Talaq reloaded: Repudiation recognized if application filed by the wife

A bit more than a year ago, I posted here & here about a Greek ruling on the non-recognition of an Egyptian notarized talaq divorce. The same court rendered mid-July a new judgment related to the same case; this time recognition was granted! It is the first decision of this nature in Greece, which will hopefully pave the path for the future.

Apostolos Anthimos

THE FACTS

There is no need to repeat the facts which are already reported in my previous posts (see links above). There are however some novelties: The application for recognition concerned indeed the divorce between the same parties, as in the first case; however, this time the request referred to a judgment of the Abdeen Court of 1st Instance, which rectified the divorce issued before the notary public. In particular, the divorce was previously registered as of a revocable nature [revocable repudiation]. Given that the waiting period had expired, and the husband did not ask for his wife's return in the marital home, a new application was filed before the Abdeen court, aiming at the rectification of the registration, i.e. from revocable to an irrevocable divorce.

THE RULING

The court began with an analysis of the pertinent provisions, i.e. Article 780 Code of Civil Procedure, which is the rule for the recognition of foreign judgments issued in non-contentious proceedings, also covering foreign legal instruments. It first underlined the obvious difficulties in accepting a divorce by repudiation, which clearly violates the equality of sexes. However, *and this is the novelty of the ruling*, recognition may not be denied, if the applicant is the wife; otherwise, the public policy defence would cause unfair solutions in concreto.

The court entered then into the facts of the case. It first considered the Egyptian decision as similar to a Greek final and conclusive judgment. It then examined whether the foreign court applied the proper law. In this context, it made reference to Article 16, in conjunction with Art. 14.2 Greek Civil Code, which enumerates three options: The law of common nationality; the law of the last common residence; and the law with which the parties are in the closest possible connection. Since Cairo was the last common residence, the application of Egyptian law was the proper solution.

Coming back to the public policy issue, the Thessaloniki Court reiterated that the general approach goes indeed towards a public policy violation, given that repudiation runs contrary to the European Convention of Human Rights. However, in the case at hand, the applicant has fully accepted the dissolution of her marriage in this fashion; moreover, she was the one seeking the rectification in Egypt, and filing for the recognition of the talaq in Greece. A dismissal of the application would lead to an absurd situation, i.e. the existence of a marriage which none of the spouses wishes to maintain. In addition, forcing the applicant to initiate divorce proceedings in Greece would be costly and time-consuming.

For all the reasons aforementioned, the Thessaloniki court granted the application.

[CFI Thessaloniki, 17/07/2019, Nr. 8458/2019, unreported].

COMMENTS

The ruling of the Thessaloniki court is very welcome for the following reasons, which I listed in my last year's post:

1. It bypassed an Athens Court of Appeal judgement from the '90s, which ruled out any attempt to recognize a talaq, even if requested by the

spouse.

2. It took a firm stance, triggered by a 2016 ruling of the Supreme Court's Full Bench [Areios Pagos 9/2016], stating 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.
3. It made clear reference to the futility of fresh divorce proceedings in Greece, which would cause significant costs to the applicant and prolong the existence of a marriage no longer desired by any of the parties involved.