

EXTRACTS OF THE JUDGMENT OF THE SUPREME COURT

Kingdom of Morocco v. Stichting Revalidatiecentrum "De Trappenberg"

The daughter of B., the cleaner/caretaker of the Moroccan Consulate-General in Amsterdam, was seriously injured in an accident at the Consulate. She was taken to "De Trappenberg" rehabilitation centre for medical treatment. During the treatment it became apparent that part of the costs involved were not covered by any Dutch or Moroccan insurance. Only during the course of the treatment had Morocco taken out a policy, and this became operative a year after the accident. The District Court of Amsterdam ordered B. to pay "De Trappenberg" the non-insured costs of Dfl. 89,185. Execution of this judgment proved, however, to be impossible since no part of the sum could be recovered from B. "De Trappenberg" then sued the Kingdom of Morocco before the District Court of Amsterdam, claiming payment of this sum. It based its claim on the unlawful conduct of Morocco in failing to comply with its duty of care as B.'s employer to insure B. and his family in good time against medical expenses. Morocco then claimed immunity in interlocutory proceedings. The District Court dismissed this claim to immunity. Subsequently it dismissed the claim by "De Trappenberg" because the Kingdom of Morocco had not acted carelessly or contrary to the general principles of Dutch law vis-à-vis "De Trappenberg" by not insuring B. against medical expenses. "De Trappenberg" appealed against this judgment. Morocco then lodged an interim appeal against the judgment, arguing that the District Court had wrongly held that the Dutch courts were competent to take cognisance of the dispute. The Court of Appeal of Amsterdam dismissed the interim appeal, upheld the judgment of the District Court and referred the case to the cause list judge for the submission of the statement of defence by Morocco in the main action. In an interlocutory judgment of the Court of Appeal dismissed the basis of the claim by "De Trappenberg" in the originating summons, but then allowed it to prove its submission that Morocco had ultimately undertaken to make payment. In its judgment the Court of Appeal held that "De Trappenberg" had succeeded in discharging the burden of proof upon it and, after quashing the judgment of the District Court, granted the claim of "De Trappenberg" on the basis of the undertaking given by Morocco. Morocco then lodged notice of appeal in cassation to the Supreme Court.

The Supreme Court held:

[...] If in principle the Dutch courts have jurisdiction with regard to a dispute referred to them, they must try the dispute even if the defendant is a sovereign State, except where the defendant claimed in good time and on good grounds the privilege of immunity from jurisdiction. It follows that there is no occasion for an ex officio investigation into the question of whether the circumstances of the case warrant such a claim.

What is therefore decisive is whether, after "De Trappenberg" had altered the basis of its claim, the Kingdom claimed the privilege of immunity from jurisdiction with regard to the trial of the dispute on these altered grounds. [...]

It should also be noted that even if this had not been the case [i.e. if Morocco had claimed immunity], it could not have benefited the Kingdom. The nature of the undertaking given (voluntarily) by the ambassador of the Kingdom to pay the claim of "De Trappenberg" against B., a national of the Kingdom, who was in the employ of the Kingdom, was not a clearly governmental act since such an undertaking could equally well have been given by a private sector employer in a comparable situation.

The reasons why the Kingdom gave the undertaking in question are not relevant to the nature of the undertaking.