

Pagna ewlenija>Kwistjonijet tal-familja u wirt>Divorzu u separazzjoni legali Divorce and legal separation

Slovenja

1 What are the conditions for obtaining a divorce?

Slovenian law recognises: a) **divorce on the basis of an agreement between the spouses**, b) divorce on the basis of an agreement before a notary public and c) divorce on the basis of a proposal (non-litigious procedure)

a) In the case of divorce on the basis of an agreement between the spouses, the court grants a divorce under Article 96 of the Family Code (*Družinski zakonik*) provided that the spouses have reached an understanding on the care, upbringing and subsistence of any children they may have together and on the children's contact with the parents in accordance with the provisions of the Family Code, and if they have submitted, in the form of an enforceable notarial record, an agreement on the division of their joint property, on which of them shall remain or become the tenant of their apartment, and on the maintenance of the spouse who has no means of subsistence and is unemployed through no fault of their own.

Before a court grants a divorce, it must establish whether the agreement between the spouses ensures the care, upbringing and subsistence of any children they may have together, and contact between the children and parents in accordance with the children's interests. If the court establishes that the agreement between the spouses is not in the children's interests, it rejects the proposal to terminate the marriage by mutual consent.

b) If spouses who do not have any children together over whom they exercise parental responsibility wish to divorce and reach agreement on the division of their joint property, on which of them shall remain or become the tenant of the apartment in which they live, and on the maintenance of the spouse who has no means of subsistence and is unemployed through no fault of their own, they ask a notary public to draw up a notarial record of their agreement to terminate the marriage. The marriage is terminated as of the signing of the notarial record. The record is the legal basis for the entry of the divorce in the civil register. The notary sends the record to the administrative unit, which enters the divorce in the civil register, within eight days of the day the agreement is signed before the notary public. (Article 97 of the Family Code)

c) Where a marriage has for whatever reason become 'unendurable', either spouse may request divorce. When a court terminates a marriage on the basis of the preceding paragraph, it also decides on the care, upbringing and subsistence of any children the spouses may have together and on their contact with the parents in accordance with the Code. Before the court decides under the preceding paragraph, it must establish how the child's interests are best served. (Article 98 of the Family Code)

Before filing an action or a proposal for divorce on the basis of an agreement, the spouses attend prior counselling at a social services centre (*center za socialno delo*), unless:

- they have no children together over whom they exercise parental responsibility;
- one of the spouses is mentally incompetent;
- one of the spouses is of unknown residence or whereabouts;
- one or both of the spouses live abroad.

The purpose of the prior counselling is to help the spouses ascertain whether their relationship has broken down to the extent that the marriage has become unendurable for at least one of them, or there is the possibility of saving the marriage. Prior counselling is attended by the spouses in person without their representatives being present. (Article 200 of the Family Code)

2 What are the grounds for divorce?

The Family Code recognises only one ground for divorce: that the marriage has become unendurable. This means that the marriage has broken down so thoroughly and irretrievably that it can no longer be saved. A marriage is only deemed to be 'unendurable' when the relations between the spouses have not merely broken down temporarily but, for serious reasons, thoroughly and irretrievably. Unendurability is assessed in line with the situation at the time of the hearing, taking into account all the circumstances that have led to the current situation. The court also establishes unendurability when the other spouse agrees to divorce.

A marriage may be terminated at the request of either spouse, and there is no requirement for the marriage to be unendurable for both partners.

The issue of the fault for the fact that a marriage has become unendurable is not raised, nor does the court establish it in the course of proceedings. Thus, a marriage may also be terminated at the request of the spouse responsible for the fact that the marriage has become unendurable.

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

The legal consequences of divorce are set out in detail below:

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

A spouse who changes their surname upon marriage may, within one year of the final divorce judgment or judgment terminating the marriage, or within one year of signing the notarial record or other equivalent document on divorce by agreement, submit a declaration to the competent authority to the effect that they wish to revert to the surname they had prior to the marriage. This declaration may only be submitted by a person who did not further change their surname in the course of the marriage. (Article 17 of the Personal Names Act [*Zakon o osebnem imenu*]) The issue of changing a surname is an administrative matter which is decided not by a court but by an administrative body.

3.2 the division of property of the spouses

If the spouses have not entered into an agreement arranging their matrimonial property relations, in the division of joint assets **the legal presumption is that the share of the spouses in the joint assets is equal**; however, the spouse that considers they will be placed at a disadvantage through the division of assets into equal shares may request that their share be determined in proportion to their contribution to the joint assets. Insignificant differences in the contributions of each spouse to the matrimonial property are not taken into account. The court takes account of all circumstances of the case, in particular the income of each spouse, the assistance that one spouse gave to another, the care and upbringing of any children, the performance of domestic work, the upkeep of the home and family, the maintenance of assets, and any other form of work and participation in managing, maintaining and increasing the joint assets.

(Article 74 of the Family Code)

3.3 the minor children of the spouses

CARE AND UPBRINGING OF CHILDREN

Parents who do not live together or who intend to separate must **agree on the upbringing and care of any children**, and do so in the interests of those children. They may agree that both will care for and bring up the children, that all children will be entrusted into the care and upbringing of one of the parents, or that some of the children will be entrusted to one parent and the other children to the other parent. If the parents fail to reach an agreement on the matter themselves, a social services centre shall assist them in reaching an agreement. They may also request mediation.

If the parents reach an agreement on the care and upbringing of children, they may propose that a court settlement be signed. If the court establishes that the agreement is not in the children's interests, it rejects the proposal.

If, even with the assistance of a social services centre, the parents fail to agree on the upbringing and care of children, the court shall decide at the request of one or both parents, a child's guardian, a child who has reached the age of 15, provided the child is capable of understanding the meaning and legal consequences of their actions, or a social services centre, as follows:

that the parents will retain joint responsibility for the care and upbringing of the children;

that all children will be entrusted into the care and upbringing of one of the parents;

that some of the children will be entrusted to one parent and the other children to the other parent;

and may also, *ex officio* and in accordance with the provisions of the Family Code, decide on all measures for safeguarding the children's interests.

In reaching a decision on care and upbringing, the court also considers the child's opinion, if it is expressed by the child themselves or by a person the child trusts, and who has been chosen by the child themselves, and provided the child is capable of understanding its meaning and consequences. In reaching a decision on care and upbringing in the interests of the child, the court takes into account the opinion of the social services centre, which it acquires in accordance with the provisions of the law governing the non-litigious civil procedure. (Articles 138 and 143 of the Family Code, Article 102 of the Non-Litigious Civil Procedure Act [*Zakon o nepravdnem postopku*])

CONTACT

A child has the right to have contact with both parents, and vice versa. Contact must ensure that the child's interests are served. The parent to whom the care and upbringing of the child has been entrusted, or another person with whom the child lives, must refrain from all conduct that hinders or prevents contact, and must endeavour to encourage the child to adopt an appropriate attitude towards contact with the other parent or their parents. The parent who has contact with the child must refrain from all conduct that hinders contact and the care and upbringing of the child.

Parents who do not live together or who intend to separate shall come to an agreement on contact. If the parents fail to reach an agreement on the matter themselves, a social services centre shall assist them in reaching an agreement. They may also request mediation. If the parents agree on contact, they may propose that a court settlement be signed. If the court establishes that the agreement is not in the child's interests, it rejects the proposal. If the parents fail to reach agreement on contact, the matter is decided by the court.

Judicial proceedings for deciding on contact and for amending a decision that regulates the matter are commenced at the proposal of one or both parents, a child's guardian, a child who has reached the age of 15, provided the child is capable of understanding the meaning and legal consequences of their actions, or a social services centre.

In the case of a divorce on the basis of an agreement between the spouses, the spouses must also enclose an agreement on contact with the divorce agreement, which the court enters in the decision on the divorce by agreement, and must enclose with the proposal a record of attendance at prior counselling. If the court upholds a proposal for divorce, a proposal to annul a marriage or a proposal to establish the non-existence of a marriage, it also decides on contact between the spouses and any children they may have together.

Contact is decided at the first instance by district courts (*okrožna sodišča*) in a non-litigious procedure.

In deciding on contact, the interests of the child are of paramount importance: contact shall be deemed not to be in a child's interest if it imposes psychological pressure on the child or if it jeopardises the child's physical and mental development;

a child also has the right to contact with other persons who are family relations and have a close personal bond with the child (e.g. the child's grandparents and (half-)brothers or (half)sisters).

The court may remove or restrict the right to contact in accordance with Article 173 of the Family Code.

If the parent with whom the child lives prevents contact between the child and the other parent and contact cannot be made to occur even with the specialist assistance of a social services centre, the court may, at the proposal of the other parent, decide to remove custody from the parent who is preventing contact and entrust the child to the other parent, if the court believes that the other parent will enable contact and if this is the only way in which the child's interests can be safeguarded. The court issues a new decision on parental contact when so required by a change in circumstances and the child's interests.

In reaching a decision on care and upbringing, the court also considers the child's opinion, if it is expressed by the child themselves or by a person the child trusts, and who has been chosen by the child themselves, and provided the child is capable of understanding its meaning and consequences.

In reaching a decision on contact in the interests of the child, the court takes into account the opinion of the social services centre, which it acquires in accordance with the provisions of the law governing the non-litigious civil procedure. (Articles 141, 142 and 143 of the Family Code, Article 102 of the Non-Litigious Civil Procedure Act)

MAINTENANCE of spouses and children

Spouses may agree to sign a court settlement in relation to the maintenance of children. Where the agreement is not in the child's interests, the court rejects the proposal. (Article 191 of the Family Code)

Where the spouses have not reached an agreement either by themselves or with the assistance of a social services centre, they may request that the court decide. Prior to reaching a decision, the court must seek the opinion of a social services centre and must also take into account the opinion of the child, if they have expressed an opinion and if they are capable of understanding its importance and consequences. (Articles 140 and 143 of the Family Code)

Parents are obliged to support their children until they reach full age, such that, in accordance with their abilities, they provide the living conditions necessary for the child's development.

Parents are also obliged to maintain a child who is enrolled in secondary school education after they reach full age, if they are engaged in regular education and are not employed, and if they are not registered as unemployed, i.e. until the first completion of secondary school studies or completion of the highest level of general or vocational education that can be obtained under the regulations on secondary education. The maintenance obligation ends when the child reaches the age of 26.

Parents are obliged to maintain a child who is enrolled in higher technical education if they are engaged in regular education and are not employed, and if they are not registered as unemployed, i.e. until the first completion of higher technical education in accordance with the provisions of the law governing higher technical education. Parents are obliged to maintain a child who is enrolled in higher education if they are engaged in regular education and are not employed, and if they are not registered as unemployed, i.e. until the first completion of undergraduate studies or a Master's programme or integrated Master's programme in accordance with the provisions of the law governing higher education. If the study programme attended by the child lasts more than four years, the maintenance obligation is extended by the amount of time by which the study programme exceeds those four years. The maintenance obligation ends when the child reaches the age of 26. (Article 183 of the Family Code)

Maintenance is allotted in line with the needs of the claimant and the material and gainful capacities of the person liable to provide maintenance. In allotting child maintenance, the court is obliged to take into account the interests of the child, so that the maintenance is adequate for ensuring their favourable physical and mental development. The maintenance must cover the child's living expenses, in particular the costs of accommodation, food, clothing, footwear, care and protection, education, schooling, recreation, amusement and other specific needs. Maintenance is adjusted once a year in line with the consumer price index in Slovenia. (Articles 189, 190 and 198 of the Family Code)

A spouse or extra-marital partner is obliged to support their partner's minor child who lives with them, unless that or another parent is capable of supporting the child.

A spouse's or non-marital partner's obligation comes to an end upon the cessation of their marriage or non-marital partnership with the child's mother or father, unless the marriage or non-marital partnership comes to an end as a result of the death of the child's mother or father. In that event, the surviving spouse or non-marital partner is obliged to support the child of their deceased spouse or non-marital partner only if they lived with the child at the time the marriage or non-marital partnership came to an end. (Article 187 of the Family Code)

A child who has reached the age of majority is obliged to support their parents if the latter do not have sufficient means of support and are unable to acquire such means, but only for as long as the parents supported them. A child who has reached the age of majority is not required to support a parent who, on unreasonable grounds, failed to perform their maintenance obligations to them. (Article 185 of the Family Code)

3.4 the obligation to pay maintenance to the other spouse?

A spouse who has no means of support and is unemployed through no fault of their own has the right to request maintenance from the other spouse in divorce proceedings, as well as by means of a special action that must be filed within one year of final termination of the marriage. Maintenance may only be requested if the conditions for maintenance existed at the time of the divorce and they still exist at the time the spouse requests maintenance. (Article 100 of the Family Code)

The spouses may reach an agreement on maintenance in the event of divorce by concluding a maintenance agreement in the form of an enforceable notarial record upon marriage, during the marriage or upon divorce. (Article 101 of the Family Code)

Maintenance is allotted in line with the claimant's needs and the capacities of the person paying the maintenance. It is determined as a monthly sum and in advance, and may be requested from the moment a maintenance action is filed. In exceptional cases, it may be paid as a one-off sum or in another way if justified by special reasons. However, maintenance determined in this way may not place the claimant in a significantly worse position than the position they would have been in had the maintenance been paid in advance as a monthly sum, nor may it place an excessive burden on the person obliged to pay maintenance. (Article 104 of the Family Code)

The court rejects a maintenance request if the maintenance payment to the spouse requesting it would be unfair on the other spouse in light of the reasons that led to the marriage being unendurable, or if the spouse requesting it committed a criminal offence against the other spouse or their child or parents prior to or during the divorce proceedings or after the divorce. (Article 100 of the Family Code)

There is no maintenance obligation between divorced spouses if the payment of maintenance would jeopardise their ability to support themselves or any minors whom they are obliged to support under the Family Code. (Article 105 of the Family Code)

Maintenance is adjusted in line with the consumer price index of Slovenia once a year. (Article 107 of the Family Code)

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

A 'cohabiting union' (*življenjska skupnost*) is an essential element of a marriage (Article 3 of the Family Code). The termination of a cohabiting union (*prenehanje življenjske skupnosti*), or legal separation, means the permanent termination of the essential elements of the mutual relations existing between the spouses. When a cohabiting union ends, the economic union and the intimate and emotional ties between the spouses come to an end, as may the common household, etc.

5 What are the conditions for legal separation?

The law does not specify the conditions for legal separation. Courts decide on legal separation in each individual procedure in line with the circumstances and specific features of the case in question.

6 What are the legal consequences of legal separation?

Legal separation has no effect on the existence of a marriage; this means, therefore, that it is only the cohabiting union that is terminated and not the marriage. In order to terminate a marriage, a proposal for divorce by mutual consent must be filed, a request made to a notary public to draw up a notarial record of the divorce agreement, or a divorce proposal filed (see point 1). A spouse who has no means of support may request maintenance from the other spouse in divorce proceedings, as well as by means of a special action that must be filed within one year of final termination of the marriage.

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

Annulment means that, at the time the marriage was entered into, the conditions required by law for a marriage to be deemed valid were not in place (e.g. there was no free expression of will, the expression of will was forced or given in error, the marriage was not contracted in accordance with the prescribed procedure, was contracted by a minor or was contracted by a mentally incompetent person or temporarily mentally incompetent person, etc.). The legal consequences of the marriage cease to have effect on the day it is annulled.

8 What are the conditions for marriage annulment?

A marriage does not become invalid *ipso iure*, but must be annulled by means of a decision.

An action to annul a marriage may be filed by the spouses and by anyone with a legal interest in annulment, i.e. if the marriage was contracted by a minor or a mentally incompetent person, if a previous marriage had not been terminated, if the marriage was contracted between relatives, if either spouse was not present when the marriage was contracted, or if the marriage was not contracted with the intention of maintaining a joint household. The state prosecutor may also file an action on the above grounds and in the case of a marriage entered into between an adoptive parent and adopted child.

One or another spouse may file an action for annulment of a marriage after the reason of mental incompetence ceases to exist.

There is no statute of limitation on exercising the right to request annulment of a marriage. (Article 48 of the Family Code)

9 What are the legal consequences of marriage annulment?

The legal consequences of marriage annulment take effect on the day the judgment on annulment becomes final. In the case of the annulment of a marriage, the provisions that apply to divorce proceedings are applied in relation to property relations and gifts between the spouses. (Articles 54 and 55 of the Family Code)

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

The Mediation in Civil and Commercial Matters Act (*Zakon o mediaciji v civilnih in gospodarskih zadevah*), which entered into force in June 2008, regulates mediation in disputes involving civil-law, commercial, labour-related, family and other property-law relationships in relation to claims which parties may freely assert and settle, unless a separate law provides otherwise for any of these types of dispute. A marriage itself cannot be terminated without the intervention of a court; a proposal to terminate a marriage by agreement must be filed (see point 1).

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?

Under the Non-Litigious Civil Procedure Act, procedures in matrimonial disputes are: procedures to establish the non-existence of a marriage, annul a marriage and terminate a marriage.

District courts are competent to decide on such matters in the first instance (Article 10 of the Non-Litigious Civil Procedure Act).

A procedure to establish the non-existence of a marriage commences at the proposal of a person with a legal interest or the state prosecutor.

A procedure to annul a marriage commences at the proposal of one of the spouses. A procedure may also be commenced at the proposal of a person with a legal interest or the state prosecutor, if the Family Code so provides.

A procedure to terminate a marriage commences at the proposal of one of the spouses.

A procedure for divorce by mutual consent commences at the proposal of both spouses. If a proposal for divorce by mutual consent has been filed and one of the spouses withdraws the proposal in the course of proceedings, the court halts the proceedings. (Article 81 of the Non-Litigious Civil Procedure Act)

Regarding the content of a proposal in a matrimonial dispute, the Non-Litigious Civil Procedure Act provides that a proposal in a matrimonial dispute must also contain a request on which the court is to decide. A record from the social services centre on attendance at prior counselling must be enclosed with the proposal to terminate a marriage, if the Family Code provides that an applicant has to attend prior counselling before proceedings commence. (Article 82 of the Non-Litigious Civil Procedure Act)

Divorce by mutual consent: The court terminates a marriage on the basis of an agreement between the spouses provided that they have reached an understanding on the legally important matters by submitting an agreement on the care, upbringing and subsistence of any children they may have together and on the children's contact with the parents, and also submitted, in the form of an enforceable notarial record, an agreement on the division of their joint property, on which of them shall remain or become the tenant of their apartment, and on the maintenance of the spouse who has no means of subsistence and is unemployed through no fault of their own. Before a court grants a divorce, it must establish whether the agreement between the spouses ensures the care, upbringing and subsistence of any children they may have together, and contact between the children and parents in accordance with the children's interests. If the court establishes that the agreement between the spouses is not in the children's interests, it rejects the proposal for divorce by mutual consent. (Article 96 of the Family Code)

Divorce on the basis of agreement before a notary public: If spouses who do not have any children together over whom they exercise parental responsibility wish to divorce and reach agreement on the division of their joint property, on which of them shall remain or become the tenant of the apartment in which they live, and on the maintenance of the spouse who has no means of subsistence and is unemployed through no fault of their own, they ask a notary public to draw up a notarial record of their agreement to terminate their marriage. The marriage is terminated as of the signing of the notarial record. The record is the legal basis for the entry of the divorce in the civil register. The notary sends the record to the administrative unit, which enters the divorce in the civil register, within eight days of the day the agreement is signed before the notary public. (Article 97 of the Family Code)

Divorce: Where a marriage has for whatever reason become 'unendurable', either spouse may request divorce. A record from the social services centre on attendance at prior counselling must be enclosed with the proposal, if the Family Code provides that an applicant has to attend prior counselling before proceedings commence. (Article 82 of the Non-Litigious Civil Procedure Act, Article 98 of the Family Code)

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

A court partly or wholly exempts a party from the payment of court fees if payment would significantly reduce the funds available for their own support or that of their family members. Foreign citizens are exempt from the payment of court fees if so determined by an international treaty or where conditions of reciprocity exist (Articles 10 and 11 of the Court Fees Act [*Zakon o sodnih taksah, ZST-1*]).

A party may apply for legal aid to cover the costs of a lawyer and expert; the decision on whether to grant legal aid shall be made by the district court covering the area in which the applicant permanently resides. In this procedure, the court assesses the criteria (e.g. substantive, financial) with reference to the provisions of the Legal Aid Act (*Zakon o brezplačni pravni pomoči*).

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

An appeal against a decision issued in a matrimonial dispute may be made to a higher court (*višje sodišče*).

A court of first instance may amend or annul a previous decision in response to an appeal made on time if this does not adversely affect the rights of other persons who rely on this decision or if these persons agree to the amendment or annulment.

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?

Under Article 21 of Regulation (EC) No 2201/2003, a judicial decision issued in another Member State is recognised without a requirement for any special recognition procedure to be initiated.

Each interested party may request that a decision on the recognition or non-recognition of a judicial decision be issued. In this case, the party must file a request for a declaration of enforceability at the competent district court in Slovenia.

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 laws of Slovenia apply to the procedure of filing a request.

A party that requests or contests the recognition of a judicial decision, or files a request for a declaration of enforceability, must submit:

- a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
- confirmation, on a standard form, of the judicial decision in the matrimonial dispute.

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 provisions of Regulation (EC) No 2201/2003 (Brussels II bis) apply primarily and directly to issues of international jurisdiction involving citizens or residents of EU Member States.

If both spouses are citizens of different countries when the action is filed, the cumulative laws of the countries of which they are citizens are applied, in accordance with the provisions of Slovenian domestic law (Article 37(2) of the Private International Law and Procedure Act [*Zakon o mednarodnem zasebnem pravu in postopku*]).

If a marriage cannot be terminated under the law of the countries of which the spouses are citizens, the law of Slovenia is applied to the termination of marriage if one of the spouses was permanently residing in Slovenia at the time the action was filed.

If one of the spouses is a citizen of Slovenia without permanent residence in Slovenia, and the marriage cannot be terminated under the law specified in Article 37(2) of the Private International Law and Procedure Act, the law of Slovenia is applied to termination.

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