Neutral Citation [2015] IEHC 522

THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 589 J.R.]

BETWEEN

UMAIR CHAUDHRY

APPLICANT

AND

AN tÁRD-CHLÁRAITHEOIR

RESPONDENT

JUDGMENT of Mr. Justice Hedigan delivered on 31st day of July , 2015

Introduction

1. The applicant herein appeals a decision of the respondent allegedly made on 27th August, 2014, refusing to recognise the applicant's decree of divorce given in accordance with Lithuanian law on 27th December, 2013. By order of 16th October, 2014, Peart J. granted leave to the applicants to apply for judicial review for the following reliefs:

> "(1) An order of certiorari quashing the decision of the respondent as notified by letter dated 27th August 2014 refusing to recognise the applicant's Lithuanian divorce decree which was granted on 27th December 2013.
>
> (2) Such further or other Order as to this Honourable Court shall seem met.
>
> (3) An Order providing for Costs."

The Parties

2. The applicant is a Pakistani citizen who alleges that his marriage to a Lithuanian woman was dissolved by a decree of divorce on 27th December, 2013, in Lithuania.

3. The respondent is responsible for managing and controlling the system of registration in Ireland. The respondent's principal functions are set out under s. 8 of the Civil Registration Act 2004 ("the Act of 2004") and include the maintenance of a system of registration in respect of, *inter alia*, births and marriages.

The Factual Background

4. The applicant entered the State in January 2005 under a student visa and his entitlement to remain in the State as a student was renewed at various times.

5. On 7th April, 2006, the applicant married a woman named R.B., a Lithuanian national. The relationship appears to have broken down a year later in May 2007. In or around June 2011, the applicant met J.S., a Romanian national, and a relationship developed and they began co-habiting together. At para. 8 of his grounding affidavit, sworn on 8th October, 2014, the applicant averred that it was as a result of this relationship that he decided to obtain a divorce from R.B. He further averred that he believed that R.B. had returned to Lithuania and thus decided to institute divorce proceedings there. Sometime after this, the relationship with J.S. broke down.

6. Divorce proceedings issued in 2013 against R.B. in the Alytus Regional District Court, Lithuania. The applicant did not have an address for R.B.. The first order of the Alytus Region District Court in Lithuania, dated 22nd October, 2013, permitted substituted service of the applicant's intention to pursue a divorce from R.B. by way of public notice on the Lithuanian Courts' website. The Order stated, *inter alia*:-

> "The process has not been served on the Defendant [R.B.], because her place of residence of existence is unknown. In accordance with the Residents' Register, the Defendant has declared her place of residence in Alytus District Municipality; in accordance with the data of Sodra, the Defendant does not work anywhere.
>
> The Plaintiff and the Court took all accessible measures to learn the address; however, the place of residence or the workplace of the Defendant are unknown. In order to perform the urgent procedural actions, the Plaintiff asks to serve the process on the Defendant by way of public announcement.
>
> The request is to be satisfied (Article 130 of the Code of Civil Procedure), because the place of residence and the workplace of the Defendant are unknown, and the Plaintiff asks to serve the process on the Defendant by way of public announcement.
>
> The Court, following Article 130, Articles 290-291 of the Code of Civil Procedure of the Republic of Lithuania, ***does hereby order***:
>
> to serve the process by way of public announcement, by announcing the notice of the following content on the special website www.teismai.lt on 22/10/2013…".

7. The Residents' Register, referred to in the Order, stated under the heading "Last Place of Residence" that "[o]n 02/09/2009, included in the Register of the Persons Having no Place of Residence, Alytus District Municipality."

8. The matter was then adjourned to 11th November, 2013, when a further order issued notifying R.B. of the place, date and time of the preliminary court hearing on 5th December, 2013, of the applicant's claim and summoning her to attend, which order was again served by way of substituted service on the designated website in accordance with Lithuanian law. No appearance was made by R.B.

at the preliminary hearing. A decree of divorce was granted by the Alytus Region District Court pursuant to a judgment issued on 27th December, 2013. The judgment noted that an appeal could be brought within 30 days to the Kaunas Regional Court.

9. Around the time of the divorce proceedings, the applicant began a relationship with a Lithuanian national, A.G. In or around February 2014, the applicant and A.G. made an application to the registry office seeking leave to marry. Shortly after, their relationship ended.

10. Following the finalisation of his divorce in the Lithuanian court and the end of his relationship with A.G., the applicant became engaged to marry J.S. in or about 12th April, 2014. The applicant made an appointment with the registry office in Roscommon on 5th June, 2014, in order to give notice of their intention to marry in accordance with the Act of 2004. By letter dated 5th June, 2014, Ms. Lally of the Civil Registration Office, Roscommon requested the applicants to complete an Annex 1 Form re Foreign Divorce(s) comprising the "Certificate Referred to in Article 39 Concerning Judgments in Matrimonial Matters". This was completed by the Alytus Region District Court on 23rd June, 2014. The completed certificate was sent by the applicant to Ms. Lally.

11. A letter dated 27th August, 2014, from Ms. Anne Boyle, General Register Office, Roscommon, to Ms. Lally, stated the following:-

> "In order for this Office to authorise the marriage to proceed, we must be satisfied that the divorce granted by the Alytus Regional District Court on 28th January 2014 is entitled to recognition under Irish law.
>
> The relevant legislation in relation to this matter is Council Regulation (EC) 2201/ 2003…
>
> In this case, it appears that the judgement was given in default of appearance of the Defendant and the above court indicated by way of an Order that the 'process has not been served on the Defendant Ms R.B., because her place of residence of residence or her workplace is unknown'. It would appear that the claim and appendices were served on the Defendant by way of public announcement only. This Office is regrettably not in a position to recognise this divorce, in view of the position set out above.
>
> If evidence can be obtained indicating that Ms R.B. accepts the divorce judgement unequivocally, the matter will be further reviewed.
>
> In the meantime the marriage may not proceed in this State until this matter is resolved."

12. No reply was received from the applicant in response to the letter and he thereafter issued the within application.

The Legal Framework

13. Section 46 of the Act of 2004 sets out the procedures to be followed in respect of the notification of marriage. Section 46(1) provides:-

> "46.—(1) A marriage solemnised in the State, after the commencement of this section, between persons of any age shall not be valid in law unless the persons concerned—
>
> (a) (i) notify any registrar in writing in a form for the time being standing approved by an tArd-Chláraitheoir of their intention to marry not less than 3 months prior to the date on which the marriage is to be solemnised, or
>
> (ii) are granted an exemption from the application of subparagraph (i) under *section 47* and give a copy of the court order granting the exemption to any registrar before the date aforesaid,
>
> and
>
> (b) attend at the office of that registrar, or at any other convenient place specified by that registrar, at any time during normal business hours not less than 5 days (or such lesser number of days as may be determined by that registrar) before the date aforesaid and make and sign a declaration in his or her presence that there is no impediment to the said marriage."

14. Section 2(2)(b) of the Act of 2004 sets out the definition of an "impediment to marriage", which includes, *inter alia*, where "(b) one of the parties to the marriage is, or both are, already married."

15. Section 46(7) of the Act of 2004 provides:-

> "The registrar concerned may require each party to an intended marriage to provide him or her with such evidence relating to that party's forename, surname, address, marital status, age and nationality as may be specified by an tArd-Chláraitheoir."

16. Article 3 of Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility ("Brussels II *bis* Regulation") provides that the primary basis for the acquisition of jurisdiction to grant a divorce according to the Brussels II bis Regulation is habitual residence. Article 3 provides as follows:-

> "1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State
>
> (a) in whose territory:
>
> — the spouses are habitually resident, or
>
> — the spouses were last habitually resident, insofar as one of them still resides there, or
>
> — the respondent is habitually resident, or
>
> — in the event of a joint application, either of the spouses is habitually resident, or

— the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or

— the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her 'domicile' there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the 'domicile' of both spouses."

17. Chapter III of the Regulation deals with recognition and enforcement. Article 21 provides:-

"1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

3. Without prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised…."

18. The grounds for non-recognition of a divorce are set out in Article 22 of the Regulation as follows:-

"A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;

(b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally;

(c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought; or

(d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought."

19. Article 25 of the Regulation provides:-

"The recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts."

20. Article 26 of the Regulation provides that "[u]nder no circumstances may a judgment be reviewed as to its substance."

Summary of the Application

21. This application concerns a decision whose validity turns on the proper interpretation of the Brussels II *bis* Regulation and, in particular, on Articles 21 and 22(b) of the Regulation. The difference between the parties with regard to the Brussels II *bis* Regulation relates, in essence, to whether, in exercising his statutory responsibility to satisfy himself that there is no lawful impediment to the proposed marriage of the applicant in the State, the respondent was obliged, or at the very least entitled, in application of Article 22(b) of the Regulation, to recognise the decree of divorce obtained in Lithuania by the applicant as concerns his previous marriage to R.B., in circumstances where the document that initiated the divorce proceedings in Lithuania was deemed, in accordance with Lithuanian law, to have been served by substituted service on R.B. prior to the grant by the Lithuanian court of the decree of divorce at issue on 27th December, 2013. The applicant contends that the respondent claims, in effect, that he has no power to satisfy himself as to the applicant's capacity to remarry in the State in such circumstances. The applicant argues that the respondent claims that the applicant is obliged to apply to court in the State for a declaration that his Lithuanian divorce may be recognised in the State. The applicant submits that this interpretation of Brussels II *bis* Regulation flies in the face of its very objective, which is to provide for the recognition of judgments given, *inter alia*, in civil matters relating to divorce. The respondent denies that he informed the applicant that he was required to apply to court for recognition of his divorce.

Submissions of the Applicant

22. In reliance on Article 21, the applicant submitted that a decree of divorce granted in another EU Member State must be recognised in this State without any special procedure being required, save where one of the exceptions under Article 22 applies. The applicant contended that this means that he cannot be required to bring an application to Court in order to obtain recognition of the Lithuanian divorce decree at issue. The applicant argued that, in effect, the respondent was attempting to replace "may" with "shall" in Article 21 and required the applicant to pursue alternative remedies such as under s. 29 of the Family Law Act 1995.

23. At issue in the present case is Article 22(b) which provides the grounds on which a divorce will not be recognised in default of appearance. The applicant submitted that the respondent's letter of 27th August, 2014, makes it clear that the applicant's divorce was not recognised as the Lithuanian court process leading to the grant of the divorce utilised a substituted service procedure in circumstances where R.B.'s address was unknown at the time and was not personally served. It was contended that the respondent fell into error as the Brussels II *bis* Regulation and, more particularly, Article 22 of the Regulation do not preclude recognition of a divorce granted in proceedings where substituted service was effected in accordance with the law of the Member State where the divorce application is brought. By seeking to go behind the decree of the Lithuanian court and, in effect, question the jurisdiction of the court, the respondent acted *ultra vires* his powers under the Act of 2004 in conjunction with his obligations under the Brussels II *bis* Regulation.

24. It was submitted that the correct interpretation of Article 22(b) is that a divorce which was granted in default of appearance is *prima facie* entitled to recognition where the respondent to the divorce proceedings was served in sufficient time and in such a way as to enable her to arrange for her defence. The respondent in these proceedings erred in law in assuming that substituted service, such as that in issue in the present case, which was in accordance with Lithuanian law, should be treated as non-service. In effect, the respondent appears to have omitted the middle sub-clause in Article 22(b), and has applied that provision as if it merely stated: "where it was given in default of appearance…unless it is determined that the respondent has accepted the judgment unequivocally". The respondent thus failed to address his mind as to whether R.B. had for the purpose of Article 22, been served with the documents instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable her to arrange for her defence. It was submitted that the fact that the Lithuanian court was satisfied to proceed to issue the divorce having applied the substituted service procedure provided for by Lithuanian law ought to have been accepted by the respondent herein on the basis of mutual trust and because he was not entitled, under Article 26 of the Brussels II *bis* Regulation, to review, under any circumstances, the said court's judgment to its substance.

25. The third ground upon which the applicant was granted leave to seek judicial review effectively concerns discrimination or difference of treatment. The applicant contended that the decision of the respondent to refuse to recognise the applicant's Lithuanian divorce decree is unlawfully discriminatory in circumstances where a divorce may be granted by an Irish court in default of appearance where the proceedings were served by way of substituted service. Thus, it is submitted, that the respondent in the instant case adopted a different, more restrictive, approach to the recognition of the applicant's decree of divorce granted in default of appearance where the proceedings had been duly served by way of substituted service, merely because the applicant's divorce decree was issued by the court of another Member State rather than by a court of this State, such that the respondent has acted in breach of the applicant's rights not to be discriminated against on the basis of the Member State, where, in accordance with Article 3 of the Brussels II *bis* Regulation, he brought his application for divorce. The applicant submitted that this amounts, in effect, to discrimination on grounds of nationality contrary to Article 18 TFEU, since the differentiated approach of the respondent is likely to affect more non-Irish than Irish nationals.

26. In regard to the oral submissions by the respondent, and more particularly the requirements for documentation pursuant to Article 37(2), the applicant contended that he was only requested to provide the completed Article 39 Certificate to the registrar and that no other documents were requested to be provided by the applicant. It was submitted that the only possible lawful impediment was that R.B. was not effectively or properly served. As regards the argument that there was no proof provided to the respondent that the various adverts were actually posted on the Lithuanian Courts' website, the applicant contended that this was the responsibility of the Lithuanian Courts and that the position posited now by the applicants effectively amounts to questioning the procedures of the Lithuanian Courts.

27. In regard to the absence of a notice to R.B. regarding the date for the decision of the Alytus Court on 27th December, 2013, the procedures of the Lithuanian Court are being criticised as the Court did not order that she be notified by way of further advert. There was no further obligation on the court to notify R.B. of the date of the decision after her non-appearance at the hearing on 5th December, 2013 and as a matter of law, this is not required under Article 22(b) of the Regulation.

28. The applicant submitted that in the alternative to the above and if there is doubt as to the interpretation of Article 22(b) of the Regulation, the Court should make a preliminary reference to the CJEU – submissions to be heard at a later date if required.

Submissions of the Respondent

29. The respondent contended that it was difficult to reconcile the applicant's argument that the respondent did not take Article 22(b) of the Regulation into account given that the letter of the 27th August, 2014, makes specific reference to the said Article. In regard to the applicant's assertion that the respondent relied upon the latter part of Article 22(b) "unless it is determined that the respondent has accepted the judgment unequivocally", the respondent submitted that is only one consideration by which the situation could be considered. Further, this contention contradicted the applicant's argument that the respondent did not consider Article 22(b) of the Regulation.

30. The issue for the respondent was whether he was satisfied that the criteria under the Act of 2004 were met and, more particularly, whether the applicant(s) to marry had satisfied him that there was no impediment to marry. In relation to the Order of the Alytus District Court of 22nd October, 2013, and the Residents' Register, the evidence before Mr. Feely, the respondent, was that in September 2009, four years previously, Ms. R.B. was registered on the "Register of the Persons Having no Place of Residence, Alytus District Municipality." It does not state that she had her last place of residence in that district.

31. Further, the Order of the Alytus Court of 11th November, 2013, which fixed the date for the hearing on the dissolution of the marriage for 5th December, 2013, prescribed that the public announcement to notify Ms. R.B. of the hearing was to be put on the website www.teismai.lt on 11th November, 2013. According to the decree of divorce "[t]he Defendant, [R.B.], did not appear at the court hearing, she did not submit any feedback to the claim." The documentation supplied to the respondent did not show that the date of the court decision, 27th December, 2013, was prescribed to be served by public announcement on Ms. R.B.. In addition, neither the judgment nor any other documents state that the court was satisfied that the notices it directed be published on the website were in fact published.

32. In regard to the Annex I Form Certificate Referred to in Article 39 Concerning Judgments in Matrimonial Matters, which was completed by the applicant, s. 5.4.2. required that where judgment was given in default of defence, the documents referred to in Article 37(2) of the Regulation be attached. Article 37(2) provides:-

> "In addition, in the case of a judgment given in default, the party seeking recognition or applying for a declaration of enforceability shall produce:
>
> a) the original or certified true copy of the document which establishes that the defaulting party was served with the document instituting the proceedings or with an equivalent document; or
>
> (b) any document indicating that the defendant has accepted the judgment unequivocally."

The respondent submitted that no document was furnished to the respondent which established that R.B. was served with the document instituting the proceedings or an equivalent document. The respondent must be satisfied under Article 22(b) that the respondent in the divorce proceedings was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to organise her defence. The respondent was not satisfied on the basis of the material produced to him that she was served with the application.

33. The respondent relied on the judgment of this Court in *Leila Ismail Tahir & Anor. v. Registrar for County Cork & Anor.* [2012] IEHC 191, para. 6.5, where it is stated that "[t]he onus is on the applicant to provide satisfactory evidence as to her identity." Here, given that the decree was in default of appearance, the onus was upon the applicant to produce documentation to satisfy the respondent of the matters in Article 22(b). The respondent is entitled to investigate matters so as to satisfy himself of matters of which he is obliged to be satisfied (*Lambert v. An tArd-Chláraitheoir* [1995] 2 I.R. 373, per. Kinlen J.).

34. The respondent submitted that the letter did not form a decision to recognise or not to recognise the Lithuanian divorce and in any event, the respondent has no such power to do so. In relation to the applicant's assertion that the respondent has the jurisdiction to recognise a foreign divorce decree, the respondent submitted that there is no provision empowering and mandating the respondent to do same and further, the applicant did not point to any such provision in the Act.

35. The letter of 27th August, 2014, in its entirety, provided an indication to the parties on how the matter might be resolved and, contrary to the submissions of the applicant, the respondent did not require personal service on R.B. The letter from the Chief State Solicitor's Office, dated 5th December, 2014, to the applicant indicated means by which the applicant could seek recognition of his divorce under s. 29 of the Family Law Act 1995. Mr. Feely, in his affidavit sworn on 16th January, 2015, suggested that this mechanism was available precisely as the respondent is not empowered to make a determinative decision recognising the divorce. Contrary to the applicant's submissions that he has been required to adopt a special procedure contrary to Article 21(1), the respondent denied this as the respondent did not request or require the applicant to do this nor require him to avail of any other method. Although not expressly outlined in the letter, the respondent merely advised the applicant of means by which the issue of recognition could be addressed in the appropriate forum. This was expressly done by the respondent in the statement of opposition, Mr. Feely's affidavit and the Chief State Solicitor's letter dated 5th December, 2014.

36. As regards the applicant's assertion that the respondent's case is that there must be some judicial scrutiny of the foreign divorce under s. 29 and/or s. 42A, the respondent stated that this is not the position and further, the letter of 27th August, 2014, contradicts this argument, stating that "[i]f evidence can be obtained indicating that R.B. accepts the divorce judgement unequivocally, the matter will be further reviewed."

37. In relation to the applicant's submission that the correct interpretation of Article 22(b) is that a divorce which was granted in default of appearance is *prima facie* entitled to recognition where the respondent to the divorce proceedings was served in sufficient time and in such a way as to enable her to arrange her defence, the respondent argued that there is nothing in the provision to suggest such an interpretation and there is no reference to prima facie recognition.

38. The respondent submitted that the argument by the applicant, on the basis of Articles 24 and 26, that the respondent was not entitled to review the procedures adopted in Lithuania, applies where the foreign law prescribes for divorce in a particular manner which would not form a ground here, leaving aside public policy reasons. In such a situation, it cannot be queried here whether or not a ground was proven in the foreign court or not. However, pursuant to Article 22, the respondent can review whether there was service for the purposes of non-recognition where the decree is given in default of appearance. Thus, the applicant is incorrect in his contention that the prohibition on review of jurisdiction encompasses service.

39. The respondent contended that there was no factual basis or inference that Mr. Feely discriminated directly against the applicant or indeed applied the law in any manner that resulted in an indirect discrimination.

40. As regards the implication in the applicant's submissions that Mr. Feely acted irrationally in coming to his decision not to be satisfied, there is no claim in the leave application or in the order that the decision was reached on an irrational basis.

The Decision of the Court.

41. The issues that arise in this case are as follows:

> (i) Did the respondent make a decision notified by letter of the 27th August 2014 refusing to recognise the applicant's Lithuanian Divorce decree granted on the 27th of December 2013;
>
> (ii) In exercising his statutory functions, did the respondent fail to have regard to Article 22(b) of Brussels II bis in particular by not considering that R.B. was served with notice of the divorce proceedings in accordance with Lithuanian law;
>
> (iii) Did the decision unlawfully discriminate against the applicant by applying a different standard to Lithuanian law insofar as the respondent refused to accept that notice of divorce proceedings could be properly served by subservice.

42. Was the decision notified on the 22nd of August 2014 a decision at all?

The terms of the letter are set out at paragraph 11 above. It seems clear that the respondent had decided not to authorise the marriage to proceed. He came to this decision because he was not satisfied that the Lithuanian divorce obtained by the applicant was entitled to recognition in Ireland. He was not satisfied because the divorce was given in default of appearance. The court stated in its order that the process was not served upon the defendant because her place of residence or work address were unknown. The proceedings were ordered to be served by way of subservice in this case by publication on a Lithuanian courts website. The respondent did not consider this to be a service in accordance with Article 22 (b) of Council Regulation (EU) 2201/2003 nor Article 37(2) because no proof of actual publication on the Lithuanian Courts site was provided to him. Consequently the applicant was advised to obtain evidence that R.B. unequivocally accepted the divorce. It seems to me that this was a decision capable of being reviewed. It was also however an advice as to how to proceed. The applicant was advised to obtain evidence indicating R.B.'s acceptance of the divorce. Alternatively he could apply to court in proceedings under s.29 of the Family Law Act 1995 seeking recognition of his divorce in Ireland.

43. Was the respondent correct in law to make this decision. In my view he was. The respondent does not issue judgments as to the recognition or not of foreign divorces. He considers applications made to him and in the course of doing that he had regard to Article 22 (b). This was the correct subsection to consider because the Lithuanian judgment was given in default of appearance and in the respondent's opinion the document or petition instituting the proceedings was not served upon R.B. directly but was ordered to be served by way of publication on the Lithuanian courts service website. This order was made when, upon the evidence produced by the applicant, he did not know whether R.B. lived in Lithuania at all. Moreover, no evidence was provided to the respondent that the notice sought to be published was in fact published on the Lithuanian court site. As stated by this court in *Tahir and Another v. Registrar for County Cork and Another* [2012] IEHC 191;

"The onus is on the applicant to provide satisfactory evidence as to her identity".

The same principle applies here. The onus is on the applicant to satisfy the respondent that the Lithuanian divorce was properly obtained and capable of being recognised by him. Section 46 (7) provides the respondent with the authority to require the applicant to provide such evidence as he may specify. He has made it clear what evidence he needs and the reasonableness of that requirement has not been challenged. In any event in all of the circumstances, I consider his requirement and his advice in relation to a s.29 application to be eminently reasonable.

44. As to certain other issues, nothing in the evidence, documents or submissions before the court provides any basis for a claim of discrimination against the applicant. The fact that the respondent was not satisfied with the evidence produced by the applicant so as to allow him accept the Lithuanian divorce does not of itself give ground for any such finding. Specifically, the respondent did not in fact decide that notice of divorce proceedings could not be served by substituted service. No matter arises that calls for a preliminary reference to The Court of Justice of The EuropeanUnion.

45. For the above reason the application is refused.