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EU laws do not cover Sharia divorce, says ECJ

BBC (20.12.2017) - <http://bbc.in/2BQZD5S> - A couple in Germany who divorced in a Sharia court in Syria cannot have their divorce validated under EU law, Europe's top court has ruled.

The European Court of Justice said member states must decide for themselves whether to recognise "private divorces", such as those performed in Sharia courts.

EU law is not applicable, it said.

Islamic law allows a man to divorce his wife instantly by saying "talaq" (divorce) three times.

It is the ECJ's first ruling on the subject.

What's the case about?

The couple married in 1999 in the Syrian city of Homs before eventually moving to Germany. They hold both Syrian and German nationality.

In 2013, the husband ended the marriage in a Sharia court in the Syrian city of Latakia by having a representative repeating "talaq" (divorce) three times.

The ECJ calls the measure "private divorce", as a state authority is not involved.

The wife acknowledged the divorce in writing, but contested it after the former husband applied for its recognition in a court in the German city of Munich.

The court then referred the case to the ECJ, asking for clarifications over the interpretation of the EU divorce law pact, known as the Rome III Regulation.

What's ECJ ruling?

The ECJ said the regulation "does not apply, by itself, to the recognition of a divorce decision delivered in a third country".

It added that a unilateral declaration of divorce before a religious court does not fall under the scope of the regulation, and said the case must be resolved under German law.

The ECJ does not decide the dispute itself, and the court in Munich will take a final decision on the issue.

What's instant divorce?

Triple talaq divorce has no mention in Islamic law or the Koran, even though the practice has existed for decades.

Islamic scholars say the Koran clearly spells out how to issue a divorce - it has to be spread over three months, allowing a couple time for reflection and reconciliation.

Why must "talaq" be said three times? Under some interpretations of Islamic law, a man can divorce his wife and get back together with her - but only twice. After the third divorce, the marriage is completely over and cannot be started again without an intervening marriage to someone else.

Most Islamic countries have now banned triple talaq.

The Rome III Regulation does not determine the law applicable to private divorces

Judgment in Case C-372/16 Soha Sahyouni v Raja Mamisch <http://bit.ly/2z8fZkZ>

EU Court of Justice (20.12.2017) – <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-12/cp170137en.pdf> - Mr Raja Mamisch and Ms Soha Sahyouni, who married in Syria, currently live in Germany. Each holds both Syrian and German nationality.

In 2013, Mr Mamisch declared the dissolution of his marriage by having his representative pronounce the divorce formula before the religious sharia court in Latakia (Syria), which declared the couple divorced. That divorce is a 'private' divorce in so far as the participation of the religious court is not constitutive of that divorce. Subsequently, Ms Sahyouni signed a declaration in which she acknowledged that she had received all payments which, according to religious law, were due to her under the marriage contract and from the unilateral divorce of her husband, and that she thus released him from all his obligations towards her.

Mr Mamisch thereupon applied to have the divorce recognised in Germany. That application was granted by the President of the Oberlandesgericht München (Higher Regional Court, Munich, Germany), who took the view, inter alia, that the Rome III Regulation on the law applicable to divorce (1) covered that type of application and that, pursuant to that regulation, the divorce in question was governed by Syrian law.

Ms Sahyouni challenged that recognition of the divorce before the Oberlandesgericht München, which submitted to the Court of Justice a number of questions concerning the interpretation of the Rome III Regulation.

In today's judgment, the Court points out, first of all, that it has already ruled in an earlier decision (2) that the Rome III Regulation does not apply, by itself, to the recognition of a divorce decision delivered in a third country.

Notwithstanding this, under German law, for the purposes of the recognition in Germany of a private divorce pronounced in a third country, the substantive requirements which such a divorce must satisfy are assessed with regard to the law of the State determined on the basis of the Rome III Regulation.

That being so, as the Oberlandesgericht München pointed out, in the event that the Rome III Regulation does not apply to private divorces, the present case would have to be resolved on the basis of the German rules governing the conflict of laws.

Consequently, the Court nevertheless assesses whether that regulation applies as such to a private divorce, such as the divorce at issue in the present case, resulting from a unilateral declaration made by one of the spouses before a religious court, and thus determines the law applicable to that divorce.

The Court finds, however, that it is clear from the objectives pursued by the Rome III Regulation that that regulation covers solely divorces that are pronounced either by a national court or by, or under the supervision of, a public authority. A divorce resulting from a unilateral declaration made by one of the spouses before a religious court, such as the divorce in the present case, does not therefore come within the substantive scope of the Rome III Regulation.

The Court also notes that a number of Member States have, since the adoption of the Rome III Regulation, introduced into their legal systems the possibility for divorces to be pronounced without the involvement of a State authority. However, the inclusion of private divorces within the scope of that regulation would require arrangements coming under the competence of the EU legislature alone.

1 Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (OJ 2010 L 343, p. 10).

2 C-281/15 Sahyouni.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.
