

FRANCE

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A. New Developments in the Field of Divorce (since September 2002)

Numerous changes have taken place in this area with regard to consensual divorce as well as the other types of divorce. A first important reform (Law Act no. 2004-439 of 26 May 2004) aimed at simplifying and modernising the divorce grounds and proceedings. Several more recent Law Acts and Decrees were passed to steadily reduce the role of the family court judge and to favour agreements between the spouses.

1. Non-judicial Divorce

The Law Act no. 2016-1547 of 18 November 2016 on the Modernisation of the Justice in the 21st Century has introduced non-judicial divorce in French law. The reform came into force on 1 January 2017.

Article 229 of the French Civil Code, which lists the different grounds for divorce, has been supplemented with a new paragraph. The new non-judicial divorce is now regulated in a specific part of the Civil code, which contains only four new articles (Articles 229-1–229-4 French Civil Code). A governmental decree¹ of 28 December 2016 clarifies some procedural details. The Constitutional Council (*Conseil constitutionnel*)² has ruled that extrajudicial divorce does not infringe on the principle of equal treatment or any other constitutional provisions.

According to Article 229-2 of the French Civil Code, there are two situations in which divorcing spouses cannot agree on their divorce and its consequences in a private deed countersigned by two solicitors (*acte sous signature privée contresignée par avocat*) and must apply to the court:

- a) when a minor child of the spouses has been informed about his/her right to be heard³ by the family judge and wants to make use of this right;⁴ or

¹ Décret n°. 2016-1907 of 28.12.2016, *Journal Officiel (JO)* of 29.12.2016.

² *Conseil constitutionnel*, 17.11.2016, n°. 2016-739 DC, *Journal Officiel (JO)* of 19. 11.2016.

³ See Art. 388-1 French Civil Code.

⁴ The ministry of justice indicated that in 2015 in 65,875 consensual divorce court proceedings, only 25 children expressed the wish to be heard by the family judge, see S. THOURET, 'Le nouveau divorce par consentement mutuel ou le divorce sans juge', *Actualité Juridique Famille (AJ Famille)* Dec. 2016, p. 569.

- b) when one of the spouses is placed under a legal protection regime such as guardianship or trusteeship (*tutelle, curatelle*).⁵

In all other situations, private divorce is legally possible. If the spouses agree on the divorce and on all its consequences, they cannot apply for divorce by mutual consent before the court and can only use the new extra-judicial divorce process (except in the two situations previously mentioned in which private divorce is not allowed). If a minor child wants to be heard the family court judge shall be seized: the consensual divorce is then subject to judicial proceedings (see Article 230 et seq. French Civil Code; since Law Act no. 2004-439 of 26 May 2004 only one hearing – instead of two – before the family judge is required).

Several legal provisions⁶ have been adjusted, such as Article L. 111-3 of the *Code des procédures civiles d'exécution* (Code of enforcement proceedings), which contains a comprehensive list of enforcement orders (*titres exécutoires*) under French law. The private divorce deed that is signed by the spouses and countersigned by two solicitors becomes an enforcement order when it is filed in a notary public's records.⁷ The notary public must check that the agreement was signed only after termination of the reflection period and verify whether all required annexes have been attached to the deed. This is a more or less formal check,⁸ which means that the solicitors will bear the responsibility for the contents of the divorce agreement. In practice, however, public notaries seem to check more than required by the law.

The non-judicial divorce process:

The spouses shall lay down the content of the agreement in a private document, which they must then sign⁹ and have countersigned by two solicitors (Article 229-1 of the Civil code). Each spouse must appoint a solicitor (*'assistés chacun par un avocat'*) who will take care of the spouse's interests; the written agreement must be filed in with the records of a notary public;¹⁰ and the notary public must check whether all the legal

⁵ In such a case, no judicial or non-judicial consensual divorce is allowed by the French Civil Code.

⁶ See e.g. *Code pénal* (criminal offence of *délict d'abandon de famille*, Art. 227-3 French Criminal Code. The offence – non-payment of maintenance during at least two months – is also committed if the duty of maintenance was laid down in the spousal private divorce agreement.).

⁷ See also Art. 229-1 para. 3 French Civil Code.

⁸ According to *Circulaire* of 26.01.2017 of the ministry of justice, the notary should, however, draw the lawyers' attention to a clause which is contrary to the *ordre public*.

⁹ The spouses receive (by registered letter) a draft agreement from their lawyers and must wait until the reflection period of two weeks has elapsed (Art. 229-4 para. 1 French Civil Code). The reflection period runs from the reception of the draft agreement by the spouse. Lawyers and spouses sign the agreement together during a final meeting (Art. 1145 para. 1 CPC).

¹⁰ On request of the spouses, one of the lawyers sends the divorce deed and the annexes (forms for each minor child ...) to the notary public within seven days from the signature. The notary must file the deed within two weeks from its receipt (Art. 1146 CPC).

requirements are met (Article 229-2, paragraphs 1–6 of the French Civil Code¹¹). Pursuant to Article 229-3 of the French Civil Code, the agreement entered upon by the spouses (*convention*) must contain the following items:¹²

- 1) name, surname, profession, place of domicile, nationality, date and place of birth of each spouse, date and place of the marriage celebration and, where relevant, the same information relating to the spouses' children;
- 2) name and professional address of the two solicitors who have been appointed by the spouses;
- 3) a reference to the spouses' agreement on the divorce and its consequences as laid down in the agreement;
- 4) the terms of the comprehensive settlement of all divorce consequences, in particular whether a '*prestation compensatoire*' (compensatory benefit)¹³ should be paid by one spouse to the other;
- 5) information relating to the division of matrimonial property (the division must be made in a notary deed if there are immovables to be divided) or the statement that no division of property has to take place; and
- 6) a reference to the fact that the minor child has been informed¹⁴ by his/her parents about his/her right to be heard by the family judge but does not want to make use of this opportunity.¹⁵

A more recent Law Act no. 2010-222 of 23 March 2019 has extended this non judicial process to **legal separation** (*séparation de corps*).

2. Other Types of Divorce

The three other types of divorce also remain in the books, but have been subject to several modifications, the most recent ones by the Law Act no. 2019-222 of 23 March 2019:

¹¹ See also Art. 1144-1 CPC (the private deed mentions the name of the notary who will file it) and Art. 1144-5 CPC (the written agreement should indicate how the divorce fees will be divided; in the absence of any indication, each spouse shall pay half of them). Each spouse keeps a copy of the deed and the third one is sent to the notary public.

¹² If one of these required elements is missing, the agreement is null and void (*à peine de nullité*).

¹³ See also Art. 1144-3 CPC (the value of the assets or rights allocated as compensatory benefits shall be indicated in the private deed).

¹⁴ If a child has no capacity of understanding, it should be mentioned in the private deed that for this reason, no information could be provided to the child (Art. 1144-2 CPC).

¹⁵ The child has to fill in and sign a form. *Arrêté* of 28.12.2016 provides a template for such form. Each minor child must fill a form, see Art. 1144 CPC. If a child refuses, private divorce is not possible.

- A) *Divorce sur demande acceptée* (*acceptation du principe de la rupture du mariage*, see Article 233 et seq. *Code civil*)¹⁶: when the spouses agree to divorce¹⁷ but do not agree on (all) the consequences. The proceedings are brought either by the two spouses or by one of them. The spouses may now lay down their common content to divorce in a private document, which they must then sign and have countersigned by the two solicitors; the family judge will then only rule on the consequences of the divorce (Law Act no. 2019-222 of 23 March 2019).¹⁸ This type of divorce was first simplified by the Law Act no. 2004-439 of 26 May 2004 which replaced by a simple agreement to the divorce the previous brief (*mémoire*) to be drawn up by the parties to explain the reasons that made the divorce necessary.¹⁹
- B) *Divorce pour altération définitive du lien conjugal* (divorce on the ground of an irretrievable breakdown of the marriage): it was formerly called *divorce pour rupture de la vie commune* and the French Civil Code first required six, then two years of factual separation (Law Act no. 2004-439 of 26 May 2004); the Law Act no. 2019-222 of 23 March 2019 has shortened this period to only one year.²⁰ Since 2004, the duty of mutual support that persisted after divorce is abolished, as well as the right to keep the use of the husband's name, and the right to a forced lease in favour of the spouse who did not want to divorce. The divorce based on the mental insanity of one spouse for at least six years was abolished in 2004.
- C) *Divorce pour faute* (divorce based upon fault on the part of one spouse or both). The Law Act no. 2004-439 of 26 May 2004 maintained this ground for divorce but limited its use to the most serious cases (particularly domestic violence). Dissociation of financial consequences and attribution of fault in the event of separation became the rule. This type of divorce has been declining considerably in occurrence the last 15 years²¹ but was not abolished since it is

¹⁶ Former also called *divorce sur double aveu* (divorce based upon the mutual confession of the spouses): one spouse took the initiative and brought a claim before the court. He or she had to assert some facts for which both spouses were responsible and which made the preservation of matrimonial life intolerable (Article 233 French Civil Code). If the other spouse (the defendant) admitted these facts before the court, the court issued a divorce order without deciding the question of fault on the part of one or both spouses.

¹⁷ Acceptance is not subject to withdrawal, even on appeal, see Article 233 as modified by Law Act no. 2019-222 of 23 March 2019.

¹⁸ Article 233 French Civil Code.

¹⁹ See footnote 16.

²⁰ Since there is no longer a first petition (*requête*) for divorce followed by an application (*assignation en divorce*) and therefore no phase elapsing between the non-conciliation order and the summons, the elapse of this one-year period of separation will be assessed at the time of the divorce application if it indicates that the divorce is requested on this basis and at the time of the pronouncement of the divorce if the application does not mention this specific divorce ground.

²¹ 2004: 50,079 – 2010: 13,117 – 2014: 9,099 – 2017: 7,665, see Les divorces prononcés, <http://www.justice.gouv.fr/statistiques-10054/references-statistiques-justice-12837/les-divorces-et-ruptures-dunion-32585.html>. See also J. Garrigue, *Droit de la famille*, Hypercours, Dalloz, 2nd ed. 2018, p. 230: 7% of the divorces were fault divorces in 2015, 13% in 2008 and 40% in 2002). See also

the only ground that allows a spouse to divorce without the agreement of the other and without waiting for one year (e.g. in case of domestic violence).

The Law Act no. 2004-439 of 26 May 2004 has increased the role of agreements between spouses in the field of divorce. Family mediation has also been favoured and at any time of the proceedings, the spouses may submit an agreement to the family judge for confirmation (see e.g. Articles 247 French Civil Code). The 2004 Law Act has also simplified the proceedings by organising a common procedure for all contentious forms of divorce. Conciliation became an obligatory prerequisite in all three forms of contentious divorce: the formal introduction of the application for divorce, accompanied by the divorce grounds (and thus giving information on the type of divorce), occurred only after an attempt at conciliation. This has since been repealed by the recent Law Act no. 2019-222 of 23 March 2019.²² Family mediation can be the subject of a proposal or an order of the family judge, in contentious divorce proceedings, and in all additional matters (liquidation of the matrimonial regime, maintenance, parental responsibilities). In 2004, bridges were established between the different divorce types, so that divorce proceedings based e.g. on fault or irretrievable breakdown of the marriage may finally end in a divorce based on the common agreement of the spouses to divorce, leaving it for the family judge to rule on its consequences (Article 247-1 French Civil Code).

The Law Act no. 2019-222 of 23 March 2019²³ has shortened the contentious divorce proceedings: the previous attempt at reconciliation before the family court judge is no longer required. Up to 31 December 2020, the spouse seeking a divorce had to first file a petition (*requête*) in which the grounds for divorce were not stated. Then an attempt at reconciliation took place before the family court judge, which was usually followed by a statement of claim (*assignation en divorce*), since no reconciliation took place. If the reconciliation attempt failed, the family court judge usually ordered provisional measures (maintenance, exercise of parental care, use of the family home, etc.). Since the 1st of January 2021 divorce proceedings begin directly with the statement of claim (*assignation en divorce*);²⁴ the grounds for divorce may only be stated therein if the two spouses agree on the divorce but not on all its consequences (*divorce sur demande*

Références statistiques justice 2019, <http://www.justice.gouv.fr/statistiques-10054/references-statistiques-justice-12837/references-statistiques-justice-33702.html>: only 6,669 divorce orders based on fault were issued (18,432 divorces were based on the irretrievable breakdown of the marriage, 40,051 were divorces were both spouses agreed on the divorce but not on all consequences, only 94 divorces by joint consent since the spouses *must* now use the non-judicial divorce if they agree on both the divorce and its consequences, except if a minor child wishes to be heard by the court).

²² See also *Décret* no 2019-1380 of 17 December 2019.

²³ See also *Décret* no 2019-1380 of 17 December 2019.

²⁴ Since 1 January 2021, the divorce application (*assignation*) shall contain the date of the hearing.

acceptée) or if it is a divorce on the grounds of irretrievable breakdown of the marriage (Article 251 French Civil Code). This reform aims to reduce the role of the court and speed up the proceedings.

In the case of a fault divorce, the ground for divorce is only stated in the first statement of the petitioner. In this pleading, reference must now be made to the legal provisions concerning family mediation and amicable settlement of disputes with the assistance of lawyers (*procédure participative assistée par avocat*) as well as to the possibility of judicial confirmation (*homologation*) of partial or total divorce settlement agreements (Article 252 French Civil Code). The pleading must also contain a proposal to settle the property and financial relations of the spouses. The reform aims at strengthening the role of Alternative Dispute Resolution in divorce proceedings. These new provisions entered into force on 1 September 2020.

The Decree no. 2019-1380 of 17 December 2019 supplements Reform Law No. 2019-222 of 23 March 2019. This new decree deals with the procedural documents (the document introducing the divorce proceedings - *acte introductif d'instance* - as well as the lawyers' pleadings) and the time limits to be observed for the different stages of the proceedings. The divorce petition is filed by means of an *assignation* (it is a document initiating the proceedings, served on the defendant by the bailiff and then filed with the court) or a joint petition of the spouses (*Code de procédure civile*, French Code of Civil Procedure, CPC, Article 1107). Provisional measures for the duration of the divorce proceedings (e.g. maintenance, use of the family home, etc.) can be requested either in the document initiating the proceedings or in a later pleading (conclusions). Thus, both provisional measures and claims can be asserted in the first pleading; the provisional measures must then be made clearly visible in a special section of the pleading. In urgent cases (e.g. family violence), the family court judge may be called upon particularly quickly (*assignation à jour fixe*) to order provisional measures (Article 1109 CPC).

Since the Law Act no. 2004-439 of 26 May 2004 in all divorce proceedings, by mutual agreement or under the family judge's control, the preparation of a settlement of the pecuniary interests of the spouses and the drawing up of a project for the liquidation of the matrimonial regime is required (Art. 255-9 French Civil Code). After divorce, if any difficulties remain, they must be settled, if necessary, by the court within a period of twelve months, possibly extended by six months (Art. 267 et seq. French Civil Code).

With the deletion of the previous first stage of the procedure (petition and attempt at reconciliation) and of the family court judge's order noting the failure of the attempt at reconciliation (*ordonnance de non-conciliation*), the date on which the divorce takes

effect regarding the spouses is now set on the date of the application for divorce (and no longer on the date of the pronouncement of the *ordonnance de non-conciliation*).

B. New Developments in the field of Maintenance between former spouses (since September 2002)

The Law Act no. 2004-439 of 26 May 2004 has relaxed the terms and conditions related to the compensatory benefit (*prestation compensatoire*) which is intended to compensate for the disparity in the spouses' living conditions caused by the break-up of the marriage (see Article 272 et seq. French Civil Code). The compensatory benefit is now both flexible in its terms and conditions (possibility of mixed compensatory benefit - capital-rent, life annuity, usufruct), and it is only transmissible to the heirs in the form of a capital sum taken from the estate (the pension benefits will then be recalculated as a capital sum, see Article 280 French Civil Code).

See also the following new articles:

Article 271 French Civil Code :

“The compensatory benefit (*prestation compensatoire*) is set according to the needs of the spouse to whom it is paid and the resources of the other, taking into account the situation at the time of the divorce and how it will develop in the foreseeable future.

The judge takes into account in particular:

- the duration of the marriage;
- the age and state of health of the spouses;
- their professional qualifications and situation;
- the consequences of the professional choices made by one of the spouses during their life together for the education of the children and the time that will still have to be devoted to it or to favour the spouse's career to the detriment of his or her own;
- the estimated or foreseeable wealth of the spouses, both in capital and income, after the liquidation of the matrimonial regime;
- their existing and foreseeable rights;
- their respective retirement pension situations, after estimation, as far as possible, of the reduction in pension rights which may have been caused, for the spouse receiving the compensatory benefit, by the circumstances referred to in the sixth paragraph.”

Article 274 French Civil Code:

“The judge shall decide on the terms and conditions under which the lump-sum compensatory payment shall be made in one of the following forms:

1° Payment of a sum of money; the pronouncement of the divorce may be subject to the provision of the guarantees provided for in Article 277;

2° Allocation of property in ownership or a temporary or life right of use, habitation or usufruct, the judgment effecting a forced assignment in favour of the creditor.

However, the agreement of the debtor spouse is required for the attribution in ownership of property he or she has received by succession or donation.”

Article 275 French Civil Code:

“Where the debtor is unable to pay the capital under the conditions laid down in Article 274, the court shall determine the terms of payment of the capital, within a limit of eight years, in the form of periodic payments indexed in accordance with the rules applicable to maintenance payments.

The debtor may apply for a review of these terms of payment in the event of a significant change in his or her situation. Exceptionally, the court may then, by special reasoned decision, authorise the payment of the capital over a total period exceeding eight years.

The debtor may pay up the balance of the indexed capital at any time.

After the liquidation of the matrimonial property regime, the creditor of the compensatory allowance may apply to the court for payment of the balance of the index-linked capital.”

Since Law Act no. 2004-439 of 26 May 2004, only in very exceptional circumstances, the judge may decide that one of the spouses will pay the other a life annuity (*rente viagère*). In the case of non-judicial divorce or judicial consensual divorce, spouses may agree upon the payment of maintenance by one of them to the other for a limited or unlimited period of time.²⁵

Article 276 French Civil Code:

“Exceptionally, the court may, by a specially reasoned decision, where the age or state of health of the creditor does not allow him to meet his needs, fix the compensatory benefit in the form of a life annuity. The court shall take account of the factors provided for in Article 271.

The amount of the pension may be reduced, where circumstances so require, by the allocation of a capital fraction among the forms provided for in Article 274.”

Since the 2004 Law Act, it is possible to request a review of the amount to be paid monthly (*rente*) in the event of a ‘significant’ (and no longer ‘notorious’) change in the resources of either party (Article 276-3 French Civil Code). However, the review may not have the effect of increasing the pension to an amount greater than that initially fixed by the family judge.

²⁵ Article 278 French Civil Code: In the case of divorce by mutual consent, the spouses set the amount and terms of the compensatory benefit in the agreement which they submit to the judge for approval (or which they sign together with their lawyers if they make use of non-judicial divorce). They may provide that payment of the benefit shall cease upon the occurrence of a specific event. The benefit may take the form of an annuity allocated for a limited period.

According to Article 276-4 French Civil Code, the debtor of a compensatory benefit in the form of a monthly payment (*rente*) may, at any time, apply to the court for the substitution of a capital sum for all or part of the pension. The creditor may make the same request if he or she establishes that a change in the debtor's situation allows this substitution, in particular during the liquidation of the matrimonial regime (2004 Law Act). Also if the spouses divorce by mutual consent, they may provide in their agreement that each of them may, in the event of a significant change in the resources or needs of either party, ask the judge to review the compensatory allowance (Article 279 French Civil Code).

Agreements between spouses, subject to approval by the judge, may now (since the 2004 Law Act) cover compensatory benefits (it was previously allowed only in case of a divorce on joint petition), and the liquidation of the matrimonial property regime. The place of agreements has considerably increased in family law.

C. New Developments in the Field of Parental responsibilities (since December 2004)

Since December 2004, numerous Law Acts and decrees adjusted and supplemented the legal provisions of the French Civil Code relating to parental responsibilities.

Holders of parental responsibilities and legal administration - The Ordinance of 15 October 2015 aiming to simplify family law has modified the rules on legal administration. Before 2015, there were two situations. Where both parents exercised jointly parental responsibilities, the legal administration was “*pure et simple*” (i.e. simple, without court intervention). Where the minor child had only one official parent, legal administration took place under the court’s supervision. Since 2015, only one regime applies irrespective of whether the child has only one or two parents: the holder of parental responsibilities exercises the legal administration of the child’s assets.

The child’s right to be heard - The Law Act no. 2007-308 of 5 March 2007 and further reforms (e.g. Decree no 2009-572 of 20 May 2009) have strengthened the child’s right to be heard: the family judge may only deny the child’s request if the child lacks judgment or is not concerned by the proceedings. If the child refuses to be heard, the family judge shall appreciate whether this refusal is well-founded or not (Article 388-1 French Civil Code). The judge shall now ensure that the child has been informed of his or her right to be heard and to be assisted by a lawyer (see also Article 338-1 CPC).

A new section has been added to the French Code of civil procedure (Articles 338-1 to 338-12) which sets out the arrangements for the hearing.

Parental responsibilities and domestic violence - The Law Act no. 2019-721 of 10 July 2019²⁶ has added a paragraph in Article 371-1 *Code civil* defining parental responsibilities (*autorité parentale*). It states: ‘Parental responsibilities are exercised without physical or psychological violence.’ (para. 3). The recent Law Act no. 2019-1480 of 28 December 2019 aiming to act against violence within the family has made clear that the parents’ contribution to the maintenance and education of the children does not cease by operation of law either when parental authority or the exercise thereof is withdrawn or when the child reaches the age of majority. It also added to Article 377 para. 2 French Civil Code that if one parent is prosecuted or convicted for a crime committed against the other parent resulting in the death of the latter, the individual, institution or departmental child welfare service that took in the child or a family member may also refer the matter to the judge in order to obtain a delegation of the exercise of parental authority in whole or in part. According to a new Article 378-2 French Civil Code, the exercise of parental responsibilities and the contact rights of a parent prosecuted or convicted, even if not definitively, for a crime committed against the person of the other parent shall be suspended *ipso jure* until the court's decision and for a maximum period of six months; the public prosecutor shall refer the matter to the family court within a period of eight days. Article 378 French Civil Code states that parental responsibilities or their exercise may be totally withdrawn by an express decision of the criminal court if the father and mother are convicted either as perpetrators, co-perpetrators or accomplices in a crime or offence committed against the person of their child, or as co-perpetrators or accomplices in a crime or offence committed by their child, or as perpetrators, co-perpetrators or accomplices in a crime or offence committed against the person of the other parent.

The Law Act no. 2010-769 of 9 July 2010 modified Article 373-2-1 French Civil Code in order to protect the child in case of the parents’ separation or divorce: when the interests of the child so require or when the direct handing over of the child to the other parent presents a danger for one of them, the family judge shall organise the exercise of parental responsibilities with all the necessary guarantees: contact rights to be exercised in a meeting place designated by the judge etc.

Some provisions of the French Civil Code dealing with educational support measures (*mesures d’assistance éducative*) were also modified by Law Act no. 2013-403 of 17 May 2013 (e.g. Articles 375-2 *Code civil*) and by later Law Acts.

²⁶ Law on the prohibition of ordinary educational violence (*loi relative à l’interdiction des violences éducatives ordinaires*).

Enforcement of agreements or court orders regarding the exercise of parental responsibilities – In cases where the parents have divorced, separated or dissolved the registered partnership (Pacs) existing between them, the Law Act no. 2019-222 of 23 March 2019 aims at the effective enforcement of the modalities by which parental responsibilities are to be exercised by the parents. With entry into force on 25 March 2019, Art. 373-2, para. 3 and Art. 373-2-6 French Civil Code now provide for two measures:

1. the public prosecutor (*procureur de la République*) may request the assistance of the police (*concours de la force publique*) to enforce a court decision or agreement;
2. the family court judge may (also *ex officio*) order a penalty payment (*astreinte*) in his or her decision on the exercise of parental responsibilities after separation or divorce in the event that one of the parents should prevent enforcement. The parent who repeatedly or seriously opposes the enforcement of the court decision or agreement can also be sentenced to a fine of up to €10,000.

With such deterrent measures, the legislator wants to strengthen effective compliance with the contractually agreed or court-ordered modalities of exercising parental care.

Separation of cohabiting partners and parental responsibilities - The Law Act no. 2019-222 of 23 March 2019 has added a new article to the French Civil Code. According to Article 373-2-9-1 French Civil Code, if the partners separate, the family court judge decides in case of conflict on the modalities of the exercise of parental care after the separation of *concubins*. The judge may also assign the use of the family home to one of the parents for a maximum period of 6 months. This new provision came into force on 25 March 2019.

Enforceable title and payment of child maintenance: new possibilities - An enforceable maintenance title can now be issued another institution in addition to those issued by the family court (court order or court confirmation of the parents' agreement). According to the new wording of Article L. 582-2 *Code de la sécurité sociale* since July 2018, at the joint request of non-married parents who separated or have dissolved their registered partnership (Pacs), the director of the body paying family benefits (*caisse d'allocations familiales, CAF*) shall give enforceability to the agreement by which they determine the amount of the contribution to the maintenance and education of the child, if the following conditions are met:

1. The parents certify that neither of them is the holder of a claim fixed for that child by a court decision or by an agreement;
2. The amount of the contribution is greater than or equal to a threshold established taking into account, in particular, the residence of the child mentioned, the resources of the debtor and the number of children of the latter.

The decision of the body has the effects of a judgment and constitutes an enforceable title. The decision is not subject to any appeal. If the body refuses to give enforceability to the agreement, the parents may, together or separately, refer the matter to the family court for determination of the amount of the contribution to the child's maintenance. Parents are required to notify the debtor organisation of any change in their situation which may lead to a revision of the amount of the contribution. Any enforceable court decision cancelling or modifying the contribution to the maintenance of a child and subsequent to the enforceable title established in application of the present article deprives this title of any effect.

In order to facilitate the payment of the child maintenance and to avoid conflicts between the parents, the legislator (Article 373-2-2 French Civil Code, Law Act no. 2019-1446 of 24 December 2019)²⁷ has created a new public service to recover child maintenance (ARIPA: *Agence de recouvrement et d'intermédiation des pensions alimentaires*). The maintenance may be paid to the creditor parent through the body responsible for paying family benefits (CAF), in the following cases:

- a) By decision of the court, even *ex officio*, when the debtor parent has been the subject of a complaint or a conviction for acts of threats or voluntary violence against the creditor parent or the child, or when such threats or violence are mentioned in a court decision concerning the debtor parent; or
- b) By decision of the judge, when at least one of the parents so requests; or
- c) By agreement of the parents mentioned in a title.

In these cases, the debtor will not send the maintenance amount each month to the creditor, but to an agency (ARIPA) subordinate to the CAF, in order to avoid conflicts. If he/she does not pay, the agency will proceed with the collection of the sums. The CAF agency ARIPA thus plays a financial mediation role (*intermédiation financière*). Since January 2021, each parent may benefit from this system upon request, regardless of when the separation or divorce took place (i.e. even if it happened a long time ago) and regardless of whether a default of payment by the debtor has already been established or not.

In the cases where the debtor does not pay the child's maintenance, the family allowance funds (CAF), which pay the child allowance, can also assist the maintenance creditor in recovering the outstanding amounts (*Code de la sécurité sociale, CSS, Art. L. 581-1 et seq.*).

D. New Developments Regarding Property Relations Between Spouses (since August 2008)

²⁷ See also Decrees no 2020-1201 and 2020-1202 of 30 September 2020.

No important changes in legislation or case law.

One modification regarding the change of the matrimonial property regime by the spouses (*changement de régime matrimonial*): the Law Act no. 2019-222 of 22 March 2019 *de programmation 2018-2022 et de réforme pour la justice*²⁸ removed the two-year period previously required before changing the matrimonial property regime (Article 1397 para. 1 French Civil Code). It also abolished the requirement that the new matrimonial property regime agreement be homologated by the court if the spouse have minor children (Article 1397 para. 5 French Civil Code: in this last case, the public notary may, however, seize the guardianship judge if he/she thinks that the new matrimonial property agreement manifestly and substantially compromises the property interests of the minor, see Article 387-3 French Civil Code).

E. New Developments Regarding *de Facto* Partnerships (since February 2015)

1. The Law Act no. 2019-222 of 23 March 2019 has added a new article to the French Civil Code for cohabiting partners (*concubins*) who separate. According to Article 373-2-9-1 French Civil Code, the family court judge decides in case of conflict on the modalities of the exercise of parental responsibilities after the separation of the partners. The judge may also assign the use of the family home to one of the parents for a maximum period of 6 months. This new provision came into force on 25 March 2019.

2. According to the new wording of Article L. 582-2 *Code de la sécurité sociale* since July 2018, at the joint request of non-married parents who get separated or have dissolved their registered partnership (Pacs), the director of the body paying family benefits (*caisse d'allocations familiales*) shall give enforceability to the agreement by which they determine the amount of the contribution to the maintenance and education of the child, if the following conditions are met:

1. The parents certify that neither of them is the holder of a claim fixed for that child by a court decision or by an agreement;
2. The amount of the contribution is greater than or equal to a threshold established taking into account, in particular, the residence of the child mentioned, the resources of the debtor and the number of children of the latter.

The decision of the body has the effects of a judgment and constitutes an enforceable title. The decision is not subject to any appeal. If the body refuses to give enforceability to the agreement, the parents may, together or separately, refer the matter to the family court for determination of the amount of the contribution to the child's maintenance.

²⁸ JORF no 0071 of 24.3.2019.

See also under C. Parental Responsibilities regarding the creation of a new public service to recover child maintenance (ARIPA).

3. The Court of cassation seems less inclined than in the past to grant requests for compensation. Its recent case law tends to dismiss claims brought by one former *de facto* partner (*concubine*) after separation who requests payment or repayment from the other partner. The reasons commonly given by the Court of cassation are based on the following rule: since there is no legal provision dealing with the contribution of the partners (*concubins*) to the costs and expenses of the family household, each of them shall bear the living expenses he or she has incurred.

In Cass. Civ. 1, 13 January 2016, no 14-29.746 a former partner claimed the reimbursement of half of the amount of the property loan (the contract had been signed by both partners). The Court of cassation approves the appellate court decision which held that the claimant was repaying the instalments of this loan, in addition to other charges, but his declared income was insufficient to meet all these expenses, while Miss Y, who had a salary, also paid for food and clothing. The court of appeal inferred that there was a common desire to share the expenses of everyday life, justifying that Mr X. retained the burden of the instalments of the mortgage loan.

In Cass. Civ. 1, 8 July 2020, no 19-12.250 both partners were holders of the residential lease but only one of them paid the rent during their cohabitation. After separation, the partner claimed half of the amounts paid. The court of appeal held that since both partners were holders of the right to a lease (*droit au bail*), they were jointly and severally liable for the rents. In the absence of an intention to make a donation (*intention libérale*) and of an agreement between the parties providing for another method of contribution, the two joint and several debtors are each liable for half of the rent paid to the lessor. The Court of cassation quashed this judgment: ‘In so ruling, without noting the existence of an agreement between the parties on the sharing of the burdens of living together, the court of appeal has infringed the law’.

In Cass. Civ. 1, 2 September 2020, no 10-10.477 one of the partners had bought a house where the family lived. After the separation, the other partner claimed for reimbursement of the property loan and of the improvements to the house he had partially financed. The Court of cassation confirms the decision of the court of appeal: the claimant had participated in the financing of the works and his partner’s house as his contribution to the expenses of everyday life and not as a third party owner of the works within the meaning of Article 555 of the Civil Code; the expenses he had thus incurred should remain his responsibility.

Annex 1: Statistics on divorce

<http://efl.fr.s3.amazonaws.com/pdf/stats-divorce.jpg>

Thèmes	Statistiques		Observations pour 2017
	2016	2017	
Divorces	170 895 demandes 128 043 prononcés	97 629 demandes 90 612 prononcés ↓ 56 794 divorces contentieux prononcés 33 456 divorces par consentement mutuel prononcés par le JAF 362 conversions séparation de corps en divorce	<p>↘ 29 % divorces prononcés par le JAF (conséquences réforme)</p> <p>↘ 53 % divorces par consentement mutuel prononcés par le JAF, soit 33 456 en 2017 (conséquences réforme)</p> <p>↗ 2,04 % divorces contentieux prononcés, soit 56 794 en 2017 (13, 5 % sont des divorces pour faute)</p> <p>Durée moyenne du mariage : 16,5 ans</p> <p>Durée moyenne procédure : 18,7 mois (4,4 mois pour divorce consentement mutuel)</p> <p>Age moyen au moment du prononcé du divorce : - femme : 45,3 ans - homme : 48,2 ans</p> <p>Résidence des enfants (stat. 2012) : - 70 % fixée chez la mère - 21 % résidence alternée</p>
Contentieux post-divorce	-	3 333 décisions	26 % modification pension alimentaire 23 % révision prestation compensatoire
	-	48 979 décisions	Décisions post-divorces relatives aux enfants mineurs concernent : - 44 % modification exercice autorité parentale ou résidence habituelle - 41 % la fixation ou la modification de la contribution à leur entretien
Séparations de corps	2 184 demandes 1 005 prononcées	1 606 demandes 822 prononcées	<p>↘ 18,2 % séparations de corps prononcées</p> <p>Durée moyenne procédure : 19,6 mois</p>

See also :

Références statistiques justice 2019

<http://www.justice.gouv.fr/statistiques-10054/references-statistiques-justice-12837/references-statistiques-justice-33702.html>

2. Décisions de justice relatives aux ruptures d'union					
	unité : affaire				
	2015	2016	2017	2018	2019
Décisions de ruptures d'union	124 645	129 048	91 435	62 954	66 672
Divorce par consentement mutuel	67 875	71 933	33 457	283	94
Divorce accepté	29 656	29 854	30 404	36 374	40 051
Divorce par altération définitive du lien conjugal	16 288	17 010	17 790	17 637	18 432
Divorce pour faute	8 504	8 036	7 665	6 989	6 669
Divorce direct indéterminé	779	731	935	748	591
Conversion séparation de corps en divorce	566	479	362	290	279
Séparation de corps	977	1 005	822	633	556
Autres décisions	29 580	30 327	25 991	23 681	23 526
Rejet	1 617	1 531	1 582	1 351	1 405
Radiation	5 195	4 946	4 501	3 780	3 365
Désistement des parties	9 082	9 312	8 605	7 959	7 997
Caducité de la demande	4 624	4 727	5 119	5 079	5 441
Autres décisions	9 062	9 811	6 184	5 512	5 318
Champ : France métropolitaine et DOM					
Source : Ministère de la justice/SG/SEM/SDSE : Exploitation statistique du Répertoire Général Civil					