

Etusivu>Perhe- ja perintöoikeudelliset asiat>Avioero ja asumusero Divorce and legal separation

Slovakia

1 What are the conditions for obtaining a divorce?

In the Slovak Republic, marriage can be dissolved only by a court.

2 What are the grounds for divorce?

A marriage can be dissolved by a court if the relationship between the spouses is seriously damaged and has permanently broken down, so that the marriage can no longer serve its purpose and the spouses cannot be expected to resume marital cohabitation.

The court establishes the causes of the serious breakdown of the relationship between the spouses and takes them into account in its decision on the divorce. The court always takes the interests of minor children into account in its divorce decision.

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

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

A spouse who, on marrying, took the surname of the other spouse may notify the registry office within three months after the divorce decision has become final that he/she is reassuming his/her former surname.

A spouse who, on marrying, took the surname of the other spouse and at the same time kept, as a second surname, his/her former surname may notify the registry office within three months after the divorce decision has become final that he/she is discontinuing use of the common surname.

3.2 the division of property of the spouses

The matrimonial property regime is dissolved on divorce. When the matrimonial property regime is dissolved, it is settled in accordance with the principles set out under Section 150 of the Civil Code. The matrimonial property regime may be settled by: (a) agreement; (b) a judicial decision; (c) lapse of time.

3.3 the minor children of the spouses

In a decision on the divorce of parents of a minor, the court specifies the parents' responsibilities towards the child in the period after the divorce, in particular by determining which parent will be granted custody of the child and will represent the child and administer his/her assets. The decision on parental responsibilities may be replaced by an agreement between the parents.

If the parents do not reach an agreement on contact rights in respect of the child, the court will also specify those rights in the divorce decision. Where necessary in the interest of the child, the court may restrict or prohibit a parent's contact with the child.

In addition, the court specifies how the parent who has not been granted custody of the child is to contribute towards the child's maintenance, or approves the parents' agreement on the amount of maintenance.

3.4 the obligation to pay maintenance to the other spouse?

A divorced spouse who is unable to provide for himself/herself may demand from the former spouse a contribution towards essential maintenance according to the latter's ability and capacity. If the spouses fail to agree, the decision regarding such maintenance contribution is to be made by the court upon a petition lodged by either of them.

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

Slovak national law does not provide for legal separation.

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?

Besides divorce, marriage can also be declared invalid by a judicial decision. Such marriage is deemed not to have been concluded from the beginning (*matrimonium nullum*). In addition, the court may declare that the marriage never existed (*non matrimonium*).

8 What are the conditions for marriage annulment?

a. Circumstances giving rise to marriage annulment are as follows:

existence of another marriage;

family relationship between ascendants and descendants and between brothers and sisters, including a family relationship established by adoption;

insufficient age, in the case of a minor over 16 but under 18 years of age;

mental disorder resulting in the restriction of legal capacity;

a marriage declaration that was not made freely, seriously, explicitly and unambiguously.

Where a marriage is concluded despite the existence of any of the above disqualifying circumstances, it is deemed to have come into existence (existing marriage) until a judicial decision annulling it becomes final.

b. Marriage does not come into existence if the marriage declaration was made:

under coercion;

by a minor under 16 years of age;

before a registry office not authorised to receive it, except for the cases specified in Section 4(2) and (3), or before a mayor or a member of a municipal council not authorised to officiate;

before a church authority or a religious community not registered in accordance with the relevant special legislation, or before a person not authorised to pursue the activities of a clergyman of a registered church or religious community;

abroad before an authority not designed to do so;

by a proxy without a valid authorisation, or if the authorisation had been withdrawn in accordance with this Act.

9 What are the legal consequences of marriage annulment?

Marriage that has been declared invalid by a judicial decision is deemed not to have been concluded.

The rights and duties of spouses in respect of their common child, and their property relations following a judicial decision on marriage annulment are governed by the same provisions that apply to divorced parents. Following a judicial decision on marriage annulment, the declaration made by the spouses concerning their common surname also ceases to be valid and each spouse has to reassume his/her former surname.

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

Only a court can declare marriage to be dissolved. Associated issues may be resolved by applying Mediation Act No 420/2004.

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?

Petitions for divorce, marriage annulment or a declaration that the marriage never existed are lodged with a district court.

The court having territorial jurisdiction is the court in whose area of jurisdiction the spouses had their latest common residence, if at least one of them resides in the area of jurisdiction of the court. Otherwise, the general court of the respondent has jurisdiction. If jurisdiction cannot be determined in this way, the general court of the petitioner has jurisdiction.

The petition must fulfil the formalities set out in Section 127 of Act No 160/2015, the Code of Civil Dispute Procedure (Civilný sporový poriadok) and in Sections 25 and 26 of Act No 161/2015, the Code of Uncontested Civil Procedure (Civilný mimosporový poriadok).

The petition must state to which court it is addressed, who the petitioner is, which matter it concerns and the purpose sought, and it must be signed. In addition, the petition must state the names of the parties, their representatives (if they have one), a faithful and full description of the key facts and a list of the evidence the petitioner intends to rely on; the petition should also make it clear what the petitioner is seeking. The petitioner must attach to the petition the documentary evidence on which he/she relies.

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

The provision of legal aid is governed by Act No 327/2005 on the provision of legal aid to people in financial need.

A court fee has to be paid for divorce proceedings. Any party to the proceedings may request exemption from payment of the court fees.

Upon a petition, the court may exempt the party, in whole or in part, from payment of the court fees, if justified by the party's circumstances and if the case does not involve arbitrary or manifestly unsuccessful assertion or protection of a right. Unless the court decides otherwise, the exemption applies to the entire procedure and has retroactive effect; however, fees paid before the decision on exemption was issued are not refunded.

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

An appeal may be lodged against such a judicial decision within 15 days of the service 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?

A petition must be lodged for the recognition of a decision. The court with jurisdiction is the Regional Court in Bratislava.

Final decisions in matrimonial matters issued in other Member States (except Denmark) after 1 May 2004 are recognised pursuant to 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, repealing Regulation (EC) No 1347/2000. Decisions are recognised without any special procedure being required; in particular no special procedure for amending the entry in the records of the registry office is required. However, the interested party may apply for a special decision to be issued on the recognition of a foreign decision in matrimonial matters. The Regional Court in Bratislava has jurisdiction regarding the recognition of foreign decisions.

As for decisions issued in Denmark or decisions issued in other Member States before 1 May 2004, it is necessary to lodge a petition for the recognition of a foreign final decision in matrimonial matters, if at least one of the parties is a Slovak national. Such a procedure is initiated by a petition, which may be lodged by a person designated as a party in the foreign decision. The Regional Court in Bratislava has jurisdiction regarding the recognition of foreign decisions.

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 decision on the recognition or non-recognition of a foreign decision may be appealed. The appeal must be lodged with the Regional Court in Bratislava and is decided on by the Supreme Court.

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 dissolution of marriage by divorce is governed by the applicable law of the State of which the spouses were nationals when the procedure was initiated. If the spouses are of different nationalities, the dissolution of marriage by divorce is governed by Slovak law.

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