CJEU on recognition of extrajudicial divorces, case Senatsverwaltung für Inneres und Sport, C-646/20

It does not happen often that the Grand Chamber of the Court of Justice delivers a judgment on interpretation of EU private international law instruments. In fact, as the highly interesting study of Martina Mantovani on EAPIL blog shows, this field of EU law is characterized by a relatively low number of Grand Chamber cases – less than one per year.

The case Senatsverwaltung für Inneres und Sport, C-646/20 is one of the rare occurrences where the Court decided to have recourse to that option. It did so in order to clarify whether an extrajudicial act on divorce can constitute a 'judgment' under the Brussels II bis Regulation and enjoy automatic recognition.

Context of the request for a preliminary ruling and the legal issue at hand

The situation that led to the case being brought before the Court can be summarized as follows:

A German authority is faced with a request to enter an Italian extrajudicial act on divorce in the register of marriages. The authority considers that the act should be subject to the recognition procedure and rejects the request. The case is brought before the national courts.

Ultimately, the German Federal Court brings its request for a preliminary ruling before the Court asking, in essence, whether that 'act' has to be considered as a 'judgment' within the meaning of Article 2(4) of the Brussels II bis Regulation and, thus, be automatically recognized in Germany.

In the preliminary questions themselves, the referring court does not describe the

modalities of such an ‘extrajudicial’ act. In the wording of those questions, the referring court confines itself to mentioning the provisions of Italian law providing for a divorce by mutual consent and explains those modalities in its request for a preliminary ruling.

Back in May, AG Collins presented his Opinion in that case, proposing to the Court to answer the preliminary questions in a following manner:

‘The dissolution of a marriage by a legally ordained procedure whereby spouses each make a personal declaration that they wish to divorce before a civil registrar, who confirms that agreement in their presence not less than 30 days later after having verified that the conditions required by law for the dissolution of the marriage have been met, namely that the spouses do not have minor children or adult children who are incapacitated or severely disabled or economically dependent and the agreement between them does not contain terms concerning the transfer of assets, is a divorce judgment for the purposes of [the Regulation].’

Court’s findings

At the outset, the Courts affirms that the notion of ‘judgment’ within the meaning of Article 2(4) of the Brussels II Regulation has to be given an autonomous meaning (para. 41).

It turns next to the primary law (Articles 67 and 81 TFEU) to observe that, in order to establish the area of freedom, security and justice, the EU develops the judicial cooperation in civil matters having cross-border implications and, doing so, it ensures the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases (para. 42).

Interestingly, from the methodological standpoint, the Court has already relied on primary law to interpret the Brussels II bis Regulation and decide on its scope in its judgment in in UD, C-393/18 PPU, para. 38. While the judgment at hand echoes that approach, it also takes it further. The Treaty provides that the EU ‘shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases’, yet

the Court states that the EU the ensures, when necessary (and, as we learn from subsequent paragraphs of the judgment – it does so through the Brussels II bis Regulation) the recognition and enforcement of extrajudicial decisions.

It is only then that the Court mentions other provisions of the Regulation in order to find, in essence, that the notion of 'judgment' shall receive a broad understating, including the decisions adopted extra-judicially. Doing so, the Court invokes, in particular, Article 2(1) of the Brussels II bis Regulation according to which the notion of 'court' shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation (paras. 44 et seq.).

The Court attempts next to benchmark that finding against its previous judgment in Sahyouni, C 372/16. In this regard, it notes that in order to deliver a 'judgment', the authority must retain control of the pronouncement of the divorce. In the context of decisions on divorce by mutual consent, such control has to involve the examination as to whether the conditions for divorce provided for in the national law has been met and the consent of the spouses has been real and valid (para. 54).

Those findings lead to Court to the conclusion that an a divorce decree drawn up by the civil registrar of a Member State, containing a divorce agreement concluded by the spouses and confirmed by them before that registrar in accordance with the conditions laid down by the legislation of that Member State, constitutes a 'judgment' within the meaning of the Brussels IIa Regulation (para. 67).

The judgment can be found here (in French, no English version at the time of posting), accompanied by a press release (in English).