Topic 110

Right to Family Name in France and Common Law Countries

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"To change one's name is to change one's destiny"[1]

When spouses get divorced, are they always ready to change their names and thus accept this change of destiny?

During a separation, the couple's last name may become a source of some conflict; the family name, especially in long-term marriages, often anchors a party's identity.

Therefore, the issue of one spouse's right to keep the other spouse's family name after divorce may precipitate certain claims and sometimes become a central issue. Often, a spouse will wish to keep the same name as her children in order to preserve that link with them or to maintain name recognition in her profession. Conversely, the other party may wish to deny this right when the couple separates, sometimes punitively, in order to punish what he considers wrongful behavior during the marriage.

Under French law, spouses only obtain the "use" of the name when they get married.[2] In principle, this right is lost at the time of divorce. This rule is not universal in every country around the world, quite the contrary, in fact. In most common law countries, marriage leads to a true name change, which in principle is retained as of right when the couple divorces.

This dichotomy between French law, on one hand, and rules that exist in other countries, such as in common law countries, on the other hand (**part 1**), is likely to cause many practical difficulties (**part 2**), especially for French citizens when they need to renew identity documents.

Only by anticipating such questions beforehand, when the divorce is decreed abroad, can such difficulties to be avoided, even though a recent reform of French laws expands the possibility of mitigating such difficulties after a divorce is decreed (**part 3**).

1. The right to keep a spouse's name after divorce: French immutability vs. Anglo-Saxon liberalism

The French system for handling the issue of the surname at the time of marriage and, therefore, at the time of divorce is the opposite of the system that exists in English-speaking countries.

In France, a spouse does not change names when she or he gets married. Spouses keep their birth names and simply acquires the use of their spouse's name, a use which is, in principle, lost when they get divorced. Only a few exceptions allow spouses to keep their married names.

Conversely, in common law countries, spouses may change their names when they get married. Divorce, therefore, has no effect on this name unless, of course, a spouse wishes to go back to her or his birth name, which involves taking certain steps to that effect.

1.1. How surnames are handled in divorces under French law

1.1.1 Preliminary question of applicable law: a persistent uncertainty

When there is an international element, the first question to be asked is which conflict of laws rule applies. This issue is not currently governed by any European regulation. The fate of surnames is, in fact, explicitly excluded from the European Regulation referred to as "Rome III."[3]

Where no international agreement applies,[4] the difficulty of determining which law applies to the issue of the surname after divorce stems from the duality of the surname as an "element of individual identification as well as a sign of belonging to a family."[5]

Indeed, for some, the surname is subject to family institutions of which the name is merely an effect, while for others, the surname is detached from these institutions and must be handled separately.[6] Both doctrine and court decisions are thus divided between the application of personal law and the application of divorce law.

Application of personal law? – Personal law may be applicable according to some authors who emphasize that "the name remains first and foremost an element of the individual, especially since the attribution of a name is not the essence of marriage, but only one of its non-binding consequences."[7]

Thus, in a 2014 decision, the Court of Appeals of Paris[8] considered a wife's name to be governed by French law, "in accordance with the nationality of the party in question."

In an international context, applying each spouse's national law may, however, lead to complex effects when the spouses are of different nationalities because two different laws, sometimes with opposite effects, may be applied to the spouses.

Majority application of the law governing the divorce - On the basis of Article 309 of the French Civil Code, the doctrine extended the connecting factor provided for divorce to the use of surnames, indicating that the law that applies to the divorce "also applies to determining the effects on the spouses as individuals, whether it is a matter of the dissolution of the marriage itself or of the name of the divorced or separated woman."[9] Courts have also applied the law governing the divorce on the basis of Article 309 of the French Civil Code.[10]

For example, the Court of Appeals of Paris[11] decided that the divorce law that applied to claims related to the personal effects of a divorce and, in particular, to the name of the divorced spouses, also applied to determining the use of the name after the divorce: "Since it is established that, in the absence of an international agreement designating the law that applies to claims relating to surnames, the law governing the divorce also governs claims relating to the personal effects of the divorce and, in particular, to the names of the divorced spouses."

A disadvantage of applying the law governing the effects of the divorce is that the divorce law may not attach any effect on the name to the divorce, even when a joint name or customary name (*nom d'usage*) has been chosen or used by the spouses under the law governing the effects of the marriage. For this reason, some authors recommend that the law governing the effects of the marriage be applied.[12]

In conclusion, legal precedents are not homogeneous. Courts generally apply the law governing the effects of the divorce to the issue of the surname, although they sometimes prefer to apply the personal law of the spouse.

1.1.2 How French law is applied

Affirming the principle of the immutability of surnames and first names, the French Law of 6 Fructidor Year II prohibits individuals from taking any name other than the name to which they have a right based on their birth certificate or, more precisely, their ancestry.

Permission of the spouse or the court - Consistent with this principle, Article 264 of the French Civil Code sets forth the principle according to which, after a divorce, each spouse loses the use of the other spouse's surname. This principle does, however, come with some important exceptions. It is, in fact, possible to keep the name of one's ex-spouse in two situations: (i) with the ex-spouse's consent, or (ii) with the permission of the court, if the court finds that doing so would be of particular interest to the individual or the individual's children.

With regard to the ex-spouse's consent, it cannot be withdrawn without cause,[13] unless wrongful use can be demonstrated or unless the agreement provides for events that trigger withdrawal, for example, remarriage.[14]

With regard to the court's permission, it is subject to demonstration of a particular interest in keeping the spouse's name. In its determination of particular interest, the court will take factual criteria into account such as a reputation under the spouse's name, the length of time the name has been used, or the professional stakes involved in keeping the name.

In an international context, with regard to this "particular interest," it is worthwhile to mention a decision of the Court of Appeals of Aix-en-Provence[15] ruling on the divorce of two American spouses living in France. The wife argued, in support of a particular interest in

keeping her married name, that, in the United States, the wife always has the right to keep using her married name after divorce without the husband having any right to oppose it. The Court of Appeals stated, "This argument has no value since, as stated above, French law applies here." The French court therefore refused to consider the American rule, even as part of particular interest, thus denying the wife the possibility of keeping her last name.

Separate rule for a name that has become a business name – It may also happen that a name loses its personal or familial character, even in the event of divorce. For example, a judgment[16] states that the husband's name, which constitutes the logo of the wife's business, is part of the business assets, which are not subject to rules governing the names of the spouses. By authorizing the continued use of the disputed name as a business name in the absence of an agreement between the spouses, the court established the independence of the business name and the wife's acquisition of the name as property, which survives the divorce.[17]

Separate rule for titles of nobility – A title of nobility falls under a different rule than that of the surname;[18] the continued use of a surname does not automatically entail the continued use of a title.[19] Titles of nobility are inherited; therefore, "although the heir possesses a real title as absolute owner, the heir only possesses, by simple communication, a purely personal title,"[20] a title qualified as an accessory to the marriage. Titles of nobility are, in fact, transmitted according to the principles of noble customary law, and having the right to use the name of one's spouse does not thereby grant the beneficiary a right to acquire the spouse's title.[21]

Therefore, at the time of divorce, even a wife who is permitted to use her husband's name may not continue to bear his title without his consent.[22]

1.2 How surnames are handled in divorces in England and Wales

In these two countries, when a couple gets married, one spouse traditionally adopts the other's name, although it is possible to keep one's birth name or to create a compound name.

British marriage certificates indicate the names of the spouses prior to marriage and constitute proof if either spouse wishes to change her or his name to the other spouse's name[23]; it is therefore not necessary to complete the regular procedural formalities for changing one's name in the United Kingdom, i.e., the deed poll.[24]

After divorce, individuals may automatically continue to use their ex-spouse's name without the need to obtain either the other party's consent or permission from the court. A husband may not require his ex-wife to give up the use of his name in the divorce. Therefore, British divorce courts do not rule in the judgment on whether the family name will be kept, since it is an established right, unless the individual wishes to give it up.

Thus, individuals who wish to reclaim their birth name must provide a copy of their marriage certificate and divorce decree to the proper administrative agencies in order to change their name, bearing in mind that some organizations may require one to go through the deed poll procedure.

1.3 How surnames are handled in divorces in the United States

The rule in the United States is very similar to the rule in England and Wales, i.e., individuals keep the name of their ex-spouse after divorce. Spouses who wish to reclaim their birth name simply submit a petition the court to this effect.[25] Such a petition may be made during divorce proceedings or afterwards by seeking a modification of the divorce decree, or even entirely independently of the divorce proceedings in certain states.[26]

Therefore, when the divorce decree speaks to the issue of the family name, its purpose is to allow a spouse to reclaim her birth name (and sometimes even to use a new name).[27] In fact, once a former spouse has used the other spouse's name after the marriage has ended, she cannot regain her birth name unless express authorization is obtained in court.

One spouse may attempt to prevent the other from using his name after divorce, but to do so, he must also petition the court and the petition must be supported by sufficient grounds.[28] Historically, in the state of New York, in the event of a divorce where the wife was at fault, the husband could prevent her from continuing to use his name.[29] This option, which was considered "archaic," was later eliminated.

1.4 How surnames are handled in divorces in Canada

When a couple gets married, a spouse may either change her or his name to bear the name of the other spouse or keep her or his birth name while using the other spouse's name.[30] When a couple gets divorced, the wife may continue to use her married name without the need

to take any steps or go back to using her birth name. As in other common law countries, the husband's consent is not needed to continue to bear his name after divorce.

1.5 How surnames are handled in divorces in Australia

Likewise, spouses have a choice when getting divorced and may decide to keep their ex-spouse's name or go back to their birth name. Therefore, spouses have the right to keep their married names, even in the absence of the other party's consent and/or a court ruling, since the other spouse cannot prevent them from using it.[31]

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This comparative overview highlights the fundamental difference between French law and the laws of common law countries: while under French law, losing the use of one's ex-spouse's name is the norm and keeping it is the exception, the opposite is true in common law countries where ex-spouses have the right to keep or use the name without anyone being able to prevent them and even without the need for express permission.

This difference has a major practical consequence: foreign divorce judgments are not interested in the question of whether the surname will be kept and therefore do not speak to this issue.

What then happens to the surname when the issue must be addressed in France?

2. Practical difficulties in France resulting from the liberalism of common law countries and opportunities created by the new "Justice 21" law in France

2.1 Practical difficulties that arise when one returns to France

Practical difficulties in cases where foreign divorce decrees do not mention the issue of the name – Foreign divorce decrees that take an individual's right to retain the name of her or

his ex-spouse as a given, particularly in common law countries, often do not mention what is to become of the family name.

This raises many practical difficulties when a French wife, for example, who was divorced under a foreign law that automatically allows her to keep her married name, tries, sometimes years later, to renew her passport with her married name while she is divorced. French authorities argue that there is no mention in the divorce decree of her authorization to keep her married name. From a purely French point of view, such an authorization appears necessary, regardless of the fact that the divorce took place in another country under rules that are different from French legal rules.[32]

The divorced spouse thus finds herself in a Kafkaesque impasse.[33]

It will be impossible, after the divorce has been decreed, to obtain a decision authorizing the spouse to keep her ex-spouse's name. Since this solution is automatic and as of right, the foreign court, particularly after the divorce has taken place, cannot rule on the possibility of reclaiming her birth name.

One might imagine that a certificate of custom from the foreign lawyer describing the rule that applies in the country that ruled on the divorce and explaining that keeping one's name is not generally mentioned, would suffice. However, it is not certain that such a letter alone would be enough to convince French authorities, even if it were possible in every case to take legal measures in the event of refusal, of course.

Practical difficulties when foreign divorce decrees are not transcribed on French civil status documents – The issue of surnames also brings to mind certain French rules concerning the publication of divorce decrees under French law.

The French Code of Civil Procedure requires divorces to be recorded on each spouse's marriage certificate and divorce certificate.[34] As for the French Civil Code, it forbids a second marriage from taking place prior to the dissolution of the first marriage[35] and provides that the divorce decree or agreement is enforceable against third parties with respect to the spouse's property starting from the day on which the recording formalities prescribed by civil status rules have been accomplished.[36]

In its judgments, the Conseil d'État has decided that the effective date of foreign divorce decrees is not delayed until the date on which the decree is recorded on the marriage certificate or transcribed onto French civil status registers, since these two formalities do not influence the validity or enforceability of foreign judgments in France.[37] Furthermore, the Court of Cassation[38] has also ruled that a remarriage that has taken place on the basis of a foreign divorce decree not covered by exequatur is valid from the time it takes place, since matrimonial capacity derived from a divorce decree is acquired *ab initio,* as soon as it acquires the force of res judicata, and not when the French judgment of exequatur is pronounced.

The practice is, however, quite different with regard to the issue of transcription. In fact, in the case of remarriage in France, if the foreign divorce decree has not been transcribed on the birth certificate or even on the marriage certificate (in the case of foreign spouses residing in France), registrars will generally refuse to proceed with the marriage as long as these formalities have not been completed. One might consider an administrative appeal in such a case, but the time required for such appeals will often be incompatible with the constraints of organizing a wedding.

Inform and anticipate to mitigate such practical difficulties beforehand – Obviously, when informed of these potential difficulties in France, foreign colleagues should anticipate the issue and, insofar as possible, include the issue of the surname in the agreement or among the points on which the judge presiding over the divorce must rule. Indeed, it seems clear that, if a foreign divorce decree provides that a spouse may continue to bear the family name of her or his ex-spouse, there should be fewer practical difficulties even though, when completing formalities in France, the spouse will undoubtedly need to produce a sworn translation of the decision into French in addition to the foreign divorce decree.

The same applies to transcription formalities in France on French civil status records after obtaining a divorce decree, even in a foreign country. However, these French legal rules would need to be known, which is rarely the case.

2.2 Can the new procedure for recognizing a name change obtained abroad open up new opportunities?

French Law No. 2016-1547 of 18 November 2016 on modernizing justice in the 21st century, referred to as "Justice 21," modified name change procedures under French law. In particular, it inserted Article 61-4 into the Civil Code, which provides that "decisions regarding changes of first and last names which are properly acquired abroad shall be recorded on civil status records on the instructions of the Procureur de la République [attorney general or public prosecutor]."

For many centuries, foreign name change decisions regarding French citizens were considered unenforceable in France. Under the applicable French law, the principle of the immutability of one's name could only be set aside based on a decision of the French authorities. The law referred to above lifted this rule; Article 61-4 of the Civil Code grants the Procureur de la République the authority to verify the enforceability of foreign decisions regarding changes to first or last names.

However, this would be a true name change recorded on the birth certificate and not simply a "use" in accordance with current principles of French law at the time of divorce.

The procedure includes a verification of the enforceability of the foreign decision by the Procureur de la République ("decision" being understood in the broadest sense, which could be a judgment or another administrative or religious decision from the authority that issued it, provided that the authority is empowered to rule on the matter on behalf of the foreign country[39]).

Recognition of a name change obtained abroad at the time of divorce – Firstly, this name change recognition procedure may be considered possible in the case of a divorce decree that rules explicitly on the issue of the surname and indicates that, following the marriage, there was a name change that will be maintained even after divorce.

Furthermore, this text appears to allow for recognition of a name change obtained at the time of divorce through a simple declaration. Such declarations exist, in particular, under Russian and German law.[40]

Example – Paragraph 1355, section 5 of the German Civil Code, the Bürgerliches Gesetzbuch (BGB), provides that divorced spouses may, through a simple declaration to the civil registrar,

keep their married name (*Ehename*) and also have it preceded or followed by their birth name, or even reclaim their birth name. The BGB does not provide for a specific time limit to make this name change declaration.

The circular[41] published following the "Justice 21" reform appears, *a contrario*, to allow that such declarations made at the time of divorce may give rise to foreign name changes that may then be recognized in France provided that "such name changes based on a union or its dissolution constitute name changes that do not fall under Article 61-3-1 of the Civil Code. On the other hand, recognition of such foreign decisions falls under the jurisdiction of the Procureur de la République pursuant to the second paragraph of Article 61-4 of the Civil Code."

Recognition of a name change obtained abroad after divorce? – A more delicate issue is that of a decision obtained after divorce, for example, when practical difficulties appear. Would a name change decision obtained in such circumstances in another country be recognized?

It must be said that name change procedures, particularly in common law countries, are very flexible.

Examples – In the *United States*, outside of marriage or divorce, one may submit a name change petition to the Superior Court of the petitioner's county of residence. The accepted reasons vary from one state to another, but for some of the more flexible states, it is enough to show an absence of fraud or intention to commit an offense. If the court grants the petition, the judge signs a Decree Changing Name[42] allowing the beneficiary to change his or her name on all official documents (including the birth certificate).

In *England*, name changes may be done simply through the deed poll procedure. Any British citizen may change his or her name using this procedure and foreigners may use this procedure by providing proof of residence in Great Britain. The name change may be refused if the change is not sought or possible in the person's country of origin.[43]

One may therefore assume that it would be possible for divorced spouses who omitted the issue of the surname in the divorce decree to attempt to remedy this situation *a posteriori* by deciding to apply to change their name.

In such situations, will the criteria for recognition be met?

Criteria for recognizing a name change obtained abroad – The Procureur de la République verifies that the name change should be recognized based on the evaluation criteria of the ICCS convention,[44] where applicable: the petitioner must provide proof that the decision of the foreign administrative or judicial authority is final and that the petitioner is a citizen of the state that granted the name change. The Procureur de la République must then make sure the decision complies with French international public policy before ordering its publication in the civil status records.

In cases in which this agreement does not apply and in which there is no bilateral treaty, the *Cornelissen*[45] criteria should be applied, namely, (i) indirect jurisdiction of the foreign court, based on the connection of the case with the court that was seized, (ii) compliance with international public policy in both substance and procedure, and (iii) absence of fraud.

In the context of the European Union, a name change obtained in another Member State should, in principle, be recognized, unless there are compelling reasons not to do so. Indeed, the Court of Justice deemed German authorities' refusal to recognize the name of a German national who exercised his right of free movement and who also had British nationality, as determined in Great Britain (based on a Deed Poll declaration recorded by the Supreme Court of England and Wales), was likely to interfere with his rights under Article 21 of the TFEU.[46] It would therefore be possible to use this decision as grounds to obtain recognition of a judgment effecting a name change, even after divorce, provided that the procedure was proper in the European Union country in which it took place.

The issue of recognition and possible fraud will undoubtedly be more strictly evaluated when one is located outside the European Union, since the conditions for foreign name change procedures, as we have seen, can be flexible.

Fraud could be established in situations of ignorance of the applicable foreign rules or even more so in the case of maneuvers intended to evade the application of French rules. Fraud could also be established in the case of a French citizen who goes abroad in order to obtain a name change that could not have been obtained in France.[47]

Even though there is currently no legal precedent, one may assume that the Procureur de la République would more readily recognize a decision changing the name of a French national who resided in another country for a long time than one who got married abroad but lived in France throughout the couple's relationship. Conversely, the verification that the

Procureur de la République performs regarding the international legality of foreign decisions will be conducted more flexibly with regard to foreign nationals.

If, after completing the verification, the Procureur de la République determines that the foreign decision is not enforceable in France, he will notify the petitioner of his reasoned decision by mail and inform the petitioner of the option of contesting the ruling of unenforceability by having him summoned before the legal court through legal counsel.[48]

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Conclusion – The comparison of French rules to foreign ones, particularly from common law countries, highlights diametrically opposed notions of the issue of family names. Through their liberalism, common law countries leave more room for the will of each individual, who is free to choose her destiny at any time, including at the time of divorce.

Deprived of this freedom, spouses subject to French law may quickly find themselves locked into precarious solutions in which several names co-exist depending on the country involved and, therefore, several identities.

Anticipating the issue at the time of divorce will undoubtedly remain the best solution. This article also offers avenues for further reflection beyond anticipating the issue, avenues that remain uncertain, however…

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End Notes:

1. Quoting the author Marek Halter.

2. Under French law, both men and women have the right to use the other spouse's name and it is possible to use one's spouse's name as one's customary name (*nom d'usage*). In addition to his or her own surname, a spouse may choose to bear either the surname of his or her spouse or a double name made up of his or her own surname and the spouse's surname in whichever order the individual prefers. In the latter case, the two names are hyphenated.

3. Council Regulation (EU) No. 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, Article 1.2(d).

4. The issue of the surname may sometimes be governed by a bilateral treaty (on the Franco-Moroccan agreement of 10 August 1989, and application of the law governing the effects of divorce to names, see Cour d'appel [CA] [regional court of appeals] Paris, 1st ch., sect. C, 27 Feb. 2003, El Habchaoui: JurisData No. 2003-218111. – CA Paris, 1st ch., sect. C, 27 Nov. 2003, No. 2002/02194, Bakrim: JurisData No. 2003-231089. – CA Paris, 1st ch., sect. C, 19 Feb. 2004, Laktout: JurisData No. 2004-238499. – CA Paris, div. 3, ch. 4, 22 June 2017, No. 14/23315).

5. P. Hammje: Rép. internat. Dalloz, "Nom," 2018.

6. M. Scherrer, Le nom en droit international privé. Étude de droit comparé français et allemande, preface P. Lagarde: LGDJ, 2004 in JurisClasseur Droit international, fasc. 542: NOM, 17 July 2019, M. Farge, 12.

7. P. Hammje: Rep. internat. Dalloz, "Nom," 2018, No. 17.

8. CA Paris, 2 Dec. 2014, No. 13/19442.

9. Loussouarn, P. Bourel and P. de Vareilles-Sommières, No. 518. – See also Th. Vignal, No. 311. – D. Bureau and H. Muir Watt, Vol. II, No. 623 in JurisClasseur Droit international, fasc. 542: NOM, 17 July 2019, M. Farge No.103.

10. CA Paris, 22 June 2017, No. 14/23315; CA Paris 23 Nov. 2003 JurisData No. 2003-231089.

11. CA Paris, 23 Oct. 2014, No.13/05630 9.

12. JurisClasseur Droit international, fasc. 542: NOM, 17 July 2019, M. Farge, No. 103.

13. See, for example: A. Breton, "Le nom de l'épouse divorcée" Mél. R. Rodière, Dalloz, 1981, p. 17 in Dalloz référence, Droit et pratique du divorce, ch. 212 – Conséquences automatiques de la dissolution du mariage – Pierre-Jean Claux; Stéphane David – 2018-2019.

14. If no such mention is made in the agreement, the Court of Appeals regards remarriage as not automatically nullifying the agreement, but this issue has not been addressed by the Court of Cassation, CA Paris, 4 March 2004, RG No. 2003/00138.

15. CA Aix-en-Provence, 29 Nov. 2016, No. 2016/489.

16. Court of Appeals of Bordeaux, 14 June 1973, Defrénois 1973.30431 D.1974.166, Note H. Souleau; RTD civ. 1974.406, obs. Nerson.

17. Dalloz référence, Droit et pratique du divorce, ch. 212 – Conséquences automatiques de la dissolution du mariage – Pierre-Jean Claux; Stéphane David – 2018-2019.

18. Cour de cassation [Cass.] [supreme court for judicial matters] civ., 25 Oct. 1898: the same rules do not apply to the use of a title of nobility and a surname.

19. Répertoire de droit civil, *Divorce: conséquences*, Nicolas Dissaux, July 2017 (updated: July 2020).

20. V. De Sémainville, op. cit. p.643, in Divorce-Séparation de corps, *Usage du titre nobiliaire de son ex-mari par l'épouse divorcée non titrée*, commentary by Laurent Ruet – La Semaine Juridique Edition Générale No. 12, 20 March 1996, II 22605.

21. CA Caen, 26 June 2008, No. 07/02831.

22. Répertoire de droit civil, *Noblesse*, Pierre Berchon, Oct. 2013; CA Bourges, 24 Feb. 1998: JCP 1998. II. 10072, note Ruet; RTD civ. 1998.654, obs. Hauser: the judgment permitting the wife to continue using the name does not thereby give her the right to continue using the title of nobility, "duchess" in this case. Since the rules for transferring titles of nobility are different from those for family names, the Court of Appeals of Bourges supported its reasoning for the wife's loss of the title in this way.

23. Informative note: explanation of change of name in the United Kingdom; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594307/Name_change_-_English_April_2016.pdf

24.https://www.gov.uk/change-name-deed-poll#:~:text=A%20deed%20poll%20is%20a,and%20hyphens%2C%20or%20change%20spelling

25. https://family.findlaw.com/divorce/changing-your-name-after-divorce.html

26. In California, for example, divorced individuals may reclaim their birth names by submitting a request to the clerk of the Court that issued the divorce decree by filling out an Ex Parte Application for Restoration of Former Name After Entry of Judgment and Order (Family Law).

27. See, for example: New Jersey Statutes Annotated, 21:34-21 Resumption of name or assumption of any surname.

28. Horesta v. Horesta, 118 N.J. Super. 71, 286 A.2d 83 (Ch. 1971).

29. Blanc v. Blanc, 21 Misc. 268, 47 N.Y.S. 694 (Sup. Ct. N.Y. County 1897).

30.https://www.easynamechange.com/ca/divorce-separation-name-change/Divorce-Name-Options

31.https://justicefamilylawyers.com.au/child-custody/name-change-after-divorce/

32. As discussed above, French conflict of laws rules designate the law governing the effects of the divorce. However, in practice, one sees that in this situation, the administration actually applied the national law of the party involved and therefore there is a real practical difficulty connected to the lack of a clear definition of the law that applies to these issues.

33. Here we are assuming that the relationship between the ex-spouses is such that it is not possible to obtain, a posteriori, express consent regarding the name.

34. C. pr. civ. art. 1082.

35. C. civ. art. 147.

36. C. civ. art. 262.

37. Conseil d'Etat [highest administrative court], 24 Nov. 2006, No. 275527.

38. Civ. 28 Feb. 1860, Bulkley, S. 1860. 1. 210; DP 1860. 1. 57; Grands arrêts, op. cit., p. 30, No. 4.

39. Paragraph No. 582 of the general instruction on civil status.

40. As an illustration, cited in the circular of 26 July 2017, appendix 3-1, Article 28 of the Russian Federal Law of 15 November 1997 on civil status records provides that, at the time of recording a marriage, spouses may choose a common family name made up either of the name of one of the spouses or of their two names joined together. This chosen married name is recorded and indicated on the marriage certificate. After divorce, this law grants either spouse who wishes to change his or her name the option of either keeping the married name or going back to the name he or she had prior to the marriage.

41. Circular of 26 July 2017 presenting various provisions on individual and family law concerning Law No. 2016-1547 of 18 Nov. 2016 on modernizing justice in the 21st century NOR: JUSC1720438C.

42. See, for example, in California: https://www.courts.ca.gov/22489.htm.

43.https://deedpolloffice.com/change-name/who-can-change-their-name#nationality-restrictions

44. On 4 September 1958, along with various member states of the International Commission on Civil Status, France signed Convention No. 4 on Changes of Surnames and Forenames. This Convention, which was ratified by Austria, Spain, France, Italy, Luxembourg, the Netherlands, Portugal, Germany and Turkey, entered into force among these countries.

45. Civ 1, 20 Feb. 2007 No. 05-14082.

46. ECJ, 2 June 2016, case C-438/14, Bogendorff von Wolffersdorff. See also ECJ 8 June 2017, case C-541/15, Freitag: The Court of Justice decided that a person with dual German-Romanian citizenship could not be denied the right to choose the name that was legally attributed to him in Romania on the basis of his Romanian nationality (even if he was not regularly staying in Romania on the day he chose this option). However, the Court allows for the possibility that another Member State might escape the obligation of automatic recognition, but on the condition that other procedures effectively allow such recognition (i.e., without impossibility or excessive difficulties in practice).

47. JurisClasseur Droit international, fasc. 542: NOM, 17 July 2019, M. Farge, No. 198.

48. Circular of 26 July 2017, appendix 3-8.