

Enforcement of the Marriages of Convenience (Prevention) Act

**Evaluation of the consequences of changes in
the Netherlands Civil Code for the workload of
the Immigration Police and the local authorities**

Summary

A research in commission of
WODC van het Ministerie van Justitie

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Summary and conclusion

I. BACKGROUND TO AND REASON FOR THE STUDY

The Marriages of Convenience (Prevention) Act (the Act) entered into force on 1 November 1994. The law was designed to reduce the number of marriages of convenience. The first evaluation of the act in 1998 led to amendment of the regulations in Book 1 of the Netherlands Civil Code and the Municipalities Database (Personal Records) Act (the Municipal Records Act). The changes in the Netherlands Civil Code were designed to reduce the workload of the Immigration Police in the different regions and of local authorities. The intention behind revising the scope of the law and the actual statutory procedure was to make enforcement of the law more efficient and reduce the workload of the officers responsible for carrying out the procedure in the Act.

When the amendment of the provisions of the Netherlands Civil Code relating to marriages of convenience entered into force on 1 April 2001 the then state secretary for justice promised that the amendment would be evaluated after two years. The evaluation was to focus on the consequences of the changes in the Netherlands Civil Code for enforcement of the law in practice, and in particular for the workload of the Immigration Police and the local authorities. The objective of this study is:

to provide insight into the extent to which the changes in the Netherlands Civil Code relating to marriages of convenience have led to the envisaged reduction of the workload for the responsible agencies.

That objective has been broken down into three main questions:

1. How great is the (average) workload of the Immigration Police and of local authorities in connection with the implementation of the Act with respect to the celebration of a marriage or partnership and the registration of a marriage or partnership concluded abroad under the Municipal Records Act?
2. To what extent and in what areas have the changes made in the Netherlands Civil Code in 2000 individually and together led to changes in the workload of the Immigration Police and the local authorities?
3. Are there any practical bottlenecks which can and should be removed (by amending existing legislation or passing new legislation or otherwise)?

II. STRUCTURE OF THE STUDY

The research consisted of:

- Desk research
- Interviews with experts
- Case studies at eight local authorities and eight Immigration Police departments
- A written survey of the other 17 Immigration Police departments (responses received from seven, which is 41%)
- A written survey of local authorities (responses received from 277 local authorities, which is 55%)
- Analysis of the data in the Aliens Administration System (VAS).

III. RESULTS

The main findings and conclusions of the study based on the three main questions are presented below.

A. The (average) workload in local authorities

There are several variants in the way that the tasks involved in enforcing the law are carried out. The variants differ in terms of the average length of time spent on individual cases, and hence the workload involved. For the local authorities there are three main variants: the basic procedure, the extensive procedure and legal proceedings. The major difference between the basic procedure and the extensive procedure is that in the latter variant an investigation is carried out if there is a suspicion of a marriage of convenience. Both main variants have two sub-variants. In other words, in this study we distinguish between five sub-variants:

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|--|-------------------------------|
| 1a. Basic procedure as a formality | 5 to 15 minutes |
| 1b. Basic procedure performed thoroughly | 10 minutes to half an hour |
| 2a. Extensive procedure as formality | 15 minutes to half an hour |
| 2b. Extensive procedure performed thoroughly | 2 to 6 hours |
| 3. Legal proceedings | one and a half days to a week |

The average time devoted to each case has not changed in any of the variants since the law was amended. In most municipalities there has also been no change in the number of cases. Since 1999 the figure has fluctuated around forty cases a year per municipality. Approximately one in four municipalities have seen an increase in the number of cases, and just as many have seen the number of cases decline in the same period. Nor has there been any change in the number of cases in which additional investigation was carried out or where legal proceedings were instituted. Overall, the workload has increased in some (mainly larger) municipalities and declined in others, but in most municipalities it has stayed the same.

B. The (average) workload in Immigration Police departments

As with the local authorities, there are variants in the way the Immigration Police perform their tasks in implementing the Act. The variants differ in the average length of time that is spent on each case, and hence the workload involved. There are two main variants in the procedure of the Immigration Police: the basic procedure and an extensive procedure. The main difference between the basic procedure and the extensive procedure is that in the latter variant an investigation is carried out if there is a suspicion of a marriage of convenience. Both main variants have two sub-variants. We therefore distinguish between four sub-variants:

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|--|-----------------------|
| 1a. Basic procedure as a formality | 10 to 15 minutes |
| 1b. Basic procedure performed thoroughly | 20 to 30 minutes |
| 2a. Extensive procedure as a formality | 30 minutes to an hour |
| 2b. Extensive procedure performed thoroughly | half a day to 4 days |

The average time devoted to each case has not changed in any of the variants since the law was amended. Nor do the data in the VAS provide any evidence of a clear reduction in the number of notifications and registrations. Moreover, the interviews and the survey showed that most Immigration Police departments felt there had been no change in the workload.

C. Effects of the amendment of the law on the workload of local authorities

In this section we discuss the extent to which the aforementioned (minor) changes in the workload can logically be attributed to the entry into force of the amendment of the Netherlands Civil Code with respect to marriages of convenience in 2001 or can be explained by other factors.

Changes as a result of the amendment of the scope of the Act

- Because the Act would no longer apply to a large proportion of EU citizens and other aliens with an independent residence permit for an unlimited period, at the time of the amendment it was expected that the number of cases to which the law applied would decline, especially in the large cities and border municipalities. According to the results of the survey, since the law was amended there has been a *small decline* in the number of applications under the Act by EU citizens (from 35% to 29% of the total number of proposed marriages and from 31% to 29% of the total number of registrations of marriages). The fact that the percentage has not fallen sharply may perhaps be because small municipalities in particular are not clear on the precise scope of the Act. As a result, they commence procedures for applications to which the law no longer applies.
- Beforehand it was also believed that excluding marriages concluded abroad more than 10 years previously from the scope of the law would lead to a drop in the number of cases to which the Act would apply. Since 2001 this decline has indeed occurred *to a small extent*: the percentage of applications relating to registration of marriages that were concluded more than 10 years previously fell from an average of 19% before the amendment to 16% after the amendment. Applications for the registration of marriages that have already been dissolved still account for 8% of the total number of applications each year. Here too a possible explanation for the modesty of the decline is that because they are not sufficiently aware of the scope of the Act smaller municipalities in particular still commence procedures for applications to which the law no longer applies.
- Since 2001 the Act also applies to registered partnerships. In practice this has not led to an increase in the workload since they account for a very small proportion of the applications (less than half of one percent a year).

Changes as a result of amendment of the statutory procedure

- The expectation was that extending the period of validity of the recommendation of the Immigration Police from two to six months might lead to a reduction of the administrative workload. This reduction of the workload would be the result of the fact that less time was needed to handle a case. The results of the study show that in practice the reduction in the average amount of time spent on each case has been negligible. A possible explanation for this is that even before the law was amended in some cities the validity of the declaration was already automatically extended every two months without the requirement of filling in another form. This requirement took several minutes at most in each case, which is a small proportion of the overall time spent dealing with an application. When this action is no longer required, therefore, it has scarcely any effect on the total time spent on each case. Another explanation is that various municipalities adapted their procedures to the fact that the D79/M46 declaration is valid for two months. These municipalities only send the declaration out when all the other documents are ready and the registration or marriage ceremony can in principle take place. However, according to the VAS data a majority of applicants still in fact receive notice to return within two months.

Changes as a result of amendments in the form to be completed

- The impact on the workload of changes in the form to be completed should be reflected in a reduction in the average amount of time spent on each case. In practice, this scarcely seems to have happened at all (with the exception of a few municipalities). A possible explanation for this is that in practice different versions of the form were already used before the law was amended. Consequently, the renumbering of the form from D79 to M46 did not always lead to any actual changes in the form that was used in practice. It is also possible that improvements in the form did lead to a minimal reduction in the time needed to handle a case but that this fact was not appreciated and reported by the employees.

Other explanations for changes in the workload

Besides the amendment of the law the following factors could possibly explain changes in the workload:

- changes in the organisation of the work (determined at organisational level);
- changes in the attitude of officials (greater or lesser acceptance of the law);
- changes in the nature of the cases / types of alien that report;
- changes in other legislation.

D. Effects of the amendments of the law on the workload of the Immigration Police

Changes as a result of amendment of the scope of the law

- The fact that the law no longer applies to a large proportion of EU citizens and other aliens with an independent residence permit for an indefinite period has led to a certain fall in the number of applications.
- The fact that marriages which were celebrated abroad more than 10 years previously or which have already been dissolved no longer fall under the Act has had little impact on the number of applications, since these categories seldom arise in practice
- The extension of the scope of the law to make it applicable to registered partnerships has not led to a substantial increase in the workload because the number of applications involved is very small.

Changes as a result of amendment of the statutory procedure

- The effect of extending the period of validity of the recommendation of the Immigration Police from two to six months was in practice negligible.

Changes as a result of amendments to the form to be completed

- The changes in the form to be completed have not led to a decline in the average time spent on each case.

Other explanations for changes in the workload

In addition to the amendment of the law the following factors may explain changes in the workload. These factors are:

- changes in the organisation of the work;
- changes in the attitude of officers;
- changes in the nature of the cases / types of alien reporting;

- other legal amendments;
- prioritising of work in combination with staff cuts and transfer of duties to the IND.

E. Bottlenecks in the implementation of the law

The problems that were mentioned most frequently by local authorities:

- the M46 form contains too many questions (especially part A)
- it is not entirely clear which groups the act applies to
- cooperation with the Immigration Police and the courts
- it is difficult to prove a marriage of convenience (applies in particular if one of the partners is living abroad).

The problems that were mentioned most frequently by the Immigration Police:

- the M46 form contains too many (irrelevant) questions (especially part A)
- The procedure under the Act is separate from the procedure for applying for residence (added value is therefore unclear)
- cooperation with municipalities
- difficulty of proving marriages of convenience (applies in particular if one of the partners is living abroad).

The most frequently mentioned suggestions for improvement were:

- link the procedure under the Act to residence procedures rather than prior to them.
- greater possibilities for proving marriages of convenience
- use the Aliens Act rather than the Marriages of Convenience (Prevention) Act to deter people from entering into a marriage of convenience (for example, by extending the period before a person is entitled to permanent residence from three to five years)
- simplify the M46 form (fewer details)
- standardise the procedure to make it more effective.

IV. CONCLUSIONS AND RECOMMENDATIONS

The changes in the Netherlands Civil Code in 2001 have not led to any significant change in the workload of the Immigration Police or the local authorities in the implementation of the Act. The average amount of time spent on each case has remained stable, while the number of cases that local authorities and Immigration Police have to deal with has not demonstrably increased or declined. A minority of municipalities and Immigration Police departments say that the workload has eased, but an equally large group refer to a heavier workload. A large majority have not noticed any difference.

The Act is seen by the implementing agencies as a 'paper tiger', since in practice few marriage registrations / ceremonies are in fact refused. Although the Act has a limited effect in preventing some marriages of convenience, the return on the law is low; the results do not measure up to the volume of work involved. Even where there is a strong suspicion that it is a marriage of convenience it is difficult to prove the suspicion. The officers responsible in local authorities and the Immigration Police also fear that if they refuse permission for a marriage the refusal will be overturned after (very time-consuming) legal proceedings.

As regards the effectiveness and the return from the law the study produced the following suggestions for improvement.

- Link the Marriages of Convenience (Prevention) Act to the Aliens Act and the legislation on integration of immigrants.
- Make a marriage of convenience less attractive as a springboard to permanent residence status by:
 - increasing the waiting period before a permanent residence permit is granted from three to five years
 - impose stricter admission requirements after three years of marriage. For example, more stringent requirements regarding command of the Dutch language and in the area of work and income.
- Abolish the application of the Act with respect to the registration of marriages celebrated abroad. Generally speaking, one of the partners remains abroad which limits the possibilities for investigation. In addition, the Municipalities Database (Personal Records) Act will probably provide sufficient safeguards for establishing the authenticity of a marriage celebrated abroad with the requirement for certification of the marriage documents.
- Finally, the procedure could be made more effective by making the compulsory M46 form optional and only starting the procedure in 'suspicious' cases. This will reduce the number of applications and leave more time for a thorough and careful investigation. This would lead to a more useful recommendation from the Immigration Police to local authorities.

There are a number of problems in the enforcement of the law. In the first place, particularly smaller municipalities, which don't encounter many marriages of convenience, seem to be unclear about which groups fall under the law and which don't. Problems also arise in the cooperation between local authorities, the Immigration Police and the courts. The following suggestions were made for improving the implementation of the Act.

- In practice it is difficult to prove a marriage of convenience in court. To ensure that the evidence of a suspected marriage of convenience meets the criteria that judges employ the responsible officers in the local authorities and the Immigration Police need greater legal expertise.
- Simplify the M46 form by limiting it to details about the current place of residence and residence status of the individuals concerned and details of previous marriages.
- Clear and stricter guidelines for the implementation of the law. It would be easier to decide whether a suspected marriage of convenience needs to be investigated further by inviting applicants to attend an interview rather than sending them a form to complete. Another guideline could be that the Immigration Police should cooperate more closely with embassies so that both partners can always be interviewed, even if one of them is living abroad.

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