

Family Law in Cyprus amended

1. Introduction

In Cyprus, the majority of the cases that are related to family matters, such as divorce, property relations, custody of a child and maintenance are resolved by Family Courts. Under certain circumstances the family matters are resolved by the President of the District Court or the Family Courts of the Religious Groups.

2. Jurisdiction

Family Courts in Cyprus have jurisdiction to resolve the following matters:

- (a) The dissolution of any religious marriage, in Cyprus or abroad, that was conducted under the rules of the Greek Orthodox Church;
- (b) The dissolution of any religious marriage, in Cyprus or abroad, of any other faith (except from those marriages that are resolved by the Family Courts of the Religious Groups);
- (c) The dissolution of any civil marriage, in Cyprus or abroad;
- (d) Family matters in judicial proceedings initiated by the treaties to which Cyprus is a signatory country;
- (e) Any family or matrimonial dispute between spouses and their children such as matters of parental care, adoption, maintenance, acknowledgment of paternity and property.

An important requirement for the family Courts to have jurisdiction is that one of the parties or both parties are resident in Cyprus for a continuous period of three months or more. However, the dispute involves property relation, then there is no need for any of the parties to be residents in Cyprus.

A decision issued by a Court of another country can be enforced in Cyprus provided that Cyprus has an agreement with that particular country for mutual recognition and enforcements of judicial decisions with the country issuing the decision. If the country issuing the decisions is an EU Member States, then the enforcement will be effected by using the EU Regulations.

3. Marriage

Marriages in Cyprus may be religious or civil. Religious marriages are conducted by a priest of the Greek Orthodox Church of Cyprus or of one of the religious groups recognized by the Cyprus Constitution (Maronites, Latin, Catholics and Armenians). Civil marriages are conducted by a Mayor, a Deputy Mayor or a person authorized by the Mayor of a municipality.

Divorce

The dissolution of civil marriage in Cyprus is granted in Cyprus Family Courts once the applicant files an application at the Family Court.

In case of religious marriage, the spouse applying for the divorce must first notify in writing, according to Article 3(1) of L. 22/90, the Bishop of the area where the applicant lives stating the grounds for the divorce. The Bishop will then try to reconcile the couple. The application for divorce in the Family Courts can be filed only three months after the Bishop has received the notification

The most common ground for divorce is the irretrievable breakdown of the marital relationship for reasons which are attributed to the respondent or to both spouses and which makes the continuation of the marital relationship irrevocable for the applicant. According to Article 27 of the Marriages Law 104/2003, in the cases of bigamy, infidelity, abandonment, danger to the applicant's life by the Respondent or violence, there is a presumption that the marital relationship has been irreversibly damaged, and the spouse against whom the divorce application is directed ought to prove the opposite.

Another ground for a divorce is when the spouses are continuously estranged for four years or more. In this case, the marital relationship is presumed to be irreversibly damaged, in which case there is no need to prove the existence of any of the abovementioned grounds as the presumption cannot be rebutted.

Additional and independent grounds for divorce constitute the abandonment of the applicant, an attempt against the life of the applicant by the respondent and change of gender.

Finally, if the marriage has been conducted in the Greek Orthodox Church of Cyprus, apart from the grounds mentioned above, it can be dissolved for any of the following reasons found in Article 225 of the Constitutional Charter of the Holy Orthodox Church of Cyprus:

- (a) Infidelity
- (b) Inexcusable conduct by one of the spouses including staying out of the family home and the false accusations for infidelity
- (c) Danger to the applicant's life
- (d) Mental disorder persisting over three years
- (e) Incarceration of the spouse for over seven years
- (f) Disappearance
- (g) Inability of one of the spouses to fulfil their marital duties for six consecutive months
- (h) Abandonment lasting over two years
- (i) Change of religion or denomination or attempt by one of the spouses to proselytize the other

- (j) Persistent hindrance of having children against the wishes of the other spouse

In cases where the marriage was conducted in a religious ceremony of one of the recognized Religious Groups, the application for divorce is submitted at the Religious Groups Family Court. Law 87(1)/94 provides for the relevant grounds for divorce:

- (a) Any factor which arises affecting the validity of the marriage according to the relevant rules of that religious group
- (b) Infidelity
- (c) Repeated violence exercised against the applicant
- (d) Imprisonment of at least seven years or for six months in case of an offence committed against the spouse
- (e) Disappearance
- (f) Inexcusable abandonment for over two years
- (g) Inability of one of the spouses to fulfil their marital duties for six consecutive months
- (h) Persistent hindrance of having children against the wishes of the other spouse
- (i) Mental disability lasting over three years
- (j) An irreversible damage to the marital relationship caused by either spouse, which constitutes the marital relationship insufferable.

A marital relationship is deemed to have been terminated only once the competent Court has issued an order for the dissolution of the marriage, or the Supreme Court in the case of an appeal.

4. Use of family home

Pending the divorce procedures, as per Article 17 of the Family Courts Law of 1990, it is possible for the Family Courts to order that a part or the whole of the family home will be exclusively used by one of the two spouses irrespective of who may be the owner of the family home, in order to achieve the welfare of one of the spouses or of the family. Such an order shall cease to have effect once the marriage is officially dissolved.

An application for the exclusive use of the whole or part of the family home must be based on the facts that the behavior of the other spouse is of such a nature that justifies the issue of the relevant order, such as violence, threats, unstable behavior so that the order will be necessary to protect the physical and mental health of the applicant spouse or of the rest of the family.

The Court in making a decision for the exclusive use of the matrimonial home will take into account equity as well as the particular circumstances of each spouse and the best interests of their children.

5. Parental care

In cases where the marriage has also produced children, the Courts have the jurisdiction to make provisions for the care of the child or children if they are not of age. In general, the parental care is a right and at the same time a responsibility of the parents which is exercised jointly by them.

Parental care according to the law may include the naming of a child, the custody, the care, the communication with the child, the representation of the minor, the administration of his property and any other issues regarding its person and property. Custody is one of the dimensions of parental care, which is mainly relevant to the bringing up and looking after the minor including his or her education and his or her place of residence.

An application is filed under Law 216/90, which is not limited to the two parents, but also direct relatives and the Director of the Social Welfare Services may also file a relevant application. The Court rules on the application based on several criteria.

It is usual practice that the Social Welfare Services shall submit a report regarding the welfare of the minor and the ability of the parent requesting custody and care to fulfil his or her obligations. Furthermore, the Court takes into account the child's interests as well as the child's wishes, provided that he/she is mature.

The exercise of parental care may be accorded to either one of the spouses, or to both in common if they agree on the child's place of residence, or even to a third party if that is necessary for the child's interests, according to Article 14 of Law 216/90.

6. Alimony

a) Child Alimony

Article 33(1) of the Law for the Relationship between Parents and their Children L. 216/90, provides for the legally imposed obligation of both parents to provide for their child according to their powers. This matter is always settled by the court after the submission of a relevant application.

During the process both parents must disclose their financial situation, meaning their respective incomes. Alimony covers everything necessary for the welfare of the beneficiary (the child or children) and for their education, taking into account the standard of living before the separation and the income generated by the parents. Such an application must not require excessive amounts for the welfare of the child which are unreasonable, unnecessary or disproportionate.

b) Spouse alimony

According to Article 3 of Law 232/91, both spouses have the obligation of paying alimony to the other spouse, regardless of whether that is the husband

and wife, on the basis of gender equality. This application may be filed before the divorce order has been issued as long as the spouses are estranged. The spouse who is entitled to alimony is the one who during the conjugal period had the least resources for covering his or her own needs and expenses and thus relied upon the other spouse for this. Therefore, the amount of alimony applied for must not be excessive or inaccurate.

The issuing of the divorce does not hinder the former spouse's obligation to support the other former spouse in cases where the former spouse is unable to support herself/himself from her/his financial resources.

7. Property relations between spouses

Each spouse retains all the rights they have on their personal property. Only property that was commonly acquired after the marriage may be divided or regulated by a court order. One of the spouses may also have a claim on property owned by the other spouse on the condition that that property has gained further value due to the other spouse's contribution to it. Such an application must be filed within three years of the dissolution of the marriage.

For such claims to be successful there are four requirements. First, the marriage must have been dissolved. Secondly, the value of the property must have increased. Thirdly, only the applying spouse's contribution is taken into account, not including the applying spouse's contribution for the family needs. Finally, the spouse's contribution must have been the reason for the increase of the property's value.

The contribution of a spouse is presumed to be 1/3 of the increase of the value of the property unless it is proved otherwise. In deciding the increase of the property, the Court will not take into account any property that was acquired by way of gift, inheritance or bequest.

Pending the divorce procedures but once the estrangement has occurred, by virtue of Article 17 of Law 23/90 it is possible for the Court to issue an order making provisions for the use of movable property until the finalization of the divorce procedures unless both spouses have agreed upon the use of such movable property.