

**GROUND FOR DIVORCE AND MAINTENANCE BETWEEN
FORMER SPOUSES**

GREECE

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A. GENERAL

1. What is the current source of law for divorce?

The current legal source for divorce in Greece is the Hellenic Civil Code Book No 4, Chapter VII *Divorce*, Articles 1438-1446 and the Hellenic Code of Civil Procedure (Articles 16, 592-613 and 681B), as well as the legislation of the E.U. Reg. No. 1347/2000.

2. Give a brief history of the main developments of your divorce law.

Until 1920 the legal source for divorce was mainly Roman-Byzantine Law. The first modern state act for divorce was Law No. 2228/1920 which determined specific grounds for divorce. The above-mentioned civil act specified five liable grounds (adultery, bigamy, threat against the life of the spouse, malicious abandonment for two years and strong alienation of affections) and four non-labile reasons (absence, sexual impotence, mental alienation and leprosy) for divorce. Law No. 2228/1920 was replaced firstly by the Hellenic Civil Code of 1946, which practically reproduced the provisions of the above-mentioned legal source, and then by Law No. 868/1979 which introduced, for the first time in the Hellenic legal system, divorce because of a year-long interruption of cohabitation. The possibility of reconciliation, provided by the Hellenic Code of Civil Procedure, to encourage spouses to resolve their martial problems in order to prevent divorce, was repealed in 1982. The current legal source is Law No. 1329/1983 which introduced, as grounds of divorce, consensual separation and the

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absence and alienation of affections which has been caused by specific reasons. This act is actually incorporated in the Hellenic Civil Code.

3. *Have there been proposals to reform your current divorce law?*

No, there have been no official proposals to reform those articles of the Hellenic Civil Code which concern the institution of divorce.

B. GROUNDS FOR DIVORCE

I. General

4. *What are the grounds for divorce?*

Since the reformation of Hellenic family law which took place in 1983, a divorce can be granted on the ground of the irretrievable breakdown of the matrimonial bond (Article 1439 §§ 1 and 2), on the ground of consensual separation (divorce by consensus) and in the case of an officially declared absence.¹

- The institution of divorce due to an irretrievable breakdown of the marriage is described in Article 1439 of the Hellenic Civil Code. According to the above-mentioned article, a divorce shall be granted at the request of one of the spouses if their relationship has been so strongly impaired due to a reason which is imputable to the defendant or also to both spouses that the continuation of the conjugal relationship has become justifiably unbearable for the plaintiff. Article 1439 § 1 was strongly criticized mainly because it deprived the imputable spouse from requesting a divorce.² The second paragraph of Article 1439 of the Hellenic Civil Code lays down four refutable criteria for presuming that there has been an irrefutable breakdown of the marriage bigamy, adultery, the

¹ See Grammatikaki-Alexiou, 'Family law' in: Kerameus and Kozyris (eds.), *Introduction to Greek law*, 1988, 1st Edition, p. 129. According to her opinion, the so-called divorce by consensus does not represent *stricto sensu* a ground for divorce. The spouses in reality agree to a divorce without having to adduce any legal grounds for their common petition.

² A. Georgiadis, *The adversarial divorce*, Armenopoulos, 1989, p. 212; I. Deligiannis, *Family Law: Volume II*, 1987, p. 248; E. Kounougeri-Manoledaki, *Family Law Volume III*, 1993, p. 17 (in Greek).

plaintiff's abandonment by the defendant (respondent) and a threat against the life of the plaintiff (petitioner) by the defendant, as long as the defendant does not prove the opposite. If the plaintiff requests a divorce on the ground of Article 1439 § 2 of the Hellenic Civil Code, burden of proof rests upon the defendant to prove that the plaintiff's allegations are false or that the act committed did not constitute a grave impairment for the continuation of the conjugal relationship. The above-mentioned strong alienation of affections is also presumed when the spouses have been continually at odds for at least four years. Article 1439 § 3 introduces an irrefutable criterion for the irretrievable breakdown of the matrimonial bond, by stipulating that if the spouses have been continually at odds for at least four years then the presumption of impairment cannot admit proof to the contrary.

- According to Article 1440 a divorce shall be granted in the case of the officially declared absence of the other spouse.
- The Hellenic Civil Code (Article 1441) recognizes the institution of consensual divorce. In this case, the spouses may jointly request a divorce.

5. *Provide the most recent statistics on the different bases for which divorce was granted.*

No official information is available.

6. *How frequently are divorce applications refused?*

Divorce petitions are very rarely rejected by the court.

7. *Is divorce obtained through a judicial process, or is there also an administrative procedure?*

According to the basic rule of Article 1438 of the Hellenic Civil Code a divorce can **only** be pronounced by a final Court judgment. In the case of a divorce due to an irretrievable breakdown of the matrimonial bond, the procedure is a legal claim to which not only special rules for the matrimonial disputes (Articles 592-610 of the Hellenic Code of

Civil Procedure) apply, but also the general rules of Civil Procedure (Article 591 Hellenic Code of Civil Procedure). If the spouses agree to a divorce by consent, they will request the divorce in accordance with the procedure pertaining to voluntary jurisdiction (Article 1441 of the Hellenic Civil Code and Articles 741-781 of the Hellenic Code of Civil Procedure).³ It was thought that the existence of two separate kinds of divorce proceedings was unnecessary, since divorce proceedings always constitute a matrimonial dispute.⁴ Now it is accepted that divorce by consent, which constitutes a means of dissolving a marriage without any dispute, can only be regulated by voluntary jurisdiction proceedings.⁵

8. *Does a specific competent authority have jurisdiction over divorce proceedings?*

Proceedings concerning divorce on the ground of consensual separation are instigated before the civil Court of First Instance - *Monomeles Protodikeio* (one judge court) according to Article 740 of the Hellenic Code of Civil Procedure.⁶ Divorce proceedings based on strong alienation of affections are instigated before the three-member (three judges) Court of First Instance - *Polymeles Protodikeio* according to Article 18 of the Hellenic Code of Civil Procedure, which has subject-matter competence. The court where the last habitual residence of the spouses occurred has territorial competence (Article 39 Hellenic Code of Civil Procedure). The parties can appeal against the decision of the court which grants the divorce (Articles 511, 741 and 590 of the Hellenic Code of Civil Procedure).⁷ In the case of a divorce due to the

³ See for details, Grammatikaki-Alexiou, 'Family law' in: Kerameus and Kozyris (eds.), *Introduction to Greek law*, 1988, 1st Edition, p. 130.

⁴ A. Gazis, 'The new family law - The problems' (1985) 15 *Diki Revue* p. 669 (in Greek).

⁵ I. Deligiannis, *Family Law, Volume II*, 1987; A. Sofialidis and P. Kornilakis, 'Divorce by consent: Problems of interpretation and application of Article 1441 of the Civil Code' (1983) *Armenopoulos Revue* p. 847 (in Greek).

⁶ See for more details about the judicial organisation and civil procedure in Greece, Kerameus, in: Kerameus and Kozyris, *Introduction to Greek Law*, 1988, 1st Edition, p. 237.

⁷ An appeal is the most important and frequent way in which to contest judgements as provided by the Hellenic Code of Civil Procedure. The term (EFESIS) has a technical meaning, denoting an attack on first instance judgements, addressed to an

irretrievable breakdown of the marriage, the parties can waive their right to exercise legal remedies (Article 606 of the Hellenic Code of Civil Procedure) after the publication of the judgment of the Court of First Instance. Against the appeal judgment, an appeal in cassation is possible before the Supreme Court –*Areios Pagos* (Article 613).⁸ In such a case the Court's decision is stayed (Article 565 of the Hellenic Code of Civil Procedure).

9. *How are divorce proceedings initiated? (e.g. Is a special form required? Do you need a lawyer? Can the individual go to the competent authority personally?)*

In the case of a divorce due to the irretrievable breakdown of the marriage, the plaintiff initiates a petition for divorce, which is signed by an attorney at law. The petition must contain a clear description of the facts and a particular request (Article 216 § 1 of the Hellenic Code of Civil Procedure). The aforementioned elements cannot be changed.⁹ The petition, which is based on Article 1439 § 1 of the Hellenic Civil Code, should include the facts which demonstrate the irretrievable breakdown of the conjugal relationship and the affirmation that the marriage has become unbearable. If the petition is based on Article 1439 § 2 of the Hellenic Civil Code, the plaintiff only has to refer to one of the criteria prescribed by the law, without further elaborating on the particular facts. When the plaintiff introduces a petition on the ground of Article 1439 § 3 of the Hellenic Civil Code, he/she may only adduce continuous disagreements for at least four years. Lastly, if the petition is based on the ground of Article 1440 of the Hellenic Civil Code, the plaintiff must mention the decision of the Court which declared that the spouse has been absent. Where the spouses agree to a divorce, according to Article 1441 of the Hellenic Civil Code, they instigate a joint request in accordance with the procedure for voluntary jurisdiction (Article 739 of the Hellenic Code of Civil Procedure), signed by a lawyer.

intermediate court of appeal authorised to review the judgement based on the law and on the facts.

⁸ The grounds for review (cassation) are quite limited. They may involve a violation either of a rule of substantive law (e.g grounds for divorce), or of some specified procedural rules.

⁹ See decision No. 1612/1984 of the Hellenic Supreme Court - *Areios Pagos*.

10. *When does the divorce finally dissolve the marriage?*

The divorce is always granted by a court judgment. This only dissolves the marriage (*ex nunc*) after the competent Court has delivered an irrevocable judgment, which is not subject to any ordinary (Appeal) or extraordinary (Cassation) methods of contesting the judgement.¹⁰ If the form of the marriage that is dissolved has been a religious one, the divorce is usually completed by the so-called spiritual dissolution pronounced by a bishop.¹¹

If under your system the sole ground for divorce is the irretrievable breakdown of marriage answer part II only. If not, answer part III only.

III. Multiple grounds for divorce

1. Divorce by consent

22. *Does divorce by consent exist as an autonomous ground for divorce, or is it based on the ground of irretrievable breakdown?*

According to Article 1441 of the Hellenic Civil Code, a divorce by consent exists, according to the prevailing opinion, as an autonomous ground for divorce. In legal countenance the consent of the spouses only provides strong evidence of the breakdown of the matrimonial bond, which is the ground for such a divorce.¹²

23. *Do both spouses need to apply for a divorce together, and if not, how do the divorce proceedings vary according to whether one or both spouses apply for a divorce?*

According to Article 1441 of the Hellenic Civil Code the spouses have to jointly request the divorce. The agreement of the spouses must twice be declared before the Court by the parties personally or by a specially authorized attorney (a special plenipotentiary) at two hearings at least

¹⁰ For this important distinction, see, Kerameus, *in* Kerameus and Kozyris, *Introduction to Greek Law*, 1988, 1st Edition, p. 253.

¹¹ This is not provided by law.

¹² Grammatikaki-Alexiou, 'Family law' *in*: Kerameus and Kozyris (eds.), *Introduction to Greek law*, 1988, 1st Edition, p. 130.

six months apart. Or, in other words, the second consenting statement must be made at least six months after the first.

24. Is a period of separation required before filing the divorce papers?

According to Article 1441 of the Hellenic Civil Code no period of separation is required before the filing of the divorce papers (presenting the divorce petition)..

25. Is it necessary that the marriage was of a certain duration?

Article 1441 of the Hellenic Civil Code stipulates that in order for a consensual divorce to be granted, the marriage must have lasted for at least one year before the filing of the request. The reason for this delay is the need for a period of reconsideration, so that overhasty divorces may be avoided.¹³

26. Is a minimum age of the spouses required?

No, a minimum age is not required, since even persons, under the age of eighteen (minors) may apply for a consensual divorce (Article 1350 § 2 of the Hellenic Civil Code).

27. Are attempts at conciliation, information meetings or mediation attempts required?

No.

28. What (formal) procedure is required? (e.g. How many times do the spouses need to appear before the competent authority?)

The spouses have to instigate a formal petition at the competent Court. According to Article 1441 of the Hellenic Civil Code the agreement (common petition) of the spouses must be declared in Court by the parties personally or by a specially authorised attorney at law in the course of two hearings at least six months apart. The special power of

¹³ Grammatikaki-Alexiou, 'Family law' in: Kerameus and Kozyris (eds.), *Introduction to Greek law*, 1988, 1st Edition, p. 130.

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attorney must have been given within the last month before each hearing. Where two years have elapsed since the first hearing the declared agreement of the spouses shall cease to be effective.

29. *Do the spouses need to reach an agreement or to make a proposal, or may the competent authority determine the consequences of the divorce?*

According to Article 1441 of the Hellenic Civil Code the spouses must reach a written agreement concerning the dissolution of the marriage as well as the custody and visitation rights concerning the minor children of the marriage. Such an agreement will be confirmed by the Court and will remain in force until a final decision has been reached in this matter.

30. *If they need to reach an agreement, does it need to be exhaustive or is a partial agreement sufficient? On what subjects should it be, and when should this agreement be reached?*

The agreement concerning the custody and care of the children of the marriage and personal contact with those children must be exhaustive. The spouses have until the Court's second session to reach such an agreement.

31. *To what extent must the competent authority scrutinize the reached agreement?*

Legal literature is not unanimous on this point. There is one legal opinion, which states that the Court cannot scrutinize the parents' agreement as to custody and visitation rights concerning children. But there is also a different point of view which holds that the Court must scrutinize such a parental decision in order to protect the child's interest.¹⁴

32. *Is it possible to convert divorce proceedings, initiated on another ground, to proceedings on the ground of mutual consent, or must new proceedings be commenced? Or, vice versa, is it possible to convert divorce*

¹⁴ See for details, E. Kounougeri-Manoledaki, *Family Law. Volume II*, 1988, 2nd Edition, p. 474.

proceedings on the ground of mutual consent, to proceedings based on other grounds?

No. A divorce petition must either be opposed or unopposed. In Modern Greek procedural law there has always been a sharp distinction between contentious (contested divorce) and non-contentious (non-contested divorce) proceedings. Proceedings of an *ex parte* nature, such as divorce by consensus, cannot be converted to proceedings of adversary jurisdiction (contested divorce).¹⁵

2. Divorce on the ground of fault/ matrimonial offence

33. What are the fault grounds for divorce?

The old fault grounds for divorce now constitute evidence of the grave impairment of the conjugal relationship. According to Article 1439 § 2 of the Hellenic Civil Code such an impairment is presumed in the case of bigamy or adultery, in the case of the defendant's abandonment of the plaintiff or when the defendant has threatened the life of the plaintiff.

34. If adultery is a ground what behaviour does it constitute?

According to Article 1439 § 2 of the Hellenic Civil Code adultery constitutes evidence, which indicates the grave impairment of the conjugal relationship. Adultery is every kind of sexual contact between two people of a different or of the same sex, and when at least one of those persons is married.¹⁶

35. In what circumstances can injury or false accusation provide a ground for divorce?

Injury or false accusation only provides a ground for divorce if it constitutes an irretrievable breakdown of the conjugal relationship. This depends on the particular circumstances and the facts of the case, which will be considered by the Court.

¹⁵ Kerameus, in: Kerameus and Kozyris, *Introduction to Greek Law*, 1988, 1st Edition, p. 261.

¹⁶ E. Kounougeri-Manoledaki, *Family Law. Volume III*, 1988, 1st Edition, p. 34.

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36. *Is an intentional fault required?*

In the case of Article 1439 § 1 of the Hellenic Civil Code any behaviour can lead to the grave impairment of the relationship between the spouses. But the second paragraph of the above-mentioned article of the Hellenic Civil Code which refers to the reasons for divorce requires intentional fault.

37. *Should the fault be offensive to the other spouse? Does the prior fault of one spouse, deprive the guilty / fault-based nature of the shortcomings of the other?*

In order to prove that the conjugal relationship has become justifiably unbearable for the plaintiff (Article 1439 § 2 of the Hellenic Civil Code) the fault on the part of the defendant spouse should be offensive to the other spouse.

38. *To obtain a divorce, is it necessary that the marriage was of a certain duration?*

No, Article 1439 which refers to a divorce due to the grave impairment of the marriage does not require that the marriage was of a certain duration. The sole exception refers to divorce by consent.

39. *Does the parties' reconciliation prevent the innocent spouse relying upon earlier facts as a ground for divorce?*

No answer.

40. *How is the fault proved?*

Fault may be proved by all those means which are regulated in the Code of Civil Procedure (Hellenic Code of Civil Procedure, Book No. 2, Chapter 12, Title 1, Articles 335-465). According to Article 339 of the Hellenic Code of Civil Procedure the following may be adduced as evidence: the results of an autopsy, the documentation, the examination of the parties, a confession, an expert report, a witness statement, examining witnesses under oath, and judicial presumptions.

41. *Are attempts at conciliation, information meetings or mediation attempts required?*

No.

42. *Can the divorce application be rejected or postponed due to the fact that the dissolution of the marriage would result in grave financial or moral hardship to one spouse or the children? If so, may the competent authority invoke this on its own motion?*

No answer.

43. *Is it possible to pronounce a judgment against both parties, even if there was no counterclaim by the respondent?*

Yes.

3. Divorce on the ground of irretrievable breakdown of the marriage and/or separation

44. *How is irretrievable breakdown established? Are there presumptions of irretrievable breakdown?*

Irretrievable breakdown is a matter of proof. In a divorce petition based on Article 1439 §1 there are no presumptions of the irretrievable breakdown of the marriage. According to Article 1439 §2 of the Hellenic Civil Code there are four refutable presumptions of the irretrievable breakdown of the marriage (bigamy, adultery, the plaintiff's abandonment and a threat against the life of the spouse). Article 1439 §3 establishes an irrefutable presumption of the irretrievable breakdown: a continuous disagreement between the spouses for at least four years.

45. *Can one truly speak of a non-fault-based divorce or is the idea of fault still of some relevance?*

No, because the idea of fault is still of some relevance, since, for example the four refutable presumptions of the irretrievable

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breakdown of the matrimonial bond represent the old grounds for divorce.¹⁷

46. To obtain the divorce, is it necessary that the marriage was of a certain duration?

No.

47. How long must the separation last before divorce is possible?

The separation must have lasted for at least four years, according to Article 1439 §3 of the Hellenic Civil Code.

48. Does this separation suffice as evidence of the irretrievable breakdown?

Yes, Article 1439 §3 of the Hellenic Civil Code stipulates that where the spouses have been continually at odds for at least four years, the presumption of impairment shall not admit proof to the contrary.

49. In so far as separation is relied to prove irretrievable breakdown,

(a) Which circumstances suspend the term of separation?

The expressed will of the spouses to continue their marriage.

(b) Does the separation need to be intentional?

Yes.

(c) Is the use of a separate matrimonial home required?

No, this is not necessary, as long as the desire to separate can be proved before the Court.

50. Are attempts at conciliation, information meetings or mediation attempts required?

¹⁷ See also Article 1444 §1 Hellenic Civil Code.

According to Law No. 1250/1982 no attempts at conciliation, information meetings or mediation attempts are required.

51. Is a period for reflection and consideration required?

No.

52. Do the spouses need to reach an agreement or to make a proposal on certain subjects? If so, when should this agreement be reached? If not, may the competent authority determine the consequences of the divorce?

No. The Court, at this point of the procedure, is only competent to dissolve the marriage.

53. To what extent must the competent authority scrutinize the reached agreement?

No answer.

54. Can the divorce application be rejected or postponed due to the fact that the dissolution of the marriage would result in grave financial or moral hardship to one spouse or the children? If so, can the competent authority invoke this on its own motion?

Unlike other European civil codes, the Hellenic Civil Code has expressly codified the principle of abuse of rights in Article 251. According to this provision, the exercise of a right (also the right to request the divorce)¹⁸ is prohibited when it manifestly exceeds the limits dictated by good faith, good morals, or the social or economic objective of the right in question.¹⁹

C. SPOUSAL MAINTENANCE AFTER DIVORCE

¹⁸ According to the general opinion in theory and practice/jurisdiction. See, E. Kounougeri-Manoledaki, *Family Law Volume II*, 1988, 2nd Edition, p. 412 (see especially, Notes 51-52).

¹⁹ See especially, Symeonides, in: Kerameus and Kozyris, *Introduction to Greek Law*, 1988, 1st Edition, p. 55.

I. General

55. *What is the current source of private law for maintenance of spouses after divorce?*

The current source for maintenance of the spouses after divorce is the Hellenic Civil Code (Book No 4 Chapter VII *Divorce*, Articles 1442-1446).

56. *Give a brief history of the main developments of your private law regarding maintenance of spouses after divorce.*

Pursuant to the former legislative context (the old Articles 1454 and 1455 of the Hellenic Civil Code), the maintenance of the spouses after divorce was considered to be a sanction imposed on the liable spouse. For this reason, there were two principles which determined the organization of maintenance between the spouses after divorce: Firstly, the liable spouse was responsible for the maintenance of the other and, secondly, the non-liable wife could force her ex-husband to pay maintenance regardless of her personal financial situation. The system of maintenance between the spouses after divorce was legislatively reformed. According to the (new) Article 1442 of the Hellenic Civil Code one of the two spouses has the right to claim maintenance from the other if

- (1) upon the pronouncement of the divorce the spouse in question cannot maintain him/herself, due to several reasons prescribed by law
- (2) if the spouse in question has custody of a minor child and for this reason is prevented from obtaining gainful employment,
- (3) if the spouse in question cannot find stable and appropriate work or if he is in need of professional training, or
- (4) in any other case where the judicial award of maintenance is required due to reasons of fairness. The criteria of gender or fault do not play a role.²⁰

²⁰ See, however, Article 1444 §1 Hellenic Civil Code, which provides an exception to this rule when the ex-spouse has caused the divorce by his/her own fault.

57. *Have there been proposals to reform your current private law regarding maintenance of spouses after divorce?*

No, there have been no official proposals in order to reform the articles of the Hellenic Civil Code that concern the institution of maintenance of spouses after divorce.

58. *Upon divorce, does the law grant maintenance to the former spouse?*

Article 1442 of the Hellenic Civil Code grants maintenance to the former spouse subject to the condition that specific criteria are satisfied. The criteria of gender or fault (as a rule) no longer play a role in maintenance obligations after divorce. Both parties have the same rights and obligations and they are expected to support themselves as far as this is possible.²¹ This is the *main rule* in the law of post-matrimonial maintenance. However, Article 1442 of the Hellenic Civil Code introduces an *exception*²² to this rule, in that the former spouse shall have the right to claim maintenance from the other, to the extent that he/she cannot adequately support him/herself from his/her income or property:

- If, upon the dissolution of the marriage or at the end of the time-limits referred to in the cases described hereunder, he/she is of an age or in a state of health that precludes him/her from carrying out gainful employment to support him/herself.
- If he/she has custody of a minor child and for this reason is prevented from being gainfully employed.
- If he/she cannot find stable and suitable work or if he/she has to undergo professional training but in both cases for a period that may not exceed three years as from the dissolution of marriage.
- In any other case where the judicial award of maintenance is reasonable and fair.

59. *Are the rules relating to maintenance upon divorce connected with the rules relating to other post-marital financial consequences, especially to*

²¹ See Grammatikaki-Alexiou, 'Family law' in: Kerameus and Kozyris (eds.), *Introduction to Greek law*, 1988, 1st Edition, p. 130.

²² So also E. Kounougeri – Manoledaki, *Family Law. Volume I*, 1988, 2nd Edition, p. 497.

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the rules of matrimonial property law? To what extent do the rules of (matrimonial) property law fulfil a function of support?

Indirectly, yes. If the ex-spouse has sufficient means (property, income), he/she cannot claim maintenance from the other party. The rules of matrimonial property law are not at all connected with any function of support.

60. Do provisions on the distribution of property or pension rights (including social security expectancies where relevant) have an influence on maintenance after divorce?

No. As stated above, ex-spouses are expected to support themselves.

61. Can compensation (damages) for the divorced spouse be claimed in addition to or instead of maintenance payments? Does maintenance also have the function of compensation?

Compensation can be claimed by the divorced spouse in addition to or instead of maintenance payments. Maintenance also has the function of moral compensation.

62. Is there only one type of maintenance claim after divorce or are there, according to the type of divorce (e.g. fault, breakdown), several claims of a different nature? If there are different claims explain their bases and extent.

According to Articles 1442-1446 of the Hellenic Civil Code there is only one type of maintenance claim after divorce.

63. Are the divorced spouses obliged to provide information to each other spouse and/or to the competent authority on their income and assets? Is this right to information enforceable? What are the consequences of a spouse's refusal to provide such information?

According to Article 1445 of the Hellenic Civil Code, each of the divorced spouses is obliged to provide all useful information to the other concerning their income and assets, as long as this is necessary to determine the amount of maintenance. If the divorced spouse refuses to provide such information, the other spouse will deliver a

prosecution order to the competent authority or to the tax/financial inspector obliging that body to provide the above-mentioned data. The consequences of any refusal can be *inter alia* an unlawful act. In such a case a claim for compensation will arise.

II. Conditions under which maintenance is paid

64. Do general conditions such as a lack of means and ability to pay suffice for a general maintenance grant or do you need specific conditions such as age, illness, duration of the marriage and the raising of children? Please explain.

According to Article 1442 of the Hellenic Civil Code general conditions such as a lack of means for a general maintenance grant. Article 1442 stipulates that the former spouse shall have the right to claim maintenance from the other, to the extent that he/she cannot adequately support him/herself from his/her income or property:

(1) If, upon the dissolution of the marriage or at the end of the time-limits referred to in the cases described hereunder, he/she is of an age or in a state of health that precludes him/her from carrying out gainful employment.

(2) If he/she has custody of a minor child and for this reason is prevented from being gainfully employed. If he/she cannot find stable and suitable work or if he/she has to undergo professional training but in both cases for a period that may not exceed three years as from the dissolution of the marriage.

(3) In any other case where the judicial award of maintenance is reasonable and fair. Also, according to Article 1487 of the Hellenic Civil Code the person who is not able to support him/herself, will not be required to pay maintenance to a former spouse.

65. To what extent does maintenance depend on reproachable behaviour or fault on the part of the debtor during the marriage?

Maintenance does not exclusively depend on reproachable behaviour or fault on the part of the debtor during the marriage. However, maintenance can be denied or limited by the Court if the dissolution of the marriage has been caused by the fault of the person claiming maintenance. According to Article 1444 of the Hellenic Civil Code,

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“maintenance may be excluded or limited where this is called for on serious grounds especially if the marriage had existed for a short period²³ or if the spouse entitled thereto has caused the divorce by his/her fault ...”

66. *Is it relevant whether the lack of means has been caused by the marriage (e.g. if one of the spouses has give up his/her work during the marriage)?*

No.

67. *Must the claimant’s lack of means exist at the moment of divorce or at another specific time?*

No.

III. Content and extent of the maintenance claim

68. *Can maintenance be claimed for a limited time-period only or may the claim exist over a long period of time, maybe even lifelong?*

Maintenance can be claimed for a limited period of time, for example during a period of education (maintenance can be claimed for three years according to Article 1442 of the Hellenic Civil Code) and also when custody of a minor child prevents the spouse from carrying out gainful employment.

69. *Is the amount of the maintenance granted determined according to the standard of living during the marriage or according to, e.g. essential needs?*

Article 1493 Hellenic Civil Code stipulates that the maintenance granted is determined according to the standard of living during the marriage.²⁴

²³ The **legal duration** of the marriage (including the length of the separation and the interruption to martial life), or the actual time during which the spouses cohabited can be relevant. On this point there are no general opinions within the legal literature. See, E. Kounougeri-Manoledaki, *Family Law. Volume I*, 1988, 2nd Edition, p. 522. Papachristou, *Family law*, 1998, 2nd Edition, p. 172.

²⁴ See, E. Kounougeri-Manoledaki, *Family Law. Volume I*, 1988, 2nd Edition, p. 514

70. How is maintenance calculated? Are there rules relating to percentages or fractional shares according to which the ex-spouses' income is divided? Is there a model prescribed by law or competent authority practice?

There is no a legal formula for the calculation of maintenance.

71. What costs other than the normal costs of life may be demanded by the claimant? (e.g. Necessary further professional qualifications? Costs of health insurance? Costs of insurance for age or disability?)

Nothing else.

72. Is there a maximum limit to the maintenance that can be ordered?

According to Articles 1442 and 1493 of the Hellenic Civil Code the time-limit for the maintenance is calculated according to the needs of the former spouse. These needs are calculated according to the former spouse's standard of living during the marriage and also including the costs of his/her professional education.

73. Does the law provide for a reduction in the level of maintenance after a certain time?

The law does not provide for a reduction in the level of maintenance after a certain time, except for the case when there has been a change in the maintenance conditions.

74. In which way is the maintenance to be paid (periodical payments? payment in kind? lump sum?)?

Generally, maintenance is paid periodically in cash according to Article 1443 of the Hellenic Civil Code. According to this article, maintenance is payable in advance each month. The maintenance can also be paid by a determined lump sum if the parties have expressed their written consent, if there is a court order to this effect or if there is a particular reason which requires this particular form of payment.

75. Is the lump sum prescribed by law, can it be imposed by a court order or may the claimant or the debtor opt for such a payment?

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It can be imposed by a court order or with the written consent of both the claimant and the debtor.

76. *Is there an (automatic) indexation of maintenance?*

No.

77. *How can the amount of maintenance be adjusted to changed circumstances?*

According to Article 1494 of the Hellenic Civil Code if, after delivering the maintenance decision, its terms are modified, the Court can amend its judgment or order the maintenance to cease.

IV. Details of calculating maintenance: Financial capacity of the debtor

78. *Do special rules exist according to which the debtor may always retain a certain amount even if this means that he or she will not fully fulfil his maintenance obligations?*

No. Except if there is a particular agreement between the spouses.

79. *To what extent, if at all, is an increase of the debtor's income a) since the separation, b) since the divorce, taken into account when calculating the maintenance claim?*

No answer.

80. *How far do debts affect the debtor's liability to pay maintenance?*

Legally, the existence of debts does not affect the debtor's liability to pay maintenance. But if the debts prevent the debtor from providing for his/her own basic needs, then the debtor may invoke Article 1487 of the Hellenic Civil Code.

81. *Can the debtor only rely on his or her other legal obligations or can he or she also rely on his or her moral obligations in respect of other persons, e.g. a de facto partner or a stepchild?*

According to Article 1492 of the Hellenic Civil Code the debtor is obliged to provide first and foremost for the maintenance of his spouse and his children.

82. Can the debtor be asked to use his or her capital assets in order to fulfil his or her maintenance obligations?

Article 1445 of the Hellenic Civil Code, relating to the right of mutual information between the spouses, stipulates that in order to determine the total amount of spousal maintenance, the spouse must provide information regarding his or her capital assets. So, the debtor can be asked to use his or her capital assets in order to fulfil his or her maintenance obligations.

83. Can a “fictional” income be taken into account where the debtor is refusing possible and reasonable gainful employment or where he or she has deliberately given up such employment?

No, but if the debtor is refusing possible and reasonable gainful employment or where he or she has deliberately given up such employment, the other spouse can reject the above-mentioned objection by opposing Article 281 of the Hellenic Civil Code which refers to the abusive exercise of a right.

84. Does the debtor’s social security benefits, which he or she receives or could receive, have to be used for the performance of his/her maintenance obligation? Which kinds of benefits have to be used for this purpose?

No answer.

85. In respect of the debtor’s ability to pay, does the income (means) of his or her new spouse, registered partner or de facto partner have to be taken into account?

Yes.

V. Details of calculating maintenance: The claimant’s lack of own means

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86. *In what way will the claimant's own income reduce his or her maintenance claim? Is it relevant whether the income is derived, on the one hand, from employment which can be reasonably expected or, on the other, from employment which goes beyond what is reasonably expected?*

The spouse can only request maintenance if his or her financial situation does not grant him or her an adequate standard of living. If the claimant by his or her income can provide him or herself with a decent standard of living, then this income is duly taken into account.

87. *To what extent can the claimant be asked to seek gainful employment before he or she may claim maintenance from the divorced spouse?*

According to the civil code (Article 1442) before the formulation of his/her claim, the claimant cannot be asked to seek gainful employment.

88. *Can the claimant be asked to use his or her capital assets, before he or she may claim maintenance from the divorced spouse?*

Yes.

89. *When calculating the claimant's income and assets, to what extent are the maintenance obligations of the claimant in relation to third persons (e.g. children from an earlier marriage) taken into account?*

No answer.

90. *Are there social security benefits (e.g. income support, pensions) the claimant receives which exclude his or her need according to the legal rules and/or court practice? Where does the divorced spouse's duty to maintain rank in relation to the possibility for the claimant to seek social security benefits?*

Yes, according to Article 1442 Hellenic Civil Code.

VI. Questions of priority of maintenance claims

91. *How is the relationship between different maintenance claims determined? Are there rules on the priority of claims?*

The priority of different maintenance claims is determined by Article 1492 of the Hellenic Civil Code. According to this article minor descendents and the spouse of the debtor have priority in questions of maintenance.

92. *Does the divorced spouse's claim for maintenance rank ahead of the claim of a new spouse (or registered partner) of the debtor?*

No, according to Article 1492 of the Hellenic Civil Code, the claim for maintenance by the divorced spouse and the claim for maintenance by the new spouse carry the same importance.

93. *Does the claim of a child of the debtor, if that child has not yet come of age, rank ahead of the claim of a divorced spouse?*

No, according to Article 1492 of the Hellenic Civil Code the claim for maintenance for the minor child and for the spouse of the debtor carry the same importance.

94. *What is the position if that child has reached the age of majority?*

Article 1492 of the Hellenic Civil Code stipulates that the spouse's claim for maintenance ranks ahead of the claim of the child who has reached the age of full legal capacity (majority).

95. *Does the divorced spouse's claim for maintenance rank ahead of the claims of other relatives of the debtor?*

Yes, according to Article 1492 of Hellenic Civil Code, the divorced spouse's claim for maintenance ranks ahead of the claims of the major descendents and of the other relatives of the debtor.

96. *What effect, if any, does the duty of relatives or other relations of the claimant to maintain him or her have on the ex-spouse's duty to maintain him or her?*

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The duty of relatives or other relations of the claimant to maintain him or her does not have any effect on the ex-spouse's duty to maintain him or her.

VII. Limitations and end of the maintenance obligation

97. Is the maintenance claim extinguished upon the claimant's remarriage or entering into a registered partnership? If so: may the claim revive under certain conditions?

According to Article 1444 § 2 of the Hellenic Civil Code, the right to maintenance shall cease if the ex-spouse entitled thereto remarries or if he or she cohabits permanently with someone else in a free union. The claim for maintenance is revived if the plaintiff's marriage is declared null and void by a court decision.

98. Are there rules according to which maintenance may be denied or reduced if the claimant enters into an informal long-term relationship with another person?

Yes, according to Article 1444 of the Hellenic Civil Code, an informal long-term relationship with another person (concubinage) extinguishes the claimant's maintenance claim.

99. Can the maintenance claim be denied because the marriage was of short duration?

Article 1444 of the Hellenic Civil Code stipulates that the maintenance claim may be denied or reduced because the marriage was of a short duration.

100. Can the maintenance claim be denied or reduced for other reasons such as the claimant's conduct during the marriage or the facts in relation to the ground for divorce?

The maintenance claim can be denied or reduced if the claimant is the liable spouse or if he/she has deliberately caused his/her own poverty (Article 1444 of the Hellenic Civil Code).

101. Does the maintenance claim end with the death of the debtor?

No, the maintenance claim does not end with the death of the debtor, it ends with the death of the claimant except when this concerns past periods of installments due at the time of death (Article 1444 of the Hellenic Civil Code).

VIII. Maintenance agreements

102. May the spouses (before or after the divorce or during the divorce proceedings) enter into binding agreements on maintenance in the case of (an eventual) divorce?

Yes, since the law of maintenance is, in the majority of its provisions, of a dispositive nature (*jus dispositivum*).²⁵ That is a clear consequence of Article 1443 Hellenic Civil Code.

103. May a spouse agree to renounce his or her future right to maintenance? If so, are there limits on that agreement's validity?

Yes, a spouse may agree to renounce his or her future right to maintenance, as long as there is no violation of the general rules concerning the validity of juridical acts.²⁶ Article 1499 Hellenic Civil Code, which prohibits the renunciation of future maintenance, is, according to Article 1443, (*e contrario*) not applicable.

104. Is there a prescribed form for such agreements?

No, the law does not require a particular form for such agreements.

105. Do such agreements need the approval of a competent authority?

No, such agreements do not need the approval of a competent authority. Special formal requirements are also not provided by the law. The civil code generally establishes the principle of the informality

²⁵ So, E. Kounougeri-Manoledaki, *Family Law. Volume I*, 1988, 2nd Edition, p. 498-530.

²⁶ On the substantive validity of juridical acts under Greek law see Stathopoulos, *Contract law in Hellas* 1995, p. 87.

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of juridical acts,²⁷ except when there are special provisions. So a special provision cannot be based on Article 1443 Hellenic Civil Code. It is usual, however, that such agreements are entered into through a notary public (*ad probationem*).

²⁷ See in general, Stathopoulos, *Contract law in Hellas*, 1995, p. 77.