

# Summary

## *Introduction*

This report presents the results of a study into the state's legal possibilities to disclose certain personal data to a person's future (marriage) partner. In particular, this research aims to investigate such possibilities in cases where one of the future (marriage) partners is a family migrant. Attention is paid to health, criminal and wealth data as well as to marriage history. The rationale behind this research can be found in a letter 2 October 2009 from the Dutch cabinet in which the cabinet has presented its vision on family migration.

This study assumes that the primary aim of such disclosure is to inform future (marriage) partners about each other's personal history in order to prevent abuse of each other. With regard to family migrants, according to the cabinet, this measure also aims at improving the starting position of family migrants while ensuring that less migrants with unfavorable perspectives will decide to immigrate. National, European and international legislation and jurisprudence as well as secondary sources such as literature were consulted for this research. In order to investigate whether such disclosure has been regulated elsewhere, a "quick scan" has been carried on relevant legislation in a number of European States.

## *Relevant law*

It follows from jurisprudence of the ECtHR that the protection of privacy in the sense of Article 8 ECHR encompasses relational privacy, such as the right to start relations with others, as well as the informational privacy, such as information concerning an identified or identifiable person. It also comprises the physical integrity.

EU Directive 95/46 prescribes guarantees with respect to privacy protection with regard to all investigated fields in this report, except for criminal records. The conditions prescribed in the Directive have been implemented in the Dutch Law on Protection of Personal Data (*Wet bescherming persoonsgegevens* or *Wbp*). The quick scan has shown that from a selected number of countries, only Sweden and Norway offer the possibility for disclosure of data on a person's criminal history (in particular, if certain crimes against family members were committed) to the foreign candidate marriage partner .

Disclosure of a person's personal data to a future (marriage) partner who lives in the Netherlands falls within the scope of the Dutch Law on Protection of Personal Data (*Wbp*). Disclosure is only possible in cases where there is a disclosure ground. One of those grounds is explicit consent of the person concerned. This ground is not problematic for present purposes. But the disclosures which comprise a necessity test requiring the striking of a fair balance are: it is doubtful if not

unlikely that these tests can be met when disclosing personal information about a person to his or her future (marriage) partner.

Furthermore, certain procedural rules must be observed when disclosing information. The right to raise objections against disclosure gives persons the opportunity to seek protection from unlawful disclosure. If personal data would be disclosed to a future (marriage) partner abroad, the state where that partner is residing should guarantee an appropriate level of protection.

The Wbp states additional rules which must be observed also if the mentioned conditions are met with. It concerns in particular the principle of proper and careful treatment of personal data and the principle of bound aims, i.e. data can be used or processed only for the aim they were assembled for.

### *Conclusions*

Certain data that could be interesting for a future (marriage) partner are already publicly available. It concerns certain property data (registered in the insolvency and land registers) and certain personal data such as the marital status. Other property, criminal and health data are subject to strict privacy protection that renders disclosure (virtually) impossible.

With regard to the feasibility of disclosure in practice, it should be noted that the possibilities to disclose data to the foreigner marriage partners are very limited. Furthermore, the first contact between the foreign partner and the Dutch state will often take place only after the marriage, and disclosure of information would therefore be too late.

With regard to the legal feasibility, Dutch law contains few restrictions to adapt the available privacy protection legislation. However, Directive 95/46 stands in the way to radical review of law which could allow disclosure of personal data and in particular health data. Disclosure of criminal data does not fall under the scope of the Directive.

Apart from Directive 95/46, Article 8 of the ECHR sets important restrictions on disclosure. It is not clear which margin of appreciation states have in this respect: while the sensibility of the information suggests a narrow margin of appreciation, the absence of a consensus between States would suggest a wide one.

That future (marriage) partners have an interest in obtaining knowledge about relational violence is evident, and a subsidiary means to achieve the aim seems absent.

To sum up, it seems that, in certain cases, disclosure of data on a person's criminal history to his or her future (marriage) partner could pass the test of Article 8 ECHR. Still, caution is due in this

context. The effectiveness of this tool would be seriously undermined if persons with criminal antecedents decide not to marry.