

marriage of a divorced Spanish national and, in another,¹⁰ the foreign marriage of a Spanish national to a divorced foreigner.

As even the establishment of bona fide domicile in the divorce-granting jurisdiction by one, or even both of the parties would not result in recognition of the divorce by the Spanish tribunal, Mexican bilateral divorce decrees of the type recognized as valid in New York by the Rosenstiel and Wood cases¹¹ would similarly be denied recognition by Spain.

¹⁰ *Tribunal Supremo*, Decision of May 12, 1944; Cf. MIAJA DE LA MUELA; *op. cit.* p. 296; ARJONA, *DERECHO INTERNACIONAL PRIVADO* 266 (1954).

¹¹ 16 N.Y. 2d 64 (1965).

SWEDEN AND OTHER NORDIC COUNTRIES

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Divorce by Common Consent

Domiciliaries of the Nordic countries who wish to dissolve a discordant marriage have scant reason to seek a foreign forum to obtain a divorce by common consent. In sharp contradistinction to the laws of many other political units, for example, Great Britain and the State of New York, substantive divorce rules in Denmark, Finland, Iceland, Norway, and Sweden authorize the dissolution of a marriage in virtually any case in which the spouses concur in a desire to terminate their union.¹

The procedure specified in the Swedish Marriage Code for a common consent divorce is inexpensive and notable for its simplicity; similar procedures are available in the other Nordic countries. First, the parties must appear together for an advisory consultation before a mediator—their parish minister or an appointed secular mediator.²

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¹ See Schmidt & Strömholm, *Legal Values in Modern Sweden* 43-47 (1965); Schmidt, "The 'Leniency' of the Scandinavian Divorce Laws," in 7 *Scandinavian Studies in Law* 107 (1963).

² Swedish Marriage Code 14:1, 15:7 (the mediator may be a minister of the Swedish state church, a leader of another religious congregation, an appointee of the court, or an official commissioned to serve as community mediator).

If a reconciliation is not effected following this consultation, a joint written application for separation may be presented to the competent court.³ The petition must recite that mediation has occurred and that "by reason of profound and enduring discord [the petitioners] are unable to continue living together."⁴ On the basis of the written application, separation may be decreed forthwith by a single judge.⁵ The spouses need not appear in court, nor is any evidence required other than the joint assertion of the petitioners concerning marital discord and a statement attesting to their consultation before a mediator. If the petitioners live apart from each other for a year from the issuance of the separation decree, either of them is entitled to obtain a decree of divorce.⁶ As in the case of the separation decree, the divorce decree may issue on the basis of a joint written submission; appearance in court is not required.⁷

Recognition of Foreign Matrimonial Judgments⁸

In Sweden, an express statutory provision governs the recognition of a divorce or separation decreed by a foreign court in a case in which

³ *I.e.*, the court for the district in which either spouse is domiciled or, if neither spouse is domiciled in Sweden, the court for the district in which the parties last shared a common domicile. Swedish Marriage Code 15:4 (also designating as subsidiary forums plaintiff's domicile and Stockholm's court of general original jurisdiction, in that order). See Ginsburg & Bruzelius, *Civil Procedure in Sweden* 167, 191 (1965).

⁴ Swedish Marriage Code 11:1, 15:7.

⁵ Swedish Marriage Code 15:5. If the spouses have lived apart for at least three years an immediate divorce may be decreed on the ground of "profound and enduring discord." Swedish Marriage Code 15:4.

⁶ Swedish Marriage Code 11:3. Grounds for immediate divorce are actual separation for three years, desertion for two years, bigamy, adultery, infection with venereal disease, severe ill-treatment, and insanity or imprisonment of either spouse for a specified period. See Swedish Marriage Code 11:4-13.

⁷ Swedish Marriage Code 15:5 (providing for a divorce decree on joint written submission "if the parties' presence is not found to be necessary for investigation of the case").

⁸ The text below refers exclusively to Swedish law. A Mexican bilateral divorce decree of the type involved in the *Rosenstiel* and *Wood* cases should present impediments to recognition in other Nordic countries similar to those presented in Sweden. However, it may be noted that while Finland and Sweden generally adhere to the principle of nationality in matters of private international law, Denmark, Iceland, and Norway accept the principle of domicile. See Philip, "The Scandinavian Conventions on Private International Law," 1959 *Recueil des Cours* I, 240, 262-74.

neither spouse is a citizen of the forum state. The statute prescribes that such decrees are entitled to recognition provided that the foreign court had competence, judged by Swedish rules, and that the ground supporting the decree would have justified a decree of the same kind under the law of the state of which the spouses are citizens.⁹

It is highly improbable that a Mexican bilateral divorce decree concerning parties who are not Mexican citizens would satisfy either of the statutory conditions. As to the first condition, under the determinative Swedish rules, competence to entertain a divorce or separation petition with respect to non-citizens exists only when the defendant spouse is domiciled in the forum state or when both spouses were domiciled in the forum state but the defendant abandoned the plaintiff or left the forum state after cause for divorce or separation arose.¹⁰ As to the second condition, presumably the parties would not take their marital discord on tour if they could obtain a divorce equally readily at home.

⁹ Law on Personal Status Cases with International Aspects, July 8, 1904, 3:5.

Special rules have been provided by convention for decrees rendered in another Nordic state separating or divorcing spouses who are citizens of any Nordic state. See Philip, *supra* note 8, at 293-97.

Decrees granting separation or divorce between citizens of the forum state are unconditionally recognized in Sweden. Law on Personal Status Cases with International Aspects, July 8, 1904, 3:4.

For the Swedish position on recognition of foreign judgments generally, see Ginsburg & Bruzelius, *Civil Procedure in Sweden* 386-92 (1965). See also Hambro, "Recognition and Enforcement of Foreign Judgments in the Nordic Countries," 1957 *Journal du Droit International* 908.

¹⁰ Law on Personal Status Cases with International Aspects, July 8, 1904, 3:1.

Legislation extending the relevant Swedish rules of competence has been proposed. On April 8, 1963 the expert legislative preparatory committee on family law recommended that Swedish courts be authorized to entertain the annulment, divorce, or separation petition of a non-citizen spouse residing in Sweden for a specified period without regard to the nationality or residence of the defendant spouse. Swedish substantive law would apply in such cases unless, with regard to the interest of the defendant spouse or the children, "special reason exists" for the application of foreign law. This extension of the competence of Swedish courts, if enacted, would probably be used as a standard for determining the competence of a foreign tribunal to grant an annulment, divorce, or separation with respect to non-citizen parties. However, the proposed legislation would not affect the status of the swift Mexican bilateral divorce decree. The petitioner before the Mexican court whose presence in the forum is highly temporary would fail to meet the requirement of actual residence in the forum state for the specified time period.