Divorce and legal separation

Viro

1 What are the conditions for obtaining a divorce?

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

2 What are the grounds for divorce?

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

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

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

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

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

3.2 the division of property of the spouses

Upon divorce, the spouses' property is divided according to the property regime between them. In the case of **joint property**, the spouses generally divide joint property (*ühisvara*) between them in equal shares according to the provisions on the termination of common ownership. The composition of the joint property is established as at the time the property regime ends. There is no obligation on the spouses to divide their property upon divorce. Until their joint property is divided, the spouses jointly exercise the rights and perform the obligations relating to them. In addition, the spouses have the right to jointly possess any objects forming part of their joint property.

When a property regime under which any **growth of assets is shared** (*vara juurdekasvu tasaarvestus*) comes to an end, the acquired assets of both spouses are ascertained and the financial claim arising from the duty to share acquired assets is determined.

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

3.3 the minor children of the spouses

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

In general, parents should agree on who the child will live with, who will be involved in raising the child and to what extent, as well as how and for how long maintenance is to be provided. The monthly support payment for a minor child may not be less than the minimum amount of maintenance for a minor child as laid down in the Family Law Act (*perekonnaseadus*).

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

3.4 the obligation to pay maintenance to the other spouse?

A divorced spouse is entitled to receive maintenance:

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

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

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

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

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

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

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

5 What are the conditions for legal separation?

The spouses live apart.

6 What are the legal consequences of legal separation?

If spouses are legally separated, either spouse may:

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

require the other spouse to transfer the family's shared accommodation or a part of it for his or her sole use if this is necessary in order to avoid major personal conflicts. Although, first and foremost, this should be based on the preferential rights of the owner of the dwelling, the dwelling may also be left to be used by the spouse who is not the owner, if the court deems it necessary when taking into account the means of both spouses and the interests of the children.

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

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

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

8 What are the conditions for marriage annulment?

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

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

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

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

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

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

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

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

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

the marriage is between persons of the same sex;

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

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

9 What are the legal consequences of marriage annulment?

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

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

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

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

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

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

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

An application for a divorce may be submitted to:

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

a notary;

the court of first instance whose jurisdiction covers the place of residence of the respondent (a county court (*maakohus*)).

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

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

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

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

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

In addition to the above, if joint property is divided, the composition and location of the property should be indicated in the statement of claim, the value of all the claimant's belongings should be determined and a proposal should be made for the division of the joint property. If the spouses have signed a marital property agreement, this should be appended to the statement of claim.
The statement of claim must be signed by the claimant or his or her representative. If this is done by a representative, an authorisation document or another document certifying the representative's powers should also be included.

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

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

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

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

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

In accordance with Council Regulation (EU) 2019/1111, a judgment on divorce made in one Member State is recognised automatically in the other Member States of the European Union (except for Denmark) without any special procedure being required.

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

In order to contest the recognition of a decision on divorce, legal separation or annulment of marriage, the court of appeal of the Member State as indicated in the list published in Council Regulation (EU) 2019/1111 should be addressed. In Estonia, a district court (*ringkonnakohus*) fulfils this function.
The procedure and deadline for appealing a court decision will be set out in the court decision.

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

In the event of divorce, the legislation of the country in which the common place of residence of the spouses is located is to be applied. If the spouses reside in different countries but have the same citizenship, the general legal consequences of the marriage are defined by the legislation of the country whose citizens they are. If the spouses reside in different countries and have different citizenship, the general legal consequences of the marriage are determined on the basis of the law of the country:
of their last common residence, provided that one of the spouses resides in that country;
where the opposing party resides;
where, in the event of a joint application, one of the spouses resides;
where an applicant for divorce resides if he or she has resided there for at least a year immediately before making the application, or where an applicant for divorce resides if he or she has resided there for at least six months immediately before making the application and if he or she is a citizen of the Member State in question.
If divorce is not permitted under the law mentioned above or is only permitted under very strict conditions, Estonian law is applied instead if one of the spouses resides in Estonia or holds Estonian citizenship or if he or she was resident in Estonia or held Estonian citizenship at the time the marriage was contracted.

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