Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

The Recognition of a Religious Ahmadi Marriage in Belgium

Question(s) at stake:

Whether a religious Ahmadi marriage can be recognized in Belgium.

Outcome of the ruling:

Since there are legal consequences for an Ahmadi religious marriage in Pakistan, the Belgian court decided that the submitted marriage certificate passes the test of Article 47 of the Belgian Code of Private International Law. Hence, the marriage celebrated in Pakistan must be recognized in the Belgian legal order.

Topic(s):

- Foreign Laws, Decisions, Acts and Institutions
- Personal Status, Family and Inheritance

Keywords:

- Recognition
- Religious marriage

Tag(s):

- Ahmadi

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Country:

Belgium

Official citation:

Court of appeal of Antwerp, Judgement of 9 March 2021, P.20.1171.N/1 (Hof van beroep Antwerpen, 9 maart 2021, P.20.1171.N/1)

Link to the decision:

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ECLI:

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Date:

09 March 2021

Jurisdiction / Court / Chamber:

Court of appeal of Antwerp (Hof van beroep Antwerpen)

Remedy / Procedural stage:

Second instance

Previous stages:

- First instance: family court Antwerp (div. Antwerp) 24 April 2020 – *familierechtbank Antwerpen (afd. Antwerpen) 24 april 2020* (www.ipr.be).

Subsequent stages:

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Branches / Areas of law:

Private international law; Family law

Facts:

The male appellant, with Belgian and Pakistani nationality, and the female appellant, with Pakistani nationality, are both Ahmadis coming from Pakistan. They married in Pakistan in February 1992 in accordance with Ahmadi religious

rules and later had four children together. The husband moved to Belgium in 2004 and obtained Belgian nationality in 2016. In January 2017, the wife requested family reunification for herself and their two minor children.

While the visa was granted to the children, who now reside with their father in Belgium, the mother's visa request was refused. It was argued that their marriage was not valid since the Ahmadi marriage was not recognized by the Pakistani authorities. This meant, therefore, that the marriage could not be recognized in Belgium (for an analysis of a 2019 Brussels Family Court decision, see CUREDI012BE009).

In a new attempt to find a legal basis for family reunification, the couple brought their case to the family court, requesting the recognition of their Ahmadi marriage by Belgian authorities. On 24 April 2020, the Family Court of Antwerp declared their request admissible but ill-founded. In line with a previous decision of the Family Court of Brussels (CUREDI012BE009), the Family Court of Antwerp ruled that an Ahmadi religious marriage could not be recognized in Belgium because it was legally non-existent according to the law of the country where the marriage was celebrated, i.e., Pakistan, (*lex loci celebrationis)*. Recourse to an infringement of the public order cannot remediate this as the public policy exception enshrined in Article 27 of the Belgian Code of Private International Law can only be invoked to disregard foreign laws that violate the Belgian international public policy. In the words of the court: "What does not exist under foreign law cannot be recognized as such".

The appellants appealed against the decision of the family court. They argued – among other things – that:

- they are both Ahmadis, as their official records show, and the Ahmadi community is one of the most discriminated against and persecuted religious minorities in Pakistan;
- they cannot marry under the Pakistan Muslim Family Act of 1961 or the Special Marriage Act of 1872, so it is impossible for them to lawfully marry in

Pakistan;

- the Pakistani “National Database and Registration Authority” (NADRA) registers Ahmadi marriages, nonetheless, registration is often refused by regional authorities and

their marriage legally ‘exists’ in Pakistan as their marriage is explicitly or implicitly mentioned on the Family Registration Certificate, passport, and birth certificate of the children.

Ruling:

Although the marriage took place before the entry into force of the Belgian Code of Private International Law, the recognition of the marriage is governed by the Belgian Code of Private International Law (see Article 126, §2, para. 1 Belgian Code of PIL).

Article 27, §1 of the Belgian Code of Private International Law stipulates that a foreign authentic instrument is recognized by any authority in Belgium without the need for any procedure *if* the validity is established in accordance with the law applicable by virtue of the present statute. The applicable law to marriage is determined by the Articles 46 and 47 of the Belgian Code of Private International Law.

Following Article 46, para. 1 of the Belgian Code of Private International Law, the validity of the marriage for each spouse is governed by the law of the state they are a national of at the time of the marriage.

Article 47 of the Belgian Code of PIL stipulates that the formal requirements for the conclusion of a marriage are governed by the law of the state where the marriage is celebrated. That law determines if and according to which specific rules:

1. that state requires a declaration and publicity before the conclusion of the marriage;

2. that state requires the registration of the marriage act;
3. a marriage celebrated before a religious authority has a legal effect;
4. a marriage by proxy is possible.

Since both appellants only held Pakistani citizenship at the time of the marriage, the substantive and formal requirements must be assessed according to Pakistani law. The question in the present case is whether the Ahmadi religious marriage meets the requirements of Article 47 of the Belgian Code of PIL.

The appeal judge noted that “although Ahmadis cannot legally marry according to Pakistani law (Muslim Family Laws Ordinance or Special Marriage Act) and their religious community laws are not officially recognized in Pakistan, it should be pointed out that the Government of Pakistan does *de facto* accept the issued Ahmadi marriage certificates as proof of marriage”.

The judge also considered the following:

(1) The National Database and Registration Authority (NADRA) registered the appellants as spouses;

(2) Ahmadi marriage certificates are accepted for legalisation by the Pakistani Ministry of Foreign Affair. Here the appeal court briefly referred to a thematic report by the Dutch government;

(3) the appellants are referred to as spouses on their Pakistani passports; and

(4) their children’s birth certificates refer to their marriage.

Given the abovementioned considerations, the appeal judge decided that the Government of Pakistan recognizes – albeit implicitly – Ahmadi marriages and that these marriages have legal consequences in Pakistan – at least in the administrative practice. Consequently, the marriage, celebrated in 1992 in Pakistan, must be recognized in Belgium, too.

Main quotations on cultural or religious diversity:

With Regard to the Legal Status of the Ahmadi Religious Minority in Pakistan

“Ahmadis in Pakistan are considered non-Muslims since the constitutional amendment of 1974. The document from Cedoca, the study service of the Belgian Office of the Commissioner General for Refugees and Stateless Persons, illustrates the discrimination against Ahmadis in Pakistan at various levels.

With regard to marriage, [the study] states: ‘Ahmadis cannot marry on the basis of the Muslim Family Law Ordinance as a result of a constitutional amendment in 1974 declaring Ahmadis non-Muslims. Nor can they marry under the Special Marriage Act 1872. For this reason, the Ahmadis have issued their own regulations referred to as the Fiqah-e-Ahmadiyya. However, this has never been officially recognized in the Pakistani legal system.’” (p. 20)

“The fact that there is no legal framework on marriage for Ahmadis does not stop the Pakistani government from recognizing – albeit implicitly – Ahmadi marriages and does not stop these marriages from having legal consequences in Pakistan – at least in the administrative practice.

Although the marriage of the appellants was/could not be celebrated in accordance with the Pakistan Muslim Family Act of 1961 or the Special Marriage Act of 1872, the court believes that in these specific circumstances – here the implicit recognition of this marriage in the country of origin – the marriage certificate can also be recognized in the Belgian legal order. As Pakistan itself attaches consequences to the Ahmadi marriage, the court believes that the submitted marriage certificate passes the test of Article 47 of the Belgian Code of PIL.” (p. 21)

Main legal texts quoted in the decision:

- Articles 27, 46 and 47 Belgian Code of Private International Law (*Wetboek van Internationaal Privaatrecht*)

Cases cited in the decision:

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Commentary

The Recognition of a Religious Ahmadi Marriage in Belgium

In the past, both the Family Court of Brussels (18 November 2019 - CUREDI012BE009) and the Family Court of Antwerp (29 June 2017 and 24 April 2020, the latter being the contested decision) ruled that an Ahmadi religious marriage could not be recognized in Belgium as it was assumed that these marriages are legally non-existent in Pakistan. In all three cases, the applicants' claim that Pakistani law is discriminatory was not sufficient to obtain recognition. On 7 March 2021, the Court of Appeal decided that the presented Ahmadi marriage celebrated in Pakistan had to be recognized in Belgium without the need to refer to the right not to be discriminated against.

According to Article 27 Belgian Code of Private International Law, a foreign marriage can be recognized "by any authority in Belgium without the need for any procedure if the validity is established in accordance with the law applicable by virtue of the present statute and more specifically with due regard to Articles 18 and 21*.*" The requirement to establish the validity in accordance with the applicable law, the so-called "*contrôle de la loi applicable*" or "conflict-of-law test", implies a thorough assessment of the content of the foreign marriage certificate.

With regard to foreign marriages, a distinction must be made between the formal and substantive requirements. The formal validity of a foreign marriage certificate is determined by looking at the law of the state where the marriage took place (*lex loci celebrationis* – Article 47 of the Belgian Code of Private International Law). The substantive validity of a foreign marriage is established by looking at the national law of each of the spouses (Article 46 of the Belgian Code of Private International Law).

In this case, questions arose with regard to the formal validity of the marriage celebrated in Pakistan. In principle, a marriage celebrated by a competent foreign authority is considered valid. In the case of Ahmadi marriages, the question arises

whether marriages celebrated by an Ahmadi religious authority are considered valid by the Pakistani Government. As the first instance court, the Court of Appeal stated that it is undisputed that the Ahmadi administration has no competence to validly celebrate a marriage. Ahmadi law (Fiqah-e-Ahmadiyya) has never been recognized by the government of Pakistan. In addition, Ahmadis are – at least in Pakistan – not considered Muslims. This prevents them from getting married under the Muslim Family Laws Ordinance. In addition, they can also not get married in accordance with the Special Marriage Act of 1872. Consequently, in theory, Ahmadis cannot contract a valid marriage under Pakistani law. However, in practice, the situation appears to be less straightforward. In the discussed judgment, the court very accurately looked into the treatment of Ahmadi marriages in practice. Taking into account that Ahmadi marriages are recognized by the National Database and Registration Authority, can be legalized by the Pakistani Ministry of Foreign Affairs, and can serve as proof of paternity when children are born, the court of appeal decided that the Pakistani government – albeit implicitly – does recognize Ahmadi marriage. Consequently, the recognition of an Ahmadi marriage celebrated in Pakistan cannot be refused on the sole ground that Pakistani law does not allow these marriages.

This judgment illustrates the importance of conducting a thorough examination of the situation in the country of origin before ruling that a certain legal status (e.g., a religious marriage) is not legally valid in the country of origin.

Literature related to the main issue(s) at stake:

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