Recognition of Italian Extrajudicial Divorces in Tunisia — Between Methodological Uncertainty and the Need to Preserve Continuity of Personal Status Across Borders

I. Introduction

Recent years have witnessed a movement towards the dejudicialization of consensual divorce and the proliferation of extrajudicial divorce mechanisms notably in Europe. While this mode of "private divorce" is not, as such, a new phenomenon and extrajudicial divorce has been practised in different forms across various parts of the world (see e.g., Béligh Elbalti, "Le divorce au Japon et son accueil en Tunisie" (2026) 73 *Osaka University Law Review* 6), it has attracted increasing attention in recent years, given the growing number of European jurisdictions that have introduced mechanisms allowing spouses to dissolve their marriage outside the courts, as well as the complex questions that such divorces raise in terms of their recognition and circulation across borders

(for a comparative view in Europe, see e.g., CJEU, Directorate for Research and Documentation, "Extrajudicial Divorce: Rules, Procedures and Cross-Border Recognition in Member States" (Research Note, February 2022) 3; Pablo Quinzá Redondo, "The Recognition of Non-Judicial Divorces in Europe" in Konrad Duden and Denise Wiedemann (eds), *Changing Families, Changing Family Law in Europe* (Intersentia, 2024) 23). This is particularly true of the Italian form of extrajudicial divorce, introduced by Decree-Law No. 132/2014, converted into Law No. 162/2014, which allows spouses meeting specified conditions to obtain a divorce through an agreement before the civil registrar, rather than through a court.

As previously reported on this blog, the recognition of such an Italian divorce in another Member State gave rise to a CJEU decision in *Senatsverwaltung für Inneres und Sport v TB* (Case C-646/20) and to scholarly discussion, notably concerning the appropriateness of the CJEU's treatment of such a divorce agreement as a "decision" for the purposes of its recognition under the Brussels IIa Regulation, later replaced by the Brussels IIb Regulation (for critical comments, see e.g., Elena Bargelli, "Reshaping the Boundaries Between 'Decision' and Party Autonomy. The CJEU on the Extrajudicial Italian Divorce" (2023) 8(1) *European Papers* 43; Quinzá Redondo, *op.cit.*, 35 ; Sabine Corneloup, "La circulation européenne du divorce sans juge : nouvel arrêt et toujours des incertitudes" (2023) *RCDIP* 409).

The issue of the recognition of Italian extrajudicial divorces has recently crossed the Mediterranean and reached the Tunisian courts. While this is not the first time that Tunisian courts have dealt with the issue (for an earlier case concerning the recognition of a French out-of-court divorce, Souhayma Ben Achour, "Le divorce extrajudiciaire français devant le juge tunisien, une tolérance à contrecœur…À propos du jugement du tribunal de première instance de Tunis du 14 novembre 2017 (no 86358)" (2018) *RCDIP* 211; on this issue in general, see Elbalti, *op cit.* 48-49, and, more specifically, on the recognition of Japanese extrajudicial divorce, pp. 50 *et seq.*), to my knowledge, this is the first time that the issue of the recognition of an Italian extrajudicial divorce has been brought before the courts in Tunisia. The issue is particularly interesting from a comparative law perspective, as it provides insights into the way in which Tunisian courts approach a form of marital dissolution originating in a different legal system, as well as the challenges that may arise in the cross-border circulation of such divorces from the perspective of non-EU law.

II. The Case

The petitioner, X (a Tunisian national), married the first respondent, Y (an Albanian national), in Italy in 1996. Since 2005, pursuant to a judgment of personal separation issued by an Italian court, the parties had been legally separated. In 2021, the parties obtained a divorce by mutual agreement before the Italian civil registrar, in accordance with the applicable Italian rules on extrajudicial divorce. Later, in 2025, X initiated summary proceedings against Y and the Public Prosecutor, as the second respondent, seeking an order from the First Instance Court of Nabeul (one of the 28 courts of first instance in Tunisia) seeking a summary order allowing the entry of the divorce agreement in X's civil-status records.

In support of the application, X argued that the divorce had been obtained by mutual consent before the Italian civil registrar and that the resulting agreement should be entered in his civil-status records. X relied, in particular, on the 1967 Tunisian–Italian Convention on judicial assistance, arguing that the Convention provides for the recognition in Tunisia of decisions issued by Italian authorities and that this should also extend to extrajudicial divorces under Italian law, introduced as a simplified procedure allowing spouses, subject to certain conditions, to dissolve their marriage before the civil registrar. X further argued that the agreement concluded by the parties complied with all the requirements under Italian law: in particular, the parties had no children and had appeared before the civil registrar twice, more than thirty days apart, to confirm their agreement. X also argued that the Italian divorce had been issued by a competent authority in accordance with Italian law, had become final and effective in Italy, and had already produced its effects there, as demonstrated by the official documents submitted to the court.

III. The Ruling

In its summary order dated 24 February 2026, the First Instance Court of Nabeul admitted the application and ruled as follows.

The Court began by recalling the general context of the case and referring to the

relevant provisions of Italian law submitted by the applicant. It then identified three legal issues to be addressed: first, whether the Court, sitting in summary proceedings, had jurisdiction to deal with an application seeking an order allowing the entry of the Italian divorce in the Tunisian civil-status records; second, whether judicial review of the Italian divorce by agreement by a court sitting in summary proceedings was permissible; and third, whether the Court should order the entry of the Italian divorce by agreement in the Tunisian civil-status records.

Regarding the first issue, the Court recalled that the jurisdiction of a court sitting in summary proceedings depends on the satisfaction of two conditions: (1) the existence of a situation of urgency; and (2) the summary proceedings must not prejudice the merits of the case. With respect to (1), the Court considered that the requirement of urgency was satisfied given the instability and discrepancy in the applicant's civil status resulting from the foreign divorce, and the potentially serious consequences of such a situation for family stability. With respect to (2), the Court considered, referring to Tunisian scholarly opinions, that this requirement was also satisfied, since the substance of the right invoked had already been addressed in the foreign country.

Regarding the second issue, the Court invoked four grounds justifying judicial review of the Italian extrajudicial divorce by a court sitting in summary proceedings. The first was a legal ground, based on the view that the extrajudicial divorce could be treated as a "decision" under the Tunisian–Italian Convention and the 1998 Tunisian Code of Private International Law (TCPIL). The Court considered that the TCPIL aims to recognize legal situations created abroad and that its provisions could therefore be applied to the recognition of extrajudicial divorces, whether consensual, notarial, or administrative. The second was a scholarly ground: the Court referred to the prevailing opinion in Tunisian legal literature in favour of the recognition of extrajudicial divorces. The third was a case-law ground: the Court referred to previous cases in which the entry of extrajudicial divorces obtained abroad into the Tunisian civil-status records had been allowed. The fourth was based on practical considerations, namely that summary proceedings allow time and effort to be saved, the need to take into account the Tunisian diaspora living in countries where extrajudicial divorce is permitted, and the absence of any serious controversy between the parties.

Regarding the third issue, the Court held that the Italian extrajudicial divorce

should be entered in the Tunisian civil-status records. It considered that refusing to recognize a divorce that had already taken effect in Italy, in the absence of any serious dispute between the parties, would create an inconsistency in their civil status and potentially interfere with their private lives and the exercise of rights resulting from their changed marital status. The Court also noted that the divorce had already been recorded in the parties' Italian civil-status records, that the respondent had authorized X to seek its registration in Tunisia, and that the agreement complied with the requirements of Italian law and did not prejudice the interests of either spouse or of any children.

On this basis, the Court issued the order allowing the entry into the Italian divorce in X's Tunisian civil-status records.

IV. Comments

While the outcome of the case can be agreed with, the Court's reasoning raises serious questions concerning the manner in which an extrajudicial divorce can be given effect in Tunisia. Various aspects – notably from the perspective of the general legal and procedural framework applicable to the "recognition" of foreign divorces in Tunisia – deserve a more thorough analysis, which may not be appropriate for a blog post, (for a detailed analysis of this issue, see Elbalti, *op cit.* 24 *et seq*.). Three particular issues, however, will be addressed here.

1. Summary Proceedings and the Recognition of Foreign Divorce

First, regarding the jurisdiction of the First Instance Court sitting in summary proceedings, it is sufficient to point out that, in assessing the requirement that summary proceedings must not prejudice the merits of the case, the Court seems to have confused the substantive merits of the case (i.e. the dissolution of the marriage) with the object of the proceedings, which, in the Court's own words, was to obtain the "recognition" of the Italian divorce for the purpose of its entry in the Tunisian civil-status records. However, given that, under the current legal framework in Tunisia – and despite the prevailing view in Tunisia to the contrary – "recognition" is not automatic (for details, see Elbalti, *op. cit.*, p. 29, describing the issue as "thorny" (*épineuse*)), a formal exequatur procedure for giving effect

to the foreign divorce would have been required. Such a procedure falls within the subject-matter jurisdiction of the courts of first instance exercising their ordinary jurisdiction (Elbalti, *op. cit.*, p. 41). In other words, the requirement that summary proceedings must not prejudice the merits of the case should have been examined with regard to the exequatur procedure that should have been initiated pursuant to the applicable rules governing the recognition and enforcement of foreign judgments, rather than with regard to the dissolution of the marriage itself. In that respect, examining the "recognition" of the foreign divorce necessarily entails an examination of the conditions governing its recognition and enforcement and, therefore, requires the court to determine issues that properly belong to the exequatur proceedings. In this sense, the exercise of jurisdiction by the First Instance Court sitting in summary proceedings would not, under the applicable legal framework currently in force, be legally justified.

In any event, it is worth noting that, in recent years, the practice of initiating summary proceedings for the "recognition" of foreign divorces for the purpose of ordering their entry in the Tunisian civil-status records (as well as other procedural modalities) has developed in judicial practice in Tunisia, generally with the approval of Tunisian scholars (see Elbalti, *op. cit.*, p. 43).

2. The Uncertain Method of Recognition

Second, it is remarkable that the Court began its analysis by placing itself on the terrain of the "recognition of foreign decisions", either under the 1967 Tunisian–Italian bilateral Convention or under the TCPIL. Leaving aside the question of whether an Italian extrajudicial divorce can properly be treated as a "decision" (on this issue, see the convincing analysis of Bargelli, *op. cit.*, arguing that it should not), such an approach would suggest that the recognition of the Italian divorce should have been examined by reference to the requirements governing the recognition and enforcement of foreign judgments, notably those prescribed by Article 3 of the 1967 Tunisian–Italian Convention, which the Court expressly referred to. (It is worth noting, however, that Tunisian scholars are generally in favour of applying domestic law, namely the TCPIL, as it sets out less restrictive requirements for the enforcement of foreign judgments than those provided for in the international conventions concluded by Tunisia. On this issue, see e.g., Souhayma Ben Achour, *La réception des decisions étrangères dans*

l'ordre juridique tunisien (CPU, 2017) 33).

However, this is not what the Court did. It did not examine the recognition of the Italian divorce under the applicable rules governing recognition, whether under the convention-based framework or the requirements set out in the TCPIL. Instead, the Court seems to have focused on the need to prevent and remedy the harm resulting from the discrepancy in the parties' civil status created by the divorce abroad. It emphasized the need to recognize the divorce agreement concluded abroad and to order its entry in the Tunisian civil-status records, particularly because the divorce had already produced its effects in Italy. This approach is reminiscent of recent discussions concerning the "recognition of situations created abroad" as an alternative method for giving effect to foreign legal situations (see e.g., Dagmar Coester-Waltjen, "Recognition of Legal Situations Evidenced by Documents" in Jürgen Basedow et al. (eds), *Encyclopedia of Private International Law – Vol. 2* (Edward Elgar Publishing, 2017) 1495).

The Court went even further, however, by stating that the divorce complied with the requirements and procedures prescribed by Italian law. Such a reference to Italian law would not have been necessary under either of the two approaches mentioned above. It would, by contrast, have been entirely justified had the Court proceeded to examine the validity of the divorce under Tunisian choice-of-law rules under the so-called "method of acceptance by conflict-of-laws" (Susanne Lilian Gössl, "Open Issues in European International Family Law: Sahyouni, 'Private Divorces' and Islamic Law Under the Rome III Regulation" (2017) *European Legal Forum* 69). Such an approach would have led to the application of Italian law as the law of the parties' common domicile, pursuant to Article 49 of the TCPIL (see Elbalti, *op cit.* p. 57). Importantly, however, such an approach would not have required the Italian divorce to be characterized as a "decision" under the Tunisian–Italian Convention or under the Tunisian rules on the recognition and enforcement of foreign judgments.

3. Towards a More Tolerant Approach to Extrajudicial Divorce

Finally, the case illustrates the evolving treatment of extrajudicial divorces in Tunisian PIL. Until recently, the "judicial nature" of divorce was generally regarded as a matter of public policy, leading Tunisian courts to (almost)

systematically refuse to give effect to divorces that had not been pronounced by a judicial authority (see Elbalti, *op. cit.*, pp. 46–49). This was particularly true of extrajudicial divorces obtained in other Arab jurisdictions, whether in the form of traditional *talaq* or *khul'*, as well as administrative divorces permitted in some other countries (see Elbalti, *op. cit.*, p. 59). The position of the courts has been consistent in this respect and was endorsed by the Tunisian *Cour de cassation*, which had the opportunity on several occasions to state that the judicial nature of divorce forms part of Tunisian public policy (see, e.g., the Tunisian *Cour de cassation* ruling of 7 November 2018, in which the Court stated, *in dictum*, that the principle that divorce must be judicial forms part of Tunisian public policy in the meaning of PIL).

Since the introduction of the French *divorce sans juge* in 2016, however, the situation has gradually begun to change, particularly in legal scholarship and in the judicial practice of the courts of first instance (see Elbalti, *op. cit.*, p. 63). While Tunisian courts have generally continued to refuse recognition of extrajudicial divorces originating in other Arab jurisdictions (see Elbalti, *op. cit.*, p. 60 and the cases cited therein), even where recognition is sought by the wife (see Elbalti, *op. cit.*, p. 63, fn 239), they have shown greater tolerance towards extrajudicial divorces originating in certain European countries, notably France, as well as Japan (see Elbalti, *op. cit.*, p. 63, contrasting the "great tolerance" shown towards French extrajudicial divorce with the "consistent hostility" towards forms of dissolution of marriage originating in other Arab jurisdictions).

One of the possible explanations for this difference in treatment lies in the generally hostile attitude of Tunisian courts and legal scholarship (see Elbalti, *op. cit.*, p. 48 and the various opinions cited therein at fn 196) towards traditional forms of divorce, which are often regarded as incompatible with the legislative policy pursued by the Tunisian State since independence. That policy has sought, among other things, to distance Tunisian family law from unilateral and traditional forms of divorce. By contrast, extrajudicial divorces based on the mutual agreement of the spouses appear more compatible with this legislative policy, which is grounded in the principles of equality between men and women and non-discrimination, particularly in matters relating to the dissolution of marriage. They have therefore encountered less resistance in Tunisian judicial practice (in this sense, see Ben Achour, *op. cit.*, 222), despite their non-judicial character. This suggests an evolving approach towards the judicial nature of

divorce in Tunisian PIL, at least with regard to extrajudicial divorces originating in Europe and Japan. This approach has been largely endorsed by the Tunisian lower courts (see Elbalti, *op. cit.*, p. 59), but remains to be confirmed by the higher courts, including the Tunisian *Cour de cassation*.