

THE NETHERLANDS

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In the New York cases¹ which are the bases for this inquiry, a Mexican decree terminated the marriage of residents and citizens of New York who had appeared voluntarily in the Mexican proceeding. It is therefore assumed here either that both spouses or only one of the spouses is a Netherlands citizen.

Netherlands law does not have a specific statutory prohibition against recognition of foreign judgments affecting the personal status of the parties, such as a divorce decree. It has been recognized in the interest of the certainty of law and the personal status that a judgment in one country concerning the same should be given effect in other countries when possible. The questions to be examined to determine the effect in the Netherlands of such a foreign judgment are the competence or jurisdiction of the court as to the subject matter and the parties; and whether recognition of the judgment would be contrary to public policy of the Netherlands.

Jurisdiction of the Foreign Court as to the Subject Matter

This involves the question of how far foreign authorities can interfere with the personal status of Netherlands citizens. It has been held that under Article VI of the General Provisions Statute²—providing *inter alia* that the laws of the Netherlands as to status bind Netherlands citizens abroad—no foreign court is competent to change the marital status of a Netherlands citizen. However, this matter has been settled by the Supreme Court of the Netherlands,³ holding that a divorce decree of the Court of New York affecting a Netherlands citizen residing and married in New York should be given effect in the Netherlands. The Court based its decision on the fact that the ground for divorce would also have been a ground for divorce under

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¹ Rosenstiel v. Rosenstiel and Wood v. Wood, 16 NY 2d 64.

² Law containing general provisions of legislation of the Kingdom of May 15, 1829.

³ November 24, 1916 W10098, Netherlands Jurisprudence 1917 No. 5.

Netherlands law and that therefore giving effect to the decree was not in violation of Article VI of said statute.

The Supreme Court further held that the provisions of Netherlands Civil Procedure as to the competence of specific Netherlands courts to take cognizance of divorce litigation have no application whatsoever to determine whether a foreign court would have jurisdiction over a marital dispute involving a Netherlands citizen. The case referred to concerned Netherlands citizens residing abroad, but under the holding Netherlands spouses residing in the Netherlands could also invoke the jurisdiction of a foreign court for their marital dispute if such court would declare itself competent under its own rules.

Personal Jurisdiction

Although the question does not arise here, it should be noted that a Netherlands court would further inquire whether the foreign court obtained jurisdiction over the persons of plaintiff and defendant in a manner that was not in violation of elemental principles of justice as applied in the Netherlands. A foreign judgment of divorce by default may be given effect; however, if the defendant shows that no sufficient and timely notice was given in accordance with the requirements of Netherlands Civil Procedure the foreign decree will not be enforced. Accordingly the Supreme Court⁴ refused to set aside a judgment denying effect to a divorce decree of the Court of Bandung, Indonesia, where it was found that defendant was not served in accordance with Netherlands rules of procedure which require sufficient guarantee that timely notice is given of the pending action.

Netherlands Public Policy

The State of the Netherlands has an interest in the marriage of its citizens. It is therefore considered against public policy to recognize a divorce between citizens of the Netherlands on a ground not recognized in the Netherlands.

The grounds for divorce set forth in Section 264 Civil Code are 1) adultery; 2) abandonment; 3) conviction of a felony involving a prison term of more than four years; 4) cruelty involving inflicting of bodily harm, threatening life, or resulting in dangerous injury. The abandonment must have lasted for five years before an action can be

⁴ NJ 1961 No. 562.

brought. The Netherlands courts have consistently held that a divorce on a ground not recognized in the Netherlands will not be given effect.

However if one of the spouses is a foreigner and the decree of divorce is recognized in the country of his citizenship the decree may be given effect to determine the status of the Netherlands spouse. In a recent case before the Court of First Instance of Amsterdam the petitioner, husband of Netherlands nationality, had married a Canadian citizen who thereby became also of Netherlands nationality but had maintained her Canadian nationality as well. The parties obtained a divorce decree in the State of Washington where they had their marital domicile at that time. The decree was based on extreme cruelty, a ground for divorce not known in the Netherlands.

The court found that

Since in accordance with Canadian Netherlands law the domicile of the couple at the time of the divorce proceeding was in the State of Washington and that therefore the court of Washington had jurisdiction and its decision was recognized in the United States and also in Canada . . . non-recognition of the divorce decree in the Netherlands would have the result that the wife in the country of her nationality would be considered legally divorced, while the petitioner husband who now resides in New York, would be considered in the Netherlands still married to the wife without the possibility of obtaining a divorce even if there was a ground therefor under Netherlands law. . . . Such a result would be contrary to concepts of Netherlands public order and good morals and that this necessarily leads to the recognition of the foreign divorce decree.⁵

The same result was reached in the Netherlands Antilles, which has substantially the same marriage and divorce laws, with respect to the question of recognition of a decree of annulment by the District Court of Juarez, Mexico. The husband in this case was a citizen of Curaçao, the wife an American national and the marriage was entered into in New York City.⁶

After the Mexican decree the wife had remarried in New York and the court found this as evidence that the Mexican decree was recognized and fully effective in the State of New York, the state of citizenship and residence of the wife.

The court reasoned further that the provision of the Code of Civil Procedure,⁷ enjoining the enforcement of foreign judgments, referred to execution of a summary judgment but did not apply to the

⁵ NJ 1963 No. 33.

⁶ Court of First Instance of Curaçao, Netherlands Antilles NJ 1963 No. 462.

⁷ Section 431 Netherlands Code of Civil Procedure.