

# International Comparative Legal Guides



## Family Law 2020

A practical cross-border insight into family law

**Third Edition**

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## Family Law 2020

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# Armenia

Concern Dialog Law Firm



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## 1 Divorce

**1.1 What are the grounds of jurisdiction for divorce proceedings? For example, residence, nationality, domicile, etc.?**

According to the general rules, the citizens of Armenia (Armenian nationals) are entitled to divorce proceedings in the Armenian jurisdiction, including if the marriage is under foreign jurisdiction.

Should at least one of the spouses be a citizen of the Republic of Armenia, the divorce case may be initiated and resolved in an Armenian court.

Cases on the divorce of citizens of Armenia and foreign citizens or stateless persons, where the spouses reside in the Republic of Armenia, are exclusively under the jurisdiction of courts of the Republic of Armenia.

Under Article 346 (6) of the Civil Procedural Code (the “Code”), the foreign judicial act about divorce is recognised in Armenia based on an Armenian court decision without international or bilateral treaties or reciprocity. Based on the treaties, the foreign court decision about divorce may be recognised in Armenia without special proceedings as well.

**1.2 What are the grounds for a divorce? For example, is there a required period of separation, can the parties have an uncontested divorce?**

There are two ways to divorce in the Republic of Armenia.

If there is mutual consent of the spouses, the divorce is realised “out-of-judicially”, i.e. in the Civic Status Registration Departments of the Ministry of Justice of Armenia (hereinafter the “CSRSD”) (Article 15 of the Family Code of Republic of Armenia (hereinafter the “Family Code”). The spouses should mutually apply for divorce and after the expiration of the defined period (at least one month but no more than three months) and confirmation of their intention by handing over the second application for registration of divorce, the divorce will be registered.

The CSRSD shall register the divorce based on the application of one spouse if the second spouse is recognised as missing or incapable by the court or is convicted to imprisonment for a period of no less than three years.

Disputes other than divorce itself may be subject to settlement by the court even if the divorce proceeding took place in the CSRSD.

It should be noted that the divorce can be made via the CSRSD if the marriage is registered in Armenia or, in case based on an international or bilateral treaty of the CSRSD, is entitled to official inquiry

and confirmation from the foreign state that the marriage was made and is valid therein.

The divorce may be realised by judicial procedure if:

- there is no agreement to the divorce by one of the spouses;
- despite the absence of reservations against divorce, one of the spouses avoids the divorce’s realisation in the CSRSD; or
- the spouses wish to divorce by judicial procedure by mutual consent.

In practice, no court requires proof of the aforementioned conditions for acceptance of a claim on divorce to the hearings. If the claim is accepted in the hearings, the court is entitled to provide spouses a three-month period for reconciliation.

Disputes related to the divorce may be presented before the court together with the divorce claim and heard and resolved in the scope of one court case.

No Armenian authorities are entitled to consider the grounds of divorce.

**1.3 In the case of an uncontested divorce, do the parties need to attend court and is it possible to have a “private” divorce, i.e. without any court involvement?**

As mentioned in question 1.2, the divorce can be done via out-of-judicial procedures; it should be added that information from the CSRSD is personal data which can be provided only based on the data subject’s explicit consent. Thus, out-of-judicial divorce is a “private” divorce without any court involvement.

Should the court hear a case related to the participants’ privacy, the sessions may be closed-door if the parties request this of the court.

According to the general procedural rules defined in the Code, the parties’ presence in the court hearings is not mandatory and can be provided through a representative. It is important to note that the court shall leave the claim (including divorce claim) without consideration at any stage if the notified claimant or representative fails to appear at two consecutive court sessions and has not filed a motion to postpone the examination of the case or on resolving the case in the claimant’s absence, provided that the respondent has not filed a motion on proceeding with the examination of the case. In cases other than those presented in this chapter, any case may be heard in the absence of any party if the latter is notified properly.

**1.4 What is the procedure and timescale for a divorce?**

The procedure and timescale for out-of-judicial divorce is presented in question 1.2.

The procedure for judicial divorce is as follows:

- presenting the claim on divorce before the first instance court;
- accepting the claim to the hearings;

- the hearing sessions and decision-making; and
- appeal to the Appeal Civil Court and afterwards, the Cassation Court (at the discretion of the parties).

If the claim presented is only about the divorce, the timescale for divorce in court is from six to nine months; if there are other claims presented along with the divorce, the case may be completed in two to three years.

### 1.5 Can a divorce be finalised without resolving other associated matters? For example, children and finances.

Please see question 1.2.

### 1.6 Are foreign divorces recognised in your jurisdiction? If so, what are the procedural requirements, if any?

According to Article 145 of the Family Code:

- divorces between Armenian nationals and foreign nationals or stateless persons concluded out of the territory of Armenia are valid in Armenia in case of consular legalisation; and
- divorces between foreign citizens concluded out of the territory of Armenia are valid in Armenia in case of consular legalisation.

The following rules concern divorces concluded out-of-judicially. Under Article 346(6) of the Code, the following are subject to recognition by Armenian courts:

- foreign judicial acts on divorce between foreign citizens or on declaring the marriage as invalid; and
- foreign judicial acts on divorce between Armenian nationals or between Armenian nationals and foreign nationals or stateless persons or on declaring a marriage as invalid (see also, question 1.1).

### 1.7 Does your jurisdiction allow separation or nullity proceedings?

The concept of “separation” is not implemented in Armenian legislation.

The marriage may be recognised as invalid by the court in case it is concluded with the breach of one of the following barrier conditions:

- the age of spouses should be no less than 18. Seventeen-year-olds can marry with parental consent. Sixteen-year-olds are entitled to marry someone no older than 18 years and with parental consent;
- neither spouse should be in another marriage, registered by the procedure established by the law;
- the spouses should not be immediate relatives (parents and children, grandparents and grandchildren, as well as siblings and siblings with common mother or common father, aunts, uncles and cousins);
- the spouses should not be adopters or adopted;
- none of the spouses should be recognised as incapable by court; and
- none of spouses should conceal a sexual virus including HIV/AIDS, as well as drug addiction and toxic addiction from the other while registering a marriage in the CSRD.

The marriage can be recognised as null and void if the spouses, or one of them, register the marriage without an intention to make a family (false marriage).

### 1.8 Can divorce proceedings be stayed if there are proceedings in another country?

Based on the rule defined in the Code, the Armenian court shall leave the claim for divorce without consideration when:

- a foreign state court has accepted the divorce claim for examination; and
- a foreign state court has delivered a judgment with respect to the divorce case.

The mandatory condition for Armenian courts to leave the claim without consideration is that a dispute should be between the same persons, on the same subject matter and on the same factual grounds.

## 2 Finances on Divorce

### 2.1 What financial orders can the court make on divorce?

Armenian law allows the following claims to be brought together with the divorce claim before the court:

- child(ren) custody claim (with which parent the child should live);
- claim on alimony for child(ren);
- common property distribution claim; and
- spousal support (alimony from the ex-spouse) claim if the spouse is entitled on this under the law.

In practice, the claims on the determination of a meeting schedule with the child(ren) can be presented and heard together with the divorce claim as well.

If there is only a claim, the court is entitled to make a decision on one of above subject matters. There can be two finance-related claims presented in Armenia: alimony for child support; and alimony for spousal support.

### 2.2 Do matrimonial regimes exist and do they need to be addressed by the court on divorce? Is there a default matrimonial regime?

Matrimonial regimes exist under Armenian law. The matter is regulated under the Family Code and the Civil Code of Armenia.

According to a general rule, the property acquired during marriage is common joint owned (the portions are considered equal and non-divided) between spouses, except for the following cases:

- personal use property (clothing, footwear, etc.), except for jewellery and luxury items, which is the ownership of the spouse who has of use that property;
- donated or inherited property; and
- the property received by one of the spouses as a gift or succession in the course of marriage shall be in his or her ownership.

It is allowed to conclude a marital contract and define a matrimonial regime other than that presented in the law. It should be noted that the spouses may conclude a marital contract and define the regime regarding property during the marriage and in case of divorce.

The court needs to address matrimonial regimes if only there is a claim on distribution of the common property of the spouses.

### 2.3 How does the court decide what financial orders to make? What factors are taken into account?

Please see question 2.1.

Alimony: The court should decide based on Articles 68–74 of the Family Code; in particular, the court may take into consideration the minimum amount defined in the law, the financial capacities of parents, including their income and assets, family status of the parent(s), the best interests of the child and other interests which the court finds deserving of attention.

Distribution of common property: The court should decide based on the marital contract (if there is one). If there is no marital

contract, the court should decide based on Article 201 of the Civil Code of Armenia and define the property which is jointly owned and distribute it equally between the ex-spouses.

Spousal maintenance (alimony from the ex-spouse): The court makes a decision based on Articles 78–80 of the Family Code (including the grounds which give the right to demand spousal maintenance) and takes into consideration the financial and family status of the spouse and other matters of interest which the court deems deserving of attention.

#### 2.4 Is the position different between capital and maintenance orders? If so, how?

In accordance with the Family Code, alimony for the child(ren) may be defined based on income or on fixed amounts. However, in both cases, the amount is defined on a monthly basis.

Former spouses are entitled to demand alimony from ex-spouses if they meet conditions defined in law, i.e. the following persons may require alimony from the spouse with enough material means by judicial procedure:

- an ex-wife during the pregnancy, as well as the spouse taking care of a common child until the latter turns three years old;
- a vulnerable ex-spouse, who takes care of their common disabled child or an offspring of first group disability;
- a vulnerable, incapable ex-spouse, who became disabled before the divorce or within a year after the divorce; and
- a vulnerable spouse, who reached pension age within five years after the divorce, if the spouses were married for 15 years or more.

The alimony from an ex-spouse should be defined in a fixed amount and as a monthly payment.

#### 2.5 If a couple agrees on financial matters, do they need to have a court order and attend court?

The agreement concluded in the form defined under the law will be valid and enforceable even if there is no court order or the parties' absence in the court. However, it should be noted that to be compulsorily enforced, the agreement should be approved and become a court order.

#### 2.6 How long can spousal maintenance orders last and are such orders commonplace?

Spousal maintenance orders last either as long as the grounds on which the maintenance is given continue to exist (see question 2.4) or until the court releases (permanently or temporarily) the spouse from the obligation to pay maintenance if the spouse in need of assistance becomes incapable:

- because of excessive alcohol, drug and toxic addiction or committing an intended crime;
- within a marriage term less than one year; or
- because of immoral behaviour of the spouse requiring alimony (unfaithfulness, gambling, etc.).

There are a very small number of cases regarding alimony from ex-spouses in Armenia.

#### 2.7 Is the concept of matrimonial property recognised in your jurisdiction?

The concept of matrimonial property is recognised in this jurisdiction (see question 2.2).

#### 2.8 Do the courts treat foreign nationals differently on divorce, if so, what are the rules on applicable law? Can the court make orders applying foreign law rather than the law of the jurisdiction?

The Constitution of Armenia prohibits any kind of discrimination; therefore, the scope of rights and obligations are the same for both nationals and foreigners, including in divorce proceedings.

The court may make a decision by applying foreign law based on the conflict of law rules, in particular on Articles 146, 151 and 152 of the Family Code. However, the norms of foreign family law shall not be applied if such application contradicts the law and order (public order) of the Republic of Armenia.

#### 2.9 How is the matrimonial home treated on divorce?

Armenian law does not use the term “matrimonial home” and thus there are no special rules as regards that particular asset.

#### 2.10 Is the concept of “trusts” recognised in your jurisdiction? If so, how?

This is not applicable in this jurisdiction.

#### 2.11 Can financial claims be made following a foreign divorce in your jurisdiction? If so, what are the grounds?

Financial claims can be made in Armenia following a foreign divorce in case Armenian courts have jurisdiction over the dispute, i.e. the respondent is an Armenian national or the respondent is a foreign national who resides in the territory of Armenia at the time of filing a claim or has a property in Armenia.

#### 2.12 What methods of dispute resolution are available to resolve financial settlement on divorce? E.g. court, mediation, arbitration?

The dispute resolution methods available in Armenia are as follows:

- the courts of general jurisdiction;
- mediation in and out of judicial proceedings. It should be noted that mediation for divorce or divorce-related cases are not mandatory in Armenia; and
- arbitration, but only for the cases on distribution of common matrimonial property.

### 3 Marital Agreements

#### 3.1 Are marital agreements (pre and post marriage) enforceable? Is the position the same if the agreement is a foreign agreement?

Marital agreements are regulated under Articles 27–31 and 146 of the Family Code.

A marital agreement can be concluded prior to marriage or at any period during the marriage. The marital agreement regulates property rights and obligations of the spouses during the marriage and/or in the event of divorce and should be notarised to be valid and enforceable.

A foreign agreement will be valid and enforceable if it complies with the conflict of law rules defined in Armenian law.

### 3.2 What are the procedural requirements for a marital agreement to be enforceable on divorce?

The marital agreement should be notarised and may cover only property rights and obligations of spouses.

### 3.3 Can marital agreements cover a spouse's financial claims on divorce, e.g. for maintenance or compensation, or are they limited to the election of the matrimonial property regime?

The marital agreement may cover all kinds of property rights and obligations, which means spousal alimony or compensation can be defined together with the matrimonial property regime rules. However, it should be noted that alimony for a child(ren) is subject to regulation in agreements other than marital.

## 4 Cohabitation and the Unmarried Family

### 4.1 Do cohabitants, which do not have children, have financial claims if the couple separate? What are the grounds to make a financial claim?

Under Armenian law, the rights and obligations of the spouses emerge after the state registration of marriage in the CSRD. There is no separate regulation for cohabitation. Thus, cohabitants are not entitled to any financial claims deriving from the fact of being in cohabitation.

### 4.2 What financial orders can a cohabitant obtain?

This is not applicable in this jurisdiction.

### 4.3 Is there a formal partnership status for cohabitants (for example, civil partnerships, PACS)?

Marriage is the only type of formal partnership existing in Armenia. Under Armenian law, marriage refers to those registered with the CSRD in accordance with the procedure established by the RA Legislation with the obligatory presence of the persons who conclude the marriage (a man and a woman).

### 4.4 Are same-sex couples permitted to marry or enter other formal relationships in your jurisdiction?

Under the Armenian Constitution, only marriage between a man and a woman is allowed.

## 5 Child Maintenance

### 5.1 What financial claims are available to parents on behalf of children within or outside of marriage?

Each parent has a duty to participate in the needs of their children proportionally to their resources.

Regardless of the parents' marriage, the parent with whom the child lives has the right to request alimony from the other parent.

### 5.2 How is child maintenance calculated and is it administered by the court or an agency?

Parents can decide the amount of child support by notarised agreement. In case of the absence of an alimony-paying agreement between parents, it is determined by the court at the rate of:

- 1/4 of the parent's income for one child;
- 1/3 of the parent's income for two children; and
- 1/2 of the parent's income for three or more children.

The amount of alimony is determined by the court based on the greatest possibility of keeping the previous standard of living for the child, taking into consideration property and family status of the parties and interests deserving attention.

The level of child support given may be decreased or increased by the court depending on the family and financial circumstances.

### 5.3 For how long is a parent required to pay child maintenance or provide financial support for their children? For example, can a child seek maintenance during university?

According to Armenian law, the parents are obligated to pay maintenance for the child.

A child is entitled to alimony after turning 18 years old if he/she is incapable.

### 5.4 Can capital or property orders be made to or for the benefit of a child?

Under Armenian law, capital or property orders cannot be made by court; this can be only agreed between the parents.

### 5.5 Can a child or adult make a financial claim directly against their parents?

The claim on payment alimony for a child (as defined by Armenian law – please see question 6.2) is presented on behalf of the parent/guardian with whom the child lives permanently.

If the child is 18 years old, he/she may present the claim on his/her name except for cases where their incapacity is connected with mental disability and the claim should be presented on the name of assigned guardian (can be the second parent).

## 6 Children – Parental Responsibility and Custody

### 6.1 Explain what rights of custody both parents have in your jurisdiction whether (a) married, or (b) unmarried?

Under Armenian law and practice, both parents have equal rights of custody, i.e. rights and obligation, over their child(ren). Thus, the disputes are about/courts decide upon the permanent living place of the child(ren) and not about custody itself.

No matter whether the child was born in or out of marriage, the rights and obligations of parents over him/her are completely the same. Where custody is based on court decisions or registration with the CSRD, it is confirmed officially who the parents are.

### 6.2 At what age are children considered adults by the court?

The child is a natural person until the age of 18 except in cases of gaining full legal capacity earlier under the law. Minors aged 16 or

older are entitled to ask the court to declare him/her as having full legal capacity (being emancipated).

### 6.3 What is the duration of children orders (up to the age of 16 or 18 or otherwise)?

The duration of a children order is until the child turns 18 years old or is emancipated based on a court order.

### 6.4 What orders can the court make in relation to children? Does the court automatically make orders in relation to child arrangements in the event of divorce?

To make an order about the child, the court should have a relevant claim on it.

The claims may be presented and therefore examined and ordered in relation to the child(ren) as follows (the most common):

- with which parent the child(ren) should live permanently;
- how much alimony should be paid for the child(ren);
- how much child support should be paid in addition to the alimony;
- the meeting schedule with the parent who lives separately from the child(ren);
- the meeting schedule with other immediate relatives, e.g. grandparents;
- the restriction of parental rights; and
- the deprivation of parental rights.

### 6.5 What factors does the court consider when making orders in relation to children?

The basic factor taking into consideration while deciding about the child(ren) is the best interest of the child(ren). The content of the child(ren)'s best interest is based on the criteria defined in the law and court practice as well as ECHR's decisions.

### 6.6 Without court orders, what can parents do unilaterally? For example, can they take a child abroad?

Theoretically and due to law, the parents should decide on issues related to the common child(ren) jointly. In practice, most decisions are made by the parent with whom the child(ren) permanently live. Armenian law allows them to cross the border with one parent without the consent of the second. The consent of the second parent is required in cases when and if it is required under the law of the foreign country.

### 6.7 Is there a presumption of an equal division of time between separating or divorcing parents?

There is no presumption of an equal division of time between separating and divorcing parents under the Armenian law, except for weekends, which shall be equally shared between parents, based on court practice.

### 6.8 Are unmarried parents treated in the same way as married parents when the court makes orders on separation or divorce?

Please see question 6.1.

### 6.9 Is a welfare report prepared by an independent professional or is the decision taken by the Judge alone? If so, does the child meet the Judge?

The report of independent profession shall be considered as evidence equal to others presented to the court. Under the law it is mandatory to have a report of the Commission of custody and guardianship.

The Commission and the court should hear children who are 10 years old and older. Children under the age of 10 should be heard as regards the issues related to him/her, considering his/her age and maturity level.

Decisions about the children older than 10 should be made based on his/her consent.

### 6.10 Is there separate representation for children in your jurisdiction and, if so, who would represent them, e.g. a lawyer?

There is no separate representation for children in Armenia.

If the case is about protection from abuse of a child against his/her parents (lawful representatives), the Commission of Custody and guardianship should undertake necessary means for protection of a child's rights and interests.

### 6.11 Do any other adults have a say in relation to the arrangements for the children? E.g. step-parents or grandparents or siblings. What methods of dispute resolution are available to resolve disputes relating to children?

In relation to the arrangements for the child(ren), only parents have a right to say. Should there be a dispute, the legally available and mandatory means of dispute resolution is settlement in court. Mediation is not mandatory for family cases.

## 7 Children – International Aspects

### 7.1 Can the custodial parent move to another state/country without the other parent's consent?

The parent with whom the child permanently lives is entitled to move to another state/country without the other parent's consent. The issue is with the legislation of the other state/country, which may ban the entry of the child without the consent of the second parent.

### 7.2 Can the custodial parent move to another part of the state/country without the other parent's consent?

The parent with whom the child permanently lives is entitled to move to another part of the country without the other parent's consent.

### 7.3 If the court is making a decision on relocation of a child abroad, what factors are taken into account?

As far as Armenian courts have jurisdiction over the territory of Armenia, they do not decide on the determination of a child's place of living outside of Armenia. The Armenian court may decide with which parent the child should live permanently and may oblige the second parent to give consent to the child's travelling abroad or



consent on living abroad. The court decides based on the child's best interest.

**7.4 If the court is making a decision on a child moving to a different part of the state/country, what factors are taken into account?**

This is not applicable in this jurisdiction.

**7.5 In practice, how rare is it for the custodial parent to be allowed to relocate internationally/interstate?**

Please see question 7.3. The court does not allow the child to be permanently relocated outside of Armenia permanently. There are cases when the court allows temporary relocation, e.g. for medical reasons, or when the court approves the reconciliation agreement between the parties on relocation of the child abroad.

**7.6 How does your jurisdiction deal with abduction cases? For example, is your jurisdiction a party to the Hague Convention?**

Armenia has been a Member State of the Hague Convention on the Civil Aspects of International Child Abduction since 1 June 2007 (accession accepted by more than 60 countries) and has all necessary internal procedures required under the Convention.

## 8 Overview

**8.1 In your view, what are the significant developments in family law in your jurisdiction in the last two years?**

The Code adopted in April 2018 defines several new rules as regards family case proceedings with the aim to develop the protection of minors' interests which are as follows:

- the court is now entitled to hear cases related to the minor and the best interest of the minor *ex officio*, which means the court is not limited by the activities of arguing parents but may take measures deemed necessary for the protection of minors; and
- the court is now entitled to secure claims related to the minor and the best interest of the minor by its own initiative, and the security measure chosen may be similar to the subject matter of the claim.

In 2018, Armenia adopted the law on prevention of violence within the family, protection of victims of violence within the family and restoration of peace in the family, which is a significant step on the way to protection against violence in families.

Amendments to the Family Code were adopted in 2017 and are mostly about the rights of minors and the criteria of the best interests of minors.

**8.2 What are some of the areas of family law which you think should be looked into in your jurisdiction?**

The priority is the improvement of the Commissions of custody and guardianship, especially the professional level of specialists directly engaging in work with minors.

Afterwards, it should be considered a necessity to have judges or court specialists on family cases. The lack of specific knowledge in family issues is an obstacle to the complete protection of minors' interests.



**Narine Beglaryan** is a partner with Concern Dialog Law Firm. She joined the firm in September 2013. She specialises in Banking Law, Contract Law, Corporate Law, Family Law as well as in court representation of administrative and civil cases. At present, she specialises in the spheres of Combat against Money Laundering and Financing of Terrorism. Currently, Narine Beglaryan provides legal clients of Concern Dialog Law Firm with legal consultancy and support related to inner processes, legal dealings, and litigation. Prior to joining Concern Dialog Law Firm, she worked at Armentel CJSC as legal representative of the department of legal support to the business and at BTA Bank CJSC as the chief lawyer of the legal office of the bank. Narine Beglaryan graduated from the Moscow New Juridical Institute and is qualified as a Certified Specialist in Civil Law. Narine has been qualified to practise law in the Republic of Armenia since 2007 and has been the Attorney of the Chamber of Advocates of RA since 2012.

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