

First civil chamber : Compliance of a foreign divorce decision with international public policy

17/03/2021



Compliance of a foreign decision with international public policy: recognition in France under certain conditions of the khol'â (divorce obtained by the wife in return for compensation) pronounced in Algeria.

Ruling no 220 of 17 March 2021 (20-14.506) - Cour de cassation (Court of Cassation) - First Civil Chamber -
ECLI:FR:CCASS:2021:C100220

Dismissal

Appellant(s) : Mr G... X...

Respondent(s) : Ms B... F..., divorced X...

Facts and procedure

1. According to the ruling under appeal (Lyon, 18 July 2019), Mrs F..., being of French and Algerian nationality, and Mr X..., being of Algerian nationality, were married in Algeria on [...], without a marriage contract, and established their first residence as a couple in Algeria. In 2009, Mrs F... acquired, in her name, a household residence in Vénissieux. On 4 July 2017, their divorce was granted by an Algerian court at the request of Mrs F....
2. Based on this divorce declaration and on the separation of property marriage regime under Algerian law, she began proceedings to evict Mr X... from the house in Vénissieux.

Reviewing plea

Statement of plea

3. Mr X... objects to the ruling for considering the declaration of divorce made by the court of Hussein Dey (Algeria) on 4 July 2017 as regular and binding, consequently authorising Mrs F... to proceed with his eviction and to order him to pay an indemnity for occupancy until his actual departure from the residence, whereas "the Algerian decision, taken pursuant to Article 54 of the Algerian Family Code, which provides for divorce with compensation (Khol'a) decided solely on the demand of the wife that the marriage be ended without the agreement of the husband, duly notified, for motives that the wife is not required to reveal nor is she required to provide a reason, without it being possible to give legal effect to the eventual opposition of the husband concerning the principle of the divorce, is contrary to the principle of equality of spouses when a marriage ends. By considering the declaration of divorce by Khol'a made by the court of Hussein Dey (Algeria) on 4 July 2017 as regular and binding to Mr X..., when this declaration, made pursuant to the provisions of Article 54 of the Algerian Family Code, requested by the sole decision of Mrs F... to end the marriage, and without the possibility of giving legal effects to the eventual opposition of Mr X... as to the principle of divorce, is contrary to the principle of the equality of spouses when a marriage is dissolved, and this, regardless of the options for appeal available to Mr X..., the cour d'appel (Court of Appeal) infringed Article 1, d) of the Franco-Algerian Convention of 27 August 1964, as well as Article 5 of the Protocol of 22 November 1984, no 7, supplemental to the European Convention for the Protection of Human Rights and Fundamental Freedoms."

Court's response

4. According to Article 1, d), of the Franco-Algerian Convention of 27 August 1964 related to exequatur and extradition, in civil matters, contentious and non-contentious decisions delivered by Algerian jurisdictions only have authority as of right of the matter being judged on French territory if they contain nothing that is contrary to international public policy.
5. According to Article 5 of the Protocol of 22 November 1984, no 7, supplemental to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the spouses benefit from equal rights and responsibilities in civil matters between them and in their relations with their children concerning the marriage, during the marriage, and in the event of its dissolution.
6. When a decision of divorce has been issued abroad pursuant to a law that does not provide to one of the spouses, due to their gender, an equal access to divorce, its recognition does not go against international public policy, once it is invoked by the spouse to which less favourable rules are applied, that the procedure used was not deemed fraudulent

and that the other spouse was able to exercise his or her rights.

7. Article 54 of the Algerian Family Code provides that :

"The spouse may separate from their partner, without the latter's consent, through a payment for "khol'â". Should the other party not consent, the court orders the payment of a sum, the amount of which cannot exceed the value of the dowry, "sadaq el mithl" as determined on the date of the ruling."

8. The ruling exactly states, on previously established grounds from the cour d'appel (Court of Appeal) and the court of first instance, and that any assimilation to divorce by compensation provided for in Article 54 of the Algerian Family Code to the repudiation provided for in Article 48 of the same code must be dismissed once the former, pronounced on the initiative of the wife, is subject to the payment of an amount of money, while the latter comes only from the decision of the husband, who can only be required to pay financial compensation when the court has recognised an abuse of rights.

9. It adds that Mr X... was able to exercise his means of legal defence and that it does not establish that Mrs F...'s referral to the Algerian court contained elements of fraud.

10. From these statements and assessments, the cour d'appel (Court of Appeal) deduced exactly that the Algerian ruling was not contrary to the principle of the equality of spouses when a marriage is dissolved, and as such not contrary to international public policy.

11. The plea is therefore unfounded.

ON THESE GROUNDS, the Court :

DISMISSES the appeal

President : Mrs Batut

Reporting Judge : Mrs Guihal

Advocate-General : Mr Sassoust

Lawyer(s) : SCP Ortsheidt

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Translated rulings