

Talaq v Greek public policy: Operation successful, patient dead...

A talaq divorce is rarely knocking at the door of Greek courts. A court in Thessaloniki dismissed an application for the recognition of an Egyptian talaq, invoking the public policy clause, despite the fact that the application was filed by the wife. You can find more information about the case, and check my brief comment [here](#).

What puzzles me though is whether there are more jurisdictions sharing the same view. Personally I don't feel at ease with this ruling for a number of reasons. But prior to that, a couple of clarifications:

1. This case bears no resemblance to the *Sahyouni* saga. The spouses have no double nationality: The husband is an Egyptian, the wife a Greek national.
2. There was no back and forth in their lives: they got married in Cairo, and lived there until the talaq was notarized. Following that, the spouse moved to Greece, and filed the application at the place of her new residence.
3. Unlike Egypt, Greece is not a signatory of the 1970 Hague Convention on the Recognition of Divorces and Legal Separations.
4. There is no bilateral agreement between the two countries in the field.

I'm coming now to the reasons of my disagreement with the judgment's outcome.

1. The result is not in line with the prevalent view in a number of European jurisdictions: From the research I was able to conduct, it is my understanding that

Austria, Germany, France, Italy, Spain, the Netherlands, Norway, and Switzerland, do not see any public policy violation, when the wife takes the initiative to apply for recognition of the talaq.

2. The reasoning of the court is a verbatim reiteration of an Athens Court of Appeal judgement from the '90s. It reads as follows: *Solely the recognition of such an act would cause profound disturbance to the Greek legal order, if its effects are to be extended and applied in Greece on the basis of the Egyptian applicable rules.* What is actually missing is the reason why recognition will lead to *profound disturbance*, and to whom. Surely not to the spouse, otherwise she wouldn't file an application to recognize the talaq.
3. It should be remembered that the public policy clause is not targeting at the foreign legislation applied in the country of origin or the judgment per se; moreover, it focuses on the repercussions caused by the extension of its effects in the country of destination. Given the consent of the spouse, I do not see who is going to feel disturbed.
4. Recognition would not grant *carte blanche* for talaq divorces in Greece. As in other jurisdictions, Greece remains devoted to fundamental rights. What makes a difference here is the initiative of the spouse. In other words, the rule remains the same, i.e. no recognition, unless there's consent by the wife. Consent need not be present at the time the talaq was uttered or notarized; it may be demonstrated at a later stage, either expressly or tacitly. I guess nobody would seriously argue that consent is missing in the case at hand.
5. Talking about consent, one shouldn't exclude an *ex ante* tacit agreement of the spouses for financial reasons. It has been already reported that all remaining options for a spouse in countries where Sharia is predominant are much more complicated, time-consuming, cumbersome, and

detrimental to the wife. Take *khul* for example: It is indeed a solution, but at what cost for the spouse...

6. Last but not least, what are the actual consequences of refusal for the spouse? She will remain in limbo for a while, until she manages to get a divorce decree in Greece. But it won't be an easy task to accomplish, and it will come at a heavy price: New claim, translations in Arabic, service in Egypt (which means all the 1965 Hague Service Convention conditions need to be met; Egypt is very strict on the matter: no alternative methods allowed!); and a very careful preparation of the pleadings, so as to avoid a possible stay of proceedings, if the court requires additional information on Egyptian law (a legal information will most probably double the cost of litigation...).

For all the reasons aforementioned, I consider that the judgment is going to the wrong direction, and a shift in Greek case law is imperative, especially in light of the thousands of refugees from Arab countries who are now living in the country.

As I mentioned in the beginning, any information on the treatment of similar cases in your jurisdictions is most welcome.