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

Recognition of Foreign Religious Marriages in the Netherlands

Question(s) at stake:

Whether the Dutch legal system recognizes the validity of an Ethiopian religious marriage.

Outcome of the ruling:

A religious marriage conducted in Ethiopia can be recognized as valid in the Netherlands, provided that it fulfills the requirements stipulated by Ethiopian family law for the solemnization of a marriage.

Topic(s):

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

Keywords:

- Marriage and partnership
- Religious marriage
- Situations created abroad
- Validity

Tag(s):

- Ethiopian marriage law
- Recognition of a religious marriage

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Official citation:

District Court The Hague, Judgement of 16 January 2019, Case nr. C/09/548540 / FA RK 18-1331 (Uitspraak Rechtbank Den Haag, 16 januari 2019)

Link to the decision:

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2019:420

ECLI:

ECLI:NL:RBDHA:2019:420

Date:

16 January 2019

Jurisdiction / Court / Chamber:

District Court of The Hague

Remedy / Procedural stage:

First instance

Previous stages:

/

Subsequent stages:

/

Branches / Areas of law:

Private international law; Family law; Marriage law

Facts:

The parties, both of Eritrean nationals, concluded their religious marriage in an orthodox church in Ethiopia in accordance with ecclesiastical law. During their

marriage, two children were born. At the time of the ruling, the two children were living with the woman. The parties lived together for ten months following their marriage, after which the woman moved to the Netherlands.

The woman has file for divorce before the District Court of The Hague in the Netherlands. The man has submitted a *referteverklaring*, a document stating that he does not oppose the divorce.

Ruling:

According to Article 10:33 of the Dutch Civil Code (DCC), to assess the eligibility of the parties for divorce, the court is required to first determine the validity of the marriage between the parties. Article 10:31 DCC provides that a marriage contracted outside the Netherlands can be recognized as valid in the Netherlands if it is valid under the law of the state where it took place or if it became valid afterwards according to the law of the State in question.

Therefore, the District Court refers to the Ethiopian Revised Family Code, which regulates family law in Ethiopia. This Ethiopian Code recognizes civil, religious, and traditional marriages.

In the present case, the parties concluded a religious marriage. According to Article 28 of the Ethiopian Family law, all marriages must be registered at the civil register of the place where the marriage was concluded. Although the parties did not possess such proof, Article 96 of the Revised Family Code allows for the presumption of a marriage's existence if a man and woman consider themselves to be husband and wife, if they live together, and if their family and community view them as such. Subsequently, Article 97 of the Revised Family Code states that if a marriage can be demonstrated according to Article 96 of the Revised Family Code, the court may presume its occurrence.

Taking into account i) the ecclesiastical deed, stating the date of the marriage, provided for by the woman, ii) the report of an interview conducted by the Immigration and Naturalisation Department (IND), in which the woman claimed the religious marriage was concluded and that the partners lived together for approximately ten months, and iii) the response declining to contest a divorce

petition by the man (*referteverklaring*), the Court concludes that the religious marriage of the parties can be presumed to exist under the Revised Family Code. As such, the marriage can be recognized in the Netherlands on the basis of Article 10:31 of the DCC.

Furthermore, the Court acknowledges that neither of the parties contested that "the marriage has irretrievably broken down", a requirement for a divorce under Article 1:154 of the DCC. Therefore, the divorce can be granted to the parties.

Main quotations on cultural or religious diversity:

- "The fundamental principle, as stipulated by Article 10:31 of the Dutch Civil Code, entails that a marriage contracted outside the Netherlands is recognised in the Netherlands if it is legally valid according to the law of the state where the marriage took place or became legally valid afterwards (paragraph 1 of Article 10:31 of the Dutch Civil Code). Paragraph 4 of this article contains a presumption of legal validity: a marriage is presumed to be legal if a declaration to that effect is issued by a competent authority."
- "According to the submitted documents, the parties entered into a marriage in Ethiopia in accordance with ecclesiastical law. The woman has provided the ecclesiastical marriage certificate. In Ethiopia, marriage is regulated by the Ethiopian Family Law (the Revised Family Code). Ethiopia recognizes civil, religious, and traditional marriages. The parties here have entered into a religious marriage. As far as the Court has been able to ascertain, the parties have met the requirements of Ethiopian law for a religious marriage."

Main legal texts quoted in the decision:

Domestic law

- Dutch Civil Code (DCC), Articles 10:31 and 10:33

Ethiopian family law

- Ethiopian Revised Family Code, Articles 3, 28, 96, and 97

Cases cited in the decision:

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Commentary

Recognition of Foreign Religious Marriages in the Netherlands

Dutch courts are frequently confronted with, and have to assess, all kinds of foreign marriages that originate from a particular religious or cultural tradition. The present case provides a clear illustration of how the Dutch legal system assesses the validity of these type of marriages. The need to make such an assessment may arise in a number of different contexts, such as determining the legal parentage of children born within the marriage, a child's name, divorce, and spousal maintenance claims. Specifically, the present case concerns two parties who were married under orthodox Christian Ethiophian law and sought divorce in the Netherlands.

Although in the Netherlands religious marriages contracted within the territory are not recognized as legally valid (Article 1:30, paragraph 2 of the Dutch Civil Code), Dutch private international law does allow the possibility for a court to consider a religious marriage concluded outside the Netherlands as being valid. For this to be the case, the marriage must be recognized as valid under the law of the state where it was concluded, as stipulated by Article 10:31 Dutch Civil Code. (See also, among many other decisions, ECLI:NL:RBZWB:2019:4440, which involved a traditional marriage in Guinee).

The Ethiopian Family Code recognizes three types of marriages: civil, religious, and traditional marriage. Article 3 of the Revised Family Code stipulates that a religious marriage occurs "when a man and a woman have performed such acts or rites as deemed to constitute a valid marriage by their religion or the religion of one of them". However, this provision does not provide detailed information on what these acts may be. Having said that, Article 28 of the Revised Family Code does require that all marriages are registered by a civil servant in the civil register of the place where the marriage was concluded. Although the parties in the present case lacked proof of marriage registration, a presumption of marriage

exists if the man and woman consider themselves to be husband and wife, their family and community view them as such, and if they have lived together (Article 96 of the Revised Family Code). When these requirements are met, Article 97 of the Revised Family Code allows the court to presume the existence of the marriage between the man and woman.

The Court in the case in question does not indicate any problems in the fulfilment of these three relatively straightforward requirements and thus accepts the marriage law of Ethiopia based on its private international law. It simply accepts that these conditions have been fulfilled. The Court does not verify whether the statements made by the parties on issues, such as living arrangements, are true or whether they have actually performed the acts and rites required in Article 3 of the Revised Family Code to conclude a religious marriage. The ecclesiastical deed brought forward by the woman, together with additional declarations, may explain this lack of verification.

This raises the question of how Dutch courts may evaluate marriage certificates issued by foreign religious authorities. This question was answered by the Council of State in a decision dated 16 May 2018 (ECLI:NL:RVS:2018:1509). The case involved an Eritrean religious marriage. Here, the Court addressed the question of which documents could serve as evidence to demonstrate the occurrence of the marriage between the parties, taking into account their admission to the State procedure. The court held that, although in principle an ecclesiastical marriage certificate may lead to the presumption that a marriage has been concluded on the basis of Article 10:31 (4) of the Dutch Civil Code, the state secretary may nevertheless verify its content if doubts exist on its correctness. This follows from the idea that Article 10:31 (4) of the Dutch Civil Code only concerns the question of the manner in which the existence of a legally valid marriage can be proved, namely by producing a marriage certificate from a competent authority, and not the question of whether a document produced as a marriage certificate can be accepted as authentic.

The state secretary is therefore not obliged to simply regard a document submitted as an ecclesiastical marriage certificate as evidence of a legally valid

marriage. This principle has been consistently reiterated by the Council of State in numerous subsequent rulings, thereby reaffirming its application in various cases. (e.g., Council of State 9 November 2018, ECLI:NL:RVS:2018:3653).

In the specific case at hand, the state secretary did not require the documents to be legalized, nor did he request consular or diplomatic officials to verify its content. However, since ecclesiastical marriage certificates issued in Eritrea come in different forms, (as a consequence of which the assessment of the document may lead to more difficulties or uncertainties,) the state secretary requested the foreigner in question to submit proof of registration of his marriage in the Eritrean civil registry in order to verify the validity. He also pointed out that Eritrean authorities themselves also require more than just the submission of an ecclesiastical marriage certificate in order to register a religious marriage in the civil registry. Therefore, the Court did not consider it disproportionate to require a certificate of registration from the Eritrean civil registry, confirming the existing marriage, based on the church certificate. This decision is supported by the fact that Eritrean authorities do not recognize religious marriage certificates as official marriage certificates, but rather utilize them solely for the purpose of registering the marriage in the civil register, known as the Kebabi. (See also District Court of the Hague, 30 May 2017, ECLI:NL:RBDHA:2017:6148).

If the parties are unable to provide such proof – as was the case before the State Council – they may hand in additional documents to prove that a marriage had nevertheless been concluded.

In contrast to the judgment of the Hague District Court on 16 January 2019, the Council of State thoroughly examines which documents may be utilized to prove the validity of a marriage, taking into account the recognition of such documents by the legal system of the foreign country.

Returning to the case before the district court of The Hague, it is noteworthy that, having determined the marriage’s validity, the Court automatically acknowledges its competence to dissolve such a religious marriage under civil law based on Article 10:56 of the Dutch Civil Code. Although this is in line with the existing jurisprudence, one may wonder whether this should be possible: how can a Dutch

court end an Ethiopian *religious* marriage on the basis of Dutch *secular* law? On the other hand, it may be the case that this divorce will not be recognized in the country where the marriage was concluded or according to religious rules. The continued existence of a religious marriage after its dissolution under civil law therefore depends on the regulations of the State and the religion in question.

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

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- Rutten, Susanne and Esther van Eijk. 2017. "*Wel Gescheiden, Niet Gescheiden?: Een empirisch onderzoek naar huwelijkse gevangenschap in Nederland*". Maastricht: Maastricht University.
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- Vonken, A.P.M.J., F. Ibili, and F.W.J.M. Schols. 2021. *Internationaal privaatrecht: internationaal personen- en familierecht en erfrecht*. Deventer: Wolters Kluwer.

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