

Complaint against France for a violation of several obligations arising from the Rome III and Brussels IIbis Regulations

On 19 April 2017, Professor Cyril Nourissat and the lawyers Alexandre Boiché, Delphine Eskenazi, Alice Meier-Bourdeau and Gregory Thuan filed a complaint with the European Commission against France for a violation of several obligations arising from the European Rome III and Brussels IIbis Regulations, as a result of the divorce legislation reform entered into force on 1 January this year. The following summary has been kindly provided by Dr. Boiché.

“Indeed, since January the 1st, in the event of a global settlement between the spouses, the divorce agreement is no longer reviewed and approved in Court by a French judge. The agreement is merely recorded in a private contract, signed by the spouses and their respective lawyers. Such agreement is subsequently registered by a French *notaire*, which allows the divorce agreement to be an enforceable document under French law. From a judicial divorce, the French divorce, in the event of an agreement between the spouses, has become a purely administrative divorce. The judge only intervenes if a minor child requests to be heard.

The implications and consequences of this reform in an international environment were deliberately ignored by the French legislator, with a blatant disregard for the high proportion of divorce with an international component in France. The main violations arising from this reform are the following.

First of all, as there will be no control of the jurisdiction, anyone will be able to get a divorce by mutual consent in France, even though they have absolutely no connection with France whatsoever. For instance, a couple of German spouses living in Spain will now be able to use this new method of divorce, in breach of the provisions of the Brussels IIbis Regulation. The new divorce legislation is also problematic in so far as it remains silent on the law applicable to the divorce.

Moreover, the Brussels IIbis Regulation states that the judge, when he grants the

divorce (and therefore rules on the visitation rights upon the children, or issues a support order, for instance) provides the spouses with certificates, that grant direct enforceability to his decision in the other member states. Yet, the new divorce legislation only authorizes the notary to deliver the certificate granting enforceability to the dissolution of the marriage itself, but not the certificate related to the visitation rights, nor the support order. This omission is problematic insofar as it will force the spouses who seek to enforce their agreement in another member state to seize the local Courts.

Last but not least, article 24 of the Charter of Fundamental Rights of the European Union makes it imperative for the child's best interests to be taken into consideration above all else, and article 41 of the Brussels IIbis Regulation provides that the child must be heard every time a decision is taken regarding his residency and/or visitation rights, unless a neutral third party deems it unnecessary. Yet, under the new legislation, it is only the parents of the child who are supposed to inform him that he can be heard, which hardly meets the European requirements. Moreover, article 12 of the Brussels IIbis Regulation provides that, when a Court is seized whereas it isn't the Court of the child's habitual residence, it can only accept its jurisdiction if it matches the child's best interests. Once again, the absence of any judicial control will allow divorces to be granted in France about children who never lived there, without any consideration for their interests. This might be the main violation of the European legislation issued by this reform.

For all those reasons, the plaintiffs recommend that the Union invites France to undertake the necessary changes, in order for this new legislation to fit harmoniously in the European legal space. In particular, they suggest a mandatory reviewal by the judge in the presence of an international component, such as the foreign citizenship of one of the spouses, or a foreign habitual residence. They would also like this new divorce to be prohibited in the presence of a minor child, an opinion shared by the French 'Défenseur des Droits'“

The full text of the complaint (in French) is available [here](#).