

Love, Law and Borders: When marriage goes digital and divorce goes religious

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Location: Paraninfo del Cardenal Lorenzana, Toledo

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Speaker: Afonso (Justice of the Constitutional Court of Portugal)

Context: DiPr Talks – Toledo 2026

Subject Matter: Contemporary challenges of Private International Law (PIL) in the era of digital globalization and religious pluralism.

Introduction and Conceptual Framework

The seminar explores the resilience and adaptability of Private International Law (PIL) in the face of emerging social realities that challenge physical borders and traditional legal categories. The speaker put forward a fundamental premise: the classic institutions of PIL were designed for a world based on physical presence and secular foundations. However, today we face phenomena that blur these boundaries: the digitalization of legal acts and the recognition of religious-based legal systems within Western societies.

The objective of the seminar was to analyze whether current PIL tools are sufficient to guarantee legal certainty without sacrificing the fundamental rights of citizens operating across multiple jurisdictions simultaneously.

Block I: Marriage in the Cyberspace Era

This block focused on the validity of marriages celebrated via videoconference, analyzing the conflict between state formalism and the increasing autonomy of the parties will.

a) **The Golden Rule: *Lex Loci Celebrationis***

Traditionally, the form of marriage is governed by the law of the place where it is celebrated (*lex loci celebrationis*). This principle, found in Articles 49 and 50 of the Spanish Civil Code and within the Portuguese system, does not seek the law with the closest connection (which would typically be the couple's place of residence) but rather seeks to favor the validity of the act (*favor matrimonii*).

- **Implication:** If a couple from Toledo marries in Las Vegas before an Elvis impersonator, Spanish PIL recognizes the marriage because it respects the forms of the place of celebration, thus protecting the parties' expectations and the stability of their civil status.

b) The Utah State Phenomenon (USA)

The speaker provided an in-depth analysis of the Utah model, which allows for 100% digital marriages.

- **De-territorialized Jurisdiction:** Utah law establishes that a marriage is considered celebrated in its territory as long as the officiant and the registry are located there, regardless of the physical location of the spouses.
- **The "Presence" Conflict:** While Utah argues that digital presence is equivalent to physical presence for administrative purposes, some European countries require the bodily presence of both spouses before the authority. This creates a direct clash between a jurisdiction offering a "digital safe haven" and stricter national laws.

c) The Debate on Fraud of Law (*Fraude à la Loi*)

The discussion turned to whether choosing a digital jurisdiction to avoid national law requirements constitutes a fraud of law (Art. 12.4 of the Spanish Civil Code).

- **Traditional Perspective:** It could be argued that the spouses "manipulate" the connecting factor (the place of celebration) to circumvent the law of their habitual residence.
- **Evolutionary Perspective (Afonso):** The speaker emphasized that the desire for efficiency or technological convenience is not inherently illicit. If Utah law permits the marriage and the spouses consent freely, there is no violation of the essence of marriage, but rather an adaptation to modern times.

d) The IRN Doctrine (Portugal)

Afonso highlighted that the Institute of Registries and Notaries (IRN) in Portugal has validated these marriages. The conclusion is clear: there is no fraud of law simply by preferring the digital route. Party autonomy to choose the place of celebration is absolute, and the motivation (cost-saving, speed, or technological ease) is as legitimate as aesthetic or touristic motivations for a conventional wedding.

Block II: Religious Divorces and Fundamental Rights

The second block addressed the complex issue of recognizing divorces obtained before religious authorities in third countries, particularly when these involve non-judicial processes.

a) Limits of the Brussels II ter Regulation

The European Union framework is designed for the mutual recognition of decisions from public authorities (judges or officials). However, the regulation leaves "private" or religious divorces celebrated outside the EU in a legal vacuum. In the absence of a unified rule, courts must rely on national PIL rules and the public policy exception.

b) Sharia Divorce (Talaq) and the Control of Constitutionality

The case of unilateral divorces initiated by the husband (repudiation), common in Sharia-based systems, was analyzed.

- **The Public Policy Barrier (*Ordre Public*):** Public policy acts as an ethical-legal filter. A divorce that discriminates against a woman based on her gender or fails to allow her a proper defense violates the principle of equality (Art. 14 of the Spanish Constitution). Therefore, a European court cannot recognize a foreign decision that infringes upon human rights.
- **CJEU Case Law (Sahyouni Case):** This landmark ruling was cited, where the court determined that EU regulations do not mandate the recognition of divorces that have not been supervised by a public authority or are purely private. Legal control must be strict to prevent the "importation" of discrimination.

c) **Consequences: "Limping Civil Status" (*Estados Claudicantes*)**

The risk of refusing to recognize these divorces is the creation of "limping" situations: individuals who are divorced in their country of origin but remain legally married in Europe.

- **Practical Implication:** This prevents them from entering into a new marriage in Spain or Portugal (under penalty of bigamy) and generates conflicts regarding inheritance and pensions. PIL seeks solutions for these cases, but never at the cost of validating processes that ignore the dignity of women.

Conclusions and Future Proposals

The seminar concluded with three key reflections on the future direction of PIL:

1. **Functional Interpretation of the Law:** "Physical presence" must begin to be understood as "effective presence through telemetric means." The law cannot ignore that social life is already digital.
2. **Reinforced Protection:** The public policy exception remains the most valuable tool of PIL to protect democratic values against foreign legal systems that do not respect gender equality.
3. **Need for Harmonization:** There was a call for the creation of an international convention or an EU directive specifically regulating the effects of legal acts celebrated in "cloud jurisdictions" (like Utah) to prevent each EU country from applying different criteria, which only creates confusion for citizens.