

Outline of Divorce Procedures

In Belgium, there are two procedures to get a divorce:

- procedure for Divorce by Mutual Consent
- procedure for Divorce based on Irretrievable Breakdown

1. Divorce by Mutual Consent

a. Conditions

Parties who want to get a divorce, must make full arrangements regarding their mutual rights, for both property rights and family law issues (see Article 203, Civil Code).

They must do so based on two agreements to be made: a family law agreement on the one hand, and a property rights agreement on the other.

Parties should make those two agreements before they can bring the case to the Court of First Instance.

The agreements made by the Parties must be submitted to the Court of First Instance, after which the divorce can be granted.

b. Agreements

The family law agreement must include the following items (see Article 1288, Judicial Code):

- residence of the Parties during the trial period
- custody of the minor children and management of the properties of the minor children, and the right to personal contact
- financial contributions of each spouse for the maintenance, the education and the appropriate education of the children
- if applicable, the amount of the alimony to be paid by the one spouse to the other.

For what matters the maintenance allowance between spouses, Article 301 §7 Civil Code is to be mentioned. After all, this article determines that the court, except in

VAN MARCKE advocaten:

Claude Van Marcke *
Vallery Declercq *
Jelle Lammertyn *

Bram Vercouter
Inez Devos
Mathy Depuydt
Dries Van Parys
Kim Devoldere *

Fien Vervaeke
Lies De Bondt
Klaas Denoulet
Annelies Delesie
Bram Casier
Jan-Willem Carpentier

Kantoor ANZEGEM

Kerkstraat 1
8570 Anzegem
t. +32 (0)56 68 79 15
f. +32 (0)56 68 16 90

Kantoor BRUGGE

Blankenbergse Stw. 141
8000 Brugge
t. +32 (0)50 32 32 67
f. +32 (0)50 32 23 33

www.van-marcke.be
advocaten@van-marcke.be

KBO nummer: 0894.616.152

/ of BVBA VAN MARCKE advocaten

* Burgerlijke Besloten Vennootschap
met Beperkte Aansprakelijkheid

case the Parties explicitly agreed upon the opposite, by request of one of the Parties, can increase, reduce or abolish the maintenance allowance between spouses later on. This is only possible if new circumstances should arise, independent of the intention of the Parties, following to which the amount of the maintenance allowance is no longer adjusted to the actual situation of the Parties.

The property rights agreement: a number of compulsory and optional statements must/can be included (see article 1287, Judicial Code):

- compulsory statements: all properties and all debts of the Parties must be included in the property rights agreement, and the regulation of legal succession and reserve assets of the surviving spouse during the procedure must be determined
- optional statements: inventory, modification of life insurance beneficiary, stipulation for payment of the proceedings costs, etc.

This property rights agreement is compulsory, it must be drawn up as an authentic act and be transferred in the records of the mortgage registry when immovable property rights are transferred.

c. Procedure

The competent court is the Court of First Instance chosen by the spouses. The proceedings must be instituted by application with the family law and property rights agreement attached as appendixes, as well as an extract from the birth certificates of the children and evidence of nationality of the spouses (see Article 1288bis, Judicial Code).

Within one month following the filing of the application, the spouses must personally appear before the Court of First Instance where they must submit their intention to get a divorce (see Article 1289, Judicial Code).

In the course of the fourth month following the first appearance the Parties must reappear before the Chairman of the Court of First Instance to renew their intention to get a divorce and to apply for the divorce to be granted. With this second appearance the Parties can be represented by a lawyer (see Article 1294, Judicial Code).

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Spouses who can show evidence of the fact that at the moment of the submission of the application they have been separated de facto for over six months, are exempted from a second appearance (see Article 1291bis, Judicial Code).

d. Decree of Divorce

If it should appear that the Parties have met the conditions and completed the required formalities, the Court of First Instance shall grant the divorce after which the Court shall homologate the arrangement regarding the children (see Article 1298, Judicial Code).

When the Decree of Divorce is passed, the Registrar shall send, within one month, an extract from this decree to the Official at the Civil Status Registry of the municipality where the wedding took place (see Article 1303, Judicial Code).

Within one month after reception of the extract from this Decree of Divorce, the Official at the Civil Status Registry shall enter the decision in the Civil Status Register (see Article 1303, Judicial Code).

2. Divorce based on Irretrievable Breakdown

a. Conditions

Parties who want to get a divorce must show evidence of the fact that their marriage has broken down irretrievably. The marriage is considered to be broken down irretrievably when the continuation of cohabitation of the spouses has become impossible as a result of that breakdown (see Article 229, Civil Code).

Evidence of irretrievable breakdown can be shown in various manners (see Article 229, Civil Code):

- with all legal means
- by expiry of a certain term of de facto separation
- by renewal of the intention to get a divorce

Firstly, the irretrievable breakdown can be proven by all legal evidence as, for instance: proof of adultery (invoke one's own adultery is also possible), evidence of assault and battery, etc. (see Article 229 §1, Civil Code).

VAN MARCKE advocaten:

Claude Van Marcke *
Vallery Declercq *
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/ o/v BVBA VAN MARCKE advocaten

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Secondly, the irretrievable breakdown can be proven by the expiry of a certain term of de facto separation. Upon joint application of the Parties to get a divorce this term is six months of de facto separation, in case of unilateral application for divorce this term shall be one year (see Article 229 §§ 2 and 3, Civil Code).

Thirdly, the irretrievable breakdown can be proven by repeating the intention to get a divorce twice. The time interval between the first and the second application for divorce is three months in case of joint application of the Parties, and one year in case of unilateral application for divorce (see Article 229 §§ 2 and 3, Civil Code).

b. Procedure

VAN MARCKE advocaten:

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Inez Devos
Mathy Depuydt
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The competent court is the Court of First Instance in the municipality of the Respondent or of the couple's last shared address.

The procedure on the merits can be initiated in two different ways: by application inter partes or by writ of summons.

The Chairman of the Court of First Instance sitting as in interim injunction proceedings can also take provisional measures regarding the person, the maintenance and the property of the spouses or their children. These provisional measures mostly relate to the separate residence of the Parties, to maintenance allowances between spouses and with regard to the children, and to parental authority and residence of the children (see Article 1280, Judicial Code).

The procedure on the merits and the interim injunction proceedings can be performed simultaneously before the Court of First Instance.

In the course of the divorce procedure before the Court of First Instance, the Parties can also come to full or partial agreements regarding provisional measures related to the person, the maintenance and the property of the spouses or their children. These agreements must then be submitted to the Judge for ratification (see Article 1256, Judicial Code).

Personal appearance of the Parties is required in case of joint application. In case of unilateral application, only the applicant is obliged to personally appear (see Article 1255, Judicial Code).

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The case can be settled at the introductory hearing if the Judge establishes that the Parties at that particular moment have been separated de facto for respectively more than six months or one year.

At the introductory hearing the Judge shall continue the case in order to:

- provide evidence of the irretrievable breakdown of the marriage with all legal means
- let expire a certain term of de facto separation
- allow parties to renew their application for divorce after respectively three months or one year

Conclusions can be filed by the Parties until close of the debates in order to modify or extend the application, or to institute a counterclaim or additional claim related to, for instance, maintenance allowances.

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c. Decree of Divorce

If it should appear that the Parties have met the conditions and have completed the required formalities, the Court of First Instance shall grant the divorce.

When the Decree of Divorce is passed, the Registrar shall send, within one month, an extract from this decree to the Official at the Civil Status Registry of the municipality where the wedding took place (see Article 1275, Judicial Code).

Within one month after reception of the extract from this Decree of Divorce, the Official at the Civil Status Registry shall enter the decision in the Civil Status Register (see Article 1275, Judicial Code).

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