



[Netherlands - District Court Den Haag, Judgement no. C/09/525057 / FA RK 17-209 17-209](#)

This case concerns the judicial establishment of paternity of a child born and living outside of the Netherlands. The Court rules that a strict application of Article 10:97 Civil Code is problematic because of the risk of statelessness of the child which would result in a violation of Article 8 ECHR and Article 7 of the Convention on the Rights of the Child. Hence, the Court accepted jurisdiction and applied Dutch law to judicially establish the paternity of the Dutch father.

Case name (in original language) : The Netherlands – District Court Den Haag, Judgement no. C/09/525057 / FA RK 17-209

Case number: C/09/525057 / FA RK 17-209 (ECLI:NL:RBDHA:2018:16305)

Date of decision: 03/12/2018

State: Netherlands

Court / UN Treaty Body: The Hague District Court

Language(s) the decision is available in: Dutch

Applicant's country of residence: Netherlands

Key aspects: Childhood statelessness

Relevant Legislative Provisions:

- Civil Code (BW), Articles 1:207; 1:212 B; 3, sub a; 10:6; 10:31; 10:97
- Code of Civil Procedure (Rv), Articles 265 and 269
- ECHR, Article 8

Facts

The man was registered in the Municipal Records (BRP) as married to the mother of the minor child in 2008. The Municipal Records also mentioned that the man divorced from his ex-wife in 2006.

The mother, however, is registered in the BRP as non-resident in the Netherlands and the marriage is not registered.

In a copy of the marriage certificate, it is mentioned that the man and mother married in Egypt in 2004. The child's birth certificate mentions that the man and mother are the legal parents of the minor child.

The man obtained Dutch nationality in 2005, however, the mother and child remained Egyptian nationals.

The mother requested the court to confirm the paternity of the man, who now is a Dutch national, and if needed to perform a mandatory DNA-test.

Legal arguments by the applicant

The mother argues that she and the man married in 2004 in Egypt. Two of their children have both Egyptian and Dutch nationalities. The mother resides with the three children in Egypt, while the man lives in the Netherlands. The man has attempted to register the non-Dutch minor child in the Municipal Records (BRP) but this was refused by the municipality declaring that the man is not recognised as the father of the non-Dutch minor in Egyptian law, according to which the non-Dutch minor already has a legal father. Additionally, the mother and non-Dutch minor live outside the Netherlands.

The mother claims that Egyptian law is applicable, however, according to the law, judicial determination of paternity is not possible. Consequently, the mother argues that the relevant provision of Dutch law (Art. 10:6 BW) is applicable to determine the paternity of the man over the non-Dutch minor.

Legal arguments by the opposing party

The opposing party argues that the man was to rectify the marriage certificate according to their claimed marriage date, especially when provided the document to register in the Municipal Records (BRP). In addition, the man was married to a second woman in the year claimed to be the marriage date with the mother, noting that bigamy is not allowed in the Netherlands.

Therefore, the opposing party argues that the man and the mother's marriage in 2004 is not to be recognised and argues that the request by the mother is inadmissible. Based on the positive results of the DNA-test and the daily contact

between the man with his children in Egypt, the opposing party independently requests to determine the paternity of the man over the non-Dutch minor in the child's best interest.

Decision & Reasoning

On the basis of Article 3, sub a, of the Code of Civil Procedure (Rv), the Dutch court is competent because the man, a Dutch national, lives in the Netherlands. In the case of minors, in the absence of their (known) residence in the Netherlands, the Den Haag District Court is competent based on Art. 269 Rv.

The non-Dutch minor was born between the first religious marriage and the re-confirmation of the marriage due to a separation, resulting in bureaucratic inconsistencies and unclarities that complicated the determination of the exact marriage date. The Court reasons that it cannot determine the legality of the marriage claimed by the mother to have been concluded in 2004. No familial relations in the Netherlands therefore exist between the man and the non-Dutch minor.

The Court concludes that, because the mother and man have no common nationality or place of residence, Egyptian law of the province where the non-Dutch minor resides is applicable.

The Court recognises that Egyptian law does not permit the judicial determination of paternity, which is contradictory with Dutch law. Dismissing familial relations and the rights the non-Dutch minor can derive thereof, following the DNA test results proving that the man is the father and considering that family life between them has become apparent from the facts and circumstances presented, would result in violation of Article 8 ECHR.

Decision documents

[District Court Den Haag, Judgement no. C/09/525057 / FA RK 17-209](#)

Outcome

Declares the mother (the applicant) inadmissible in her request for judicial determination of the paternity.

Confirms the paternity of the man, a Dutch national, over the non-Dutch minor with the mother (applicant).