

Divorce after Brexit: Jurisdiction and Recognition

The decision to dissolve a marriage involves certain legal formalities, and marriages with international element are no exception. In addition to the already complex framework which involve dealing with several jurisdictions, the uncertainty caused by the end of the Brexit transition period on 31 December 2020 brings further complexity. Ascertaining which courts are to have jurisdiction to deal with the dissolution of marriage is the first drawback. It should be noted that to divorce proceedings commenced after 1 January 2021, the "first in time" rule, which until now conferred jurisdiction to the courts of the country to which one of the spouses first applied, will no longer be applicable. Instead, the courts will decide their jurisdiction on the basis of their closest connection to the case.

In view of this change, it should be borne in mind that the assessment and interpretation of this connection may vary from country to country and that although many understand domicile as the point of closest connection, not all countries interpret the legal concept of domicile in the same way.

In this respect, both the EU and the UK will respect the choice of court made by couples by means of a prenuptial agreement dated prior to 31 December 2020. However, at this stage, this is not guaranteed for agreements entered into after that date.

Finally, as regards to the recognition of divorce decrees in countries other than the country of origin, those issued in proceedings initiated before 31 December 2020 will continue to be recognised. However, with the end of the transitional period and the Withdrawal Agreement that establishes that the UK is no longer part of the Brussels II bis Regulation, it will be necessary to take into account the rest of the conventions that remain in force in this regard and the bilateral agreements and different national rules of the countries in which recognition is sought.

For instance, the UK and 12 members of the EU, which include Italy, Poland and Portugal, are parties of the Convention on the Recognition of Divorces and Legal Separations of 1 June 1970. However, this is not the case of countries like Spain, France or Greece where in order to seek recognition of a divorce decree issued in the UK, it will be necessary to resort to their existing bilateral agreements or to their national regulations. Thus, in the case of Spain, as there is no agreement on this matter, it will be necessary to resort to the application of its Law 29/2015 on International Legal Cooperation in Civil Matters and initiate a procedure known as *exequatur*.

Although this is the current scenario, as we find ourselves in a globalized world in which these situations are occurring more often than ever, it would not be surprising to see more changes and an increase in the number of agreements between EU countries and UK.

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