

EXTRACTS OF THE JUDGMENT OF THE DISTRICT COURT OF AMSTERDAM

The Kingdom of Morocco v. Stichting Revalidatie Centrum "De Trappenberg"

The daughter of the cleaner/caretaker of the Moroccan Consulate-General at 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 treatment had Morocco taken out a policy, and this became operative a year after the accident. The non-insured costs amounted to Dfl. 84,185.15. Assuming that the caretaker was unable to pay such a sum, the defendant requested the Court for a garnishee order to secure the debt on funds held by Morocco in the Banque de Paris et des Pays-Bas. It was alleged that Morocco was liable in tort for failure to ensure that the caretaker, who was sent to the Netherlands as an employee and his family were adequately insured. The Court complied with the request, whereupon Morocco applied to the Court in summary proceedings for an injunction for the withdrawal of the garnishee order. The President gave judgment for the plaintiff.

The District Court held:

[...] 6. Much as States are not normally subject to one another's jurisdiction, this principle may be subject to exceptions in cases where a State becomes involved in legal situations not as a public authority, but rather in a private capacity. This occurs not only where the state takes on an obligation by entering into relationships in the sphere of private law, but also where such an obligation arises out of the law itself.

7. In the present case "De Trappenberg" alleges that Morocco is liable in tort under Article 1401 of the Civil Code, viz., an act or omission in which Morocco is involved not as a sovereign state, but in the same capacity as a private person, as the employer of M. Bouarfa.

8. Judged by the criterion set out in paragraph 6 of this judgment, Morocco's reliance on immunity must fail.

9. Also, Morocco's reliance on the purposes for which the sums attached were intended, viz., public purposes, cannot succeed because, much as these sums were to be used for public purposes, this circumstance cannot render the moneys themselves immune from attachment. [...]