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Judgment of the Court in Case C-646/20 | Senatsverwaltung für Inneres und Sport

Automatic recognition of extrajudicial divorces: 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 Ila Regulation

In 2013, TB, who has dual German and Italian nationality, married RD, an Italian national, in Germany. In 2018, at the end of divorce proceedings through extrajudicial means, laid down in Italian law, they obtained a divorce certificate issued by the civil registrar of the Italian civil registrar.

The German civil status services refused the registration of that divorce on the ground that there had not been any prior recognition of that divorce by the competent German judicial authority. The matter having been brought before it, the German Federal Court of Justice asks whether the concept of ‘judgment’ in the Brussels Ila Regulation on the recognition of decisions granting a divorce covers an extrajudicial divorce stemming from an agreement concluded by the spouses and pronounced by a civil registrar of a Member State in accordance with the legislation of that Member State.

By today’s judgment, the Court, sitting as the Grand Chamber, rules that a **divorce decree** drawn up by a **civil registrar of the Member State of origin**, 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 Ila Regulation.

First of all, the Court points out that, concerning divorce, the concept of ‘judgment’ referred to in that regulation covers any **decision granting a divorce** granted at the end of judicial or extrajudicial proceedings, **provided that the law of the Member States also confers jurisdiction in relation to divorce on extrajudicial authorities**. Thus, any judgment given by such extrajudicial authorities with jurisdiction in relation to divorce in a Member State must be automatically recognised, subject to the conditions laid down by that regulation being met.

Furthermore, the Court recalls its case-law according to which the Brussels Ila Regulation covers only divorces pronounced either by a national court or by, or under the supervision of, a public authority, thereby excluding mere ‘private’ divorces. It infers therefrom that any public authority called upon to give a ‘judgment’ must retain control over the grant of the divorce, which means, as regards divorces by mutual consent, that it **must examine the conditions of the divorce in the light of national law and the actual existence and validity of the spouses’ consent to divorce**.

The Court explains that that requirement for an examination is the criterion which allows a distinction to be drawn between the concept of ‘judgment’ and those of ‘authentic instrument’ and ‘agreement between the parties’ which also appear in the Brussels Ia Regulation. It notes that that criterion, like the rule relating to authentic instruments and agreements between the parties, were reproduced and clarified in the context of the Brussels Ib Regulation, which replaced the Brussels Ia Regulation as from 1 August 2022.

As the regard the case at issue, the Court notes that, as a legally established authority, the Italian civil registrar has jurisdiction to **pronounce the divorce in a legally binding manner** by recording, in writing, the divorce agreement drawn up by the spouses, **after having carried out an examination**. He or she ensures that **the divorcing spouses’ consent to divorce is valid, free and informed** and he or she also checks the content of the divorce agreement in the light of the legal provisions in force, by ensuring that that agreement relates only to the dissolution or termination of the civil effects of the marriage, to the exclusion of any transfer of assets or the involvement of children other than financially independent adult children. Therefore, the Court finds that this is a ‘judgment’ within the meaning of the Brussels Ia Regulation, which must be automatically recognised by the German civil status services.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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