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LIMITE

JUSTCIV 105

N O T E

from : the Dutch Presidency

to : Working Party on the "Extension of the Brussels Convention"

Subject: Draft Convention on jurisdiction, recognition and the enforcement of judgments in matrimonial matters

Delegations will find herewith a text of several Articles of the draft Convention, proposed by the Dutch Presidency, for purposes of discussions at the Working Party.

TITLE III ⁽¹⁾

Recognition and enforcement

(...)

SECTION 1

Recognition

Article 14

1. A judgment relating to a divorce, legal separation or annulment of marriage, given in a Member State be recognized in the other Member States without any special being required.
2. Any interested party who raises the recognition of such judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a judgment that the judgment be [or not be] recognized.
3. Where the recognition of such judgment is raised as an incidental issue before a court or other authority of a Member State that court shall have jurisdiction over that question. In this paragraph, the reference to a court means a court or authority of a competent jurisdiction as defined in the internal law of a Member State concerned.
4. A party seeking recognition of such judgment shall produce :
 - a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity, and
 - b) documents which establish that, according to the law of origin, the judgment is legally effective [, or
 - c) a document which establishes that the judgment has been duly registered, if the Member State of its origin has made a declaration under Article XX]. ⁽²⁾

⁽¹⁾ For sake of a clear discussion of the recognition and enforcement of judgments for a divorce, judicial separation or annulment of marriage and of a decision on the exercise of parental responsibility, Articles 14 to .. are structures in such way that each Article in its "bis" provision envisages the situation as far as decisions on parental responsibility are concerned.

⁽²⁾ According to Dutch law, a divorce judgment is only effective on registration of the divorce judgment in the public register of marriages and divorces.

If the court or authority so requires, a translation of the judgment and the documents referred to shall be produced; the translation shall be certified by a person qualified to do so in one of the Member States.

Articles 14 bis

1. A judgment in relation to parental authority taken by the authorities of a Member State shall be recognized by operation of law in all other Member States.
2. Any interested party who raises the recognition of such judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Section 2 and 3 of this Title, apply for a judgment that the judgment be [or not be] recognized.

Article 15

1. A judgment of divorce, legal separation or annulment of marriage shall not be recognized.
 - a) if such recognition is contrary to public policy in the Member State in which recognition is sought ;
 - b) where it was given in default of appearance, if the defendant was not duly served with a document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence [unless he indicates he is in agreement with the judgement] ;
 - c) if the judgement is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought ;
 - d) if the judgment is irreconcilable with a earlier judgment given in a non-Member-State between the same parties, provided that this latter judgment fulfils the conditions for its recognition in the State addressed [unless the parties indicate they are in agreement with the judgment.]

Article 15 bis

1. Recognition of a judgment in relation to parental authority may be refused :
 - a) if the judgment was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II ;

- b) if the judgment was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard [in person or through an appropriate representative or body], in violation of fundamental principles of procedure of the requested State ;
- c) on the request of any person claiming that the judgment infringes his or her parental responsibility, if such measure was taken, except in case of urgency, without such person having been given an opportunity to be heard ;
- d) if such recognition is manifestly contrary to the public policy of the requested State, taking into account the best interests of the child ;
- e) if the judgment is incompatible with a later measure taken in the non-Member State of habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State ;
- f) if the judgment includes the placement of the child in a foster family or institutional care in another Member State, if that foster family or institutional care was not consulted prior to the judgment.

Article 16

1. Moreover, a judgment shall not be recognized in a case provided for in Article [45].
2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings on facts on which the court or authority of the Member State of origin based its jurisdiction.
3. Without prejudice to paragraph 1, the jurisdiction of the court or authority of the State of origin shall not be subject to review, the rules governing jurisdiction, laid down in Articles 2 to 7, do not concern the public policy provision of Article 15(1)(a) and Article 15 bis (1)(a).

[Article 16 bis]

Without prejudice to Article 15(1)(a) and Article 15 bis (1)(a), any interested person may request from the competent authority of a Member State that he decides on the recognition or non-recognition of a judgment given in another Member State. The procedure is governed by the law of the requested State.]

Article 17

[Without prejudice to such review as is necessary in the application of the preceding Articles] a foreign judgment may not be reviewed as to its substance. ⁽³⁾

SECTION 2

Article 21

(...)

3. [Unless the law of the State in which enforcement is sought provides otherwise,] the documents referred to in Articles 33 and 34 shall be attached to the application.

Article 22

(...)

3. [Without prejudice to such review as is necessary in the application of the preceding Articles] a foreign judgement may not be reviewed as to its substance. ⁽¹⁾

Article XX

On accession or at a later date a Member State, the internal law of which requires registration to give full effect to judgments relating to divorce, legal separation or annulment of marriage, may declare that such judgments of its courts may only be recognized after such registration.

⁽³⁾ Or : Under no circumstances may ...