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The new divorce legislation

Law No. 2019-222 of March 23, 2019 on the 2018-2022 Programming and Reform of the Justice System (the “Reform”) has amended the divorce process introduced by Law of May 26, 2004.

The health crisis has disrupted the legislative calendar and the entry into force of the Reform, initially planned for January 1, 2020, was then postponed to September 1, 2020, and finally did not take place until January 1, 2021.

What are the major changes brought about by the Reform?

Until January 1, 2021, the divorce process included two steps, i.e., the conciliation stage, which was introduced pursuant to a petition for divorce, and the summons, which marked the start of the proceedings on the merits.

From now on, the procedure is initiated by a single judicial act, a summons or a joint petition, setting out both the claims on the merits and the requests for interim measures.

After having drafted the summons or the joint petition, the lawyers must obtain a date from the clerk of the Family Court.

As such, the parties will be informed of the date of the first hearing, called the hearing for orientation and interim measures, as soon as the summons or joint petition is drawn up and recorded.

Previously, the hearing for attempt of conciliation was the compulsory step, and the spouses had the obligation to appear personally.

Under the new process, the appearance of the spouses is no longer mandatory.

Although the separate interview of each spouse is no longer required, their presence will sometimes be recommended, depending on the nature of the requests for interim measures that may be made.

Indeed, the main changes introduced by the Reform is that it is possible to waive the setting of interim measures or to seek such measures during the proceedings, within the framework of an incidental procedure.

The interim measures are those that will be applicable during the divorce proceedings.

The first hearing will therefore only be an orientation hearing for which it is now mandatory to retain a lawyer.

The grounds for divorce remain unchanged.

The only noteworthy change concerns the required length of the period during which the spouses have not been living together to obtain a divorce for irretrievable breakdown of the marriage.

Under the 2004 Law, it was necessary to demonstrate an absence of cohabitation and collaboration of two years as of the day the summons was drawn up.

From now on, a period of one year is required as of the day of the divorce application if the ground for divorce is mentioned in the summons or, if the proceedings were initiated without specifying the ground for divorce, as of the day the divorce is granted.

The successive reforms that have been introduced so far suggest that the legislator's intention is to reduce the number of family disputes brought to court by inviting the parties to reach agreements upstream with the assistance of their respective lawyers.

The joint petition or the summons must henceforth mention the possibility of using mediation or the so-called participative procedure.

The Reform also offers the opportunity for lawyers to draft a joint petition from the beginning of the proceedings with the possibility to regularize a lawyer's act of acceptance of the principle of the breakdown of the marriage.

In this respect, it should be recalled that the Law of November 18, 2016 on the Modernization of Justice in the 21st Century had already started the reform process by taking divorce by mutual consent out of the courtroom and entrusting lawyers with the responsibility of drafting a private deed recorded by a public notary^[1].

While the legislator seems to be eternally driven by the desire to simplify the various processes, only the practice on the long term will allow us to determine if the objective is achieved.

The new provisions introduced by the Reform apply to all proceedings commenced as from 1 January 2021.



All proceedings initiated before that date will continue to be governed by the former legislation, which means that until these files are over, two laws will coexist within our Family Courts.

The practice is still recent, but it has already been observed that there are disparities in the way each Family Court manages the new process.

In any event, a decrease in the number of contentious divorce cases has been observed since January 1, 2021.

[1] See article entitled [“Out-of-court” divorce by mutual consent](#) published on our Blog in February 2017

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