Jurnalul de Studii Juridice

Year XII, No. 1-2, June 2017, pp. 93-95

PRIVATE INTERNATIONAL LAW REPORT. RECOGNITION OF THE FOREIGN DECISION REGARDING THE DIVORCE. THE CONCEPT OF FOREIGN DECISION

Nadia-Cerasela ANITEI

DOI: <https://doi.org/10.18662/jls/8>

Covered in:

CEEOL, CrossRef, CrossCheck, Index
Copernicus, Ideas RePeC, EconPapers,
Socionet

PRIVATE INTERNATIONAL LAW REPORT. RECOGNITION OF THE FOREIGN DECISION REGARDING THE DIVORCE. THE CONCEPT OF FOREIGN DECISION¹

Nadia-Cerasela ANITEI²

Abstract

The case we present concerns the recognition in Romania of the divorce decision pronounced between a Romanian citizen and a Japanese citizen by the court in Japan. We specify that the marriage document was concluded in Japan in accordance with the provisions of Japanese law.

By the application filed with Neamț County Court no. 1201 / C / 29.05.2006 the recognition of the foreign decision in Romania, pronounced in the matter of divorce in Japan, was requested, which declared the dissolution of the marriage between petitioner N. L and N.J. Japanese citizen.

Neamț County Court dismisses the action as unfounded.

Against this decision, N.L. filed an appeal to

Bacău Court of Appeal admits the action brought by the appellant

We will present the reasons for rejecting the action by Neamț District Court and the admission of the action by Bacău Court of Appeal.

Keywords:

recognition of the foreign decision in Romania; the law of the place of conclusion of the marriage, the divorce document, Neamț County Court Romania, the Court of Appeal Bacău, Romania.

By the application filed with Neamț County Court no. 1201 / C / 29.05.2006 the recognition of the foreign decision in Romania, ruled in the matter of divorce in Japan, was requested, which declared the dissolution of the marriage between petitioner N. L and N.J. Japanese citizen.

The reasons for the action are:

1. the marriage concluded in Tokyo on 6/05/2004 with Japanese citizen N.J., a marriage certificate being issued;

¹ Sentința civilă nr.316/21 iunie 2006 pronunțată de Tribunalul Neamț în dosarul nr.1201/2006 de pe site-ul: <https://legeaz.net/spete-civil-3/raport-de-drept-internaional-1cq>

² PhD Univ. Prof. Faculty of Law, Social and Political Sciences, Dunărea de Jos University, Galați, Romania e-mail: nadia.anitei@ugal.ro; ncerasela@yahoo.com

2. the divorce ruling pronounced by the Tokyo court;
3. the excerpt from the Family Register which mentions the registration of the marriage, the acquirement of the spouse's name and the dissolution of the marriage.

Petitioner N L requests the admission of the application because it has a legitimate interest in the matter of the recognition of the marriage in Romania concluded with the Japanese citizen N.J. in Japan as well as in terms of regaining the name before marriage, namely that of B.

In law, the petitioner based its action was based on the provisions of Articles 165, 166 of Law 105/1992.

The petitioner filed as evidence: the copy and the original of the family register, the marriage certificate registered with the Embassy of Romania in Japan under no. 2017 of 13/04/2006, the copy of the identity document.

Neamț County Court dismisses the action as unfounded for the following reasons:

1. The foreign decision under Article 165 of Law 105/1992 shall mean "*acts of jurisdiction of the courts, notaries or any competent authorities of another State*". The document of jurisdiction must be the result of settling the conflicts occurred between natural or legal persons, by applying the law, by the competent institutions.
2. In the present case, the document the recognition of which was sought is a family register issued on 28/04/2005 and signed by the Mayor of Kita-Ku District Tokyo, dated 06/05/2004 on the occasion of the relocation of the former NJ husband to another address, from another district.
3. The document referred to in the above paragraph is no judicial in nature, the fact that it bears the mention of the marriage dissolution not conferring it that quality.
4. The petitioner must formulate a new action in which it will submit the court decision by which the marriage was dissolved, according to the law.

Neamț County Court dismisses the action as unfounded.

Against this decision, N.L. filed an appeal to stated in the reasoning the following: The trial court misapplied the provisions of Article 165 of the Law no. 105/1992, since the divorce document in Japan fulfils the requirements stipulated in Article 165 of this law

The appeal is considered to be based on the provisions of Article 167 of the Law no. 105/1992 "*Foreign decisions are fully recognized in Romania if they refer to the civil status of the citizens of the state where they have been ruled or if, while being ruled in a third state, were first recognized in the State of Citizenship of each Party.*"

Bacău Court of Appeal admits the action brought by the appellant

In conclusion, by means of the concept of foreign decisions, the legislator considered and considers not only court rulings and arbitration awards, but also the notary documents as well as the documents of other authorities in another state of a judicial nature.

Considering that N.L. Romanian citizen married the Japanese citizen NJ in Japan in accordance with Japanese law and the divorce was pronounced in Japan in compliance with the Japanese legislation proved by the divorce document issued by the mayor at the seat of the conclusion of marriage one can notice that the provisions of Article 161 of Law 105/1992 are observed, which provides: "*The means of evidence for proving a legal document and the proving power of the document which it finds are those provided by the law of the place of the conclusion of the legal document or by the law chosen by the parties, if they were entitled to choose it. (paragraph 1) The evidence of the deeds is performed according to the law of the place where they occurred. 9 paragraph 2) However, the Romanian law shall be applicable if it admits other means of evidence than those provided for by the laws referred to in paragraphs 1 and 2. The Romanian law is also applicable if it admits the evidence with witnesses and presumptions of the court, even if such evidence is not admissible under foreign law. 9 paragraph 3) The evidence of civil status and the proving power of civil status documents are governed by the law of the place where the invoked document was drawn up. (paragraph 4) The administration of evidence shall be in accordance with Romanian law (paragraph 5) "*

Thus, it is established that the requirements of Article 165 of the Law no. 105/1992 are met and the foreign decision ruled in the matter of divorce in Japan can be recognized in Romania.