



ECLI:NL:RBROT:2021:4377

Authority	Court of Appeal Rotterdam
Date of ruling	19-05-2021
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Case number	C/10/610991 / HA ZA 21-12
Judicial areas	Civil law
Specifics	First instance - single judge
Indication as to contents	

Competence incident. International competence. Common competence legislation. This case concerns a claim following wrongful act with the purpose of sentencing the defendant to cooperate towards the realisation of a divorce according to religious law. The Dutch Court has jurisdiction pursuant to article 6 introductory phrase and under e Dutch Civil Procedures Code, because claimant encounters the consequences of the defendant's refusal to cooperate towards the dissolution of the religious marriage.

Relevant sites Rechtspraak.nl

Ruling

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ruling

COURT OF APPEAL

Team handel en haven [trade and harbour]

case number / docket number: C/10/610991 / HA ZA 21-12

Ruling in incident of 19 May 2021

in the case of

[person A],

residing at [place of residence A].

claimant in the primary case,

defendant in the incident,

lawyer mr. B. Manawi at Delft,



versus

[person B],

residing at [place of residence B] ([municipality B]), [country B],

defendant in the primary case,

claimant in the incident,

lawyer mr. J. el Hannouche at Utrecht.

Hereinafter parties will be referred to as the wife and the husband.

1. The proceedings

1.1. The course of the proceedings is attested by:

- the writ of summons of 21 September 2020 with 12 Exhibits;
- the incidental statement of declining of jurisdiction;
- the incidental statement of defence with three Exhibits.

1.2. Ultimately ruling has been found in the incident.

2. The facts

2.1. On [date] the wife and the husband married at [place], Pakistan. Husband and wife did not marry for the civil registry in The Netherlands.

2.2. On 18 November 2010 the Court of Appeal Rotterdam pronounced the divorce between the husband and the wife. On 15 February 2011 the divorce was registered in the registered of the civil registry.

3. The dispute in the primary case

3.1. The wife claims that the Court rule, insofar as possible enforceable immediately:

I. to sentence the husband to cooperate towards realising the divorce of parties in accordance with Islamic law within three days after service of this ruling by appointing two witnesses who, together with the wife's two witnesses, at the imam [name imam] s/o [name 1] (also [name 2]) in Pakistan are to sign a written document to this effect; and to act and refrain from acting in such a way that



the dissolution of the religious marriage can be realised, at least that the Court orders such cooperation towards the dissolution of the religious marriage as justice may require;





- I. lays down with the sentence under I that the husband forfeits a penalty payment of € 1,000.- for each time that he is summoned and contravenes this sentence;
- II. sentences the husband to pay to the wife an amount of € 6,000.- concerning the Mahr;
- III. sentences the husband to return to the wife her personal jewellery and personal effects as described in Exhibits 7 and 8 on summons or to pay her an amount of € 34,141.48;
- IV. sentences the husband to pay to the wife a contribution towards her living expenses for the duration of three months, in accordance with Shiite law at the amount of the Dutch social assistance benefit for the norm of a single person;
- V. sentences the husband in the costs of these proceedings, as well as the subsequent costs and the costs of the civil imprisonment.

3.2. The wife motivated her claim by arguing that the Dutch divorce of the husband and the wife is not recognised in Pakistan, so that according to Islamic law she is not yet divorced. The husband refuses to cooperate towards the ratification of the talaq (repudiation), which would result in the dissolution of the marriage in accordance with Islamic law. The wife suffers damage because the marriage has not been dissolved in accordance with Islamic law and because of the husband's refusal to cooperate towards this dissolution.

4. The dispute in the incident

4.1. The husband claims that the Court rule, insofar as possible enforceable immediately:

primarily:

- a. to declare it is not entitled to receive disclosure of the claims submitted by the wife against the husband;
- b. to sentence the wife to increase the actual costs of this incident with the legal interest;
- c. to sentence the wife to pay the subsequent costs to be increased with the legal

interest;

in the alternative:

In case the Court would rule that it is competent that the Court will grant the husband a further term of twelve weeks to issue a statement of response.

4.2. The husband motivated this by arguing that Regulation nr 2201/2003 of the Council of 27 November 2003 concerning the competence and the recognition and enforcement of rulings in marriage cases and concerning parental responsibility and towards repeal of EU Regulation nr 1347/2000 (Brussels II Bis) do not apply now that the wife has based her claim on a wrongful act. However, the Court cannot derive jurisdiction from Article 7 section 2 of the EU Regulation nr 1215/2012 of the European Parliament and the Council of 12 December 2012 concerning the jurisdiction, the recognition and the enforcement of rulings in civil and trade cases (Brussels I Bis) now that the husband resides in Australia, a non-EU member state. This is because the husband is reproached because he does not cooperate towards proceedings in Pakistan, the place where the harmful event occurred within the meaning of Article 6 introductory phrase and under e Dutch Civil Procedures Code is no ground for jurisdiction of the Dutch Court.

4.3. The wife defends, with the purpose of repealing the husband's incidental claims with compensation of costs in the incident. She founds this on the fact that the harmful consequences of the husband's



refusal to cooperate towards the dissolution of the religious marriage occur in The Netherlands where the wife resides and which is the centre of her social life. Therefore, the Dutch Court has jurisdiction pursuant to Article 6 introductory phrase and under e Dutch Civil Procedures Code. In addition the Dutch Court can derive jurisdiction from Article 9 and under c Dutch Civil Procedures Code now that it is impossible for the wife to initiate proceedings outside of The Netherlands.

5. The evaluation in the incident

- 5.1. Firstly the Court pointed out that there is no claim in the primary case with the purpose of the dissolution of a religious marriage. There is a claim following wrongful act with the purpose to sentence the husband to cooperate towards the realisation of a divorce in accordance with religious law. Brussels II bis does not apply in this case. Because the husband, the defendant in the primary case, does not reside in an EU member state, the jurisdiction is settled on the grounds of national legislation pursuant to Article 6 first paragraph thereof Brussels I bis. The exceptions mentioned in this paragraph do not apply. Therefore the jurisdiction will be evaluated on the basis of national law.
- 5.2. Pursuant to Article 6 introductory phrase and under e Dutch Civil Procedures Code the Dutch Court has jurisdiction with respect to unions from wrongful act if the harmful event has occurred or can occur in The Netherlands. Article 6 Dutch Civil Procedures Code is (in part) based on supranational legislation (including Article 7 introductory phrase and paragraph 2 Brussels I Bis). The legislator envisaged that the Court would take as the source of inspiration this supranational legislation (and the explanation thereof by for example the (then) Court of Justice of the European Communities) (TK 26 855, nr. 3, p. 33) when interpreting Article 6 Dutch Civil Procedures Code.
- 5.3. The 'place where the harmful event has occurred or can occur' can be the place where the damage originated (in the literature also known as *Erfolgort*) as well as the place of the event that has causal connections to the damage (in the literature also known as *Handlungsort*), so that the husband according with the wife's choice can be called up for the Court of either the former or the latter place (Court of Justice EU 30 November 1976, ECLI:EU:C:1976:166 (*Kalimijnen*) and Court of Justice EU 5 June 2014, EU:C:2014:1318, (*Coty Germany*) between parties legal consideration 46).
- 5.4. It is not disputed between parties that the place of the event that caused the damage, the *Handlungsort*, is not situated in The Netherlands, now that the husband's cooperation can only be provided in Pakistan.
 - 5.4.1. With respect to the place where the damage occurred it follows from the jurisprudence of the European Court of Justice EU that this is the place where the damage stated by the wife actually occurred, that is to say the place where direct (as opposed to indirect) harmful consequences were felt (see for example the judgment-*CDC Hydrogen Peroxide*, EU:C:2015:335, legal consideration 52). However, this cannot be interpreted so widely that it includes every place where the harmful consequences can be felt of a fact that already caused actual harmful consequences elsewhere (see for example Court of Justice EU 10 September 2015, ECLI:EU:C:2015:574, (*Holterman Ferho Exploitatie*), legal consideration 78). However, the Court of the place of residence of the wife is competent if this is the place where the harmful consequences were felt directly.
 - 5.4.2. According to the husband the place where the damage originated is not situated in The Netherlands because it cannot be so that the place where the claimant in a dispute resides also created the competence of a Court. Moreover, Pakistan is also the place where the damage originated because it is there and not in The Netherlands where the wife runs the risk of persecution stated by her and the wife would not be able to remarry in Pakistan.
 - 5.4.3. The wife explained that the consequences of the husband's refusal to cooperate towards the dissolution of the religious marriage will be felt in The Netherlands now that the wife lives in The



Netherlands and experienced harmful consequences here. The wife explained that the consequence of the husband's refusal to dissolve the marriage with the wife is that the wife according to Pakistani and Islamic views remains captive in her - religious - (existing/continued) marriage. Because of this the wife cannot enter into a second marriage among other things and her freedom is restricted - here as well.

5.5. The Court is of the opinion that the Dutch Court has jurisdiction to receive disclosure of the dispute on the basis of Article 6 introductory phrase and under e Dutch Civil Procedures Code.

5.5.1. It has been stated undisputedly that the wife resides in The Netherlands and lives her life here. She stated that she cannot live her life here in the way she wants because she is still bound to a marriage the civil aspect of which has been dissolved. This restrained freedom brings (stated) risks and a (stated) violation of her person. At any rate these (stated) risks and this (stated) violation take place in The Netherlands *as well*. It is true that a general sense of discomfort is insufficient ground for the adoption of jurisdiction as the husband stated. However, the (stated) violation of the person (including the (stated) impossibility to enter into a new marriage) go beyond a general sense of discomfort. Such a (stated) violation can, in accordance with the view of the Court, result in a judgment that the *Erfolgort* is situated in The Netherlands for which reason the Dutch Court can be considered competent.

5.5.2. Insofar from the statements of the husband it should be understood that he is of the opinion that the wife abuses the law by submitting the dispute to the Dutch Court, this argument is rejected. The Court concludes from the statements made by the wife and from the divorce decree submitted by her that the wife has lived in The Netherlands during her entire life. For this reason this cannot be considered a case of forum shopping.

5.5.3. Whether the wife, by travelling to another country could render another Court (also) competent, is irrelevant in these proceedings. Not the competence of another Court has to be evaluated, but the competence of the Dutch Court. This competence has to be evaluated according to the situation at the time of the evaluation and the situation is that the wife is residing in The Netherlands.

5.5.4. Whether the husband actually commits a wrongful act and whether the wife actually encounters the consequences stated by her, are questions that have to be addressed in the primary case. The Court will not currently address these questions.

5.6. Therefore, the Court is of the opinion that the incidental claim has to be rejected.

5.7. In proceedings between previous spouses the litigation costs are usually compensated and the Court sees no reason to rule otherwise in this case.

5.8. The alternative incidental claim towards postponement of the submission of a statement of response of the husband has not been motivated at all and will be rejected.

6. The ruling

The court

in the incident

6.1. rejects the claim,



6.2. compensates the costs of the incident between parties in the sense that each party bears his or her own costs,

in the primary case

6.3. rules that the case will be put on the docket of **30 June 2021** for statement of response.

This ruling has been found by mr. drs. J. van den Bos and was pronounced in public on 19 May 2021.

3178/1407

