

SPAIN



Law and Practice

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Contents

1. Divorce p.366

- 1.1 Grounds, Timeline, Service and Process p.366
- 1.2 Choice of Jurisdiction p.367

2. Financial Proceedings p.369

- 2.1 Choice of Jurisdiction p.369
- 2.2 Service and Process p.370
- 2.3 Division of Assets p.370
- 2.4 Spousal Maintenance p.372
- 2.5 Prenuptial and Postnuptial Agreements p.372
- 2.6 Cohabitation p.373
- 2.7 Enforcement p.373
- 2.8 Media Access and Transparency p.374
- 2.9 Alternative Dispute Resolution (ADR) p.374

3. Child Law p.374

- 3.1 Choice of Jurisdiction p.374
- 3.2 Living/Contact Arrangements and Child Maintenance p.375
- 3.3 Other Matters p.377
- 3.4 ADR p.378
- 3.5 Media Access and Transparency p.378

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Arbáizar Abogados is an independent law boutique focused on the international aspects of family law and law of succession, with knowledge of international legislation, case law and practices. The firm operates nationwide through its office in Malaga, its network of collaborating firms and connections spanning the globe and allowing it to plan and resolve legal issues in a wide range of different jurisdictions. The

firm's team of ten lawyers practise in civil law, family law, law of succession, criminal law and public law. Amparo Arbáizar leads the expertise on international family law. Team members are expert family mediators and also collaborate closely with tax advisers. The personal relationship and trust that is shared with clients is crucial for Arbáizar Abogados.

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Amparo Arbáizar has over 20 years' experience advising international clients in international family law, law of succession and cross-border estate planning. She is a litigation expert in the Spanish jurisdiction and has acted as a Spanish legal expert before the courts of the United Kingdom, Canada and USA. Her significant experience involves all aspects of family law covering divorce,

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1. Divorce

1.1 Grounds, Timeline, Service and Process

The grounds for divorce are the same for all marriages, also for same-sex marriages. Civil partners are not considered a marriage in Spanish family law. The civil partnership status is not regulated in the Spanish Civil Code or at a national level.

Some autonomous communities have produced their own specific laws on civil partnership, with legal provisions for the existence of a partnership register: Andalucía; Aragón; Asturias; the Balearic Islands; Basque Country; Canary Islands; Castilla-La Mancha; Castilla y León; Extremadura; Galicia; Madrid; and Valencia. Catalonia only provides for municipal registers, the existence of a partnership being proved by means of an authentic/notarial deed.

Each autonomous community regulates the register in a different way, and the effects of registration range from being simply declarative to having practical equivalence with marriage. Some autonomous communities do not provide for such a regional register.

Spain is a “no fault” divorce jurisdiction. There are neither grounds for divorce nor a required period of separation. One or both parties can issue separation/divorce proceedings three months after the marriage. These three months will not be required in cases where there is a danger to the petitioner or the children.

The timescale is approximately a year for a first instance Divorce Decree, although it is very different from court to court. The appeal may take about one year. If any party requests a psychological forensic report via the court, the time-

scale will be longer because forensic psychologists are overloaded with work.

Uncontested divorce proceedings are much quicker: between two months and six months to obtain a Divorce Absolute.

The head of the court administration (*Letrado de la Administración de Justicia*) of each court is responsible for the service of documents and other acts of communication. Once a party has filed a divorce petition, the court will admit it and issue divorce proceedings, ordering service upon the other party. The other party will be served at his residence in person by a court’s agent.

Service by a particular method is also possible. The petitioner can request the court that his private court’s clerk (*procurador*) serve the divorce petition personally.

Spain is a party to the Hague Convention on the service abroad of judicial documents signed on 15 November 1965. A form must be filled in and sent to the Spanish Central Authority with the divorce petition and documents. The Central Authority forwards the document to the Dean Judge (*Juzgado Decano*) of the Courts of First Instance within the judicial territory (*partido judicial*) where the document is to be served. This court office is competent for distributing the different proceedings (including service of documents) among the judicial authorities that fall under its jurisdiction.

In principle, although a different form of service is not prohibited in Spanish domestic law, the Central Authority does not usually receive a special request by the applicant for service by a particular method.

Between member states of the European Union, Regulation (EU) 2020/1784 of 25 November 2020 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (recast) is applicable.

Religious marriages are recognised in Spain, as set out in Article 60 of the Civil Code. Catholic, Protestant, Jewish and Muslim marriages are recognised in Spain.

Separation proceedings are treated like divorce proceedings, with same effects, except the dissolution of the matrimonial bond.

The grounds for nullity are different and it is much more difficult to obtain an annulment than a divorce or separation. To obtain annulment of the marriage you have to prove the grounds of annulment of a contract, such as lack of free consent or goodwill, or that the spouse entered into marriage because of fear, deceit, threats, etc. It is governed by Article 73 of the Civil Code. Other grounds for nullity are marriage with a minor, a close relative or polygamy.

1.2 Choice of Jurisdiction

Spain is party to Council Regulation (EU) No 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast). This Regulation currently rules the Spanish international private law concerning international jurisdiction on divorce and the grounds of jurisdiction set out in Article 3 of the Regulation apply. The Spanish Law on Judicial Power was reformed in 2015, with regard to international jurisdiction, and its Article 22 quáter (c) adopts the very same grounds for jurisdiction as Article 3 of the Regulation.

Spain retains the residual jurisdiction on divorce when the following apply:

- both parties are habitually resident in Spain at the time the proceedings are issued;
- Spain was the last matrimonial habitual residence and one of the spouses still lives there;
- Spain is the respondent's habitual residence;
- in the case of uncontested divorce, when one of the spouses is habitually resident in Spain;
- the petitioner is habitually resident in Spain at least one year before proceedings are issued;
- the petitioner is Spanish and has been habitually resident in Spain for at least six months before proceedings are issued; and
- both spouses are of Spanish nationality.

The same grounds apply to same-sex marriages. The civil partnership status is not regulated in the Spanish Civil Code or at a national level. Civil partners are not considered to be married and therefore they cannot apply for divorce.

The main concept to determining jurisdiction is the habitual residence of the spouses. They can also apply for divorce in Spain when both of them have Spanish nationality. "Domicile" is not a legal concept in the jurisdiction of Spain.

A party can contest jurisdiction within ten days after having been served with the divorce petition. The "*Declinatoria*" proceedings, due to a lack of international jurisdiction, are provided for by Articles 63–66 of the Spanish Law of Civil Procedure (LEC1/2000) and Article 39 of the Law on International Judicial Co-operation in Civil Matters (29/2015).

It is not possible to apply to stay proceedings in order to pursue divorce proceedings in a foreign jurisdiction, apart from challenging jurisdiction, as explained above.

International *lis pendens* is ruled by Article 39 of Law No 29/2015, of 30 June, on International Judicial Co-operation in Civil Matters:

“1. When there exists pending proceedings with an identical object and cause of action, between the same parties, before a Spanish court, the Spanish court may stay proceedings, at the instance of a party and following a report from the Public Prosecutor’s office, always provided that the following requirements are met:

a) The jurisdiction of the foreign court is based on a reasonable connection with the litigation. The existence of a reasonable connection will be presumed when the foreign court has based its international jurisdiction on criteria equivalent to those provided for in Spanish Law for that specific case.

b) It is foreseeable that the foreign court will issue a resolution susceptible of being recognised in Spain; and

c) The Spanish court considers it necessary to stay proceedings in the interest of the proper administration of justice

2. The Spanish court may order the continuation of proceedings at any time at the instance of a party and following a report from the Public Prosecutor’s Office when any of the following circumstances apply:

a) Should the foreign court have declared it has no jurisdiction or should it, at the request of any of the parties, have failed to pronounce on its own jurisdiction;

b) Should the proceedings before the court of the other State have been suspended or finalised without issuing of a resolution;

c) Should it be considered unlikely that the proceedings before the court of the other State will be concluded within a reasonable time;

d) Should the continuation of proceedings be considered necessary for the proper administration of justice;

e) Should it be understood that the final judgement that may eventually be handed down will not be susceptible of being recognised and, where appropriate, enforced in Spain.

3. The Spanish court shall put an end to proceedings and close the case if the proceedings before the court of the other State have been concluded with a decision susceptible of recognition and where appropriate, enforcement in Spain.”

Lis pendens is regulated in Article 20 of Council Regulation 2019/1111 and is applicable between EU member states:

“Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are instituted before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of the court first seised.

In that case, the party who instituted proceedings before the court second seised may bring those proceedings before the court first seised.”

2. Financial Proceedings

2.1 Choice of Jurisdiction

Regarding Article 3 of the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

- the court where the defendant is habitually resident;
- the court where the creditor is habitually resident;
- the court that, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties; or
- the court that, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.

Article 22 quáter (f) of the Spanish Law on Judicial Power regulates the international jurisdiction of the Spanish courts on maintenance obligations, as set out in Article 3 of the “Maintenance Regulation”.

Spain retains the residual jurisdiction on maintenance obligations when:

- the petitioner or the respondent is habitually resident in Spain; and
- the Spanish courts have jurisdiction concerning the status of a person or concerning parental responsibility and the matter relating

to maintenance is ancillary to those proceedings.

Spain is party to the Council Regulation (EU) No 2016/1103 of 24 June 2016, implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, which is applicable between member states as of 29 January 2019.

According to this Regulation, jurisdiction in matters of the matrimonial property regime in the event of the death of one of the spouses will be retained by the court of the member state that is ruling the succession of the spouse pursuant to Regulation (EU) No 650/2012 on Succession. Jurisdiction in matters of the matrimonial property regime in cases of divorce, legal separation or annulment will be ruled by the court of the member state that is seised for the divorce, legal separation or annulment pursuant to Regulation (EU) No 2201/2003.

Article 22 quáter (c) of the Spanish Law on Judicial Power rules the international jurisdiction of the Spanish courts in matters of matrimonial property regimes. Spain retains the residual jurisdiction in matters of matrimonial property regimes when:

- both parties are habitually resident in Spain at the time the proceedings are issued;
- Spain was the last matrimonial habitual residence and one of the spouses still lives there; and
- Spain is the respondent’s habitual residence.

It is not possible to apply to stay proceedings in order to pursue financial proceedings in a foreign jurisdiction.

The court can hear financial claims in Spain after a foreign divorce. First, the foreign divorce must be recognised by the Spanish courts. The financial claim must be related to immovable assets situated within the Spanish jurisdiction upon which the foreign judge did not have jurisdiction to rule. It might also consist of liquidating a Spanish property regime before the Spanish courts if it was not decided in the foreign divorce decree. This is not commonplace.

2.2 Service and Process

The service requirements in financial proceedings are the same as any other civil proceedings. The head of the court administration (*Letrado de la Administración de Justicia*) of each court is responsible for the service of documents and other acts of communication. After a party has filed a financial petition, the court will admit it and issue financial proceedings, ordering service upon the other party. The other party will be served at his residence in person by a court's agent.

Service by a particular method is also possible. The petitioner can request the court that his private court's clerk (*procurador*) serve the divorce petition personally.

Spain is a party to the Hague Convention on the service abroad of judicial documents signed on 15 November 1965. A form must be filled in and sent to the Spanish Central Authority with the divorce petition and documents. The Central Authority forwards the document to the Dean Judge (*Juzgado Decano*) of the Courts of First Instance within the judicial territory (*partido judicial*) where the document is to be served. This court office is competent for distributing the different proceedings (including service of documents) among the judicial authorities that fall under its jurisdiction.

In principle, although a different form of service is not prohibited in Spanish domestic law, the Central Authority does not usually receive a special request by the applicant for service by a particular method.

Between member states of the European Union, Regulation 2020/1784 of 25 November 2020 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (recast) is applicable.

The financial orders on divorce are spousal and children maintenance and the use of the matrimonial home in the child's best interests. These proceedings can take about one year for the first instance court order and another year for the appeal at the Higher Court.

Spouses can issue court proceedings to liquidate the matrimonial property regime with the divorce petition or after the divorce decree has been rendered. There are two parts to the liquidation of the matrimonial property regime proceedings:

- to make the inventory of the assets and liabilities of the matrimonial property; and
- to distribute the matrimonial property between the spouses.

Each part can take about one to two years if there are a lot of appeals. If the parties can reach an agreement, the liquidation of matrimonial property regime will be much quicker.

2.3 Division of Assets

The financial orders on divorce are spousal and children maintenance, the use of the matrimonial home in the child's best interests and the liquidation of the matrimonial property regime.

In the case of the separation of assets matrimonial regime, a compensation order to a spouse for their dedication to the family that has produced a corresponding loss of professional opportunities, as well as a financial order to put an end to the joint property ownership of the spouses, can both be made on divorce.

Spanish law does not provide for the possibility that, once the marriage is dissolved, the courts may ex officio establish measures of a patrimonial nature between the parties. On the contrary, any such measure between the spouses (such as spousal maintenance, financial compensation for family work or the allocation of the use of the family home) must be expressly requested by a party in the originating petition or in a defence and counterclaim to such petition, for the court to order (or not) corresponding measures in the judgment it issues.

The liquidation of a matrimonial property regime is a different matter, which can be decided in a later court proceeding, separate from the divorce action itself.

The court will only order spousal maintenance obligations if requested in the divorce petition. The aim of maintenance orders is to redistribute the family incomes in order to minimise the effects of the divorce, primarily upon the children's costs and expenses, and, secondarily, upon the spouses. The spouse with the larger income must pay more child maintenance and, eventually, maintenance to the other spouse. Maintenance obligations between spouses are not commonplace.

Capital orders are made regarding the rules of the liquidation of the matrimonial property regimes of the Spanish Civil Code. The assets and liabilities of the marriage will be split between

the spouses following these articles in quite an impartial manner.

The exception is the matrimonial property regime of the separation of assets. If there is no matrimonial property, on divorce, the court can issue an order to compensate one of the spouses for their dedication to the family that has produced a corresponding loss of professional opportunities.

If the couple has children, child maintenance orders must be made by the court on divorce, regardless of whether there is an agreement or not. If there is an agreement, the judge and the *Ministerio Fiscal* must approve the settlement protecting the child's best interests.

The court can request disclosure obligation from the spouses, although there is not a subsequent penalty if the spouses do not comply. The court can request information about the spouses' income from the Spanish Tax Revenue Office (*Agencia Tributaria*). The court can identify the spouses' properties at the Spanish Property Registry and can obtain information from the Register of Companies and the Cars Register. The main Spanish Banks co-operate with the court and can provide information regarding the spouses' bank accounts or investment funds in their companies.

The court cannot make orders for disclosure against third parties.

There are three matrimonial property regimes recognised in the Spanish Civil Code:

- joint ownership of acquisition of assets;
- separation of assets; and
- participation in acquisitions.

The matrimonial property regime will finish open at the divorce decree date. After the divorce decree, the parties can issue the specific liquidation of the matrimonial property regime and proceed to distribute the assets and liabilities between them. They can also make an out-of-court agreement and liquidate the matrimonial property regime in a notary public deed.

Spain comprises 17 autonomous communities (*Comunidades autónomas*), some of which have their own rules of law in respect of family and succession. The common point is that, in all of them, you can choose your matrimonial property regime in a notary public deed. However, in the absence of an agreement, one of the following matrimonial property regimes will apply by default:

- Civil Code – joint ownership of assets (*Régimen de gananciales*);
- Catalonia, Aragón and the Balearic Islands – separate ownership of assets;
- Galicia – joint ownership of assets;
- Basque Country (differences between the counties) – joint ownership of assets/universal community of assets; or
- Navarra – matrimonial company of conquests (*Sociedad conyugal de conquistas*).

The matrimonial property regime can be implemented with a prenuptial or postnuptial agreement.

Spain is not party to the Hague Convention of 1985. Trust is not a legal concept in Spain and it is not regulated.

Foreign trusts can be recognised by the Spanish courts subject to proof of the foreign trust law or providing the judge with a similar civil law legal concept that would meet the purpose of the

trust, on a case-by-case basis: eg, donations, agency, company, mortgage, mandate, *fiducie* and foundation. On divorce, the court will check the nature of the assets held in a trust, the owner of the assets held in the trust, who was the owner of the assets before the transfer to trust, etc, in order to calculate the matrimonial assets.

2.4 Spousal Maintenance

After a divorce, it is normally expected that each spouse supports themselves. The main aim of spousal maintenance is to help the ex-spouse to maintain the same “standard of living as during the marriage”. The main criteria for spousal maintenance are: if the divorce produces an adverse economic imbalance to one of the spouses; and if there has been a loss of professional opportunities because of the marriage. Age, health, duration of the marriage and the spouse’s career prospects and ability to earn a living are also taken into account.

The compensation usually consists of temporary maintenance payments for a couple of years but a single payment can also be taken into account. Lifelong spousal maintenance orders are rare and only apply in cases in which the marriage was very long and the spouse is of an age with no prospects to earn a living after having invested their life in the family’s welfare.

It is possible for a party to apply for interim maintenance pending the final outcome. This amount for the spouse until there is a divorce order is considered an obligation for family support between the spouses during the marriage.

2.5 Prenuptial and Postnuptial Agreements

Prenuptial and postnuptial agreements, although not included in the Spanish Civil Code (CC), will be recognised by the Spanish courts on the

basis of the principle of freedom of party autonomy (Article 1.255 CC) and the freedom of agreements between spouses (Articles 1323 and 1325 CC). These marital contracts must meet the criteria for a valid contract such as free consent, object and motive (Article 1261 CC). Moreover, the principle of goodwill and compliance with the *ordre public* have to be observed. The most recent judgment of the Spanish Supreme Court (*Tribunal Supremo*) on marital contracts is *Sentencia número 428/2022*, dated 30 May 2022, proceedings *Casación número 6110/2021*.

Spousal maintenance obligations or financial terms will be binding on divorce. Terms regarding children arrangements and the use of the family home will be taken into account by the court but they will be checked by the judge and the public prosecutor in order to protect the child's best interests.

Marital agreements are recognised as private contracts under Spanish law and are therefore binding on the contracting parties if they are not against the child's best interests and the Spanish *ordre public*. The marital agreement will be enforceable when included in a court order after the divorce proceedings.

The marital agreement can be directly enforceable if it is granted in a deed executed before a Spanish notary public. Marital agreements can cover a spouse's financial claims on divorce, eg, maintenance. They cannot deal with child maintenance or other claims regarding children, which must be approved by the judge and the *Ministerio Fiscal*, who protects the child's best interests.

The election of the matrimonial property regime must be granted in a deed executed before a Spanish notary public.

2.6 Cohabitation

In the absence of children, parties can claim for compensation and an order to sell their joint properties. Claims must be lodged in the civil courts; they are not under the family law jurisdiction.

In order to make a financial claim, a party must prove that the couple had joint properties, joint bank accounts, etc. The grounds for making a financial claim are the intention and existence of shared estates between the cohabitants.

By virtue of length of cohabitation or the existence of children, parties can prove that they are in a civil partnership where they were not registered, but they do not acquire any rights other than those granted to civil partners by each autonomous community.

2.7 Enforcement

A party can file an enforcement application before the same court that rendered the divorce order. In the enforcement application, the petitioner can provide the court with information regarding the other party's assets and make a request to the other party for disclosure.

The petitioner can also request the court's help to investigate the other party's assets at the Spanish Land Registry, Register of Companies, Cars Register, in the Spanish Banks, in the Spanish Tax Revenue, Spanish Employment Office, Spanish National Social Security System, etc.

The enforced party's assets will be charged by the court, also their pay slips, bank accounts, etc.

International enforcement of a financial order is permitted when this order has been recognised in Spain. The European Regulation 4/2009 of

18 December 2008 on maintenance obligations rules the enforcement of maintenance obligations between European Union member estates. The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (the “2007 Hague Convention”) is applicable to enforce maintenance orders from signatory countries in Spain.

Capital orders regarding the liquidation of matrimonial property will be enforced according to Council Regulation (EU) No 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regime between member estates of the European Union and Spain.

Otherwise, exequatur proceedings before the Spanish court will be needed for the recognition and enforcement of a financial order.

2.8 Media Access and Transparency

The media and press are not able to report on financial cases because family proceedings are private and the public cannot have access to them.

2.9 Alternative Dispute Resolution (ADR)

Parties can resolve their financial disputes by signing an agreement or liquidating their matrimonial property before a public notary. The notary deed will have the same effects as a court order.

No ADR methods are mandated by the court. Courts always offer the parties the option to stay the divorce proceedings to attend mediation. However, there is no penalty if any party decides not to participate in mediation or any other ADR.

There are family arbitrators and collaborative lawyers but they are not commonplace.

The agreement reached via a non-court process is a private contract between the parties. To be enforceable, it must be included in a consent court order.

3. Child Law

3.1 Choice of Jurisdiction

Council Regulation (EC) No 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) is the applicable law on jurisdiction in Spain regarding parental responsibility.

Article 7 of Council Regulation No 2019/1111 rules that the courts of the member state where the child is habitually resident at the time the court is seised shall have international jurisdiction for parental responsibility and childcare arrangements. Spain will have jurisdiction for bringing children proceedings when the children are habitual residents in Spain at the time the court is seised.

Article 10 of Council Regulation No 2019/1111 rules the choice of court by the parents:

“1. The courts of a Member State shall have jurisdiction in matters of parental responsibility where the following conditions are met:

- (a) the child has a substantial connection with that Member State, in particular by virtue of the fact that:
 - (i) at least one of the holders of parental responsibility is habitually resident in that Member State;

- (ii) that Member State is the former habitual residence of the child; or
 - (iii) the child is a national of that Member State;
- (b) the parties, as well as any other holder of parental responsibility have:
 - (i) agreed freely upon the jurisdiction, at the latest at the time the court is seised; or
 - (ii) expressly accepted the jurisdiction in the course of the proceedings and the court has ensured that all the parties are informed of their right not to accept the jurisdiction; and
- (c) the exercise of jurisdiction is in the best interests of the child.”

The applicable law on international jurisdiction in maintenance obligations is European Council Regulation (EC) No 4/2009 of 18 December 2008 on maintenance obligations. According to Article 3 (b), Spain would have jurisdiction for child maintenance when the child has their habitual residence in Spain.

The most relevant concept for determining jurisdiction in children matters is the habitual residence of the child at the time the court is seised. In the case of Articles 10 and 12 of Council Regulation (EC) No 2019/1111, the nationality of the child can be a factor in proving a special connection of the child with that state for an agreement between the parents on the choice of court or a transfer of jurisdiction to the court of another member state.

3.2 Living/Contact Arrangements and Child Maintenance

Parental Responsibility and Custody

Article 156 of the Civil Code states that both parents have the same parental responsibility, and they must agree on the upbringing of the

child, such as schooling, medical treatment, religion, holidays, etc. In case of dispute, either parent can issue a proceeding and the judge, after having heard both parents and the child (mandatory for children older than 12 years), will issue an order stating which parent can decide on this specific matter. The parental responsibility matters of Article 156 are urgent proceedings on family law that must be heard at court within a month.

Parental responsibility will not be affected by a divorce. In Spain, “rights of custody” actually refers to “parental responsibility”, which is for both parents. When they cannot agree on an issue, they must take the matter to a court, which will issue an order stating which parent decides on this specific matter.

The court must decide at the time of the divorce which parent the child lives with (physical custody) and which parent has the “right of access”. There is no difference between married or unmarried parents in the exercise of rights of custody.

The legal approach now to (physical) custody is that joint custody subsequent to post-marital separation is the optimal solution to safeguarding the “interests of the child”. Law No 15/2005, of 8 July, amending the Civil Code and the Civil Judicial Proceedings Act in matters of separation and divorce introduced joint custody into the Spanish Civil Code. According to Article 92 of the Civil Code, judges could henceforth order joint custody even without the agreement of both parents.

The court must automatically make child arrangements order on divorce. The *Ministerio Fiscal* must be invited to the divorce proceedings to protect the child’s best interests. Members of the *Ministerio Fiscal* represent the Spanish

authorities' protection of the child's best interests. The *Ministerio Fiscal* co-operates closely with the court and has a similar education and professional background as a judge; however, members of the *Ministerio Fiscal* are not independent because they are Spanish government civil servants.

A parent can also request the court to order interim measures regarding maintenance, custody, rights of access and use of the family home until the divorce decree is produced.

Children orders can be made until the children are 18 years old. Normally, however, they stop at the age of 16 because at this age it is purposeless and counterproductive to oblige a child to visit or live with a parent if they do not want to.

A father who has been accused of violence against his spouse/partner cannot be granted his children's custody by the court on divorce or separation.

Child Support

Content of child support

Article 142 of the Civil Code makes provision regarding what is necessary to cover child maintenance, such as food, clothing, housing, health assistance and education. Each parent will support their children in accordance with their wealth and income.

Proportionality test

The amount of the child support must be in proportion to the parent's wealth and income and the necessity and circumstances of the child (Article 146 Civil Code). The proportionality test will be checked by the judge on a case-by-case basis.

Calculation of child support

The petitioner must provide the court with evidence regarding the child's costs: school fees, schoolbooks, extracurricular activities, clothing, housing, etc. Each parent must inform the court about their income and wealth. The aim is to cover the child's necessities.

Apart from the monthly child support, each parent will bear the cost of 50% of the following.

- *Extraordinary expenses* construed as expenses that are exceptional, unforeseeable, necessary and appropriate to the financial capacity of both parents, as well as expenses due to illness, eyeglasses, dental or hearing prosthesis, or any other health expense not covered by the public health system under the Social Security, which have this character, provided that the parent who intends to make the expense consults the other parent beforehand about the convenience or need of the expense (except in exceptional and urgent cases where it is not possible to inform the other immediately of the emergency event and the amount of the extraordinary expense). If there is no consent, the petitioner must seek judicial authorisation.
- *Extra-curricular activities* if there is an agreement on them. In the event of failure to reach an agreement, they will be the liability of the parent who has chosen them. Examples include summer camps, sports and dancing lessons.

The *Spanish General Council of Judges' online portal* provides a table to calculate child support by entering the parents' monthly incomes.

Payment obligation

The payment obligation starts at the date the application for child support was lodged at court (Article 148 Civil Code).

It is not possible for the parties to agree child maintenance arrangements without the involvement of the court because any child arrangement must be approved by the judge and the public prosecutor (*Ministerio Fiscal*), who protect the child's best interests.

The court can order child maintenance until the child turns 18 years old or until they are financially independent. The court can also put an end to the child maintenance obligation if the supporting parent can prove that the young adult is neither studying nor seeking a job.

The child cannot apply for financial provision themselves until they turn 18 years old. An adult can make a claim for financial support directly against their parents when they are older than 18 and the child maintenance obligation has ended. The court will take into account the reasons and circumstances that force the adult to make a financial claim (eg, unemployment) and the parents' resources.

3.3 Other Matters

Article 156 of the Civil Code says that both parents have the same parental responsibility and they must agree on the upbringing of the child, such as schooling, medical treatment, religion, holidays, etc. In case of dispute, either parent can issue a proceeding and the judge, after having heard both parents and the child (mandatory for children older than 12 years), will issue an order stating which parent can decide on this specific matter. The parental responsibility matters of Article 156 Civil Code are urgent proceedings on family law that must be heard at court within a month.

The Constitutional Act No 1/2004, of 28 December, on Integrated Protection Measures Against Gender Violence was promulgated to combat male violence against women and, as a result, Spanish law contains a variety of mechanisms that target male violence. As a consequence, a father accused of violence against his partner will not have his children's custody and eventually neither will he be able to have right of access to his children. Although both the government and the General Council of the Judiciary have taken a stand against the deployment of the parental alienation syndrome in the legal system, this notion is used in family courts. Allegations of parental alienation and those of "false complaints" are made in an attempt to falsify denunciations of gender violence. They argue that women manipulate children or press charges falsely in order to benefit from the opportunities of the law and to obtain custody of the children in question and even stop the parents from having visitation rights to their children.

The Sentence TS:2016:129 of the Supreme Court rejected the appeal of a father who requested a change of custody in his favour, based on the alleged existence of parental alienation. Although the Sentence did not reject parental alienation in itself, the Supreme Court confirmed that there was no evidence that the children in question had suffered from parental alienation, dismissing the father's claim. However, there is no clear jurisprudence against parental alienation. The courts will check parental alienation allegations on a case-by-case basis, supported by strong evidence and the forensic psychologist's report.

Children are able to give evidence in court according to their age and maturity. They will be heard by the forensic psychologist and eventually by the judge alone. Children must be heard at court when they reach 12 years old. The court will take into account their evidence when con-

vinced that it was free from any parent's manipulation or influence. When children are older than 16 years old, the court usually follows their wishes because the court considers that at this age it is very difficult to make them abide by an order that they oppose.

3.4 ADR

Law No 15/2015 on *Jurisdicción Voluntaria* introduced in Spain the consent divorce before a notary. The notary will declare dissolution of the marriage instead of the judge, but having the same competence by virtue of Law No 15/2015. The notary must check the legal terms and equity of the divorce agreement. If the notary finds the divorce agreement unfair for one of the spouses or their grown-up children, they can decide not to ratify it and the spouses must go to court (the notary cannot amend the agreement, nor can the spouses go to another notary).

A notary from the spouses' last habitual residence or the habitual residence of one of them will have jurisdiction. The spouses must attend personally to sign the deed in front of the notary and be legally assisted by at least one lawyer representing both parties, who will usually write the divorce agreement.

The divorce agreement must deal with the use of the family home, the spousal maintenance and the grown-up children support. Any other agreement regarding the spouses can also be included, such as donations, etc. The liquidation of the matrimonial property regime can be done in the same agreement or afterwards. The notary deed (*escritura*) will be considered equivalent to a court order.

There is, however, discussion in Spain about the legal nature of this new concept: whether it is a private divorce produced by the spouses' consent and willingness towards the dissolution of their marriage (a private contract) or a consent divorce which is ratified by the notary as a public authority.

Spouses cannot divorce on the basis of a private divorce if they have minor or disabled children. They can divorce with children older than 18 years, who must appear in front of the notary and sign the divorce deed if they are affected by the divorce agreement. The law does not refer to "common minor children", so it is unclear whether a notarial divorce is possible if only one of the spouses has minor children.

No ADR methods are mandated by the court. Courts always offer parties the option to stay the divorce proceedings to attend mediation. However, there is no penalty if a party decides not to participate in mediation or any other ADR.

There are family arbitrators and collaborative lawyers but they are not commonplace.

3.5 Media Access and Transparency

The media and press are able to report on relevant child cases, but it is mandatory that the child is anonymised in the case report. The media cannot have access to the proceedings' information, which remains a protected private matter.