THE NETHERLANDS

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A. New Developments in the field of Divorce (since September 2002)

There are no changes regarding the grounds for the divorce, the procedure (except the ones explained below) and the effects. The percentage of divorces (compared to the ending of marriages as a result of the death of one of the spouses) has slightly increased over the last decade.[1]

Two themes have been on the political and legislative agenda in the last two decades: (1) proposals to turn some types of divorce into an administrative procedure instead of a judicial one; (2) changes regarding high-conflict divorces. Regarding the first theme: several bills have been introduced in Parliament aiming at the establishment of an administrative divorce for spouses without minor children. However, these bills have not been accepted by Parliament.[2] As a result, divorce law is unchanged and requires all marriages to be dissolved by a court decision, even when spouses agree on the divorce and its consequences. The debate on an administrative dissolution of marriages seems to be silenced for the time being. This is perhaps related to a policy change strongly focussing on high-conflict divorces, which have been identified as a major societal problem by the government. That is why the most significant policy changes in the area of divorce concern the attempt to bring down the number of high-conflict divorces, as well as to reduce the adverse effects on children and society at large. Policy focusses on divorcing parents with minor children since the potential negative impact is highest for these families. An abundant amount of initiatives have been launched, such as a plan with several wide-ranging ideas created by the ministry of Justice and Security and the ministry of Social Welfare and also a so-called 'Divorce Challenge' where the general public and professionals could submit ideas to reduce the problem of high-conflict divorces. In 2016, the Council of the Judiciary (*Raad voor de rechtspraak*) identified ideas for improvement of divorce-related matters within the

1 CBS, Statline, https://www.cbs.nl/nl-nl/cijfers/detail/37425ned?dl=1429A. In 2010 the percentage was 36%, in 2017 39%; the average duration of marriages increased from 14,4 years in 2010 to 15,1 years in 2017.

2 Bill 1: Parliamentary Papers II 2011/12, 29 676 (Beëindiging huwelijk zonder rechterlijke tussenkomst) and Bill 2: Parliamentary Papers II 2014/15 no. 34 118 (Wetsvoorstel scheiden zonder rechter). See Asser/De Boer, Kolkman & Salomons, Personen- en familierecht, Deel II. Huwelijk, geregistreerd partnerschap en ongehuwd samenleven, I-II 2016, no. 602.

court system.[3] The attention on high-conflict divorces interacts with the growing emphasis on shared parenting (see below on parental responsibilities). The search for better ways to deal with high-conflict divorces still continues with new proposals tested in pilots by the judiciary. Several courts pilot new ways to deal with divorces. The government commissioned a number of research projects, consisting of the evaluation of pilots with new practices regarding divorce proceedings within the courts.[4] The ratio is a better processing of (high-conflict) divorce cases by the court, resulting in a better handling and containment of the underlying conflicts between the former spouses. Recently, a pilot started in two district courts introducing a new handling of divorces aimed at solving conflicts between parents at an early stage.[5] In two other courts another pilot has been launched to get families appropriate help and support as soon as possible[6] and yet in another court, an experiment with a family representative in divorce-related proceedings is undertaken. In short, divorce law has not changed, but policy has. It is expected that as a result of the policy changes, the law and legal practice on divorce and separation will eventually be changed, in particular when some of the pilots are successful. Finally, it is striking to note that the number of cases referred by the courts to a mediator has declined during the last decade.[7]

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3 Uitvoeringsplan van de ministeries van Veiligheid en Justitie en Volksgezondheid, Welzijn en Sport Parliamentary Papers II, 2013/14 33 836, no. 3; Visiedocument Rechtspraak, (echt)scheiding ouders met kinderen, Raad voor de rechtspraak, 10-10-2016, www.rechtspraak.nl/SiteCollectionDocuments/visiedocument-vechtscheidingen.pdf; Agenda voor het Actie Platform Scheiden zonder Schade, Rapport Platform 'Scheiden zonder schade', Scheiden…en de kinderen dan? Agenda voor actie, February 2018.

4 E.g. M.V. Antokolskaia, C.J.W. van den Berg, L.M. Coenraad, J. Kaljee, R. Roorda, M. Tomassen-van der Lans, M.C. Sijtsema, Evaluatie pilot preventie vechtscheiding en pilot regierechter echtscheidingen Research Memoranda, no. 3, 2017 Raad voor de rechtspraak; E.S. Kluwer, Het ouderschapsonderzoek: Een aanpak bij vechtscheidingen (Research Memoranda, no. 1). Raad voor de rechtspraak, 2013; E.S. Kluwer, Evaluatie van het ouderschapsonderzoek: Een follow-up, 2018.

5 Parliamentary Papers II 2019/20, 33836, nr. 47, p. 6.

6 Pilot ´Uniform offer of support' in family proceedings, where the judge can refer parties and children to a care and support centre (´*zorgloket*'). The aim is to get help and support as soon as possible without waiting periods. https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Noord-Holland/Nieuws/Paginas/Pilot-uniform-hulpaanbod-per-1-maart-2021-voor-familiezaken.aspx.

7 M. ter Voert, Factsheet 2020-1 Scheidingen 2019, WODC, p. 8: from almost 2.800 cases in 2011 to 1.700 in 2019.

B. New Developments in the field of Maintenance between former spouses (since September 2002)

During the last decade, several bills have been introduced in Parliament to reform the Dutch Civil Code on spousal maintenance,[8] but only the final bill was successful.[9] This was a bill originating from Members of Parliament (MPs) (and not the government itself). This is an interesting observation, indicating that government and Parliament are not always on the same legislative page. This also applies to the reform of the community of property (see below), which also was a MP bill.

The original idea of the MPs was to fundamentally reform the whole system of spousal maintenance, with not only new legal grounds for maintenance, but also a renewed calculating system of the amounts to be paid and, not less important, a shorter duration of the right/duty to maintenance. The contractual freedom of spouses to agree on spousal maintenance would be enlarged; currently spouses have quite some freedom to make an agreement, but it is not possible to exclude spousal maintenance claims before concluding marriage. Some other safeguards have been put into place as well.[10] The bill was first introduced in 2014 in the House of Representatives. Subsequently, the Council of State (*Raad van State*), which has an advising task to inform the legislator on newly proposed acts, was critical towards the fundamental changes made, which according to the Council were insufficiently substantiated in the proposal.[11] The literature was, in varying degrees, critical as well, while in Parliament many questions were raised.[12] This led the initiating MPs to fundamentally adjust the bill, leaving in it only the duration of the spousal maintenance. All the other topics were deleted from the bill. The bill was accepted by both Chambers of Parliament and entered into force on 1 January 2020. The act applies to married couples and registered partners, just like

8 Initiatiefnota of the MP's Van der Steur, Recourt en Berndsen Parliamentary Papers II 2011/12, 33 312 and Initiatiefnota of MP Bontes, Parliamentary Papers II 2011/12, 33 311, rejected by the House of representatives in 2014.

9 Van Oosten, Recourt en Berndsen-Jansen, Parliamentary Papers II 2014/15, 34 231, no. 1-3.

10 Article 1:158 DCC.

11 Parliamentary Papers II 2015/16, 34 231, 5 (Advies van de Afdeling advisering Raad van State en Reactie van de initiatiefnemers), p. 1.

12 W.M. Schrama, Verschil moet er zijn: over gelijkheid in het familierecht, FJR 2016/22, p. 89-94; J. Kok, Partneralimentatie op drift FJR 2017/41; N. Spalter, Het initiatiefwetsvoorstel 'Wet herziening partneralimentatie': partneralimentatie eerlijker, simpeler en korter?, FJR 2017, 22; T.F.H. Reijnen, Het aangepaste voorstel tot beperking van alimentatie: zullen we er maar van afzien?, WPNR 2017, 7172, p. 931-934; C.M. Mellema, Wetsvoorstel herziening partneralimentatie bezien in het licht van de jurisprudentie van de Hoge Raad, REP 2018, nr. 7, p. 39-45; A.N. Labohm, Wet herziening partneralimentatie: de tweede nota van wijziging van 11 juni 2018, EB 2018, 76, p. 164-167; R. van Coolwijk, 'Wet herziening partneralimentatie door de bril van een advocaat', FJR 2019/44, afl. 9; A.N. Labohm, 'Wet herziening partneralimentatie door de bril van de rechter' EB 2019/81; B. Dijksterhuis, Het aangenomen initiatiefvoorstel Wet herziening partneralimentatie: veronderstellingen en empirie, FJR 2019, 43.

all other maintenance provisions. Under the old legislation spousal maintenance was in principle limited to a maximum period of twelve years since the divorce.[13] Under the new act, the maximum duration has been shortened to half the length of the marriage, capped at a maximum of five years. If a marriage has lasted 4 years, the maximum duration of the maintenance right/duty is 2 years. For marriages longer than ten years, the cap of five years limits the duration to this five year-period.

There are a number of exceptions for two types of marriages: long-term (over 15 years) marriages and marriages with children younger than 12 at the time of the divorce. Regarding the long-term marriages, the duration can be extended to the old age pension age of the maintenance creditor, but only when this is no longer than 10 years.[14] The maximum duration is in this case ten years.[15]

The second exception concerns all marriages, regardless of their duration, where children are born, who are at the time of the divorce younger than 12 years.[16] The maintenance right/duty will be extended until the youngest child is 12 years old.[17] It is not clear yet whether the rule applies to all children of the couple, or only the ones born during the marriage (and excluding children born during the informal cohabitation of the future spouses).[18] It is important to note that the new act is applicable to all divorces since 1 January 2020. Couples who married under the old maintenance law, will face the new legislation, thus affecting rights and duties to a great extent. This has been criticised in the legal doctrine.[19] There is hardly any case-law yet on the new act.

Recently, a government commissioned research report has been published on many aspects of maintenance law.[20] Findings indicate that there are opposing views on the

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13 Article 1:157 DCC.

14 Art. 1:157 s. 2 DCC.

15 There is a temporary exception to the ten years-rule in art. 1:157 s. 3 DCC for maintenance creditors who have been married for a minimum of 15 years, who are born before 2 January 1970 and who will reach the old age pension age later than ten years after the divorce. In this scenario, the duration of the maintenance right/duty can be longer than ten years.

16 Art. 1:157 s. 4 DCC.

17 Effectively, this means that this is only an extension (half of the duration of the marriage with a maximum of 5 years) when the youngest child is at the time of the divorce younger than 7 years, or when the couple only recently married.

18 W.M. Schrama, B. Dijksterhuis and N. Spalter, Commentaar & context Wet herziening partneralimentatie, Den Haag: Boom juridisch, 2020, p. 56-57.

19 W.M. Schrama, De wet herziening partneralimentatie: kort door de bocht verkort, in: C. Jeppesen de Boer en F. de Kievit (eds.), Actuele ontwikkelingen in het familierecht, Veertiende UCERF symposium, 2020, Nijmegen, Ars Aequi, p. 13-26.

20 W.D. Kolkman, L.C.A. Verstappen and I. Visser, Alimentatie van nu, Acceptatie van alimentatie in het licht van de maatschappelijke ontwikkelingen, Den Haag: Boom juridisch 2021.

current legal ground and calculating method for spousal maintenance. It is not surprising that maintenance creditors have other perspectives than maintenance debtors do. More interesting is that there appears to be little consensus among legal professionals as well. The acceptance of maintenance is high in general and maintenance is also still needed, according to the researchers, as long as female labour participation is low(er). The researchers recommend not to change the legal maintenance system but to better adjust the informal guidelines courts use (*Tremanormen*) in a number of respects. Furthermore, they argue that there are arguments in favour of introducing maintenance for informal cohabitants with an opt-out system.

C. New Developments in the field of Parental Responsibilities (since December 2004)

Three key themes are relevant in the developments regarding the law on parental responsibilities. First, there is a trend towards more emphasis on children's and parents' rights to equal parenting after divorce and separation. Secondly, the increased attention for high-conflict divorces (see under A) is closely related to care and contact after divorce. The third development concerns the accommodation of new types of families, which do not fit the default family type of heterosexual two parent-families.

The legal provisions on parental responsibilities in the Dutch Civil Code have been changed a number of times; reforms took place by gradual changes in separate acts over time instead of one major reform. In 2007, a new act introduced the duty of parents to take responsibilities for the child's safety. Also, a new norm was added to the section on parental responsibilities that forbids parents to use any mental or physical violence or any degrading treatment against the child.[21] The ratio was to prevent child abuse by the parents.[22]

In 2008 the act on equal parenting after divorce entered into force.[23] This act contains more fundamental changes than the 2007 one. It introduced a duty of parents vested with parental responsibilities to stimulate the development of contact between the child with the non-resident parent after divorce.[24] New was also the duty of a parent without parental responsibilities to have contact with the child.[25] In addition, the 2008 act created a duty for parents to make a parenting plan at divorce (or at the separation

21 Wet van 8 maart 2007, Staatsblad 2007, 145 (Parliamentary Papers 30 316).

22 Asser/De Boer, Kolkman & Salomons, Personen- en familierecht, Deel I, De persoon, afstamming en adoptie, gezag en omgang, levensonderhoud, bescherming van meerderjarigen, I-I 2020, no. 314.

23 Wet bevordering voortgezet ouderschap en zorgvuldige scheiding van 27 November 2008, Staatsblad 2008, 500 (Parliamentary Papers no. 30 145).

24 Article 1:247 s. 3 Dutch Civil Code.

25 Art. 1:377a Dutch Civil Code.

of informal couples). This parenting plan has the status of a mandatory procedural step in the divorce proceedings: in order to obtain a divorce decision from the court, parents need to make such plan, containing their arrangements on care and contact, information and child maintenance.[26] The parenting plan has to be submitted to the court in the divorce proceedings. For informal partners, no divorce proceedings exist but a parenting plan still needs to be agreed upon by the parents.[27] If parents are not able to reach an agreement, they may ask the court to take a decision on the disputed topics without having to submit a parenting plan.[28] The underlying ratio of parenting plans is to stimulate parents to make their own arrangements so that it is not the court who has to decide. The legislator presumed that this would have a positive effect on post-divorce conflict levels between the parents and this would be in the best interest of children. Recent research shows this does not work out as hoped for.[29] There seems to be no link between parenting plans and the conflict level or well-being after divorce.

In the 2008 act a new provision became part of the Civil Code: shared parenting became the new legal norm. In the best interest of the child both parents should be (more) involved in the child's life after divorce or separation. Shared parenting (*gelijkwaardig ouderschap*) does not imply a mandatory 50-50 division after divorce, the Supreme Court ruled on several occasions.[30] It is up to the parents to make arrangements on care and contact after divorce; they may take into account practical considerations.[31] When they do not reach an agreement, the court will make a decision, having the best interest of the child in mind.

After the divorce, conflicts regularly arise regarding care and contact. Enforcement issues regarding arrangements in the parenting plan mostly relate to care and contact. These conflicts have caught the attention of the political domain, with groups lobbying for better compliance. The Ministry of Justice commissioned legal-empirical research on this topic.[32] The results show that many legal options and instruments exist to enforce these arrangements, but that the focus on enforcement is probably not very effective, and that it is to be preferred to support parents in shaping their post-divorce

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26 Article 815 s. 2 Dutch Code of Civil Procedure.

27 Article 1:247a Dutch Civil Code.

28 Article 815 s. 6 Dutch Code of Civil Procedure.

29 S. de Bruijn, Reaching agreement after divorce and separation: Essays on the effectiveness of parenting plans and divorce mediation, 2017 (dissertation); E. Spruijt & H. Kormos, Handboek scheiden en de kinderen. Houten: Bohn Stafleu van Loghum 2014; M. Tomassen-van der Lans, Het verplichte ouderschapsplan: regeling en werking, Den Haag: Boom Juridische uitgevers 2015.

30 Supreme Court 21 May 2010, ECLI:NL:HR:2010:BL7407; Supreme Court 4 October 2013, ECLI:NL:HR: 2013:847; Supreme Court 13 April 2021, ECLI:NL:HR: 2012: BV2363.

31 Art. 1:247 s. 5 Dutch Civil Code.

32 M.V. Antokolskaia, C.G. Jeppesen de Boer, G.C.A.M. Ruitenberg, W.M. Schrama, I. van der Valk, & P. Vrolijk, *Naleving van contact-/omgangsafspraken na scheiding*: *Een rechtsvergelijkend en sociaalwetenschappelijk perspectief.* Den Haag: Boom juridisch 2019.

roles without a high level of conflicts. Another research, requested by a Member of the House of Representatives, looked into the question whether the legal norm on equal/shared parenting should be mandatory.[33] The conclusion in the research report is that this would not have the expected effects on the well-being of the child and parents.

Regarding the third trend: this is not a new one, since the law on parental responsibilities has been adapted several times before in order to accommodate new types of two parent-families (see the 2004 country report). More recently, the question arose whether parental responsibilities could be awarded to more than two parents. Research commissioned by the Ministry of Justice shows some interesting results on intentional multiparent families and stepfamilies. Empirical findings seem to indicate that many parents in these families do not experience problems by not all having parental responsibilities. The role of the third or fourth parent in both types of families differs substantially, both in the respective legal positions of the parents involved and their wishes on the ideal legal regime.[34] In 2016 this State Committee on the Reassessment of Parenthood (*Staatscommissie Herijking Ouderschap*) published its report, 'Child and Parents in the 21st century'. The report is detailed and encompasses many topics, including child participation, a stronger position for children to know their origins, the position of children born in unmarried families, and much more. One of its revolutionary ideas was to introduce legal multi-parenthood for a maximum of four parents (in two households) and multi-parent parental responsibilities. In reaction to the recommendations, the government commissioned further research on the legal and practical implications of multi-parenthood in other relevant areas of law such as inheritance law, tax law, child maintenance, private international law and residence law. Subsequently, the government decided not to take over the idea of multi-parenthood, mostly because of the expected increase of conflicts between more parents.[35] The government also referred to the complexity of a four parent-system. Instead of opting for a multi-parenthood system, the government indicated that a system of *partial* parental responsibilities is the way forward to solve problems experienced by social parents.[36] A draft bill has been published for consultation.[37] The bill hardly resolves the fundamental problem experienced by multi-parent families: the lack of legal recognition of their family as a publicly acknowledged type of family, eligible for the same protection as other families are. Partial parental responsibilities

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33 S. Berends, L. Buimer, Omgangsregeling tussen ouders na scheiding, Regioplan Amsterdam, 2020 Publicatienr. 19164.

34 M.V. Antokolskaia, W.M. Schrama, K.R.S.D Boele-Woelki, C.C.J.H. Bijleveld, C.G. Jeppesen de Boer and G. van Rossum, Meeroudergezag: een oplossing voor kinderen met meer dan twee ouders? Een empirisch en rechtsvergelijkend onderzoek, Den Haag, Boom Juridisch 2014.

35 Parliamentary Papers II 2018/19, no. 33 836, 45, p. 11.

36 Parliamentary Papers II 2018/19, no. 33 836, 45, p. 11.

37 https://www.internetconsultatie.nl/deelgezag.

do not recognise this status, and hardly provide any solution at all. At the same time, this new instrument will result in further complexity of the law.

Another type of family which does not fit the married parents-model are parents who informally cohabit. The legal position of children born during and outside marriage is different than that of marital children: informal parents (fathers mostly) need to take initiatives in order to become a legal parent by recognition of the child, and by registering joint parental responsibilities with the mother (and with the mother's consent). In the legal doctrine it has been argued that it would be preferable to change this.[38] The State Committee recommended creating a new option for parents to register joint parental responsibilities before the child's birth, which is not a choice under the current regime. The government rejected these ideas. In the meantime, a MP introduced a bill facilitating joint parental responsibilities at the time of recognition of the child.[39] It has been accepted by the House of Representatives and has been submitted to the Senate.

D. New Developments in the field of Property relations between spouses (since August 2008)

Property relations between spouses (and registered partners alike) have been subject to a number of reforms over time. In 2012 changes were introduced in the provisions on spousal rights and duties.[40] The 2012 act reforming the community of property introduced a new duty of spouses to inform each other on their property and the administration of their property.[41] New is also the introduction of article 1:87 DCC, which provides a solid basis for claims for compensation of investments of one spouse with his private property in the other one's private property. The investing spouse is entitled to a claim against the other spouse, sharing in an increased or decreased value of the asset. A new rule for full liability of community of property debts at the dissolution of the community debts was also part of the act.[42] The date of the dissolution of the community of property was object of reform too: from 2012 onwards

38 W.M. Schrama, Aanpassing afstammings- en gezagsrecht gewenst voor ongehuwd samenwonende ouders, Justitiële Verkenningen 2016, nr. 4, Den Haag: Boom Juridische Uitgevers 2016, p. 30-44.

39 Parliamentary Papers II, 2016/17 34 605, nos 1-3.

40 Wet van 18 april 2011, Stb. 2011, 205, in werking getreden op 1 januari 2012, tot wijziging van de titels 6, 7 en 8 van Boek 1 van het Burgerlijk Wetboek (aanpassing wettelijke gemeenschap van goederen).

41 Article 1:83 DCC. Asser/De Boer, Kolkman & Salomons, Personen- en familierecht, Deel II. Huwelijk, geregistreerd partnerschap en ongehuwd samenleven, I-II 2016, no. 141.

42 Asser/De Boer, Kolkman & Salomons, Personen- en familierecht, Deel II. Huwelijk, geregistreerd partnerschap en ongehuwd samenleven, I-II 2016, no. 366.

the date of the application for divorce is relevant, and no longer the date of the registration of the court's divorce order (which is at a later date).[43]

Subsequently, a private bill of individual Members of Parliament was introduced, which became the new law of 2018 (below). There was quite some debate in Parliament and in the literature on the proposed reforms.[44] The universal nature of the community of property was converted into a more limited community of property. Assets and debts incurred before marriage are excluded from the community of property under the new act. An exception applies for assets and debts which are jointly owned/incurred before the marriage. If, for example, partners bought a house together during their informal cohabitation, which is registered in both their names, this will be absorbed by the community of property at the conclusion of the marriage. The same applies to debts such as the mortgage incurred for such a house. A second change is that assets which are inherited or donated to a spouse during marriage will be private property. Under the pre-2018 law, the testator or donator had to make a will excluding the asset from any community of property. This change is welcomed by most authors. The two property regimes will exist alongside each other for decades for marriages (and registered partnerships) concluded before or after 1 January 2018.

Not only by legislative action has matrimonial property law been changed; the Supreme Court also further clarified a number of topics, such as *verknochte* assets and debts which might not always fall into the community of property,[45] the relation between a divorce agreement and a matrimonial property agreement,[46] and the date for the valuation of the community property and extent of the community of property.[47]

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43 Asser/De Boer, Kolkman & Salomons, Personen- en familierecht, Deel II. Huwelijk, geregistreerd partnerschap en ongehuwd samenleven, I-II 2016, no. 344.

43 Art. 1:99 DCC; Asser/De Boer, Kolkman & Salomons, Personen- en familierecht, Deel II. Huwelijk, geregistreerd partnerschap en ongehuwd samenleven, I-II 2016, no. 344.

44 T.J. Mellema-Kranenburg, Maakt wetsvoorstel 33987 huwelijkse voorwaarden overbodig of juist noodzakelijk?, WPNR 2015/7054; B. Breederveld, Naar een beperkte gemeenschap van goederen: de stand van zaken met betrekking tot wetsvoorstel 33987, REP 2015, no. 3; B.E. Reinhartz, Scènes uit een huwelijk; oftewel: Beter ten halve gekeerd, FJR 2015, no. 1; T.M. Subelack, Nieuw huwelijksvermogensrecht vanuit het perspectief van een echtscheiding(sadvocaat), WPNR 2014, nr. 7043; J.H. Lieber, De gemeenschap van goederen alsnog beperkt, WPNR 2014, nr. 7041; F.W.J.M. Schols, De vermoedelijke huwelijksvermogensrechtelijke wil, WPNR 2014/7041; W.D. Kolkman, Het einde van het schuldeisersparadijs, WPNR 2014/7044; A.N. Labohm & A.H.N. Stollenwerck, De onderneming(swinst) in het wetsvoorstel Aanpassing van de wettelijke gemeenschap van goederen, WPNR 2015/7057; W.G. Huijgen, Wetsvoorstel 33987: naar een beperkte gemeenschap als wettelijk stelsel van huwelijksvermogensrecht?, JBN 2014, 11.

45 Supreme Court 23 February 2018, ECLI:NL:HR:2018:270.

46 Supreme Court 30 March 2012, ECLI:NL:HR:2012:BV3103.

47 Supreme Court 8 February 2013, ECLI:NL:HR:2013:BY4279.

E. New Developments in the field of De Facto Partnerships (since February 2015)

Very little has changed in the approach of the legislature on this topic. Family law policy continued to focus only on the formal relationships of marriage and registered partnerships. The numbers of informal couples still rise.

This does, however, not mean that there are no changes at all. In the case-law the Supreme Court ruled a landmark case which contributes to more clarity in this vague area of law. The case concerns a couple with a child living together for some years. The woman provides a sum of 77.000 euro to her partner for the renovation of the house they are living in, but which is registered only in his name. At their separation she asks him to pay her the 77.000 euros. In the district court the claim is exclusively based on the analogous application of a provision for married couples in marital property law. This article 1:87 DCC lays down a claim for an investing spouse: when a spouse has invested his private property in private property of the other spouse, he is entitled to a share in the profit (or loss) of the asset invested in. In lower court case-law, this type of claims had already been granted, not on the legal basis of this specific provision but on the analogous application of the case-law of the Supreme Court on spousal claims, which were also applied to informal partners. The claim based on the application of article 1:87 DCC was granted by the district court, but unfortunately on the wrong grounds. When the man appealed, the Court of Appeal of The Hague had no option other than to squash this decision. It ruled that there were no grounds for granting the woman's claim. She took the case to the Supreme Court, which gave an important ruling. The first important aspect is the introduction of a new term for informal partners: informal cohabitants (*'informeel samenlevenden'*). Whatever the specific term chosen, it is good to have a fixed term which can be used by all courts. Secondly, the Supreme Court ruled that the provisions of marital property law, including the articles on spousal rights and duties, are not to be applied analogously to informal cohabitants. It is a pity that the court does not give even one single argument for this point of view. It probably did not realise that lower courts frequently do apply marital property law provisions to informal cohabitants. The new route in judgments on this type of claims after separation is, according to the Supreme Court, to first assess whether parties made an explicit or implicit agreement on the contested claim. The Supreme Court leaves in his prior decisions substantial room to infer implicit contracts between informal cohabitants on the basis of their conduct. If no agreement can be proven (the burden of proof rests on the claimant), there might be other grounds for the claim, such as unjust enrichment. In this particular case, however, according to our highest court, unjust enrichment could not come into play because when the woman provided the money to the man, he was not able to pay this sum himself, and he was under no legal duty to pay for the renovation. In sum, this means that when a cohabitant after

separation claims that he did not have the financial means to pay for the investment made in his property, this will block a claim for compensation of the other partner. Why the court did not take into account that he should not let the renovation take place if he did not have the money is unclear, but criticised in the literature. Anyhow, the Supreme Court continued its reasoning that in relationships between informal cohabitants a legal relationship will be created and that on the basis of fairness and justness one partner might have a claim against the other, if special circumstances have been proven. In this case, the woman did not rely on any special conditions, and in the end her claim for repayment or compensation was rejected. The decision has been received quite differently in the literature.[48] Whatever position one takes in the debate, one can appreciate that at least there is more clarity on the legal position of informal cohabitants in this situation.

[48] L.C.A. Verstappen, NJ 2019/248; A.J.M. Nuytink, AA20190477; W.M. Schrama, HR 10 mei 2019, ECLI:NL:HR:2019:707, Vergoedingsrechten tussen ongehuwde samenlevers: van de regen in de drup Personen- en Familierecht Updates commentaar PFR_2019_0157.