

SPANISH LEGISLATION

SPANISH CONSTITUTION 1978 (CE)

Article 149.1

The State shall have exclusive competence over the following matters:

[...]

(8) Civil legislation, without prejudice to the preservation, modification and development by the Autonomous Communities of their Civil, *foral* or special law, wherever these exist. In any event, rules for the application and effectiveness of legal provisions, civil relations arising from the forms of marriage, organisation of public records and public instruments, bases of contractual obligations, rules for resolving conflicts of law and rules for determining the sources of law with respect, in this last case, for the rules of *foral* or special law.

SPANISH CIVIL CODE 1889 (CC)¹

Book I: Persons; Title IV: Marriage; Chapter VII: Separation

Article 81

Separation shall be judicially decreed, regardless of the form in which the marriage was contracted:

(1) At the petition of both spouses, or of one of them with the other's consent, at the expiration of one year after the marriage was contracted. The petition for separation must be accompanied by a proposal for a regulatory agreement to govern the separation in accordance with Articles 90 and 103 of this Code.

(2) At the petition of one of the spouses, when the other has incurred a legal ground for separation.

Article 82

¹ As amended by the Act 30/1981, 07.07.1981.

The following are grounds for separation:

(1) The unjustified abandonment of the family home, marital infidelity, abusive or offensive conduct and any other serious or reiterated infringement of conjugal obligations.

Marital infidelity cannot be alleged as a ground for separation when there exists a prior separation in fact of the spouses, by mutual consent freely given, or imposed by the spouse alleging it.

(2) Any serious or reiterated infringement of the obligations regarding the common children or regarding those of any of the spouses who reside in the family home.

(3) Sentence to imprisonment for longer than six years.

(4) Alcoholism, drug addiction, or mental abnormalities, provided that the interests of the other spouse, or of the family, require the spouses to discontinue living together.

(5) The effective cessation of marital life in common for a period of six months by free consent. Such consent shall be understood to be freely given where a spouse requests it from the other spouse in authentic form, giving him or her express notice of the consequences of doing so, and the other spouse fails to manifest his or her will against it by any legally permissible means, or petitions a separation or the provisional measures to which Article 103 refers, within six months of the required summons.

(6) The effective cessation of marital life in common for a period of three years.

(7) Any of the grounds for divorce in the terms provided by numbers 3, 4 and 5 of Article 86.

Article 83

A decree of separation suspends the spouses' life in common, and terminates the possibility of binding the assets of the other spouse in the exercise of domestic prerogative (*potestad doméstica*).

Article 84

Reconciliation puts an end to the separation proceedings and leaves what may have been decided therein without further effect. The parties must, however, notify the court of the reconciliation before which the proceedings are or have been held.

The above notwithstanding, the measures taken in relation to the children shall be maintained or modified by judicial resolution whenever there exists just cause therefor.

Chapter VIII: Dissolution of Marriage

Article 85

Marriage is dissolved by the death or declaration of death of one of the spouses, and by divorce, regardless of the manner and time in which it was contracted.

Article 86

Grounds for divorce are:

(1) The effective cessation of marital life for, at least, one uninterrupted year from the time of the filing of the petition for separation, filed either by both spouses or at least by one of them with the consent of the other one when at least one year since the celebration of marriage has elapsed.

(2) The effective cessation of marital life for, at least, one uninterrupted year from the time of the filing of the petition for personal separation, at the request of the petitioner or of one who filed a reconventional claim pursuant to Article 82, once the judgement of separation becomes final, or where, the expressed term having expired, there should be no judgement at trial level.

(3) The effective cessation of marital life for, at least, two uninterrupted years:

(a) From the time the *de facto* separation is freely consented by both spouses, or the time the judicial decree becomes final, or from the time of the declaration of the legal absence of any of the spouses at the request of either of them.

(b) When the petitioner of divorce proves that when the *de facto* separation began the respondent had incurred a ground for legal separation.

(4) The effective cessation of marital life for at least five years at the petition of either of the spouses.

(5) A final judgement finding the other spouse guilty of attempting against the life of the petitioning spouse or of his or her ascendants or descendants.

When the divorce is petitioned by both spouses, or by one of them with the other's consent, a proposal for a regulating agreement for the effects thereof, in accordance with Articles 90 and 103 of this Code, must be attached to the petition or to the first pleading filed in the proceedings.

Article 87

The effective cessation of marital life to which Articles 82 and 86 of this Code make reference is compatible with the continuation, or the temporary resumption of life in the same domicile, when this results, with regard to one or both of the spouses, from necessity, an intent to reconcile, or is in the interest of the children and is duly shown to be so in any legally admissible manner in the corresponding separation or divorce proceedings.

The interruption of life in common shall not imply the effective cessation of marital life if it is grounded on labour or professional reasons, or on whatever reasons of similar nature.

Article 88

The action for divorce is terminated by the death of any of the spouses and by their reconciliation. Reconciliation must be express when it takes place after the filing of the demand.

Reconciliation after divorce does not produce legal effects, although the divorced parties may contract a new marriage between each other.

Article 89

Dissolution of marriage by divorce can only take place by means of a decree of divorce so declaring and shall produce effects from the time this decree becomes final. It shall not prejudice third parties in good faith until it is recorded in the Civil Registry.

Chapter IX: Effects Common to Nullity, Separation, and Divorce

Article 90

The regulating agreement to which Articles 81 and 86 of this Code make reference must deal with, at least, the following subjects:

(A) The determination of the person in whose custody the children under parental authority of both spouses are to remain; the exercise of parental authority; and the regime of visitations, communications, and children's periods of stay with the parent who does not live with them.

(B) The use of the family dwelling and furnishings.

(C) Contributions to the expenses of marriage and support obligations, as well as the basis for updating them and guarantees, when appropriate.

(D) The liquidation of the matrimonial property regime, when appropriate.

(E) Maintenance which, pursuant to Article 97, must eventually be discharged by one of the spouses.

Matrimonial agreements, entered into for the purpose of regulating the consequences of nullity, separation, or divorce, shall be approved by the court, unless they should be detrimental to the children or seriously damaging to one of the spouses. The rejection must be made by reasoned opinion, and, in such a case, the spouses must submit a new proposal to the consideration of the court for approval, where appropriate. From the moment it receives court approval, the agreement may be enforced by compulsory executory process (*vía de apremio*).

The measures adopted by the court in the absence of agreement, as well as those agreed upon by the spouses, may be modified

judicially or by a new agreement when there is a substantial change in the circumstances.

The court may establish the real or personal guarantees that the performance of the agreement may require.

[...]

Article 97

The spouse to whom the separation or divorce produces an economic imbalance in relation to the position of the other, which involves a worsening of the situation he or she had during the marriage, has a right to maintenance which shall be fixed in the judicial decree, taking into account, among other, the following circumstances:

- (1) The agreements that the spouses may have reached.
- (2) Their age and state of health.
- (3) Professional qualifications and the probabilities of gaining employment.
- (4) Past and future dedication to the family.
- (5) Collaboration, by his or her own labour, with the commercial, industrial, or professional activities of the other spouse.
- (6) The duration of the marriage and their marital life.
- (7) The eventual loss of a right to a pension
- (8) The wealth and economic means and necessities of both spouses

The judicial decree shall establish the bases for updating the award of maintenance, and the guarantees for its effectiveness.

Article 98

The spouse in good faith whose marriage has been declared null shall have a right to an indemnification award, if there has been

marital life, taking into account the circumstances provided by Article 97.

Article 99

The substitution of an annuity, the usufruct of certain property, or the delivery of capital in assets other than in money, instead of the judicially fixed award pursuant to Article 97, may be agreed upon at any time.

Article 100

After maintenance and the bases for updating it are fixed in the judgement on separation or divorce, the award may only be modified when there are substantial alterations in the economic capability of either spouse.

Article 101

The right to receive maintenance terminates on the cessation of the cause that gave rise to it, by the subsequent marriage of the spouse entitled to it or by his or her marital cohabitation with another person.

The right to receive maintenance does not end on the death of the person who is obliged to make this payment. Nevertheless, the debtor's heirs may request the reduction or suppression of the award from the court if the hereditary assets were insufficient to discharge the debt or if their right to the legitimate portion would be affected.

CATALAN FAMILY CODE 1998 (CF)²

Title II: Matrimonial property regimes; Chapter I: The separation matrimonial property regime and purchases with covenant of survival

[...]

Article 41. Economic compensation on the grounds of work

² Llei 9/1998, de 15 de juliol, *del Codi de Família* (DOGC num. 2687, 23.7.1998. Correction of mistakes DOGC num. 2732, 28.9.1998).

(1) In cases of judicial separation, divorce or marriage annulment, the spouse who has worked for the household or for the other spouse without receiving any payment in exchange or who has received insufficient payment, shall be entitled to receive economic compensation from the other spouse, in the event that this fact has produced a situation of inequality between the two patrimonies, which implies an unfair enrichment.

(2) The compensation shall be paid in money, unless otherwise agreed by the parties or if the judicial authority, on grounds of a justified cause, authorises that the payment be made with assets belonging to the obliged spouse. The payment shall be made within a maximum period of three years, together with the accrued interests calculated at the legal rate, from the acknowledgement. In this case, the constitution of guarantees in favour of the creditor spouse may be judicially decreed.

3. This right is compatible with any other economic rights to which the favoured spouse may be entitled, but shall be taken into consideration for the assessment of these other rights.

[...]

Title III: The effects of the annulment of marriage, divorce and judicial separation

Article 76. Aspects that are the object of regulation

(1) In cases of nullity of marriage, divorce or judicial separation, if there are children under the parental authority, the following must be dealt with:

(a) The parent with whom the children shall have to live together and also, if this applies, the rights of access, the periods of stay and communication with the father or mother with whom such children do not live.

(b) The way in which the custody of the children has to be exercised, in the terms established in Article 139.

(c) The sum that has to be paid for children's support, in accordance with Article 143, by the father or mother, and the periodicity and means of payment.

(d) The rules for the updating of the support payments and, eventually, of the guarantees to ensure them.

(2) If there are children of age or emancipated who live with one of the parents and have no earnings of their own, it shall be necessary to establish the support that corresponds to them under the terms established in Article 259.

(3) The remaining aspects that, according to the circumstances of the case, will need to be dealt with are the following:

(a) The attribution of the use of the family dwelling, with the appropriate household equipment and, eventually, the use of the other residences.

(b) Any maintenance allowance or support payment that, if any, shall be made by one of the spouses in favour of the other spouse.

(c) The manner, if any, in which the spouses continue to contribute to family expenses.

(d) The rules for updating support and maintenance payments and, if necessary, the guarantees to ensure their payment.

(e) The liquidation, if necessary, of the matrimonial property regime and the division of common assets and properties, in accordance with what is established in Article 43.

Article 77. Regulating agreement

Whenever marriage nullity, divorce or legal separation is petitioned by both spouses acting in common agreement, or by one of the spouses with the other spouse's consent, a proposal for a regulating agreement shall be attached to the claim or initial writ. In such a regulating agreement, the aspects indicated in Article 76 shall be dealt with.

Article 78. Judicial approval

(1) The regulating agreement mentioned in Article 77 shall necessarily be judicially approved, except in those aspects that may be harmful to the children. In such cases, the judicial authority shall indicate the points that need to be modified and shall establish the period for carrying out these modifications.

(2) Should the spouses fail to execute the requested modifications, or if these cannot be approved on the same grounds as those mentioned in paragraph 1), the judge will decide as appropriate.

Article 79. Absence of regulating agreement.

(1) In cases of marriage annulment, divorce or judicial separation requested by one of the spouses without the consent of the other spouse, the judicial authority shall resolve on the aspects mentioned in Article 76 directly.

(2) If, further to considering the circumstances of the case, the judicial authority deems that the aspects cited in Article 76 can still be resolved by common agreement, such judicial authority may refer the spouses to a mediator or to a mediation institution so that the spouses may resolve their differences, and so that the mediator or mediation institution then submits a proposal of regulating agreement to which, if necessary, the provisions contained in Article 78 shall apply.

Article 80. Modification

(1) The measures established by the court's decision may be modified when subsequent circumstances so require. Such a modification shall be made by means of a judicial decree.

(2) The regulating agreement or the sentence may foresee the relevant modifications in advance.

Article 81. Court order

The payments established by the sentence may be collected by means of a compulsory court order.

[...]

Article 84. Maintenance

(1) In cases where one of the spouses' financial situation has been impaired as a result of the divorce or legal separation and, in the cases of nullity of marriage, the bona fide spouse only, shall be entitled to receive maintenance from the other spouse. Maintenance shall not exceed the standard of living that the couple led during the marriage, nor the standard of living the spouse obliged to make the payment can afford to maintain.

(2) In order to assess the maintenance awards, the judicial authority shall take the following into consideration:

- (a) The resulting financial situation of the spouses as a consequence of the nullity of marriage, the divorce or the legal separation, and the economic prospects for both spouses.
- (b) The duration of the marital life in common.
- (c) The age and health of both spouses.
- (d) In cases where it applies, the specific economic compensation governed by Article 41.
- (e) Any other significant circumstance.

(3) Maintenance shall be reduced if the situation of the person who is entitled to receive such an award improves, or if the situation of the person obliged to pay it worsens.

(4) Upon request of one of the parties, the decision may establish the relevant measures in order to ensure the payment of the award and may also establish objective and automatic criteria for updating.

Article 85. Payment of maintenance

(1) Maintenance shall be paid in money and in advance monthly payments.

(2) At any time, by agreement of the spouses or, lacking this, by judicial decree, the spouse obliged to pay maintenance may substitute this by delivery of assets in ownership or usufruct.

Article 86. Termination of maintenance

(1) The entitlement to receive maintenance shall terminate in the following cases:

- (a) When the financial situation of the creditor spouse improves in such way that maintenance is no longer justified, or when the financial situation of the spouse who is obliged to pay it worsens in such way that the payment is no longer justified.
- (b) When the spouse entitled to maintenance remarries or cohabits matrimonially with another person.
- (c) When the spouse entitled to maintenance dies or is declared dead.

(d) When the period for which the payment of maintenance was established has elapsed.

(2) Maintenance shall not terminate with the death of the debtor, although his or her heirs may claim a reduction or the exoneration thereof, if the profitability of the inherited assets is not sufficient to pay maintenance.