

DIVORCE PROVISIONS IN CYPRUS

According to the statistical service's demographic report 1 in 5 marriages in Cyprus will end in divorce. Although the divorce rate in Cyprus has quadrupled in the last twenty or so years it still remains small compared to our European counterparts. In the rest of Europe, one marriage in two will end in divorce.

Cypriot family law provisions are extremely complicated and have unreasonable and unclear provisions that divide grounds for divorce in accordance with¹:

- 1) Ethnicity: Greek-Cypriot, Turkish-Cypriot, Maronites+Armenians+Roman-Catholics, other
- 2) Date of marriage
- 3) Place of marriage

We will therefore, need to examine each heading individually, starting with the Greek-Cypriot community.

1. Greek-Cypriots

The enactment of the 2003 Marriage Law has meant divorce provisions vary depending on whether the marriage had been celebrated before or after its enactment.

For marriages celebrated before its enactment, the provisions of its predecessor, the Family Courts Law will still apply. For marriages celebrated after the year 2003, the relevant grounds for divorce can be found in the Marriage Law of 2003.

(a) Marriages which took place after 2003:

The grounds for divorce for marriages which took place after the year 2003 are covered by the Marriage Law of 2003 ("the 2003 Law").

For the 2003 Law to apply the parties must have:

- Had an ecclesiastical wedding in Cyprus after the year 2003.
- Had a civil wedding in Cyprus either before or after the year 2003.
- Belong to one of the Ethnic Communities of Cyprus (Armenians, Maronites, Roman-Catholics) and had a civil wedding.
- Belong to the Greek-Orthodox faith.

If the parties satisfy these conditions, these are the grounds for divorce:

¹ See "Μηνιαία Νομική Επιθεώρηση (Αρμενόπουλος)" May 2004. G.A Sergides Ph.D Exon, President of Family Court.

1) Serious breakdown of marital relationship

This serious breakdown may be attributable to one or both parties and must make cohabitation intolerable for the spouse petitioning for divorce. It is important to note that the party solely responsible for the serious breakdown cannot petition for divorce under this heading.

Perhaps, the meaning of the words “serious breakdown” can be better understood by looking at Cypriot case law. In a decided case it was held that a wife’s disgraceful behaviour in her husband’s family and business circle and her unsubstantiated allegations that her husband was having an affair amounted to a serious breakdown of their relationship.

In a further case, it was held that a wife’s admission to having an affair had also amounted to a serious breakdown of their marital relationship.

The court, however, was not convinced that a serious breakdown of the marital relationship had occurred where the spouses were still living together, going out as a couple and spending holidays as a family at their country house.

It should be noted that a serious breakdown of a marital relationship need not be due to behaviour lasting several years. Even one incident may be regarded by the Court as being enough to constitute a serious breakdown of the marital relationship.²

There is a revocable presumption that the marital relationship has suffered a serious breakdown in cases of bigamy, adultery, desertion of the petitioner or an attempt on petitioner’s life. Such a presumption, however, may be revoked by contrary evidence produced by the accused party.³

2) Four year continuous separation

It should be noted that co-habitation not exceeding six months during this four year period, will not stop the four year period from running. In the case of the four year continuous separation, there is an irrevocable presumption that there has been a serious breakdown of the marital relationship. This means, that no evidence to the contrary may be produced.⁴

3) Change of sex, desertion of the petitioner, attempt on petitioner’s life. (unless provided otherwise by other laws)⁵

4) Death of one of the spouses brings a marriage to an end.⁶

² See “Μηνιαία Νομική Επιθεώρηση (Αρμενόπουλος)” May 2004. G.A Sergides Ph.D Exon, President of Family Court.

³ Marriage Law 104(I)/2003, Art. 27(3)(a)

⁴ Marriage Law 104(I)/2003 Arts. 27(3)(b) and 27(4)(b)

⁵ Marriage Law 104(I)/2003 Art. 27(4)(a)

⁶ Marriage Law 104(I)/2003, Art. 27(5)

- 5) Grounds found in Article 111(2) (B) of our Constitution. These grounds include:
- a) The grounds found in the Charter of the Holy Orthodox Church of Cyprus. These grounds remain important because, unlike the ground of serious breakdown above, they allow the party which is solely responsible for the breakdown of the relationship to petition for divorce. Such grounds include:
- Infidelity. This ground for divorce will not be accepted by the court if it can be shown that the complainant knew of his/her spouses infidelity and consented. The complainant will for example, indirectly consent to his/hers spouses affair if it can be shown that after the infidelity the spouses carried on living together.
 - Immoral or disgraceful behaviour. Such behaviour could include a wife's overnight stay away from home (not including an overnight stay at a relative's house) without her husband's consent. A husband who has left his home cannot make such a claim.
 - Violence between spouses or attempt against spouse's life which result in physical or mental injuries. The increase of incidents of violence in the family has brought about the enactment of the Violence in the Family (Prevention and Protection of Victims) Law. This Law reflects society's contempt towards violent family members by punishing them far more severely than violent individuals outside a family circle are punished by the Cypriot penal code.
 - Insanity which carries on for three years after the marriage and makes cohabitation intolerable.
 - Final conviction which will lead to imprisonment of one spouse for seven years or more.
 - Disappearance.
 - Inability to have sexual intercourse. This inability must have existed during the marriage and must have carried on for six months and still be in existence during the relevant petition.
 - Inexcusable desertion for two years. Desertion need not be continuous for two years but must amount to a total of two years.
 - Change of religion or attempt to convert the spouse and underage children.
 - Refusal to have children despite the other spouse's wishes.
- b) Five year continuous separation. This constitutes an irrevocable presumption of a serious breakdown of the marital relationship and a divorce will be granted even if the serious breakdown was solely attributable to the accused.

- c) Serious breakdown of the marital relationship. (This provision does not mention revocable or irrevocable presumptions)

(b) Marriages which took place before 2003 and marriages celebrated abroad

For the following grounds for divorce to apply, such marriages (civil or ecclesiastical) must have been in celebrated in Cyprus between members of the Greek Orthodox Church, before the year 2003. Or the marriage must have been celebrated abroad.

If such is the case, then the following grounds for divorce apply:

- 1) The grounds found in the Charter of the Holy Orthodox Church of Cyprus (see above)
- 2) Five year continuous separation. This constitutes an irrevocable presumption of a serious breakdown of the marital relationship and a divorce will be granted even if the serious breakdown was solely attributable to the accused.
- 3) Serious breakdown of the marital relationship

Divorce proceedings

No matter whether the marriage had been celebrated before or after the year 2003, the couple planning to get a divorce, must first notify the competent cleric (cleric in the area where the husband or wife had their usual residence) of their intention to get a divorce. (unless the reasons for divorce are those of disappearance or insanity).

Although the competent cleric is obliged by law to make an attempt to reconcile the couple in practice this procedure is not followed. The parties will, instead, receive a notice by the church saying that they do not recognise divorces granted by the Family courts and that the party should get a divorce from the ecclesiastical court.⁷

Nevertheless, the parties are not to bring proceedings in the Family Courts unless such notice is served and unless three months have elapsed from the date the competent cleric received their notice.

The Family Courts have the power to grant exclusive use of the family home and/or exclusive use of chattels to one of the spouses pending divorce.

Until 1990, divorces for members of the Greek Orthodox Church were governed by ecclesiastical law and administered by ecclesiastical courts. The first amendment of the Constitution Law has had the effect of transferring this jurisdiction from the ecclesiastical courts to the Family Courts thus ending a jurisdiction of around 2,000 years. Since then a “war” has started between the church and the state resulting in endless confusion, expense and paperwork for the parties seeking to get a divorce.

⁷ See “Grounds for divorce under the Law of Cyprus: the road to Europe”. G.A Sergides Ph.D Exon, President of Family Court

The church, ignoring the amendment to the Constitution, has carried on its parallel jurisdiction of granting divorces and refuses to re-marry any person that has not received a divorce from the Church.

The result has been that applicants are forced to apply to family *and* ecclesiastical courts for the issue of their divorce. Should an applicant only get a divorce from the church, he will be considered a bigamist if he marries again. Should he only get one from the Family court, the church will refuse to allow him to re-marry in church.

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