

Uz sākuļāpū>Ģīmenes lietas un mantojums>Laulības šķīršana un laulāto atšķīršana Divorce and legal separation

Bulgārija

1 What are the conditions for obtaining a divorce?

Bulgarian law recognises the following ways of terminating marriage through divorce:

divorce by mutual consent under Articles 50 and 51 of the Family Code (Semeen kodeks);

divorce by petition on the grounds of a serious and irretrievable breakdown of the marriage under Article 49 of the Family Code;

no-fault divorce by petition on the grounds of a serious and irretrievable breakdown of the marriage on submission of an agreement between the spouses under Article 49(4) of the Family Code;

In a divorce by mutual consent, the two spouses make a joint petition to the district court (rayonen sad), by which they submit the agreement under Article 50 of the Family Code. In the agreement, the spouses must settle matters concerning the residence of the children, the exercise of parental rights, access to and maintenance of the children, the division of property, the use of the family home, maintenance between the spouses and the family name. The settlement has to be endorsed by the court after it has verified whether the children's interests are protected. If the court determines that the agreement is deficient or the children's interests are not properly protected, the court sets a time limit for remedying the defects. If the defects are not remedied within the time limit, the court will dismiss the divorce petition.

In the case of divorce by petition on the grounds of a serious and irretrievable breakdown of the marriage, the petition is lodged by one of the spouses. The petition is examined by the district court (rayonen sad) with jurisdiction over the respondent's place of residence. The court is required to rule of its own motion on the issue of fault for the breakdown of the marriage and on the exercise of parental rights, access to and maintenance of the children born of the marriage, the division of property, the use of the family home, maintenance between the spouses and the use of the husband's surname. These rules apply if the parties have not concluded a nuptial agreement which settles the above-mentioned relations in the event of divorce.

In the case of divorce by petition, the spouses may declare that they have agreed a binding settlement on matters relating to the exercise of parental rights, access to and maintenance of the children born of the marriage, the division of property, the use of the family home, maintenance between the spouses and the use of the husband's surname. The court will rule on the matter of fault only if expressly requested to do so by a party or the parties to the case, but it is nevertheless required to establish that there are grounds for terminating the marriage, namely a serious and irretrievable breakdown.

2 What are the grounds for divorce?

For divorce by mutual consent:

The basis for granting a divorce by mutual consent is the declaration by the spouses of their solemn and unwavering mutual consent to the termination of the marriage. The court does not examine the spouses' motives for terminating the marriage.

For divorce by petition:

The basis for granting a divorce by petition is the serious and irretrievable breakdown of the marriage. There is no legal definition of 'serious and irretrievable breakdown of the marriage'. According to legal theory and the interpretative case-law of the Supreme Court of Cassation (Varhoven kasatsionen sad), there is a serious and irretrievable breakdown of the marriage if the marriage bond exists formally but is totally devoid of the substance dictated by public morality and the law. A serious and irretrievable breakdown of the marriage is an objective state that has to be established on a case-by-case basis. All means of proof, including oral evidence, are admissible. The law does not lay down absolute preconditions for a serious and irretrievable breakdown of the marriage. The case-law accepts, although the list is not exhaustive, adultery, a prolonged de facto separation, alcohol abuse and abuse of other intoxicating substances, physical and mental cruelty and persistent neglect of the family. The new Family Code no longer requires the court to rule of its own motion on matters concerning fault for the breakdown of the marriage, with the exception of cases in which the party or parties have expressly requested a ruling on this matter. Nevertheless, in the absence of an agreement, fault remains a determining factor when ruling on matters concerning the exercise of parental rights, access to and maintenance of the children born of the marriage, and use of the family home.

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

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

After the divorce, the court may keep the marital surname or may restore the premarital surname of one of the spouses at his or her request. The other spouse may not oppose the request to keep the marital surname or to restore the premarital surname.

3.2 the division of property of the spouses

The new Family Code lays down several possible property regimes between the spouses during the marriage: statutory matrimonial property regime; statutory separate property regime; and contractual regime.

1. The matrimonial property regime is the indivisible joint ownership of all assets, including cash deposits, acquired during the marriage. These assets are jointly owned by both spouses, regardless of whose name they were acquired under, if acquired by means of a joint contribution by both spouses. The joint contribution of the spouses may take the form of the investment of funds and labour, childcare and housework. Joint contribution is presumed unless there is proof to the contrary. Under the Family Code in force (adopted in 2009), cash deposits no longer constitute matrimonial community property.

Each spouse's personal property consists of assets acquired before the marriage and inheritances and gifts acquired during the marriage. Chattels (movable property) acquired by a spouse during the marriage for his or her normal personal use or the exercise of his or her profession are personal property.

Following the divorce, matrimonial property is transformed into normal property.

2. separate property regime:

The rights acquired by each of the spouses during the marriage are held personally by that spouse, but upon termination of the marriage by petition each spouse is entitled to obtain a portion of the value of the rights acquired by the other spouse during the marriage, to the extent that the claiming spouse contributed by labour, by his or her financial means, by taking care of the children, by housework or by other means. The expense of meeting family needs is borne by both spouses; the spouses are jointly and severally liable for obligations assumed for the day-to-day needs of the family.

3. contractual regime;

Under the new Family Code, spouses may conclude a nuptial agreement, an option that is new to Bulgarian law. A nuptial agreement may be concluded by spouses either before or during their marriage. The terms of the nuptial agreement are confined to the division of property between the parties, such as: the

parties' rights to the property acquired during the marriage; the parties' rights to the property they owned before the marriage; the manner in which the property, including the family home, is managed and disposed of; the sharing of expenses and obligations by the parties; the property-related consequences in the event of divorce; the spouses' maintenance during the marriage and in the event of divorce; the maintenance of the children born of the marriage. A stipulation transforming any premarital property of one of the parties into matrimonial community property is inadmissible. A nuptial agreement may not contain provisions on pre-death arrangements, except with regard to the spouses' shares in agreed matrimonial community property upon dissolution. The statutory matrimonial property regime applies to any property relations which are not settled by the nuptial agreement.

Regardless of the regime chosen by the spouses, the general regime applies to disposal of the family home, i.e. when the family home constitutes personal property of one of the spouses, disposal requires the consent of the other spouse unless the two spouses own another home which is co-owned or personally owned by each one of them. In the absence of consent, disposal can take place with the authorisation of the district judge if it is established that the disposal is not detrimental to the children who have not reached the age of majority and to the family. When a divorce is granted, if the family home cannot be used separately by the two spouses, the court will award its use to one of them if he or she has requested this and has a housing need. Where there are children born of the marriage who have yet to reach the age of majority, the court will rule of its own motion on the use of the family home, and may award such use to the spouse who has been awarded the exercise of parental rights, for as long as he or she exercises them.

After the divorce, the former spouses cease to be one another's legal heirs and forfeit all benefits under pre-death arrangements. After the divorce, gifts of property of significant value made in relation to or during the marriage by one spouse or their close relatives to the other spouse may be revoked, save where this is contrary to public morality. The petition to revoke the gift may be lodged up to one year after the divorce is granted.

The statutory matrimonial property regime applies where the persons entering into marriage have not chosen a regime for their property relations and if they are minors or persons with limited legal capacity. The property regime is recorded in a Spousal Property Relations Register. The property regime may be modified during the marriage. The modification is noted in the record of civil marriage and in the register. Nuptial agreements and the applicable statutory property regime are recorded in a central electronic register with the Registry Agency. The register is publicly accessible. When one or both spouses engage (s) in a transaction with a third party and no property regime is recorded in the register, the statutory matrimonial property regime applies.

3.3 the minor children of the spouses

The accepted legal term in Bulgarian legislation is 'exercise of parental rights'.

In its decision to grant a divorce dissolving the marriage, the court is required to rule on issues relating to the exercise of parental rights, access to and maintenance of the children born of the marriage, and the use of the family home. When doing so, it takes account of the interests of the children. The court decides which of the spouses is to exercise parental rights, laying down measures concerning the exercise of those rights, contacts between the children and the parents and the maintenance of the children. When determining which parent will exercise parental rights, the court assesses all the circumstances pertaining to the interests of the children, hearing the parents and, if they are over ten years of age, the children.

3.4 the obligation to pay maintenance to the other spouse?

Under Article 83 of the Family Code, maintenance is granted only to the spouse not at fault for the divorce. Maintenance is payable for no more than three years after the termination of the marriage, unless the parties have agreed a longer period. The court may extend these periods if the former spouse receiving the maintenance is in particular hardship and the other spouse can pay the maintenance without particular difficulty. A former spouse's right to maintenance is terminated on remarriage. In practice, cases in which ex-spouses are awarded or ordered to pay maintenance are extremely rare.

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

The concept of judicial separation does not exist in current Bulgarian legislation.

In case-law, de facto separation simply means that the spouses are neither living together nor sharing a household. It does not have the same meaning as 'judicial separation'.

5 What are the conditions for legal separation?

See 4.

6 What are the legal consequences of legal separation?

See 4.

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

The Bulgarian law in force uses the term 'annulment of the marriage'. Annulment is one of the means afforded by Bulgarian law for terminating a marriage. The annulled marriage has all the legal consequences of a valid marriage prior to its termination by judicial procedure. A marriage may be annulled only by judicial procedure: the marriage's nullity may not be relied upon until it has been ordered by the court.

8 What are the conditions for marriage annulment?

For a marriage to be annulled, one of the spouses must:

have contracted the marriage when under eighteen years of age and, if over sixteen years of age, without the authorisation of the court; ;

still be married to another person;

have been declared legally incapable or suffer from a mental illness or mental handicap constituting grounds for them to be declared legally incapable;

suffer from a disease which gravely endangers the life or health of offspring or the other spouse, unless the disease endangers only the other spouse and that spouse is aware of it;

be a direct ascendant or descendant of the other spouse;

be a brother or sister, nephew, niece or other collateral relative to the other spouse up to the fourth degree, including the other spouse;

be the adoptive parent or adopted child of the other spouse;

have been coerced into contracting the marriage by the threat of a serious and imminent danger to their own life, health or honour or that of their family.

9 What are the legal consequences of marriage annulment?

Depending on the defect in the marriage, the petition for its annulment may be lodged by the spouse affected by the defect; it may also be lodged by the prosecutor, by the spouse from the first marriage, or by the public prosecutor and the spouse. Article 97 of the Family Code expressly and exhaustively lists the persons empowered to bring an action for annulment and the time limits for doing so.

The consequences of annulment of the marriage are identical to those of divorce for the personal and property relations between the spouses, as well as for the relations between the spouses and their children. For the annulment of a marriage, bad faith is equivalent to fault in the case of divorce. Children conceived or born during the annulled marriage are considered to have been born in wedlock and enjoy the presumption of paternity.

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

The only way to dissolve a marriage by divorce is by lodging a petition or application with a court.

Where the parties opt for mediation, court proceedings are suspended.

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?

As court of first instance, a district court (rayonen sad) has natural jurisdiction over petitions for divorce on the grounds of fault and for annulment. These courts also hear applications for divorce by mutual consent of the spouses. The petitions should be lodged with the court for the respondent's place of residence. The court is not required to check of its own motion that it has jurisdiction, but it is required to transfer the case to the competent court if the respondent submits an objection within the time limit for responding to the petition.

The party requesting the divorce is required to appear in person at the court hearing for an examination of the case. In a divorce by mutual consent, both parties are required to appear in person. In default of appearance without good reason, the case is dismissed.

Judgment by default is not possible in matrimonial cases.

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

The parties to the case can obtain legal aid under the usual terms for its provision. These are laid down in the Legal Aid Act (Zakon za Pravnata Pomosht).

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

A decision granting a divorce by mutual consent is not subject to appeal.

On being served with a decision on a petition for annulment or a petition for divorce, a party has two weeks in which to lodge an appeal with the provincial court. The decision on divorce becomes effective even if an appeal has been lodged against the part concerning fault.

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, as implemented by Article 621 of the Code of Civil Procedure (Grazhdanski protsesualen kodeks), applies in this case. A judgment or another instrument is respected by the authority before which it is brought on the basis of a duplicate copy authenticated by the rendering court and the accompanying certificate, where an act of the European Union so requires. Judgments within the scope of Article 21(2) of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, are recognised by the competent registration authorities.

The interested party may request recognition of the judgment under the procedure of Article 623 of the GPK from the provincial court with jurisdiction over the permanent address of the opposing party or over its registered office or, where the opposing party does not have a permanent address or registered office within the territory of the Republic of Bulgaria, over the permanent address or registered office of the interested party. Where the interested party has neither a permanent address nor registered office within the territory of the Republic of Bulgaria, the request is brought before the Sofia City Court.

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?

Council Regulation (EC) No 2201/2003, as implemented by Articles 622 and 623 of the Code of Civil Procedure, applies in this case.

The party opposing recognition of the decision may appeal against the recognition order or, as appropriate, the order granting enforcement of the decision.

An appeal against the order may be lodged with the Sofia Court of Appeal. The decision of the Sofia Court of Appeal is subject to an appeal on points of law only by the Supreme Court of Cassation.

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?

Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation applies in this case.

In cases where the above-mentioned Regulation is inapplicable, the Code on Private International Law (Kodeks na mezhdunarodnoto chastno pravo) (KMCP) applies.

The law applicable to the annulment of a marriage is that of the place in which it was contracted.

Personal relations between spouses are governed by their common domestic law. If they are of different nationalities, their relations are governed by the law of the state in which they have their common habitual residence. Failing that, their relations are governed by the law of the state with which the two spouses together have the closest ties.

Property relations between spouses are governed by the law applicable to their personal relations.

The divorce of spouses of the same foreign nationality is governed by the law of the state of which they are citizens when the petition for divorce is lodged.

The divorce of spouses of different nationalities is governed by the law of the state in which they have their common habitual residence when the petition for divorce is lodged. When the spouses have no common habitual residence, Bulgarian law applies.

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