

EXTRACTS OF THE JUDGMENT OF THE COURT OF APPEAL OF THE HAGUE

Republic of Zaire v. J.C.M. Duclaux

The Hague Sub-District Court ordered the Republic of Zaire in absentia to pay arrears of wages to Duclaux, who had worked as a secretary at the Embassy of Zaire in The Hague. When the Embassy failed to pay her wages, Duclaux petitioned the District Court of The Hague to declare the Republic of Zaire bankrupt to enable her to collect the debt, claiming that the Republic was also failing to pay other recoverable debts and therefore was in a position that it had ceased to pay its debts. The District Court rejected the Republic of Zaire's claim that it was immune from jurisdiction and execution, and declared the Republic of Zaire bankrupt. It furthermore instructed the trustee in bankruptcy to open letters and telegrams from the bankrupt.

The Court of Appeal held:

[...] Under Dutch law a declaration of bankruptcy is a very far-reaching measure; it constitutes judicial seizure of the entire assets of the debtor concerned with a view to their forced sale to enable the assets thus realised to be distributed among all the creditors; by virtue of being declared bankrupt, the debtor also automatically, by law, forfeits control over and the use of the assets which form part of the bankrupt estate. It cannot be denied that if a Dutch court were to declare a sovereign State (which has an embassy or diplomatic mission in the Netherlands) bankrupt as the court of first instance did the Republic of Zaire this would in no small measure impede the efficient performance of the functions of that State's official diplomatic representation in the Netherlands in view of the nature, effects and consequences of a bankruptcy under the Dutch Bankruptcy Act, which have been considered above, particularly if, as in the present case, the trustee in bankruptcy were also to be declared competent to open letters and telegrams addressed to the sovereign sending State.

As therefore such a bankruptcy would entail a by no means insubstantial infringement of the independence of the sending State vis-à-vis the receiving State, given that, at the minimum, the diplomatic mission would not be able to function properly, the sending State can, under the generally recognised rules of international law, invoke its immunity from execution in proceedings before the court in the receiving State which has been asked to give judgment on a petition for the sending State to be declared bankrupt. [...]