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Divorce and legal separation

Greece

1 What are the conditions for obtaining a divorce?

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

There are two types of divorce proceedings:

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

2 What are the grounds for divorce?

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

There is a breakdown of the marital relationship, caused by the respondent or by both spouses, such that there is good reason to believe that the continuation of the marital relationship would be intolerable to the applicant. There is a presumption of breakdown, which the respondent may seek to rebut, in cases of bigamy, adultery, desertion of the applicant, attempt on the applicant's life by the respondent, or domestic violence committed by the respondent against the applicant.

If the spouses have been separated continuously for at least two years, there is an irrebuttable presumption of breakdown, and divorce may be sought even if the breakdown was caused by the applicant.

If one of the spouses is declared missing presumed dead, the other may petition for divorce.

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

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

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

3.2 the division of property of the spouses

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

3.3 the minor children of the spouses

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

- (a) it may assign parental responsibility or custody to one of the parents;
- (b) it may assign parental responsibility or custody to both parents jointly;
- (c) it may apportion parental responsibility between the parents; or
- (d) it may assign parental responsibility to a third party.

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

3.4 the obligation to pay maintenance to the other spouse?

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

if at the time the divorce is pronounced the age or state of health of the spouse making the claim is such that he or she cannot be required to take up or continue to carry on a suitable occupation in order to support himself or herself;

if the spouse making the claim has care of a minor, and is thereby prevented from carrying on a suitable occupation;

if the spouse making the claim cannot find appropriate regular employment, or needs vocational training; in either of these cases the entitlement lasts no more than three years from the time the divorce is pronounced; or

in any other case where the award of maintenance at the time the divorce is pronounced is necessary on equitable grounds.

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

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

5 What are the conditions for legal separation?

6 What are the legal consequences of legal separation?

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

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

8 What are the conditions for marriage annulment?

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

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

Nullity is remedied after the marriage if the spouses consent to the marriage fully and freely; if unauthorised minors are subsequently given the authorisation of the court; if an unauthorised minor reaches the age of 18 and acknowledges the marriage; if a disqualified spouse thereafter becomes qualified and acknowledges the marriage; if the guardian, or the court, or a disqualified spouse being now qualified, acknowledges the marriage; or if a person who acted in consequence of mistake or duress acknowledges the marriage after the mistake or duress has ended. There is no marriage if no declaration of marriage has been made before the mayor and witnesses, in the case of a civil wedding, or in the case of a religious wedding if the marriage has not been solemnised before a priest of the Eastern Orthodox Church or before a minister of another denomination or faith known in Greece. In that event the marriage has no legal effect, and an action seeking a declaration of its non-existence may be brought by anyone with a legal interest in the matter.

9 What are the legal consequences of marriage annulment?

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

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

No.

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

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

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

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

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

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

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

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

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

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

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

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

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

a certificate issued (free of charge) by the mayor or chairman of the village council of the applicant's domicile or permanent residence, stating the applicant's occupational, financial and family situation;

a certificate issued (free of charge) by the tax inspector of the applicant's domicile or permanent residence, stating that in the last three years the applicant submitted an income tax declaration, or a declaration for any other direct tax, and that after examination the declaration was approved; and

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

Provisional exemption may also be granted for only a part of the expenses.

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

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

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

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

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

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

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

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

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

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

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

The substantive law applicable to divorce is as follows, in order of precedence:
the law of the parties' last common nationality, provided one of them still holds it;
the law of the parties' last common habitual residence during the marriage; or
the law with which they have the strongest links.

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

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Last update: 11/12/2020

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