Divorce and legal separation

Croatia

1 What are the conditions for obtaining a divorce?

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

2 What are the grounds for divorce?

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

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

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

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

3.2 the division of property of the spouses

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

3.3 the minor children of the spouses

The legal consequences of the termination of a marriage that apply to minor children include several important issues: which parent the child will live with after the marriage has been terminated, establishing the arrangements with the other parent, child maintenance, how the remaining areas of parental care will be organised (representing the child, performing legal acts, management and disposal of the child's assets, education and health of the child, etc.). The spouses may come to an agreement regarding these legal consequences of divorce (agreement on joint parental care) and hence select a simpler and faster non-judicial divorce proceeding. (Articles 52, 54-55, 106, 453-460 ObZ 2015). If the spouses do not produce an agreement on joint parental care that contains an agreement on the relevant legal consequences of divorce, the decision on these matters is automatically issued by the court in a judicial proceeding initiated by a divorce action (Articles 53-54, 56-57 and 413 ObZ 2015). Nevertheless, the possibility exists that the parents might come to an agreement on the legal consequences of divorce during judicial divorce proceedings. In this event the court will reach its decision on the grounds of the parents' agreement, if it feels that this agreement is in the best interest of the child (Article 104/3 in conjunction with Article 420 ObZ 2015).

3.4 the obligation to pay maintenance to the other spouse?

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

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

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

5 What are the conditions for legal separation?

There is no term equivalent to "legal separation" in Croatian family law. A corresponding term to "legal separation" found in current legislation would be "termination of the marital union" (*prestanak bračne zajednice*). The Family Proceedings Act does not provide conditions for the "termination of the marital union" since marital union is a legal standard and represents the content of conjugal life. The termination of the marital union ensues if the spouses terminate

all mutual relations that otherwise comprise conjugal life, i.e. if they no longer have the wish to live as a married couple and to realise the specific content of such a relationship (e.g. they cease to communicate, etc.). The termination of a marital union is most commonly manifested in practice by one of the spouses leaving the common home and leaving the other spouse.

6 What are the legal consequences of legal separation?

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

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

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

8 What are the conditions for marriage annulment?

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

9 What are the legal consequences of marriage annulment?

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

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

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

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

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

Spouses with a minor child in common may institute court proceedings by one spouse initiating an action or both spouses submitting an application for a divorce by mutual consent (Article 50 ObZ 2015). However, before instituting divorce proceedings (by action or submitting an application for a divorce by mutual consent) when there is a minor child in common, the spouses are obliged to take part in the non-judicial proceeding of mandatory counselling (a form of expert help to family members in reaching consensual decisions on family relationships, carried out by a team of experts from the Department of Social Services) (Articles 321-322 ObZ 2015). The purpose of such procedures is to provide spouses with professional help that includes composing an agreement on joint parental care - an agreement on the legal consequences of divorce, which must lay down in detail: the place and address of the child’s residence, the time the child will spend with each of the parents, how information will be shared regarding consent for important decisions, how important information about the child will be shared, the amount of maintenance as an obligation of the parent with whom the child does not reside, as well as how future issues will be resolved). Parents may compose the agreement on joint parental care during the mandatory counselling process, however they may also compose it independently or during the family mediation procedure (non-judicial process in which the parties try to consensually resolve disputes from family relationships with the help of one or more family mediators - Article 331 ObZ 2015). By composing an agreement on joint parental care the spouses can initiate a simpler and faster non-judicial divorce proceeding which is launched by submitting an application (Articles 52, 54-55, 106, 453-460 Obz 2015). Spouses with a minor child in common are obliged to submit a report on the mandatory counselling referred to in Article 324 ObZ 2015 with their application for a divorce by mutual consent, as well as an agreement on joint parental care, as referred to in Article 106 ObZ 2015) (Article 456 Obz 2015).

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

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

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

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

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

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

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

Pursuant to Article 21 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, (Regulation Brussels IIa), a judgment given in a Member State is recognised in the other Member States without any special procedure being required (Article 21(1)), however pursuant to Article 21(3), any interested party may apply for a decision that the judgment be or not be recognised. In that event, applications for recognition or non-recognition are subject to the territorial jurisdiction of the relevant court from the list notified by each Member State to the Commission pursuant to Article 68 in the form provided for by Article 37 of Regulation Brussels IIa. Additionally, it should be noted that, without prejudice to Article 21(3) Regulation Brussels IIa, no special procedure is required to update the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

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

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

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

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

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

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

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

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