

5 The Netherlands

Applying Shari'a to Family Law Issues in the Netherlands

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Introduction

According to the latest official count, there were 837,000 Muslims in the Netherlands in 2007.¹ Muslims therefore make up between 5 and 6 per cent of the entire population. The majority still possesses a foreign nationality, often in addition to their Dutch nationality.²

When considering the application of shari'a to matters of family law in the Netherlands, a distinction may be made between the application of shari'a by the authorities under the Dutch national legal order, on the one hand, and application of shari'a among Muslims themselves within the informal social legal order, on the other hand. In the former situation, Muslims are subjected by the State to shari'a family law; in the latter, Muslims are subjected to Dutch secular law, but observe shari'a principles within the informal social legal order.

FORMAL APPLICATION OF SHARI'A

With regard to the first category, application of shari'a under the national legal system, two features of the Dutch legal order must be taken into account. The first is that religious legal systems, which may exist and co-exist in other countries, are not allowed in the Dutch legal order, as Dutch law is secular law. There is separation of Church and State, meaning that State law cannot be based on religious principles and State authorities may not impose religious norms on citizens. The second feature concerns the way in which the law governing family issues is organized in the Netherlands, whereby family disputes may be resolved at different levels.

First, they may be resolved according to the rules of private international law. Rules of private international law apply where a case relating to family law is considered to have an international character. As a result, foreign law may enter into the Dutch legal order in two ways: either through recognition of relationships or decisions established

abroad or through application of foreign law by the Dutch authorities. Quite often, Dutch rules on private international family law still refer to the law of a person's nationality. If that foreign law still observes, or is based on, shari'a law, the Dutch authorities apply shari'a rules indirectly.

The second level at which family law is applied is that of foreign diplomatic authorities. These can be consulted by foreign nationals in relation to all kinds of matters, such as the conclusion of a marriage and the establishment of a marriage contract, including agreement between the spouses on such matters as the dower, the establishment of parentage, reconciliation attempts, other family disputes, and matters of succession. The fact that diplomatic authorities can intervene in all kinds of family affairs and mediate or, to a large extent, indirectly decide in accordance with the principles of shari'a, seems to diminish the need among Muslims to have their disputes resolved by Islamic religious authorities in informal settings.

The third level is the level of Dutch substantive law, which in itself offers a variety of possibilities for introducing shari'a concepts.

INFORMAL APPLICATION OF SHARI'A

With regard to the informal application of shari'a among Muslims themselves, there is no general legal impediment to this practice. So long as the limits set by the national legal system are respected, people are free to conduct themselves as they wish. Acting in accordance with shari'a law is therefore permitted, on condition that Dutch law is observed. Muslims are even permitted to consult religious authorities, providing that Dutch law is not violated. Only in relation to a very small number of issues does Dutch law prescribe a certain sequence of actions, in the sense that religious activities may only take place after obligations under civil law have been fulfilled. The most explicit rule is the one governing marriage: a religious marriage may not take place unless a civil marriage between the spouses has already been concluded.³

However, acting in accordance with shari'a principles may give rise to legal disputes. In that event, the informal and the national legal order may converge. Although shari'a rules respected within the informal social order will not be officially recognized under the national legal system, the fundamental rights of Muslims, such as women's rights, may be at stake. Protection of these fundamental rights might be disrespected within the informal social order. The question arises as to what role human rights can play in protecting the social position of Muslims within their informal social order.

In this article, the application of shari'a as a legal system will not be discussed. In what follows, I focus on describing the legal instruments that may be used to either accept or reject shari'a as rules of conduct for Muslims in their daily life. As a result, I will reflect neither on issues of private international law, nor on the application of shari'a law by foreign consular authorities. In the following I will therefore first discuss the application of shari'a concepts within Dutch substantive law and, second, the legal attitude towards the use of shari'a in informal social settings. After having described the legal framework and the legal instruments available, I will conclude the article by briefly discussing the relevance of the political climate and political policy towards migration and integration, and the way in which this may affect the issue of applying shari'a in the Netherlands.

Applying Shari'a Under the Dutch Legal System

In this section, I will discuss the extent to which Dutch law enables Muslims to apply shari'a to family law issues. This will be explained by describing the legal instruments available to accommodate religious family law values. The following instruments will be discussed: 1. party autonomy; 2. the favour-principle; 3. the use of open norms by the legislator; 4. express legal provisions to accommodate expressions of religion; and 5. the fundamental right to freedom of religion.

PARTY AUTONOMY

Many family disputes may be settled by the parties themselves, either by bilateral agreement or unilateral declaration, or by merely fulfilling religious obligations, for example within the context of bringing up children. However, the formal requirements set by Dutch law must be met. For instance, divorce can only be pronounced by a court of law,⁴ and marriage can only be concluded before the civil authorities.⁵ The divorce or marriage of Muslims carried out by an *imam* in the Netherlands will not be recognized by law. Where there are no formal requirements set by law, the parties are free to organize their family issues as they wish, with or without the involvement of an Islamic authority.

A second restriction is found in the applicable substantive legal rules themselves. It must be borne in mind that the applicable substantive law will often be determined by rules of private international law. Since many Muslims in the Netherlands still possess a foreign nationality, private international law will always come into play in matters of fam-

ily law. For the purposes of this article, I will only discuss *Dutch* substantive law. Agreements governed by private law are usually valid as long as they are not in contravention of the law, public policy, or good morals.⁶ Future spouses are free, in principle, to agree for instance on the dower the man will have to pay to the woman according to shari'a law.⁷ Only where the agreement violates public policy will the autonomy of the parties be limited. Another example is the following: people are free to determine how their property should be disposed of after their death. Under the rules of private international law, the applicable substantive law will either be the law of the nationality of the deceased or the law of his last habitual residence.⁸ Should the conflict rule refer to Dutch inheritance law, only a few restrictions must be taken into account and the disposition may not be contrary to good morals or public policy.⁹ So long as these restrictions are observed, distribution of the estate according to shari'a law is enforceable.

THE FAVOUR-PRINCIPLE

In some instances, the parties may choose which one of several alternatives is to be applied. In these situations, a choice may be made for the alternative that mostly favours shari'a principles. An example is found in the law governing names. The free choice of a child's first name is given to the parents.¹⁰ They are allowed to choose 'one of the 99 beautiful names of Allah'¹¹ if they so desire. Parents are also afforded the possibility of opting for either the mother's or the father's family name as their child's family name.¹² Thus, in order to demonstrate the child's legal descent and to show its observance of Islamic religion, its parents may opt for the name of the Muslim father.

EXPRESS PROVISIONS AND OPEN NORMS

Dutch family law does not include provisions that expressly accommodate the application of shari'a or other religious principles.¹³ On the other hand, the Dutch legislator has deliberately laid down open norms in several family law provisions, so that the specific circumstances of each case, changing circumstances and other developments may be taken into account.¹⁴ The 'interest' or the 'best interest' of the child is such a concept. It is used in all custody cases and in cases of child protection and needs to be construed depending on the factual circumstances of the case. It is debatable whether a child's upbringing in accordance with shari'a would be in its interest, or whether circumcision is in the interest of the Muslim child concerned. It follows from Dutch

case law that, if parents disagree on the circumcision of their child, circumcision is not readily considered to be in the interest of a Muslim boy.¹⁵ However, the Dutch courts will only arrive at such a conclusion after having weighed up the various interests and circumstances involved in the case. One consideration is the religious and social interests of the parents and the child in having him circumcised.¹⁶

FREEDOM OF RELIGION

Freedom of religion and the practice of religion are fundamental rights, guaranteed, *inter alia*, in Article 9 of the European Convention on Human Rights. Although the provisions of this article are applicable in the Netherlands, invoking freedom of religion has hardly ever been successful in matters of family law. In family law issues, freedom of religion usually has to be balanced against other interests at stake, such as the gender equality principle, the interest of the child and public interests. Since it is common sense that the gender equality principle in Europe is of fundamental value and that the interest of a child should be given predominant weight as far as children are involved, balancing the interests often results in attaching more weight to these latter interests.¹⁷

The Use of Shari'a in Informal Social Settings and the Role of Human Rights

Human rights may have a variety of functions where the application of shari'a is concerned. On the one hand, human rights may serve as a shield *against* the application of certain shari'a family law rules. Where shari'a violates the principle of gender equality, the principle of equality between spouses, the principle of equality on the basis of birth, or the principle of equality on the basis of religion, its application is not accepted as a rule. In this event, application and recognition of foreign shari'a family law rules may be refused. These grounds are also invoked in the debate about shari'a councils (see discussion below). Furthermore, they impede the operation of shari'a in all other areas of domestic law, for example where shari'a condones violence or prescribes circumcision.

On the other hand, human rights, primarily the right to freedom of religion, may be used to *accommodate* the application of shari'a. However, as we have seen above, this freedom of religion is rarely successfully invoked in Dutch family disputes.

And finally, human rights may be used as a tool to offer protection against human rights violations brought about in the informal social religious order. This last function of human rights will be discussed in more detail in the next section.

THE EXAMPLE OF THE 'CHAINED WIFE'

The example of the 'chained wife' concerns the following situation: a Muslim wife has married a Muslim husband in both a religious and a civil ceremony. Only the civil marriage is legally valid in the Netherlands. In the case of divorce, it is the Dutch court, and the Dutch court only, which can rule on the divorce. The court will only dissolve the civil marriage, not the religious one. The latter can only be dissolved in religious proceedings. To obtain such a divorce, Muslims must apply to religious or consular authorities. To acquire a religious divorce, the cooperation of the husband is usually required. If the husband refuses to cooperate, the wife will remain in her religious marriage. As a result, she will not be free to enter into a new relationship. Her right to marry, her right to start a (new) family, and her right to develop and participate freely in society (her right of self-determination), are some of the rights that may be thwarted. The phenomenon of the 'chained wife' first emerged within Jewish communities, where it is presumably better known. The term 'chained wife' stems from the *aguna*, the chained wife under Jewish law who was not able to receive her *get*, the Jewish letter of divorce her ex-husband had to hand over to her. Nowadays, this issue has been extended to Muslim women.

In fact, Dutch case law does permit women to apply to the court for an order to force the ex-husband to cooperate with a religious or consular divorce. Already in 1982, the Netherlands Supreme Court recognized the possibility of ordering a Jewish ex-husband to deliver a *get* to his ex-wife before rabbinical authorities in the Netherlands.¹⁸ In 1989, the same Court recognized the possibility of ordering a Muslim ex-husband to cooperate with a consular divorce so that the divorce would be valid in the state of origin as well.¹⁹ In a case in 2010, a Pakistani Muslim woman, who applied to a Dutch Court of First Instance to force her husband to cooperate with an Islamic divorce carried out by an *imam*, was granted her request.²⁰

In all these cases, the application was based on tort: depending on the circumstances of the case and the interests involved, failure to cooperate with a religious divorce after a civil divorce has been obtained may be regarded as a civil wrong (negligence) committed against the ex-wife. The issue was thus resolved in accordance with the provisions of Dutch substantive private law.

The question may arise as to whether the wife, to have the matter resolved, could also have successfully invoked human rights and thus be released from her marriage.²¹ It can be argued that the human rights of a chained wife, as summed up previously, had been violated. However, at least three dilemmas would have to be overcome. The first dilemma is that, since *shari'a* represents informal law, the wife is only informally chained to the marriage. Legally, she is divorced; formal impediments to entering into a new relationship no longer exist. Should human rights be invoked for the sole purpose of resolving the social problems women face within the informal legal order? My answer would be in the affirmative. Human rights protect real-life situations regardless of how these have come about. In a democratic, pluralist society, authorities should recognize that problems may exist within the informal legal order. Recognition of the existence of informal religious marriages and the social results of such marriages is a precondition for the will to have it solved by legal means. In a case concerning a Jewish *aguna* decided by the Canadian Supreme Court in 2007, the Court considered the following:²²

Recognizing the enforceability by civil courts of agreements to discourage religious barriers to remarriage, addresses the gender discrimination those barriers may represent and alleviates the effects they may have on extracting unfair concessions in a civil divorce. This harmonizes with Canada's approach to equality rights, to divorce and remarriage generally, to religious freedom, and is consistent with the approach taken by other democracies.

The second dilemma concerns the following question: should a secular state and secular courts intervene in religious disputes? My answer to this question would again be in the affirmative.²³ Although States must exercise restraint in intervening in religious affairs, secular authorities may intervene if human rights are not observed in the application of religious rules. This was the argument used by the European Court of Human Rights in the case of *Pellegrini v Italy*, where the procedural fundamental rights of one of the spouses had been violated during the Christian Court proceedings,²⁴ and more recently in two cases where churches were not allowed to dismiss one of their employees because they maintained an extramarital relationship.²⁵

The third dilemma reads as follows: must the parties themselves respect human rights in their private relationships? Not the State as public authority, but the ex-husband himself, is ordered by the court to cooperate in a private legal act, that is, a divorce, within the private marital relationship. Of the three dilemmas, the last one may be the

hardest to solve. Although human rights are primarily invoked against State authorities, there is a tendency to accept that human rights are enforceable in private relationships as well.²⁶ Direct application of human rights in the situation of the chained wife is an interesting option that deserves to be examined more thoroughly. Should direct application not yet be accepted, human rights could at least be used to support the wife's civil claim aimed at having her chained position terminated. For one could at least argue that neglecting the fundamental rights of the wife would easily constitute an act of tort.

Application of Shari'a: Politically Sensitive

Application of shari'a in the Netherlands does not seem to be merely a legal question that can be answered by legal reasoning alone. Rightly or wrongly, it seems to be inextricably intertwined with policies on migration and integration. In the course of time, however, these policies have taken different forms. In the 1970s, the presence of migrants in the Netherlands was supposed to be temporary.²⁷ Since it was assumed that migrants would return to their countries of origin, they were allowed to fully keep their identities.²⁸ From the end of the 1970s onwards, there was growing awareness that migrant residency had assumed a permanent nature. The objective then became for minorities to participate fully in society.²⁹

The integration of migrants required mutual adaptation and recognition of existing diversity. In the Integration Memorandum 2007-2011, social cohesion, social integration and participation are deemed essential conditions for integration.³⁰ Very diverse ideas on ethnic, cultural and religious differences within society would have to be bridged. Society realized that integration would be a long process spanning several generations. On several occasions, the European Court of Human Rights stressed the importance of tolerance and acceptance of religious pluralism in present-day democratic pluralist societies.³¹ But by 2010, the government's patience suddenly seems to have run out. Multicultural society has failed, a Dutch Minister has proclaimed.³² Specific integration policy was put on hold. It was felt that many aspects of foreign cultures hamper the process of integration. The political majority's policy of that time seems to be barring foreign elements from society.

In June 2011, in a paper entitled *Integratie, binding, en burgerschap* (Integration, bonding, and citizenship), the Dutch Minister of Internal Affairs launched the government's new perspective on integration.³³ In this paper, the government endeavours to establish a common and rec-

ognizable basis for all its citizens. This common basic foundation is first of all shaped by the social achievements of Dutch society and by such fundamental values as freedom, equality, equal respect for all citizens, tolerance and solidarity. However, according to the Minister, existing unwritten codes of conduct also form part of this common basis. The Minister furthermore states that the Dutch government is also aware of the concerns about the incompatibility between the Western and the Islamic way of life among the traditional population,³⁴ and its attitude towards symptoms of radicalization, violence, and other antidemocratic acts.³⁵ The government also states that it considers itself responsible for allaying these concerns.³⁶ This is a crucial, but worrisome point, as policy is no longer determined by existing incompatibilities and real dangers, but by fear; the fear that incompatibilities and dangers will be the decisive factor, whether such fears have a basis in reality or not.

Measures are to be developed in the area of family law in relation to foreign marriages. Marriage immigration is blamed as one of the reasons for migrants' failure to integrate. In particular, marriages entered into abroad with spouses not prepared for Dutch society are deemed to cause problems of integration and oblige society to make costly efforts to overcome the disadvantaged position of women and children. The government therefore intends to tighten the rules on marriage immigration, in particular as regards forced and polygamous marriages. In this respect, the government is pursuing a multidisciplinary approach, opting for both legal and non-legal, often social, measures. The intended legal measures are in the areas of family law,³⁷ private international law,³⁸ and criminal law,³⁹ as well as in the area of migration law.⁴⁰

It is interesting to see that the issue of forced and polygamous marriages is nowadays approached from a totally different angle than previously. In the past, the issue was regarded as either a gender or human rights issue, or from the perspective of multiculturalism. As a gender and human rights issue, the most important goal used to be the provision of legal instruments to protect the interests of the wife in a forced or polygamous marriage. These instruments were found in family law (marriage impediments), in private international law (refusal to recognize such marriages), and sometimes in criminal law (penalization of such marriages). Nowadays, what seem to have become of paramount importance are the consequences of such marriages for migration and integration. This change in attitude is to be regretted, since it implies a high risk of overlooking the specific interests of the parties concerned and of attaching too much weight to public interest. If the proposals are implemented and prove to be successful, the result will be less acceptance of shari'a in the Netherlands.

Conclusion

The Dutch legislator has expressly and deliberately allowed the application of foreign law – by rules of private international law and by accepting the competence of foreign diplomatic authorities – and the practice of religion. Furthermore, legal instruments are employed, such as party autonomy, open norms, and the favour-principle, so that all kinds of interests may be taken into account. By means of these techniques, shari'a has been formally included in the Dutch legal order. At the same time, the Dutch legal system offers a number of principles restricting the use of shari'a: the secular nature of the Dutch legal system, the prevalence of human rights, and the legal constraints of 'good morals' and 'public policy', which function as 'shields'.

Although the Dutch legal system may be well equipped to cope with legal and religious pluralism and consequently with shari'a, some issues remain to be resolved. There is room for improvement in the application of existing legal instruments, which could be refined. The question is how to achieve this. If shari'a manifestly infringes human rights or public policy, shari'a may not be applied. Where the application of shari'a does not violate Dutch legal standards, it may be readily accepted. From a legal perspective, less clear situations, such as the question of whether Muslim parents are allowed to have their sons circumcised, are the most challenging and open to debate. The instruments provided by Dutch law to cope with these situations seem to be appropriate. However, correct application of the instruments often requires more understanding of the relevance and significance of shari'a principles for those Muslims concerned.

Another problem results from the way in which the gap between the application of Dutch laws and the application of shari'a family law to Muslims and their observance of shari'a family law within the informal legal order is to be bridged. A precondition for resolving this dilemma is recognition of the informal legal order as a social reality. Legal recognition of this social reality, in the sense of legitimizing informal conduct, is not necessary, however, nor is it desirable in general. However, denial on principle of any legal relevance of the informal setting would entail not taking into account genuine, existing interests. Dutch secular rules already allow a certain degree of observance of shari'a.

In addition, human rights are a potential instrument for coping with difficulties ensuing from the informal application of Islamic family law. These often concern the position of women and that of related persons in non-marital relationships, such as partners and their children. Human rights could be an interesting instrument in protecting the position of

women and children against unfair consequences of their observance of shari'a. Thus far, human rights have rarely played such a role, and the further development of this role should thus be encouraged.

Notes

- 1 <http://www.cbs.nl/NR/rdonlyres/ACE89EBE-0785-4664-9973-A6A00A457A55/0/2007k3b15p48art.pdf>.
- 2 <http://www.cbs.nl/nl-NL/menu/themas/bevolking/publicaties/artikelen/archief/2012/2012-3578-wm.htm>.
- 3 Article 68 of Book 1 of the Dutch Civil Code.
- 4 Article 55 of Book 10 of the Dutch Civil Code (in force since 1 January 2012). In earlier jurisprudence: Netherlands Supreme Court (HR) 31 October 1986, *Nederlandse Jurisprudentie* (NJ) 1987, 924.
- 5 Article 68 of Book 1 of the Dutch Civil Code.
- 6 Article 40 of Book 3 of the Dutch Civil Code.
- 7 Agreements on a dower often gave rise to questions of characterization. Should such an agreement be classified as a marital agreement, a maintenance agreement or a contract *sui generis*? For a more extensive discussion of these questions, see the contribution by N. Yassari in chapter 9 of this volume.
- 8 Articles 145 and 146 of Book 10 of the Dutch Civil Code and the 1989 Hague Convention on Succession.
- 9 Article 44 of Book 4 of the Dutch Civil Code.
- 10 Article 4 of Book 1 of the Dutch Civil Code.
- 11 K.M. Sharma, 'What's in a Name? Law, Religion, and Islamic Names,' *Denver Journal of International Law and Policy* 1997-1998 (Vol. 26, No. 2), pp. 151-207; A. Schimmel, *Islamic Names*, Edinburgh University Press 1989 (series: Islamic Surveys).
- 12 Article 5 of Book 1 of the Dutch Civil Code.
- 13 The last provisions that expressly referred to religious interests were repealed on 1 January 2005. These articles prescribed that the religious character of a foster institute and the religion of the child should be taken into account when placing a child in a foster family.
- 14 R.J.S. Schwitters, *Recht en samenleving in verandering. Een inleiding in de rechts-sociologie*, Deventer: Kluwer, 2008 (2nd ed.), pp. 56-57.
- 15 S.W.E. Rutten, 'Besnijdeniszaken voor de Nederlandse rechter,' in: Pauline Kruiniger (ed.), *Recht van de Islam* 24, Den Haag: Boom Juridische Uitgeverij, 2010, pp. 67-78.
- 16 Court of Appeal 's-Hertogenbosch, Judgment of 26 November 2002, LJN: AF2955.
- 17 Supreme Court 1 July 1982, *Nederlandse Jurisprudentie* (NJ) 1983, 201 (child protection measure); Court of Appeal 's-Hertogenbosch 26 November 2002, LJN: AF2955 (circumcision of a male child); ECTHR 29 November 2007, appl.nr. 37614/02 (Ismailova t. Rusland) (upbringing by Jehovah's Witness and awarding of custody); Supreme Court 9 November 2001, NJ 2002, 279 (unilateral

- repudiation); Court of First Instance Rotterdam 27 January 2010, LJN: BL1502 (unequal positions of men and women with regard to denial of paternity).
- 18 Supreme Court 22 January 1982, *Nederlandse Jurisprudentie* 1982, 489. More recently: Court of First Instance Amsterdam 10 April 2012, LJN: BW3800.
 - 19 Supreme Court 10 November 1989, *Nederlandse Jurisprudentie* 1990, 112.
 - 20 Court of First Instance Rotterdam 8 December 2010, LJN: BP8396.
 - 21 See also Susan Rutten, 'Protection of spouses in informal marriages by human rights,' *Utrecht Law Review* 2010, 2 (Special Issue: Human Rights Law as a Site of Struggle over Multicultural Conflicts. Comparative and Multidisciplinary Perspectives), pp. 77-92.
 - 22 Canadian SC 14 December 2007, No. 31212, *Bruker v. Marcovitz*.
 - 23 I wrote extensively about this question in a Dutch-language article entitled 'Het recht van de gescheiden vrouw om verlost te worden uit het huwelijk,' *NJCM-Bulletin* 2008 (33)/6, pp. 755-769.
 - 24 ECtHR 20 July 2001, appl.no. 30882/96 (*Pellegrini v Italy*).
 - 25 ECtHR 23 September 2010, appl.no. 425/03 (*Obst v Germany*) and ECtHR 23 September 2010, appl.no. 1620/03 (*Schüth v Germany*).
 - 26 See, for example, article 16 CEDAW. More extensively on this point: Susan Rutten, 'Het recht van de gescheiden vrouw,' 2008, 'Protection of spouses,' 2010.
 - 27 Report of the WRR (Wetenschappelijke Raad voor het Regeringsbeleid), 2001, p. 168; Report of the Tijdelijke Commissie Onderzoek Integratiebeleid "Bruggen bouwen", TK 2003-2004, 28689, nrs. 8-9, p. 28.
 - 28 Idem.
 - 29 Ministerie van Binnenlandse Zaken, 1983, *Minderhedennota*, TK 1982-1983, 16102, nrs. 20-21, Den Haag; Ministerie van Binnenlandse Zaken, 1994, *Integratiebeleid etnische minderheden; contourennota*, TK 1993-1994, 23 684, nrs.1-2.
 - 30 Integratienota 2007-2011, TK 2007-2008, 31268, nrs. 1-2, pp. 11-18.
 - 31 See: Eva Brems, 'Human Rights as a Framework for Negotiating/Protecting Cultural Differences – An Exploration of the Case-Law of the European Court of Human Rights,' M.-Cl. Foblets *et al.* (eds.), *Cultural Diversity and the Law*, Bruxelles Bruylant 2010, pp. 663-715.
 - 32 TK 2010-2011, 32824, nr. 1, p. 3.
 - 33 TK 2010-2011, 32824, nr. 1.
 - 34 41% of these citizens.
 - 35 No numbers are given.
 - 36 Integratienota 2011, pp. 5-6.
 - 37 Attributing authority to the Public Prosecutor to suspend a forced marriage, facilitating the nullification of forced marriages, extending the persons who may nullify a forced marriage by attributing this competence also to the Public Prosecutor, prohibiting marriages between nieces and nephews unless the partners can prove that there is no forced marriage, and increasing the marital age to 18 years.

- 38 Forced marriage as an express ground for invoking public policy, in case of a threat: Dutch law always applies where there is a ground for invoking public policy; removing the attributive rule that refers to foreign law, listing age as a ground for invoking public policy, strengthening recognition policy with regard to polygamous marriages.
- 39 Increase in the number of prosecutions, instituting extraterritorial criminal authority; penalizing forced marriages abroad, not only when committed by own nationals but also by foreigners with durable residence in the Netherlands, extending the period of prescription.
- 40 Refusal of residency permits in case of forced marriages, arranged marriages between nieces and nephews, child marriages, polygamous marriages, and marriages of convenience.

