

Avalent>Perekonnaasjad ja pärimine>Abielu lahutamine ja kooselu lõpetamine Divorce and legal separation

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1 What are the conditions for obtaining a divorce?

Divorce can be obtained by mutual consent (through a judicial, administrative or notarial procedure). In the absence of mutual consent, divorce can be granted by a court.

2 What are the grounds for divorce?

According to Article 373 of the Civil Code, a divorce may be obtained in the following cases:

by mutual consent of the spouses;

where the relationship between the spouses has seriously deteriorated and continuation of the marriage is no longer possible;

at the request of one of the spouses, following a *de facto* separation that has lasted for at least two years;

at the request of the spouse whose state of health makes the continuation of the marriage impossible.

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

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

the status of spouse ceases to exist and each of the divorced spouses may remarry;

on dissolution of the marriage through divorce, the spouses may agree to keep the names used during their marriage. If there is no agreement, the court may, in duly justified cases, permit the spouses to keep the names used during their marriage. If there is neither agreement nor a court ruling, each former spouse reverts to the names used prior to the marriage.

3.2 the division of property of the spouses

As a result of the divorce, the matrimonial property regime ceases between the spouses from the date of filing for a divorce. However, either of the spouses – or both, jointly, in the case of a divorce by mutual consent – may request the divorce court to declare that the matrimonial property regime ceased on the date of the *de facto* separation.

If the joint property regime ceases through the dissolution of the marriage, the former spouses remain joint owners of the joint property until their respective shares are determined.

During the termination of the marital community, each of the spouses takes over his or her own property, after which the joint property is divided and the debts are settled. For this purpose, the share of property corresponding to each spouse is first determined on the basis of his or her contribution to acquiring the joint property and fulfilling the joint obligations. Unless proven otherwise, it is presumed that the spouses made an equal contribution.

Irrespective of any maintenance obligation between the former spouses, and of the provision of compensation, the spouse not at fault who suffers material loss as a result of the dissolution of the marriage may request the spouse at fault to compensate him or her. The family court decides on that request through the divorce decision.

Mutual inheritance rights are lost as a result of divorce.

3.3 the minor children of the spouses

Once the divorce decree has been issued, the family court decides upon the arrangements between the divorced parents and any minor children. As a rule the spouses have joint **parental authority over the children** following divorce. The family court establishes the **place of domicile** of the minor child at the house of the parent with whom he or she usually lives, while the parent separated from the child has the right to have personal contact with the child. The court establishes the **contribution** of each parent to the expenses related to the children's upbringing, education, schooling and vocational training.

If circumstances change, the family court may modify the measures concerning the rights and obligations of the divorced parents with regard to their minor children if requested to do so by either of the parents or by another family member, the child, the tutelary authority, the public institution for child protection or the public prosecutor.

3.4 the obligation to pay maintenance to the other spouse?

Any maintenance obligation ceases between the spouses as a result of the dissolution of the marriage. A divorced spouse is entitled to maintenance if he or she is in financial need owing to incapacity to work arising before or during the marriage or within a year of its dissolution (but only if the incapacity is caused by a circumstance relating to the marriage).

A spouse applying for a maintenance allowance may not also request compensation. Where the divorce has been granted due to the exclusive fault of the defendant spouse, the plaintiff spouse may receive compensation. Compensation may be granted only where the marriage lasted for at least 20 years.

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

In Romanian law there is no concept of 'legal separation' but only of '*de facto* separation' and the judicial division of property. This is a situation that has to be proven before court. In the event of the *de facto* separation having lasted for at least two years, this is a reason for judicially issuing a divorce.

5 What are the conditions for legal separation?

6 What are the legal consequences of legal separation?

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

A marriage is annulled in the event of a breach of one of the legal requirements concerning the marriage contract. A marriage can be annulled only by means of a court decision. Annulment takes effect with regard to the past as well as the future; the marriage is considered not to have taken place.

8 What are the conditions for marriage annulment?

The following breaches of the legal provisions relating to the marriage contract constitute absolute grounds for annulment:

the marriage was contracted without consent;

the marriage was contracted between persons of the same sex;

the marriage was contracted by a person who was already married;

the marriage was contracted between persons related in the direct line or in the collateral line up to and including the fourth degree;

the marriage was contracted by a person of unsound mind or suffering from a mental disorder;

the marriage was contracted without the consent of the future spouses, or such consent was not given in accordance with the legally required procedure;

the marriage was contracted by a minor under the age of 16;
the marriage was contracted for purposes other than that of founding a family.

Relative grounds for annulment of a marriage are as follows:

when it is contracted by a 16-year-old minor based on a medical opinion, without the consent of the parents/parent having legal guardianship or without the authorisation of the person having parental rights;
when there is a defect in consent: error (regarding the physical identity of the other spouse), fraud or violence;
when it is contracted by a person temporarily lacking judgement;
when the marriage was contracted between an adoptive parent and a minor under his or her guardianship.

9 What are the legal consequences of marriage annulment?

Until a final court judgement is issued, the spouse who entered in good faith into an invalid or annulled marriage retains his or her status as a spouse within a valid marriage, and the property relationships between the former spouses are subject, by analogy, to the provisions regarding divorce.

The invalidity of the marriage has no effect on the children, who maintain their status as children of the marriage. As far as parents' and children's rights and obligations with regard to each other are concerned, the provisions regarding divorce apply by analogy.

A court decision declaring a marriage invalid or annulling it is enforceable against third parties; the provisions concerning the formalities of the matrimonial property regime, the public character of the marriage contract and the unenforceability of the marriage contract are correspondingly applicable.

The invalidity of the marriage cannot be enforced against a third party in respect of an act concluded prior to it with one of the spouses, unless the disclosure formalities laid down by law concerning the action for declaring the invalidity or the action for annulment have been completed, or the third party was otherwise aware of the grounds for the invalidity of the marriage prior to the conclusion of the act.

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

Mediation is optional prior to the initiation of proceedings at a court. During the proceedings, the judicial authorities are obliged to inform the parties about the possibility and the advantages of using mediation.

Through mediation, misunderstandings between spouses concerning the exercise of parental rights, the establishment of the domicile of the children, and the parents' contribution to the maintenance of the children. The mediator ensures that the outcome of mediation is not contrary to the best interests of the child, encourages parents to focus first and foremost on the child's needs and to take responsibility as parents to ensure that the *de facto* separation or divorce does not have a detrimental effect on the child's upbringing and development.

The mediation agreement containing the parties' agreement concerning the exercise of parental rights, the parents' contribution to the maintenance of the children, and the establishment of the domicile of the children has to be subject to the permission of the court, which has the obligation to verify whether the agreement is in the interest of the child.

If the spouses agree to the divorce and do not have minor children born within or outside the marriage or adopted, the public registrar or notary public in the place where the marriage was entered into or where the last joint domicile of the spouses was registered may declare the marriage to be dissolved through the agreement of the spouses and issue them with a divorce certificate.

Divorce on the basis of an agreement of the spouses may also be declared by a notary public in the event of there being minor children born within or outside the marriage or adopted, if the spouses agree on all the aspects relating to names, exercise of parental authority, establishing the domicile of the children, the manner of maintaining personal relationships, and establishing the parents' contribution to the expenses related to the children's upbringing, education, schooling and vocational training.

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

An application for divorce falls within the jurisdiction of a **district court** (*judecătoria*).

Jurisdiction belongs to the district court with territorial jurisdiction over the place in which the spouses' last joint home is located. If the spouses did not have a joint home or if neither spouse still lives in the court district in which their last joint home was located, the application should be lodged with the court with jurisdiction for the place where the defendant's home is located. However, if the defendant does not have a place of domicile in Romania, and the Romanian courts have an international jurisdiction, the application should be lodged with the court with jurisdiction for the place where the applicant's home is located. If neither the applicant nor the defendant has his or her domicile in Romania, the parties may agree to lodge the application for divorce with any court in Romania. In the absence of such an agreement, the application for divorce should be lodged with the District Court for Sector 5, Bucharest.

In addition to the remarks from the application for judgment, an application for divorce must include the names of any minor children. The application must be accompanied by the marriage certificate, copies of the birth certificates of any minor children and, where appropriate, the spouses' agreement following mediation.

If an application for divorce is based on the agreement between the parties, it shall be signed by both spouses or by a joint authorised representative with an authenticated special power of attorney. If the authorised representative is a lawyer, he or she shall certify the signatures of the spouses, in accordance with the law.

The parties must appear in person before courts of first instance, unless one of the spouses is serving a custodial sentence, is prevented through serious illness, is placed under a court injunction, has his or her domicile abroad or is in another situation that prevents him or her from appearing in person; in such situations, the person concerned may be represented by a lawyer, authorised representative or, where appropriate, guardian or registered representative (*curator*). If on the date of the hearing at the court of first instance, the applicant is unjustifiably absent, and only the defendant appears, the application shall be rejected as being unfounded.

The divorce court shall take a decision, even if not requested to do so in the application for divorce, concerning the exercise of parental authority, the parents' contribution to the expenses related to the children's upbringing and education, the domicile of the children and the parent's right to have a personal relationship with the children.

An application for a marriage to be declared invalid on absolute grounds can be lodged by any interested party. The application for marriage annulment is personal in character, with no effect passed down to the heirs. However, if the application was lodged by one of the spouses, it may be continued by any of his or her heirs.

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

Legal aid can be obtained subject to the conditions laid down in Government Emergency Order No 51/2008 on legal aid in civil matters, as approved with amendments and additions by Law No 193/2008, as subsequently amended.

Legal aid may be provided, separately or cumulatively, in the form of the assistance of a lawyer; payment of the fee of the expert, translator or interpreter; payment of the bailiff/enforcement officer's fee; and in terms of exemptions from, discounts on, or instalments or deferrals of, the payment of legal fees.

In order to be eligible for full legal aid, persons shall have had a monthly net average income per family member of less than RON 300 in the last two months prior to the lodging of the application. If the income is below RON 600, the proportion of legal aid provided is 50%. Legal aid proportionate to the applicant's

needs can also be granted in other situations where the certain or estimated costs of the proceedings are likely to restrict effective access to justice, due for example to the difference between the cost of living in the Member State where the applicant resides and that of living in Romania.

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

In the new Code of Civil Procedure, the time period for appeal against a decision is 30 days from the notification of the decision.

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

The applicable legislation concerning recognition of a divorce decree is Regulation (EC) No 2201/2003. The application should be lodged with the court with jurisdiction for the defendant's place of domicile or residence in Romania. If the defendant has no known domicile, the application should be lodged with the court with jurisdiction for the applicant's place of domicile or residence.

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

A recognition decision may be opposed through the lodging of an application with the court of appeal with territorial jurisdiction or the submission of an appeal to the High Court of Cassation and Justice.

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

To determine the law applicable to international private-law relations, the Romanian court will apply either *Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation* or the provisions of Article 2597 and subsequent articles of the Civil Code.

The spouses may choose the law of the state in which they have their habitual common place of domicile or had their last habitual common domicile (if at least one of them lives there on the date of the agreement for choosing the applicable law), the law of the state of which one of the spouses is a citizen, the law of the state where the spouses lived for at least three years, or Romanian law.

If the spouses have not made a choice, the applicable law is that of the state in which they have their habitual common domicile, or in the absence thereof, the law of the state where the spouses had their last habitual common domicile (if at least one of the spouses still has his or her usual domicile in that state on the date when the application for divorce is lodged); where one of the spouses does not have a habitual place of domicile, the law of the state of which they were both citizens on the date when the application for divorce was lodged applies; or, where the spouses have different citizenships, the law of the country in which they last jointly had citizenship (if at least one of them still has this citizenship on the date when the application for divorce is lodged). In all other situations, the applicable law is that of Romania.

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Last update: 18/12/2020

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