46TH EUROPEAN PRESIDENTS' CONFERENCE – VIENNA INTERVIEWS

FRANCE REPORT

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1. The new procedure for divorce: by mutual consent using a private deed drawn up by a lawyer

Law n° 2016-1547 of November 2016 to modernise XXIst century justice enshrines divorce by mutual consent using a private deed drawn up by a lawyer. As of 1st January 2017, divorce by mutual consent is now established using a private deed countersigned by lawyers and registered with a notary. It is no longer necessary for the divorce settlement to be formalised by a judge.

Each spouse has his or her own lawyer, so as to secure their free and informed consent. The divorce settlement is drawn up by the lawyers of both spouses. It is then signed by the spouses and their lawyers, together. Once it has been signed, this settlement agreement, which determines the full terms of the settlement, is registered with a notary. This registration provides a specific date and makes the settlement enforceable by law.

Lawyers play a key role in this new divorce procedure by mutual consent: verification of the divorce agreement, which used to be carried out by a judge, is now handled by lawyers. They substantiate the spouses' wishes, verify that their consent is legitimate, protect the interests at stake and make sure that the settlement is balanced and compliant with public policy. In registering the divorce, the notary's only role is to carry out a purely formal verification of the validity of the agreement.

Both litigants and lawyers have eagerly turned to this new procedure, reducing the backlog of cases awaiting the family courts.

2. Modernisation of civil procedure and introduction of obligatory electronic communications before the high courts

Decree n° 2017-892 of 6 May 2017 established various measures to modernise and simplify civil procedure and was published in the Official Journal of the French Republic on 10 May 2017.

The decree contains various provisions which aim to modernise and simplify civil procedure. Among other things, it overhauls the legislation on challenges and recusal on grounds of bias, basing the changes on the code of criminal procedure. It also allows judges to raise a lapse in proceedings sua sponte, after inviting the parties to submit observations and lays out certain provisions regarding protective measures.

In oral proceedings, the decree introduces a framework for conclusions where all parties appearing in court provide a written account of their claims and pleas and are assisted or represented by a lawyer.

Furthermore, the decree simplifies the regulations applicable to international notifications. It creates a provision in the code of civil procedure which enables individuals living abroad to register their elected domicile in France with the court clerk, so that they may use this elected domicile to receive procedural documents, the decision rendered by the court and any appeals made.

It grants the High Court exclusive jurisdiction over international letters rogatory and establishes, in the Code of Judicial Organisation, that a judge shall be appointed to supervise the execution of these letters rogatory. It also makes it possible for international letters rogatory to be executed directly (notably via videoconference), in the case of letters rogatory which are executed under the framework of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil and Commercial Matters. The decree also modifies the procedural provisions regarding the wrongful removal of children in another country by clarifying the role of the public prosecutor in this area and by making it possible to apply to the family courts for the return of a child who has been wrongfully removed.

The decree also establishes lawyers' procedural deeds. Law n° 2016-1547 of 18 November 2016 to modernise XXIst century justice paved the way for participatory procedures in the pre-trial stage of litigation, and the decree specifies how the procedure is to be implemented. It sets out what parties are able to do using a lawyers' procedural deed: establish the facts; determine the points of law with which they intend to limit the debate, as long as these points of law relate to rights they enjoy free disposal of; agree on a channel to communicate their written submissions; use a specialist; designate a judicial conciliator or a mediator, *etc.*

The procedure enables parties assisted by their lawyers to exchange arguments and evidence before asking a judge to resolve their dispute. It also makes it possible for confidential negotiations and transactions to take place during this extra-judicial pre-trial phase.

This extra-judicial pre-trial phase allows part of the budget spent on justice to be reallocated, since the court does not get involved before the case is ready to be judged. The courts will thus be able to avoid the procedural issues which occur today due to the accumulation of formalities and binding deadlines.

The pre-trial phase which uses deeds countersigned by lawyers promotes the reaching of full or partial agreements to a greater extent than when the pre-trial phase takes place before a judge. This makes it possible to limit legal debate and makes the trial entirely focused on the parties concerned.

Lastly, the decree of 6 May 2017 makes electronic communications compulsory before the high court for litigation cases initiated after 1st September 2019.

3. Major reform to the civil appeal procedure

Decree n° 2017-891 of 6 May 2017 concerning challenges to jurisdiction and appeals in civil proceedings, published in the Official Journal of the French Republic on 10 May 2016, makes significant changes to appeal proceedings in civil cases.

This reform redefines the purpose of appeals, moving towards being a "means of reversing" a judgement. The aim of an appeal is no longer to overturn or annul a judgement but "attempts, by criticising the decision rendered by a court of first instance, to lead to it being overturned or annulled by the court of appeal" (Article 542 of the Code of Civil Procedure).

The decree removes the possibility of a general appeal by obliging the appellant to detail, within the statement of appeal, the specific points of the decision that are being criticised, unless the appeal aims to have the judgement ruled as null or indivisible (Article 901 of the Code of Civil Procedure, AMDT).

The devolutive effect of the appeal is limited: the decree now only requires that a new decision be reached, de facto and de jure, within the limits defined (Article 561 Code of Civil Procedure). The decree affirms the principle that the points of decision that the appeal should refer to the court are those the appeal specifically criticises, or which depend on them (Article 562 Code of Civil Procedure).

The decree bestows appeals with the principle of narrowing down the claims and means as early as the first conclusions. Pursuant to New Article 910-4 of the Code of Civil Procedure, paragraph one, "to be accepted, as raised by the court by its own motion, the parties must present, as soon as the conclusions mentioned in Articles 905-2 and 908 to 910 are reached, their full substantiated claims."

Claims which are new in relation to the first instance are still allowed, so as to avoid counter claims which aim to respond to conclusions or to the documents produced by the opposing party or to force a judgement of questions that arise after the first conclusions from the intervention of a third party, or the occurrence or revelation of a new fact. These new claims must be reported in the conclusions (Article 910-4 of the Code of Civil Procedure, paragraph 2). The formal presentation of the appeal's findings is also regulated (Articles 954 and 961 of the Code of Civil Procedure AMDT).

New article 904-1 of the decree establishes two new procedures so that the case may be judged in the shortest delay (Article 905 of the Code of Civil Procedure) or so that a pre-trial advisor may be requested. This emergency procedure may now be applied to appeals for interim orders and is subject to short binding deadlines (Article 905-1, 905-2 of the Code of Civil Procedure).

4. Publication of the implementing decrees relating to multi-professional companies (SPE)

The implementing decrees for ordinance n°2016-394 of 31 March 2016 relating to Multi-Professional Companies (*Société pluri-professionnelle d'exercice* or S.P.E.), as authorised by the law of 6 August 2015 for Growth, Activity and Equality of Economic Opportunities, were adopted on 5 May 2017.

The multi-professional company – which exists to allow professionals from multiple fields, namely lawyers, lawyers to the Council of State and the Court of Cassation, court bailiffs, judicial auctioneers, notaries, official receivers, insolvency practitioners, patent attorneys and certified accountants to practice their professions in collaboration – is now one of the frameworks that lawyers can use for their practice.

Decree n°2017-794 lays out the general rules on the creation, workings and liquidation of multi-professional Companies. A second decree, n°2017-795[1], is intended to facilitate the transformation of private professional companies (*Société civile professionnelle* or SCP) into multi-professional companies and the participation of a private professional company in the creation of a multi-professional company. Lastly, the six decrees n°2017-796 to 2017-801 complete the framework profession by profession.

[1] Decree n° 2017-795, 5 May 2017 implementing Article 27 of law n° 66-879 of 29 November 1966 and determining the majority required to turn a professional civil partnership into a multi-professional company or for a professional civil partnership to participate in the creation of such a company, *Official Journal of the French Republic,* 8 May, text n°31.

In addition to these regulatory provisions, multi-professional companies are governed by articles 31-3 to 31-12 of law n°90-1258 of 31 December 1990, which derive from Article 3 of the implementing degree of 31 March 2016, notably with regard to professional independence, the prevention of conflicts of interest, the respect of professional secrecy and client information.

Thus, in accordance with the legislator's wishes, law professionals and accountants can create *one stop shops* to provide their clients with inter-professional services.

5. The removal of the principle of exclusive practice

Decree n°2016-878 of 29 June 2016 removed the requirement that the partners of private practice firms (sociétés d'exercice libéral), limited liability companies (Société à responsabilité limité or S.A.R.L.), Simplified Joint-Stock Companies (Société par actions simplifiée or S.A.S.), Anonymous Companies (Société anonyme or S.A.), or societas europaea operate within a single firm. Decrees n° 2017-795 and n° 2017-801 of 5 May 2017 made it possible for the partners of professional civil partnerships and lawyers' associations to work for more than one firm.

In a ruling on 5 July 2017, the Council of State rejected an annulment appeal on grounds of misuse of power in violation of the provisions of the decree of 29 June 2016, and underlined that "though the provisions of Article 7 of the law of 31 December 1971 provide an exhaustive list of the frameworks under which a lawyer may practice his or her profession, neither these provisions nor those of the law of 31 December 1990 forbid the partner in a private practice firm (société d'exercice liberal) from practicing the legal profession using several of the frameworks listed in Article 7".

Hence it is now possible for a lawyer to combine several of the frameworks for practice that are laid down in Article 7 of the law of 31 December 1971, specifically by being a member of multiple lawyers' associations or law firms, including a multi-professional company.

The French National Bar Council holds that this new possibility does not call the regulations concerning representation, as set out in Article 8 of the law of 31 December 1971, into question. Furthermore, it has stressed that the possibility of practicing in multiple organisations is not intended to call the existing organisational principles for bars into question, and nor does it do so in reality. As a matter of principle, lawyers are natural persons and remain registered with a single French bar.

6. Lobbying activities and a compulsory transparency register

Law Sapin 2 of 9 December 2016 defines the interest representative as a person whose main or regular activity is to influence public decision-making, particularly in terms of the content of a law or a regulatory act, by entering into communication with public officials: the president of the Republic, the government, parliament, central and decentralised administration, independent administrative authorities, local politicians and local civil servants.

Interest representatives are now required to be registered in the digital directory of interest representatives maintained by the High Authority for Transparency in Public Life (HATVP), respect an ethical code (defined by the legislator and, for matters which concern them, the Senate

and the National Assembly) and declare the content of their interest representation activities to the HATVP on an annual basis.

These obligations, as well as the powers of the High Authority, were defined by Decree n° 2017-867 of 9 May 2017 on the digital directory of interest representatives, which takes note of the specificity of the legal profession.

In this context, if the High Authority makes checks on site in a law firm, these may only be carried out in the presence of the president of the bar that the lawyer is a member of, or the bar president's delegate, with written notice at least three days prior to the visit. It is possible to request that a judge suspend or terminate the visit. If this procedure is not respected, the lawyer has the right to oppose the checks carried out by the High Authority.

Similarly, regarding requests for information or documents to be transmitted, the bar president serves as a filter. It should not be forgotten that the National Rules of Procedure (RIN) of the legal profession provides a declaration for those lawyers concerned. Article 6.3.2 states that "*A lawyer serving as an interest representative for European or international public institutions or administrations must, where appropriate and after informing his or her clients, record their identity and fees charged for this task, specifically, in the relevant register. The fees charged for this task must use a separate convention and invoicing from any other task or service carried out on behalf of a single client*".

Certain interest representatives transmit information to the HATVP when they first appear on the register and update the information on a monthly basis. Others declare information as part of their annual activity report.

7. Partial access to the legal profession

Decree n° 2017-1370 on partial access to the legal profession in France for nationals of EU member states who gained their qualification in another member state was published in the Official Journal of the French Republic on 20 September 2017.

This decree concludes the transposition of the provisions of directive 2005/36/CE as amended by directive 2013/55/UE, under which a national of an EU member state should be permitted entry to one or several activities which form part of a regulated profession in the receiving state, being already qualified for this profession in his or her state of origin. The decree also supplements implementing decree n° 2016-1809 of 22 December 2016 and authorises a certain number of professionals to gain partial access to the legal profession, meaning that they may carry out legal consulting and draw up private deeds.

Requests for partial access to the legal profession are addressed to the Minister of Justice, via the internet through the website of the Ministry of Justice, accompanied by the documents listed in the decree. If a request is incomplete, the individual making the request must produce the required documents within a month of receipt of request for further information sent by the Minister of Justice. The request for partial access expires if this delay is not met.

The Minister of Justice adjudicates on the request by reasoned decision, which is notified by registered mail with a return receipt requested or by any other means by which it is possible to verify that the decision has been received and confirm the date of reception. This decision states whether the individual making the request will have to take an aptitude test. The programme and

detailed application of the aptitude test are set by the Minister of Justice after consultation with the French National Bar Council.

The decree also lays down the grounds and procedure for the withdrawal of the authorisation.

8. A national examination for entry to bar schools (CRFPA)

On 18 October 2016, the decree and ordinance to reform the entry examination to bar professional training courses (CRFPA) were published in the Official Journal of the French Republic.

As called for by the legal profession through the French National Bar Council resolution of 16 June 2012, the examination organised by universities is now more focused on the skills expected of lawyers. Each of the written examinations provided by the various Institutes of Legal Studies (Instituts d'études judiciaries or IEJ) are scheduled to take place at the same time and cover the same topic, as determined by a national commission whose role it is to harmonise the marking criteria.

This commission, whose secretariat is carried out by the French National Bar Council, is made up of four lawyers and four academics.

The reform will make it possible to better identify candidates who possess the skills which are essential for the legal profession, as well as standardising entry procedures for bar professional training courses and thus providing more equal opportunities. 8500 candidates took this exam in 2017.

9. End of the state of emergency and the perpetuation of exceptional provisions

The law to reinforce domestic security and the fight again terrorism was published on 31 October 2017.

The law made it possible for the state of emergency, which had been decreed on 13 November 2015 and later renewed, to be brought to an end. To do so, it enshrines adapted versions of certain prerogatives of the state of emergency in ordinary law.

The new legislation allows prefects and representatives of the state to establish a security perimeter at a place or event which is exposed to the risk of terrorist acts because of its nature or the number of people who frequent it. The searching of individuals, their luggage and their vehicles will be authorised within this perimeter.

The text also allows the closure of places of worship which diffuse ideas that incite violence, hate, discrimination or acts of terrorism or which defend such acts.

The most sensitive provisions of the law concern the possibility, at any time, for the administrative authority to impose house arrest and to search property. "Visits and seizures" will replace administrative searches and will be authorised by the liberty and custody judge.

Lastly, the surveillance of microwave communications and the perimeter of administrative authorisation of border identity checks have been enlarged.

The French National Bar Council has spoken on many occasions to denounce the perpetuation of a state of emergency which discards the intervention of a judge and only carries out the judicial review of administrative measures in retrospect.