of the spouses or following a court ruling certifying the death.
(2) The marriage can also be dissolved by divorce.

Art. 38 par. (1) – The law court can dissolve the marriage by divorce when, due to solid reasons, the relationships between the spouses are severely prejudiced and the continuation of the marriage is no longer possible."

As for as the divorce by mutual consent, the legal provisions in the field (the Family Code) stipulates the following:

Art. 38 – (2) "The divorce can be pronounced only based on the mutual consent of the spouses, if the following conditions are satisfied:

- a) at least one year passed from the date of conclusion of the marriage;
- b) there are no under age children resulting from the marriage.

Any of the spouses can ask the divorce when his/her health makes the continuation of the marriage impossible.

(3) When solving requests ancillary to the divorce, regarding the custody of under age children, the alimony obligation and the use of the dwelling, the court shall take into account the interests of the under age children as well."

As for the support the spouses owe to each other, Article 41 in the Family Code specifies the following:

"Art. 41

- (1) Until the dissolution of the marriage in the conditions stipulated by Article 39, the spouses owe each other a spousal support.
- (2) The divorced husband is entitled to spousal support if he is in need because of a labour incapacity occurred before or during marriage; he is also entitled to support when the incapacity occurs within one year as from the dissolution of the marriage, but only if this is due to circumstances related to the marriage.
- (3) The spousal support due according to the provisions of par. 2 can be established to an amount up to one third of the net income of the spouse obliged to payment, depending on the needs of the spouse asking for support and the means of the one who is to pay it. This amount, together with the child support, cannot exceed half of the net income of the paying spouse.
- (4) When the divorce is pronounced due to the fault of one of the spouses, the latter shall only benefit from the provisions of par. 2 and 3 for one year as from the dissolution of the marriage.
- (5) In all events, the right to spousal support ceases in case of remarriage of the entitled spouse."

As far as the procedure of the divorce is concerned, we note that this procedure is regulated by the Civil Procedure Code, Articles 607-619. As a rule, the divorce procedure supposes the production of proofs and the dissolution of the marriage by the fault of one or both spouses. The marriage can also be dissolved by mutual consent, when there are no under age children resulting from the marriage and more than 1 year passed from its conclusion.

Russian Federation

Legal Termination of the Marriage is regulated by Chapter 4 of Family Code

The marriage may be terminated by its dissolution upon an application of one or of both spouses, and also upon an application of the guardian of the spouse, recognized by the court as legally incapable.

The husband shall not have the right to institute court proceedings on the dissolution of the marriage during the wife's pregnancy and in the course of one year after the birth of the child.

The dissolution of the marriage shall be effected at the registry offices and in court.

A) Dissolution of the Marriage at the Registry Offices

In case there is the mutual consent to the dissolution of the marriage on the part of both spouses, who have no underaged children, the marriage shall be dissolved at the registry offices.

The dissolution of the marriage upon an application of one of the spouses, regardless of whether the spouses have or have not common underaged children, shall be effected at the registry offices, if the other spouse:

- is recognized by the court as missing;
- is recognized by the court as legally incapable;
- is sentenced for committing a crime to imprisonment for a term of over three years.

The dissolution of the marriage and the issue of the certificate on the dissolution of the marriage shall be effected by the registry office upon the expiry of one month from the date of filing an application on the dissolution of the marriage.

B) Dissolution of the Marriage in Court

A marriage shall be dissolved in court, if the spouses have common underaged children, or if one of the spouses does not consent to the dissolution of the marriage. A marriage shall also be dissolved in court, if one of the spouses, while raising no objections to it, avoids the dissolution of the marriage at the registry office (refuses to file an application, does not wish to attend the registering of the dissolution of the marriage, etc.).

The marriage shall be dissolved in court, if it has been established that the further life of the spouses together and the preservation of the family is impossible.

When considering the case on the dissolution of the marriage in the absence of one of the spouses' consent to the dissolution of the marriage, the court shall have the right to take measures for reconciling the spouses and shall also have the right to put off the proceedings by the case, having fixed for the spouses a three-month reconciliation term.

The marriage shall be dissolved, if the measures, taken to reconcile the spouses, have failed and the spouses (one of the spouses) insist (insists) on the dissolution of the marriage.

The dissolution of the marriage shall not be effected by the court before the expiry of one month from the date of the spouses' filing an application on the dissolution of the marriage.

When dissolving the marriage in court, the spouses may present for the consideration of the court an agreement on the issue of with whom of them the underaged children will live, on the procedure for paying out the means for the maintenance of the children and (or) of the disabled needy spouse, on the amount of these means or on dividing the common property of the spouses.

In the absence of an agreement between the spouses on the issues, or if it is established that the given agreement infringes upon the rights of the children or of one of the spouses, the court shall be obliged:

- to decree, with whom of the spouses shall the underaged children live after the divorce;
- to determine, from which of the parents and in what amounts shall the alimony be exacted for their children;
- upon the demand of the parents (of one of them), to divide the property in their joint ownership;
- upon the demand of the spouse, having the right to claim for a maintenance from the other spouse, to define the size of this maintenance.

The marriage, dissolved at the registry offices, shall be terminated as from the date of the state registration of the dissolution of the marriage in the Register of the Civil Status Acts, and if the marriage is dissolved in court - as from the date of the court decision coming into legal force.

The dissolution of the marriage in court shall be subject to the state registration in conformity with the procedure, established for the state registration of the civil status acts.

The court shall be obliged, within three days from the date of the court decision on the dissolution of the marriage coming into legal force, to forward an excerpt from this court decision to the registry office by the place of the state registration of entering into the marriage.

The spouses shall have no right to enter into a new marriage until obtaining a certificate on the dissolution of the marriage from the registry office by the place of residence of any one of them.

The Alimony Obligations of Ex-Spouses are established by Chapter 14 of Family Code.

The right to claim an alimony through the court from the ex-spouse, who possesses the necessary means for this, shall be enjoyed by:

- the ex-wife in the period of pregnancy and in the course of three years after the birth of the child;
- the needy ex-spouse, looking after the common invalid child, until the child reaches the age of 18 years, or after the common child - the 1st group invalid from childhood;
- the disabled needy ex-spouse, who has become disabled before the dissolution of the marriage or in the course of one year from the moment of the dissolution of the marriage;
- the needy ex-spouse, who has reached the pensionable age not later than five years since the dissolution of the marriage, if the spouses were married for a long time.

The amount of the alimony and the way of its payment to the ex-spouse after the dissolution of the marriage may be defined by an agreement between the ex-spouses.

In the absence of an agreement between the spouses (the ex-spouses) on the payment of an alimony, the amount of the alimony, to be exacted from the spouse (the ex-spouse) through the court, shall be defined by the court, proceeding from the material situation and the family status of the spouses (the ex-spouses) and from the other interests of the parties, worthy of attention, as a fixed monetary sum, subject to the monthly payment.

The court may relieve the spouse of the duty to maintain the other disabled spouse in need of assistance, or restrict this duty by a definite term, both in the period of the marriage and after its dissolution, if:

- the disability of the spouse in need of assistance has set in as a result of the abuse of strong drinks or drugs, or as a result of his committing a premeditated crime;
- a short term of the spouses' marriage;
- a mean behaviour in the family of the spouse, who claims an alimony.

The Parents' Obligations in Maintaining Children are regulated by Chapter 14 of Family Code.

The parents shall have the right to conclude an agreement on the maintenance of their underaged children (an agreement on the payment of an alimony).

If the parents do not provide the maintenance to their underaged children, the means for maintaining the underaged children (the alimony) shall be exacted from the parents through the court.

In the absence of an agreement on the payment of an alimony, the alimony for the underaged children shall be exacted by the court from their parents monthly in the amount of one fourth of the parents' earnings and (or) of another kind of income for one child, one third - for two children and a half of the parents' earnings and (or) another income - for three and more children.

The amount of these shares may be reduced or increased by the court with account for the material situation or the family status of the parties, and also for other circumstances, worthy of attention.

If the parent, obliged to pay the alimony, has irregular, changing earnings and (or) another income, or if this parent receives these earnings and (or) another income fully or in part in kind or in the foreign currency, or if he has no earnings and (or) another income, and also in the other cases, if the exaction of the alimony as a share of the parent's earnings and (or) another income is impossible, difficult or essentially infringes upon the interests of one of the parties, the court shall have the right to define the amount of the alimony, to be exacted monthly, as a fixed monetary amount, or as the share and as a fixed monetary amount simultaneously.

The size of the fixed monetary amount shall be defined by the court, proceeding from an attempt to ensure to the maximum possible extent the child's former maintenance level, taking into account the material situation and the family status of the parties and the other circumstances, worthy of attention.

If each of the parents has the children, staying with him, the size of the alimony, taken from one of the parents in favour of the other parent, worse provided for, shall be defined as a fixed monetary sum, to be exacted monthly.

The parents shall be obliged to maintain their disabled adult children in need of assistance. In the absence of an agreement on the payment of the alimony, the amount of the alimony for the disabled adult children shall be defined by the court as a fixed monetary sum, subject to the monthly payment, proceeding from the material situation and the family status, and also from other interests of the parties, worthy of attention.

In the absence of an agreement and in the face of some emergency circumstances (a grave illness, a severe injury of the underaged children or the existence of the disabled adult needy children, taking care of whom makes it necessary to pay for an outside help, and other circumstances), each of the parents may be obliged by the court to bear extra expenses, called forth by these circumstances.

The way of the parents' participation in bearing extra expenses and the amount of these expenses shall be determined by the court, proceeding from the material situation and the family status of the parents and of the children, and also from the other interests of the parties, worthy of attention, as a fixed monetary sum, subject to the monthly payment.

The court shall have the right to oblige the parents to take part both in the actually borne extra expenses and in the extra expenses, which it would be necessary to make in the future.

The payment of the alimony, exacted through the court, shall cease:

- when the child reaches the majority or if the underaged children acquire a full legal capacity before their reaching the majority;
- in the case of the adoption of the child, for whose maintenance the alimony was exacted;
- if the court recognizes that the work capacity of the alimony recipient has been restored or that he is no longer in need of

assistance;

- if the disabled ex-spouse in need of assistance, who received the alimony, enters into a new marriage;
- with the death of the person, who received the alimony, or of the person, obliged to pay the alimony.

Serbia

Marriage can be ended only by death of partners, annulment and divorce.

Marriage partners have the right to divorce if they conclude written agreement about divorce, which necessarily contains a written agreement about fulfilment of parental rights, same as about dividing common properties. Agreement about fulfilment of parental rights can have the shape of the agreement about together fulfilment of the parental rights or of single fulfilment of parental rights. Each partner has the right to divorce if marital relationships have been seriously disturbed for a longer period of time or if objectively the community cannot be achieved.

Process for a divorce is started by the suggestion for the settled divorce. The sue can be submitted by the both partners. The right to a sue for a divorce does not move onto inheritors of the partners. They can continue already started process in order to determine whether there was a basis for a divorce. Inheritors of partners who started marital litigation by suggestion for settled divorce can continue the process that had already started for determination whether there was a basis for a divorce. Guardian of professionally incapable partner can submit the request for a divorce only with the previous acceptance by the guarded body.

If the request is submitted by the power of attorney of the partner, power of attorney must be sealed and issued only for the purpose of representing in the marital litigation. The power of attorney must contain descriptions of the type and basis of the request. In marital litigation which has been started with suggestion of a settled divorce, partners cannot be represented by the same power of attorney.

In the marital litigation, prosecutor can withdraw the sue before the main argument has been closed without the acceptance of the prosecuted person and with the acceptance by the prosecuted person before the case has been legitimately finished and the suggestion for a settled divorce can be withdrawn by either partner before the case has been legitimately finished.

The agreement between the partners about fulfilment of parental rights is included in the decision about the divorce if the court assesses that the agreement is in the best interest of the child, same as for the agreement about dividing the common properties. In the marital litigation, the court is obligated to make the decision about the fulfilment of parental rights, as well as to partially or completely take the parental right away from either of the partners. The decision can also include one or more measures of protection against the family abuse.

Marriage as well as spurious partner who does not have enough means for a support and is incapable of work or is unemployed, has the right to support from another partner based on the capabilities of the other. The partner who in the time of contracting marriage knew about the reason that later caused the divorce does not have the right to support. Also, the partner does not have the right to support in case that it would be the obvious injustice to another partner.

Mother of the child who does not have enough means to support has the right to support from the father of the child 3 months before giving birth and one year after the birth of the child. However, mother will not have the right to support if that would represent and obvious injustice to the father.

The child minor has the right to a support from his/her parents, as well as from another blood relatives closest to the child if the parents are not alive or do not have enough means to support. On the other side, the child minor has the obligation to as a subsidiary in relation to the parental duty, partially cover the needs of his/her support from his/her own earnings.

The right o support has also the child that is not a minor if he/she is incapable of work and does not have enough means to support as long as that state is ongoing, same as the child (up until 26 years) that is still finishing education.

Slovakia

Irretrievable breakdown of the marriage as the sole ground for divorce (§ 21 Slovakian Family Code)

- the decision on divorce must contain a regulation on the attribution of parental responsibilities; the regulation by a court can be replaced by an agreement between the parents, which has to be scrutinized by the court.

Slovenia

A law on divorce does not exist. The Law on Marriage and Family Relations (Official Gazette of the RS, No. 14/98 -clarified text) in case of divorce (legal separation) or annulment, stipulates that the parent who has been entrusted with the care and education of the child implements the parent right. In cases where one of the parents is dead or unknown, or the right has been taken away from him/her, or he/she been denied business capacity, the parent right is maintained by the other parent. In the above-mentioned cases, when one person implements the parent right, the term "single parent family" is used.

Spain

Possibility of legal separation by court decision (Art. 81-84 Spanish CC)
- specific grounds for divorce do not exist (Art. 86 Spanish CC)
- divorce is granted by unilateral or mutual application, if the requirements of Art. 81 Spanish CC are complied
- an agreement on the consequences of divorce has to be reached (Art. 90 Spanish CC)
- divorce has no impact on joint attribution of parental responsibilities, but an agreement of their exercise has to be reached (care of the children under the parental authority of both parents, communication regime and stay of children with the other parent).

Sweden

Specific grounds for divorce do not exist
- divorce is granted by unilateral or mutual application
- joint attribution of parental responsibilities also continues after divorce (Chapter 6, Section 3, para 2, Swedish Children and Parents Code). The court shall remind the parents in the divorce decree that joint custody still applies. Under certain conditions, however, the joint attribution may be dissolved, and sole custody be entrusted to one of the parents.

Switzerland

Deux sortes de divorce: divorce sur requête commune et divorce sur demande unilatérale après une séparation de deux ans ou en raison de la rupture du lien conjugal (sans délai).

Procédure:

- maxime des débats pour le divorce sur requête commune;
- maxime inquisitoire pour le divorce sur demande unilatérale;
- maxime d'office pour les questions relatives aux enfants.

Pension alimentaire: au cas où l'un des époux, après le divorce, ne serait pas en mesure d'assurer lui-même son entretien, il peut demander à l'autre une contribution d'entretien.

Turkey

The Turkish Law recognizes two main fields of grounds of divorce; specific grounds and the general ground of divorce. Apart from these, there are no other grounds of divorce; i.e. the parties cannot agree among themselves to divorce each other apart from the

grounds enumerated below. However art. 166/111 has accepted divorce upon mutual agreement. Either spouse can bring an action for divorce on any of the grounds and both have equal right to do so.

Specific grounds of divorce are adultery, attempts on life, ill usage, to commit a crime and lead a dishonourable conduct, desertion and insanity.

Adultery is voluntary sexual intercourse by a married person with a person other than such married person's husband or wife. Adultery, which is a breach of fidelity, is a ground for divorce. The period of limitation for bringing an action for divorce on this ground is six months from the time of the discovery of the adultery. Such discovery must be made within five years of the date of commitment of the adultery; otherwise the right to bring an action for divorce on this ground is lost.

Attempts on life is a plot by one spouse to murder the other. Usage are threats or attempts to do bodily harm to another spouse, by force or violence. It is sometimes accompanied by battery, which is an unlawful beating or other physical violence inflicted upon a person without his or her consent.

Both cases, to commit a crime and lead a dishonourable conduct must cause the other spouse to be seriously strained to continue his or her life together as it has become intolerable.

Relating to the desertion, according to article 164 of the Civil Code: "Where either the husband or the wife has wrongfully deserted the other or without a concrete ground refuses to return to the conjugal home, the injured party can sue for a divorce, provided this desertion or absence has continued for at least six months and still continues. The spouse that forces the other to desert conjugal home or prevents the other to return to the conjugal home is also considered to have deserted."

Insanity at this instance must occur after marriage, insanity existing at the time of the marriage is subject to an action of nullity. Article 165 of the Civil Code regulates that: "Either the husband or the wife can at any time sue for a divorce on the ground of the insanity of the other, where the latter's mental condition makes life in common intolerable and is verified by an official health board to be incurable".

The conditions for divorce upon mutual agreement are as follows: the marriage should have lasted for at least a year, the parties must have declared their intentions by their free will, the parties must assist personally in the trial proceedings and personally petition their claims, the judge must have approved the agreement related to financial and personal matters, and the parties must accept the necessary alterations made by the judge in this respect. On the other hand, in a rejected divorce claim, if three years has elapsed and if there is a lack of unity in life in common, upon the petition of either spouse, a decision of divorce would be rendered.

The Civil Code, article 166 is as follows: "If conjugal relations are so materially strained that life in common cannot be expected to be continued for them, each spouse may ask for a divorce. Where the above-mentioned domestic disturbances are principally the result of the gross fault of the plaintiff, the defendant has a right to object to the divorce suite. However, if the objection constitutes an abuse of right and there are no justifiable grounds of interest to maintain the unity of life in common for the defendant and the children, a judgement of divorce may be obtained. If the marriage has lasted at least for a year, upon the application of both spouses or acceptance of one of the other's claim, the conjugal life would be considered as materially strained. In order to decide for a divorce, the judge must personally listen to the parties and be convinced that their free intentions were declared and must approve the agreement reached by the parties concerning the financial matters and personal arrangements of the children. The judge may make necessary amendments in that agreement taking into consideration the interest of the parties and the children. Upon the acceptance of these amendments, a decision for divorce is issued. In this case, the rule that "statement of any kind made by the parties has no binding for the judge" will not be applied. If the divorce suit petitioned for any one of the above mentioned reasons is rejected and three years elapse since this decision becomes *res judicata*, and there is lack of unity of life in common due to any reason whatsoever, the conjugal life would be considered to be materially strained and upon the application of one of the spouses, a divorce decision will be rendered".

Judicial separation: There is an intermediary mechanism where the judge relieves the petitioning spouse from the obligation of cohabitation: the judicial separation. It has its roots in the Canon Law. Judicial separation may be obtained for almost all the same grounds as the divorce. According to article 170: "Where a ground of divorce has been proved, the judge must grant either a divorce or judicial separation. Where only judicial separation is asked for, divorce cannot be granted. Where the suit is for a divorce, he can grant judicial separation only if a reconciliation between the husband and wife seems probable".

Material and moral compensation, according to the Article 174 "When a divorce effects the innocent spouse in terms of his pecuniary rights or expectations, the guilty party must duly indemnify him. Where the circumstances that led to the divorce have seriously damaged the innocent spouse in person or his reputation, the judge may grant him a sum of money as moral compensation". Again in article 175 a maintenance is provided for the spouse who by divorce would fall into a state of destitution. The court require the



other spouse, even if the latter is innocent, to contribute according to his means for an indefinite period till life time to the maintenance of the destitute party. This is called alimony.

Ukraine

There are no problems to divorce if family has not children.

According to the legislation property is divided in to equal parts between family partners. If they can't to divide, this issue will decide Court.

Court always divorces families with children.

In particular children stay with their mothers. Other partner pays the alimony. 25% from salary if they have one child (but no less of living min), 33% if they have two children and 50% if they have three and more children.

United Kingdom

The sole ground of divorce is the irretrievable breakdown of the marriage.

This can be proved in one of the following ways:

- unreasonable behaviour
- adultery
- desertion for two years (except in Scotland)
- separation for two years with consent (one year in Scotland)*
- separation for five years without consent (two years in Scotland)*

*These time periods were reduced from two years and five years by the Family Law (Scotland) Act 2006.