## Recognition of a status acquired abroad: Netherlands

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# RECOGNITION OF A STATUS ACQUIRED ABROAD: NETHERLANDS*

# RECONOCIMIENTO DE UNA SITUACIÓN JURÍDICA RELATIVA AL ESTATUTO PERSONAL VÁLIDAMENTE CREADA O MODIFICADA EN EL EXTRANJERO: PAÍSES BAJOS

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**Abstract:** The aim of this national report is to analyse the current legal framework for the recognition of a legal status acquired abroad in the Netherlands. The first part of the report discusses the academic awareness, legislative awareness, as well as the administrative and judicial awareness of the European discussion on the recognition of personal status. The second part of the report outlines the development and structure of the Dutch legal framework for recognition. The formal and substantive requirements for recognition of a legal status acquired abroad, as well as subsequent changes to that framework, are highlighted for each relevant set of rules. It is argued that the Dutch legal framework for recognition is rather permissive due to its strong link with multilateral instruments ratified by the Netherlands, but suffers from its own flaws in terms of complexity. The final part of the report discusses the methods of recognition in Dutch private international law.

**Keywords:** Private International Law, recognition, personal status, Netherlands, European Union.

**Resumen**: El objetivo de este informe nacional es analizar el marco jurídico actual para el reconocimiento en los Países Bajos de una situación jurídica relativa al estatuto personal válidamente creada o modificada en el extranjero. En la primera parte del informe se analiza el conocimiento académico, el conocimiento legislativo y el conocimiento de la práctica administrativa y judicial del debate europeo sobre el reconocimiento del estatuto personal. La segunda parte del informe expone el desarrollo y la estructura del marco jurídico neerlandés para el reconocimiento. Se destacan los requisitos formales y de fondo en relación a cada una de las materias que forman parte del estatuto personal. Se argumenta que el marco jurídico neerlandés para el reconocimiento es bastante permisivo debido a su fuerte vínculo con los instrumentos multilaterales ratificados por los Países Bajos, pero adolece de sus propios defectos en términos de complejidad. En la última parte del informe se analizan los métodos de reconocimiento en el Derecho internacional privado neerlandés.

* This national report forms part of a comparative law research project which started in 2018. Preliminary results were presented and discussed at an internal meeting in Würzburg in spring 2019, at the JPIL conference 2019 in Munich and at the online conference "La famille dans l'ordre juridique de l'Union européenne" in autumn 2020. The overall comparative analysis, results and discussion are published in this issue in S. Gössl, M. Melcher, Recognition of a Status Acquired Abroad in the EU – A Challenge For National Laws at *Cuadernos de Derecho Transnacional*, vol. 14, n. 1, 2022.

**Palabras clave**: Derecho internacional privado, reconocimiento, estatuto personal, Países Bajos, Unión Europea.



## I. Introduction

**1.** Insofar the "spectre of recognition" is haunting Europe,[1] it appears to be haunting a ghost town in Dutch legal doctrine and legal practice, in particular in matters concerning personal status. The general stance towards the European discussion on the (mutual) recognition of (personal) status is best described as blissful ignorance (II). Book 10 of the Dutch Civil Code (DCC)[2] contain several rules that allow for the automatic recognition of names,[3] marriage,[4] divorce,[5] registered partnerships,[6] family relations[7] and adoptions,[8] although the underlying structure is rather complex. We will elaborate the development of these rules and illustrate the minimal effect of the case law of the Court of Justice of the European Union (CJEU) on the Dutch rules for recognition. In addition, (changes to) the formal and substantive requirements for recognition are addressed in the context of each relevant set of rules for recognition (III). Subsequently, we discuss the methods for recognition in Dutch private international law in line with the Comparative Report in order to highlight the salient features of recognition in Dutch private international law (IV).

## II. Awareness

**2.** The academic awareness, legislative awareness, as well as the administrative and judicial awareness of the European discussion on the recognition of personal status can each be described as intermediate, i.e. the discussion is known, but no significant steps were taken pursuant to this discussion. As will be elaborated below, most steps were already taken before the European discussion on recognition commenced.

### 1. Academic awareness

**3.** The general awareness of the European discussion on the (mutual) recognition of (personal) status and the interplay with private international law in the Netherlands can be regarded as intermediate, although it is helpful to distinguish a minority position and a majority position in order to support this

[1] M. Lehmann, "Recognition as a Substitute for Conflict of Laws?", in: S. Leible (Ed.), *General Principles of European Private International Law*, Deventer, Wolters Kluwer, 2016, p. 11.

[2] We will refer to provisions of the Dutch Civil Code in the customary form of reference. Article 24 of Book 10 is denoted as Article 10:24, whereas Article 24 of Book 1 is denoted as Article 1:24. We will only refer to Book 1 DCC (the family law code) and Book 10 DCC (the private international law code) in this national report.

[3] Article 10:24-10:26 DCC.

[4] Article 10:31-10:34 DCC.

[5] Article 10:56-10:59 DCC.

[6] Article 10:61-10:63 & 10:88-10:89 DCC.

[7] Article 10:100-10:102 DCC.

[8] Article 10:107-10112 DCC.

assertion. The distinction is largely based on the extent to which the case law of CJEU on the principle of non-discrimination and the free movement of persons of Articles 18 and 21 of the Treaty on the Functioning of the European Union (TFEU) can be extended beyond the domain of international name law.[9] The case law of the European Court on Human Rights (ECtHR) on the recognition of certain types of personal status decisions in the context of the right to family life of Article 8 of the European Convention on Human Rights (ECHR) plays a subordinate role in this distinction.[10]

**4.** The minority position was voiced by Gerard-René de Groot and Susan Rutten in 2004,[11] pursuant to the CJEU's ruling in *Garcia Avello*. In a slightly redacted English version of their Dutch contribution, De Groot pointed out that there was "no reason to assume that the importance of the decision in *re Garcia Avello* will be limited to conflicts in the field of names. Similar decisions can be expected with respect to the conflict and recognition rules in other matters of personal status, like affiliation, adoption, transsexuality, marriage and divorce."[12] De Groot and Rutten were both associated with Maastricht University at that time. In the subsequent years, De Groot supervised the dissertations of Kees Saarloos, Jan-Jaap Kuipers and Olivier Vonk at Maastricht University, whom all paid a significant degree of attention to the interplay between the free movement provisions of the EU and private international law in the respective contexts of legal parentage,[13] company law[14] and dual nationality.[15] We will refer to their position as the 'Maastricht' position, which reflects their (former) association with Maastricht University, as well as their specialized focus on the ramifications of primary EU law and the CJEU's case law for private international law.[16]

**5.** The majority position is based on a more restrictive interpretation of the CJEU's case law on the free movement provisions and the primacy of EU law vis-à-vis private international law in general. A.V.M. (Teun) Struycken more or less summarized the majority position by pointing out that "[t]he EC policy with regard to the immigration of third-country nationals happens to have an impact on Member State PIL related to marriage. The EC does not interfere with the Member States' rules of validity and recognition."[17] In other words, the effect of EU law on private international law is acknowledged, but

[9] CJEU 7 June 1992, case C-369/90, *Micheletti*, EU:C:1992:295; CJEU 30 February 1993, case C-168/91, *Konstantinidis*, EU:C:1993:115; CJEU 2 October 2003, case C-148/02, *Garcia Avello*, EU:C:2003:539; CJEU 14 November 2008, case C-353/06, *Grunkin-Paul*, EU:C:2008:559; CJEU, 22 December 2010, case C-208/09 (*Sayn-Wittgenstein*), EU:C:2010:806; CJEU 12 May 2011, case C-391/09, *Runevič-Vardyn*, EU:C:2011:291; CJEU 2 June 2016, case C-438/14, *Bogendorff von Wolffersdorff*, EU:C:2016:401; CJEU 8 June 2017, case C-541/15, *Freitag*, EU:C:2017:432.

[10] ECtHR 28 June 2007, nr. 76240/01, *Wagner & J.M.W.L. v. Luxemburg*; ECtHR 3 May 2011, nr. 56759/08, *Negropontis-Giannisis v. Greece*; ECtHR 26 June 2014, nr. 65192/11, *Mennesson v.* France; ECtHR, 26 June 2014, nr. 65941/1, *Labassee v. France*; ECtHR 24. January 2017, nr. 25358/12, *Paradiso u. Campanelli v. Italy*; ECtHR 14 December 2017, nos. 26431/12; 26742/12; 44057/12 and 60088/12, *Orlandi et al. v. Italy.* However, see para. II.3 below.

[11] G.R. de Groot & S. Rutten, "Op weg naar een Europees IPR op het gebied van het personen- en familierecht", *Nederlands Internationaal Privaatrecht*, 2004, p. 273; G.R. de Groot, "Namenrecht op drift", *Burgerzaken & Recht*, 2004, p. 212; G.R. de Groot, "Op weg naar een Europees IPR op het gebied van het personenrecht", *Weekblad voor Privaatrecht, Notariaat en Registratie*, 2004/6577, p. 360.

[12] G.R. de Groot, "Towards European Conflict Rules in Matters of Personal Status", *Maastricht Journal of European and Comparative Law*, 2004, p. 115.

[13] K.J. Saarloos, European private international law on legal parentage? Thoughts on a European instrument implementing the principle of mutual recognition in legal parentage, Maastricht, Océ Business Services, 2010, pp. 259-323.

[14] J.J. Kuipers, *EU Law and Private International Law: The Interrelationship in Contractual Obligations*, Leiden, Nijhoff, 2012, pp. 275-338. See G.R. de Groot, J.J. Kuipers, "The New Provisions on Private International Law in the Treaty of Lisbon", *Maastricht Journal of European and Comparative Law*, 2008, p. 109; J.J. Kuipers, "Cartesio and Grunkin-Paul: Mutual Recognition as a Vested Rights Theory Based on Party Autonomy in Private International Law", *European Journal of Legal Studies*, nr. 2, 2008, p. 66.

[15] O.W. Vonk, Dual Nationality in the European Union: A Study on Changing Norms in Public and Private International Law and the Municipal Law of Four EU Member States, Leiden, Nijhoff, 2012, pp. 127-163.

[16] Thalia Kruger for example pointed out that Saarloos did not question the subsidiary role of EU law in the area of international family law when he argued that certain issues of legal parentage should be regulated by the EU. See T. Kruger, "Review: European private international law on legal parentage? Thoughts on a European instrument implementing the principle of mutual recognition in legal parentage", *Familie- en Jeugdrecht*, 2012/66.

[17] A.V.M. Struycken, "Co-ordination and Co-operation in Respectful Disagreement", *Collected Courses of the Hague Academy of International Law*, vol. 311, 2009, para. 134.

cannot be deemed to substitute national rules of private international law and neither should the case law of the CJEU be interpreted to that effect.[18] Likewise, Paul Vonken,[19] Paul Vlas[20] and Luc Strikwerda[21] do not extend the reasoning in the CJEU's case law on names and/or companies beyond the free movement of persons and the freedom of establishment in the context of their discussions of the effect of EU law on Dutch private international law.[22] In addition, Struycken,[23] Vonken[24] and Katharina Boele-Woelki[25] are particularly aware of the European discussion on mutual recognition, although they only mention that discussion in passing. We will refer to the position of these scholars as the 'internationalist' position, due to the fact that they tend to emphasize the importance of the Hague Conference of Private International Law (HCCH) and the Commission Internationale de l'État Civil (CIEC) as more appropriate venues to adopt (uniform) rules of private international law in some of the specific areas upon which the European legislator and the CJEU appear to encroach.[26]

**6.** The distinction between the Maastricht position and the internationalist should not be over-exaggerated, as it mainly serves to highlight the reception of the case law of the CJEU. The Netherlands has always given full support to the HCCH and the CIEC,[27] even though the Dutch membership of the CIEC was terminated on 15 May 2018 due the increasing role of the EU and the HCCH in similar fields.[28] More specifically, the Netherlands is a Contracting Party to 28 Hague Conventions and has ratified 21 CIEC Conventions that are and remain in force.[29] A significant number of the legal scholars mentioned above is a (former) member of the Standing Government Committee for Private International Law (*Staatscommissie voor het Internationaal Privaatrecht*)[30] and/or the Advisory Committee for matters concerning civil status and nationality (*Commissie van Advies voor de zaken betreffende de burgerlijke staat en de nationaliteit*),[31] which by their very nature endorse an internationalist orientation.

**7.** The Standing Government Committee serves as an advisory body to the Dutch government, parliament and senate on matters concerning private international law. In addition, it serves as an advisory body to the HCCH pursuant to the Statute of the Hague Conference on Private International Law.[32]

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[18] Ibid., para. 133.

[19] A.P.M.J. Vonken, *Asser 10-I Algemeen deel IPR* (2nd edition), Deventer, Wolters Kluwer, 2018, para. 54-57.

[20] P. Vlas, *IPR en BW*, Deventer, Wolters Kluwer 2015, para. 20.

[21] L. Strikwerda, *Inleiding tot het Nederlandse Internationaal Privaatrecht* (11th edition), Deventer, Wolters Kluwer, 2015, para. 100.

[22] In specialized contributions on name law, the reasoning of the CJEU is not extended. See E.C. Maclaine Pont, Partijautonomie in het 'nieuwe' internationale namenrecht, *Nederlands Internationaal Privaatrecht*, 2010, nr. 3, p. 447; F. Ibili, "Persoonenrecht: minderjarigheid, handelingsbekwaamheid, meerderjarigenbescherming en namenrecht", in: T.M. de Boer, F. Ibili,, *Nederlands internationaal personen- en familierecht* (2nd edition), Deventer, Wolters Kluwer, 2017, para. 3.4.

[23] A.V.M. Struycken, "Co-ordination and Co-operation in Respectful Disagreement", *Collected Courses of the Hague Academy of International Law*, vol. 311, 2009, par. 147.

[24] A.P.M.J. Vonken, *Asser 10-I Algemeen deel IPR* (2nd edition), Deventer, Wolters Kluwer, 2018, para. 550.

[25] K. Boele-Woelki, "The Legal Recognition of Same-Sex Relationships within the European Union", *Tulane Law Review,* 2008, pp. 1968-1969.

[26] See A.V.M. Struycken, "Les conséquences de l'intégration Européenne sure le développement du droit international privé", *Collected Courses of the Hague Academy of International Law*, vol. 256, 1992, para. 43; A.V.M. Struycken, "Co-ordination and Co-operation in Respectful Disagreement", *Collected Courses of the Hague Academy of International Law*, vol. 311, 2009, para. 304; L. Strikwerda, S.J. SCHAAFSMA, *Inleiding tot het Nederlandse Internationaal Privaatrecht* (12th edition), Deventer, Wolters Kluwer, 2019, para. 12; P. Vlas, *IPR en BW*, Deventer, Wolters Kluwer 2015, para. 10; A.P.M.J. Vonken, *Asser 10-I Algemeen deel IPR* (2nd edition), Deventer, Wolters Kluwer, 2018, para. 96-98.

[27] A.V.M. Struycken, "The Codification of Dutch Private International Law: A Brief Introduction to Book 10 BW", *Rabels Zeitschrift für ausländisches und internationales Privatrecht*, 2014, p. 596.

[28] Parliamentary Documents 2016-2017, 34 774, A;1.

[29] See the Dutch member page on hcch.net and the list of signatures, ratifications and accessions by country on ciec1.org (last accessed on 14 October 2021).

[30] Instituted by Royal Decree of 20 February 1897, *Staatscourant* 1897, 46 and supplemented by the Act on the Standing Government Committee for Private International Law of 14 February 1998, *Staatsblad* 1998, 208.

[31] Article 1:29 DCC.

[32] See also D. van Iterson, "The Response of National Law to International Conventions and Community Instruments – the Dutch Example", *European Journal of Law Reform*, 2012, nr. 1, pp. 4-5.

The Advisory Committee used to be the Dutch section of the CIEC, but now mainly serves as an advisory body to the Registrars (*ambtenaar van de burgerlijke stand*) tasked with keeping the Registers of Civil Status (*registers van de burgerlijke stand*) and other public bodies, including the government, on legal questions concerning matters of personal status or nationality.[33] Both Committees were instrumental in the development of the Dutch rules for recognition due to their advisory roles, although the Dutch legislator tends to espouse an even more internationally-oriented position.

## 2. Legislative Awareness

**8.** The level of legislative awareness with respect to the European discussion on recognition should be regarded as intermediate, at least with respect to the decisions of the CJEU on international name law. After the CJEU's ruling in *Garcia Avello* in 2003, the Dutch Minister of Justice requested an advisory opinion from the Standing Government Committee on the effects of this ruling for Dutch private international law. The Committee responded on 18 June 2004 and advised the minister to only take those measures that the CJEU's ruling necessitated. The potential far-reaching consequences of the developments under EU law were not fully crystallized and the Committee therefore urged the Minister to await the CJEU's ruling in the pending case *Grunkin Paul*.[34] A change in the secondary legislation concerning the modification of surnames for Dutch nationals with a dual nationality was deemed sufficient to cover the consequences of *Garcia Avello* in the meantime, but no further changes were introduced pursuant to the CJEU's ruling in *Grunkin Paul*.[35] Moreover, with respect to the recognition of (changed) surnames of persons with a foreign nationality, the Dutch legislator simply observed that the relevant provisions of Dutch private international law were already in line with the case law of the CJEU.[36] In other words, changes were limited to what was deemed strictly necessary, even though the Dutch legislator is usually very cognizant of the effects of EU instruments on Dutch private international law. Nonetheless, new legislation has been proposed by the Dutch legislator in order to allow Dutch nationals with a dual nationality to choose their surname.[37]

**9.** A key figure that helps to gauge the normal level of legislative awareness in the Netherlands is Dorothea van Iterson, who served as a legislative counsellor on private international law for the Dutch Ministry of Justice between 1982 and 2009.[38] According to Struycken, she is one of the driving forces behind the step-by-step codification of Dutch private international law up until its consolidation in Book 10 DCC in 2009.[39] Book 10 DCC consolidated twenty separate Private International Law (PIL) Acts that entered into force between 1980 and 2010, which PIL Acts in turn incorporated twenty international instruments concluded over the course of half a century.[40] According to van Iterson, the policy of the Dutch government has always been to accept multilateral instruments to the largest extent possible, including EU instruments and international conventions. Many of these instruments require some form of national

[33] 1:29b DCC. A Registrar that reasonably doubts whether a legal fact evidenced by a foreign public document can be registered in the Registers of Civil Status is obliged to ask advice from the Advisory Committee. See Article 1:29c DCC.

[34] Explanatory Memorandum to Book 10 DCC (*Kamerstukken II* 2009-10, 32 137, nr. 3), pp. 27-28.

[35] E.W.M. Gubbels, "Naamrecht en IPR: enige opmerkingen", *Tijdschrift voor Familie- en Jeugdrecht*, 2010/119, para. 3. A similar conclusion was reached in the report "Bouwstenen voor een nieuw naamrecht" of 2009, which was drafted by the Working group on the liberalization of name law (*Werkgroep liberalising naamrecht*) pursuant to a request of the Dutch Minister of Justice. The report was sent to Dutch parliament in July 2010. See Letter of the Minister of Justice (*Kamerstukken II* 2009-10, 21 123 VI, nr. 121, *Blg.* 74 735).

[36] Explanatory Memorandum to Book 10 DCC, p. 29. See para. III.4 below.

[37] See E.C.C. Punselie, "Komt de dubbele naam in zicht?", *Tijdschrift voor Familie- en Jeugdrecht*, 2019/30.

[38] D. van Iterson, "De exportwaarde van Nederlandse beslissingen en rechtsfeiten op het gebied van het familierecht", in: T.M. de Boer (ed.), *Strikwerda's Conclusies*, Deventer, Kluwer 2011, p. 231.

[39] A.V.M Struycken, "Boek 10 BW – een grote stap in de codificatie van het internationaal privaatrecht: Achtergronden en enige kanttekeningen", *Vermogensrechtelijke analyses*, 2011, nr. 2, p. 34.

[40] See for the full list of international instruments and national PIL Acts K. Boele-Woelki, D. van Iterson, "The Dutch Private International Law Codification: Principles, Objectives and Opportunities, *Electronic Journal of Comparative Law*, December 2010, para. 3.1-3.3.

implementation measures in order to incorporate them in the Dutch legal order, irrespective of whether the instrument contains rules that take precedence over the national provisions of private international law. However, whereas some legal systems distinguish between the national rules that aim to give effect to an international instrument and the national rules that deal with subjects that are not (yet) governed by an international instrument, the Dutch national rules of private international law, as enacted through separate PIL Acts, developed in parallel with the incorporation of international instruments.[41] National codification is therefore regarded as complementary to EU and other international instruments and ought to ensure the coherence between rules from various national, European and international sources.[42] A certain degree of scepticism with respect to recent European developments can nonetheless be observed.

**10.** The incorporation of various international instruments in Dutch private international law often led to the adoption of broad national provisions on recognition. The incorporation of CIEC Convention (No. 11) on the recognition of decisions relating to the matrimonial bond and the Hague Divorce Convention[43] for example led to the adoption of liberal national rules for the recognition of foreign divorces.[44] In contrast, the implementation measures that were taken with respect to Regulation (EU) 2016/1191 on the free circulation of public documents do not go beyond the appointment of a Central Authority as required by Article 15.[45] The response of the Dutch government to the European Commission's 2010 Green Paper on less bureaucracy was already rather negative.[46] According to the Dutch government, the TFEU contained no legal basis to harmonize the substantive family law provisions of the EU Member States and the cross-border aspects should rather be discussed in the context of the HCCH and the CIEC. In other words, the European Commission should stick to the principle of subsidiarity and promote co-operation, rather than impose regulation.[47] Moreover, due to the perception that the Dutch rules for recognition are more liberal than the rules in other Member States, some European developments tend to be considered as a step backwards with respect to Dutch private international law.[48]

### 3. Judicial and Administrative Awareness

**11.** The judicial and administrative awareness of the CJEU's case law regarding the recognition of names is intermediate in the sense that the Dutch courts invoke the CJEU's rulings in *Garcia Avello* and/or *Grunkin Paul* in order to afford Dutch nationals with a dual nationality a right to choose the law that determines their surname, but do not extend the reasoning of the CJEU beyond this specific domain.[49] In practice, the implementation of the right to choose entails that the courts refuse to correct documents in which the law of a different EU Member State was applied to determine the surname of a Dutch national. Moreover, the authorities who are competent to request such a correction will in such cases often refuse to submit such a request to the Registrar.[50]

**12.** In addition, the courts tend to invoke Article 8 ECHR as a balancing argument in order to accept a status that is not otherwise recognized. Article 8 ECHR was for example invoked to allow the applicants to choose the surnames of their children in a uniform manner, which was not be possible in the

[41] D. van Iterson, "The Response of National Law to International Conventions and Community Instruments – the Dutch Example", *European Journal of Law Reform*, 2012, nr. 1, pp. 4-6.

[42] Ibid, pp. 7-8.

[43] Convention on the recognition of divorces and legal separations (Hague Divorce Convention).

[44] Ibid, pp. 9-10.

[45] Act of 28 April 2018, *Staatsblad* 2018, 162.

[46] COM(2010) 747 def.

[47] Letter of the State Secretary 7 April 2011, pp. 10-14.

[48] D. van Iterson, "De exportwaarde van Nederlandse beslissingen en rechtsfeiten op het gebied van het familierecht", in: T.M. de Boer (ed.), *Strikwerda's Conclusies*, Deventer, Kluwer, 2011, pp. 244-245.

[49] See for example Rechtbank Amsterdam 23 September 2009, NL:RBAMS:2009:BK1836.

[50] E.W.M. Gubbels, "Naamrecht en IPR: enige opmerkingen", *Tijdschrift voor Familie- en Jeugdrecht*, 2010/119, para. 3.

absence of a CIEC convention that governed the matter.[51] In addition, Article 8 ECHR has been invoked in the context of surrogacy cases to establish filial relations if recognition of the birth certificate itself was deemed incompatible with public order, e.g. because a different mother is recorded or no mother is recorded at all, despite the existence of family life.[52] Recognition of the birth certificate would in such cases violate Article 7-8 of the United Nations Convention on the Rights of the Child (UNCRC).[53] The mere existence of family life, however, is not by itself sufficient to establish filiation.[54]

**13.** Lastly, courts tend to invoke Article 3 UNCRC in the context of foreign adoption decisions that concern two prospective parents who were habitually resident in the Netherlands at the time that the adoption decision was taken, if the requirements for recognition are not met.[55] The court may consider various factors, including the best interests of the child and the extent to which the prospective parents sought to evade the rules of the Dutch Adoption Act (*Wet opneming buitenlandse kinderen*),[56] and nonetheless recognize the foreign adoption,[57] or establish an adoption under Dutch law pursuant to Articles 1:227 and 1:228 DCC.[58] However, the recognition of foreign adoptions has been suspended since 8 February 2021.[59]

### 4. Blissful ignorance

**14.** Dutch private international law is not necessarily oblivious to the European discussion on the recognition of personal status established abroad. The common stance is perhaps best described as blissful ignorance, due to the fact that virtually all rules for the recognition of personal status were adopted before 2004 and only minor changes were adopted thereafter. As will be demonstrated below, the Dutch rules for recognition were designed to favour the recognition of a status validly established abroad, unless recognition would be incompatible with public order. The issues concerning the recognition of filial relations in the context of surrogacy and adoption are currently addressed in the context of the HCCH project on parentage/surrogacy,[60] which might entail new national legislative developments in the near-future. Nonetheless, the Dutch system has its own flaws in terms of its complexity.

## III. Development and structure of the Dutch rules for recognition

**15.** Dagmar Coestjer-Walten stated that the Swiss and Dutch rules for recognition may serve as a source of inspiration with respect to the recognition of legal situations evidenced by documents, alongside the CIEC and HCCH conventions. Nonetheless, she submits that:

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[51] Rechtbank Gelderland 15 November 2017, NL:RBGEL:2017:6847.

[52] Rechtbank Den Haag 16 January 2016, NL:RBDHA:2016:417; Rechtbank Den Haag 24 October 2011, NL:RBSGR:2011:BU3627; Rechtbank Den Haag 14 September 2009, NL:RBSGR:2009:BK1197

[53] Hoge Raad 13 March 2016, NL:HR:2016:452.

[54] Hoge Raad 26 September 2008, NL:HR:2008:BD5517.

[55] Article 10:109 DCC. See para. III.6 below.

[56] Act of 8 September 1998, *Staatsblad* 1988, 566.

[57] Rechtbank Den Haag 5 December 2012, NL:RBSGR:2012:BY5179.

[58] Rechtbank Noord-Nederland 16 March 2011, NL:RBNNE:2014:6832; Hof Den Haag 14 November 2012, NL:GHSGR:2012:BZ6329; Rechtbank Noord-Holland 20 February 2013, NL:RBNHO:2013:9811; Rechtbank Noord-Holland 26 September 2018, NL:RBNHO:2018:8259. See A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 513.

[59] A report drafted by an external committee spearheaded by Tjibbe Joustra highlighted the abusive practices surrounding foreign adoptions and the systemic vulnerabilities of the current legislative framework. Consequently, the Minister of Justice suspended the recognition of foreign adoptions in anticipation of new legislation. See Letter of the Minister of Justice (*Kamerstukken II* 2020-21, 31265, nr. 79) and the accompanying report by the Commissie onderzoek interlandelijke adoptie (*Blg.* 968997).

[60] See S. RUTTEN, "Het Haagse project over afstamming en internationaal draagmoederschap; the Parentage/Surrogacy Project", *Tijdschrift voor Familie- en Jeugdrecht* 2019/54. Rutten participates in the HCCH Expert Group that was initiated in 2015 on behalf of the Netherlands

> "*the mix of conflict rules, substantive and procedural standards, limitations on the scope of recognition with regard to the types of documents and the authorities competent to issue the respective documents, as well as the grounds for refusal of recognition, make a systematic and convincing approach (acceptable as a method of private international law) very difficult*."[61]

The above quote applies to the recognition of foreign legal situations established pursuant to a decision. The difficulty to discern a systemic approach in fact results from the policy of the Dutch legislator to accept multilateral instruments to the largest extent possible,[62] which provided the initial trigger to adopt the national rules for recognition that are currently reflected in Titles 2 to 6 of Book 10 DCC.[63] We will discuss the international background of these rules, as well as their interplay with international instruments as a preliminary matter, before we address the relevant underlying PIL Acts.

## 1. General observations

**16.** The rules for the recognition of names, marriage, divorce, registered partnerships, family relations and adoptions in Book 10 DCC are derived from the PIL Acts on Divorce,[64] Marriage,[65] Names,[66] Descendance,[67] Adoption[68] and Registered Partnerships,[69] which were enacted between 1981 and 2004. The structure of these PIL Acts was transposed to Book 10 DCC and their order was re-arranged, but their provisions were not significantly modified.[70] Each PIL Act introduced conflict rules to determine the applicable law to establish a certain type of legal status in the Netherlands, as well as rules for the recognition of a foreign legal status that was validly established by, or under the supervision of a competent authority in the state of origin.[71] Most of these rules are in turn derived from a corresponding HCCH and/or CIEC convention.

**17.** The PIL Acts on Divorce, Marriage, Names and Adoption implement, transpose and/or complement the Hague Divorce Convention, the Hague Marriage Convention[72] and the Hague Adoption Convention,[73] as well as the CIEC Convention (No. 11) on the recognition of decisions relating to the matrimonial bond and Convention (No. 19) on the law applicable to names and surnames up to various extents. The PIL Act on Descendance equally gave effect to several CIEC conventions,[74] although the provisions for recognition of the PIL Acts on Names, Descendance and Registered Partnerships were modelled on the existing rules in the PIL Acts on Divorce and Marriage.[75] The link between the PIL Acts and their corresponding international instruments, if any, remained intact and is explicit in the context

[61] D. COESTER-WALTJEN, "Recognition of legal situations evidenced by documents", in: J. BASEDOW ET AL. (eds.), *Encyclopedia of Private International Law*, Cheltenham, Edward Elgar, 2017, pp. 1495, 1505.

[62] See para. II.2. above.

[63] The relevant titles are Title 2 (names), Title 3 (marriage), Title 4 (registered partnership), Title 5 (descendance) and Title 6 (adoption), which structure expressly mirrors the structure of Book 1 DCC.

[64] PIL Act on Divorce (*Wet conflictenrecht echtscheiding*), Act of 25 March 198, *Staatsblad* 1981, 166

[65] PIL Act on Marriage (*Wet conflictenrecht huwelijk*), Act of 7 September 1989, *Staatsblad* 1989, 392.

[66] PIL Act on Names (*Wet conflictenrecht namen*), Act of 3 July 1989, *Staatsblad* 1989, 288, amended by the Act of 24 December 1998, *Staatsblad* 1999, 2.

[67] PIL Act on Descendance (*Wet conflictenrecht afstamming*), Act of 14 March 2002, *Staatsblad* 2002, 153.

[68] PIL Act on Adoption (*Wet conflictenrecht adoptie*), Act of 3 July 2003, *Staatsblad* 2003, 283.

[69] PIL Act on Registered Partnerships (*Wet conflictenrecht geregistreerd partnerschap*), Act of 6 July 2004, *Staatsblad* 2004, 334.

[70] Explanatory Memorandum to Book 10 DCC, p. 5.

[71] A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 396.

[72] Convention on the Celebration and Recognition of the Validity of Marriage (Hague Marriage Convention).

[73] Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention).

[74] The relevant conventions include CIEC Convention (Nr. 6) on the establishment of maternal descent of natural children; (Nr. 12) on legitimation by marriage; and (Nr. 18) on the voluntary acknowledgment of children born out of wedlock.

[75] See para. III.4-III.6 below.

of the Titles on names,[76] marriage (including divorce),[77] and adoption[78] in Book 10 DCC. Moreover, the Brussels IIbis Regulation takes precedence over the Dutch national rules for recognition of foreign divorce decisions,[79] whereas the Hague Adoption Convention takes precedence over the national rules for the recognition of adoption decisions.[80] The national provisions for the recognition of divorce and marriage, however, apply notwithstanding the Hague Divorce Convention and the Hague Marriage Convention, as the Dutch legislator decided to adopt more favourable rules for recognition.[81]

**18.** In general, the characterization of the Dutch rules for recognition as a mix of conflict rules, substantive and procedural standards, as well as limitations on the scope of recognition is correct, which results from the national and international developments briefly outlined above. We will discuss the underlying PIL Acts in order of enactment to highlight some of the historical intricacies involved in that process.

## 2. Divorce

**19.** The PIL Act on Divorce was introduced in 1981, following the ratification of the Hague Divorce Convention and the Luxembourg Convention. The national rules for recognition were intended to supplement these conventions, although the Dutch legislator equally took into account existing case law, which differentiated between foreign divorce decrees that involve Dutch nationals,[82] one Dutch national[83] or foreign nationals.[84] The distinction between Dutch and foreign nationals was ultimately levelled, as a special regime for Dutch nationals was deemed incompatible with the liberalization of Dutch divorce law in 1971. The requirements for recognition of a foreign divorce were limited to an examination of the international competence of the foreign authority, as well as whether the procedure followed by that authority complies with basic procedural standards, in conformity with international developments.[85]Article 10:57(1) DCC in this respect provides that:

> *(1) A divorce or legal separation decreed outside the Netherlands after a proper administration of justice is recognized in the Netherlands if it has been decreed by a decision of a court or other authority to whom jurisdiction has been granted.*

[76] Article 10:18 DCC (CIEC Convention (Nr. 19) on the law applicable to names and surnames).

[77] Article 10:27 (Hague Marriage Convention) and 10:54 DCC (Hague Divorce Convention & CIEC Convention (Nr. 11) on the recognition of decisions relating to the matrimonial bond).

[78] Article 10:107 (Hague Adoption Convention).

[79] 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, repealing Regulation (EC) No 1347/2000 (OJ L 338/1, 23.12.2003).

[80] Article 10:107 DCC. The national rules for the recognition of adoption decisions were mainly designed to complement the Convention, Explanatory Memorandum to the PIL Act on Adoption, p. 5.

[81] See para. III.2-III.3 below.

[82] A divorce obtained abroad involving two Dutch nationals was recognized if it was decreed by a competent authority on similar grounds as provided by the Dutch rules for divorce. See Hoge Raad 24 November 1916, *Nederlandse Jurisprudentie* 1917/5; Hoge Raad 4 March 1965, *Nederlandse Jurisprudentie* 1996/132; Hoge Raad 9 december 1965, *Nederlandse Jurisprudentie* 1966/378. The Dutch government observed that the lower courts did not apply the aforementioned standard strictly, nor was it unequivocally accepted in legal doctrine. See Explanatory Memorandum to the PIL Act on Divorce (*Kamerstukken II* 1979-80, 16 004, nr. 3), pp. 6-7.

[83] The standard mentioned in the previous footnote above initially also extended to situations where only one Dutch national was involved, although such divorces were often recognized if they were decreed by a competent foreign authority. See Explanatory Memorandum to the PIL Act on Divorce, p. 7.

[84] A divorce that involves only foreign national was generally subjected to the requirements that it was decreed by a competent foreign authority and established pursuant to a proper procedure. See Explanatory Memorandum to the PIL Act on Divorce, p. 8.

[85] Explanatory Memorandum to the PIL Act on Divorce, p. 18. The Standing Government Committee advised the legislator to maintain the rule that a divorce obtained abroad by Dutch nationals should be based on a similar ground for divorce as provided by Dutch law as a precondition for recognition, but later changed its position.

**20.** Article 10:57(1) DCC is formulated in a rather broad manner.[86] The authority that decrees the divorce does not have to be a court, but may equally be an administrative, ecclesial or other religious authority, provided that it assumed its competence on an internationally accepted ground for jurisdiction. Moreover, a unilateral dissolution of marriage facilitated by, or subject to the supervision of a public or religious authority is equally characterized as a divorce for the purpose of this provision,[87] which allows for the recognition of a Moroccan *tatliq, talaq*, *khul*' and *mubarah*.[88] In either case, the divorce must have been decreed pursuant to some form of procedure or supervision,[89] although a divorce that does not meet the criteria of Article 10:57(1) DCC can still be recognized under Article 10:57(2) DCC, provided that the former spouses explicitly or tacitly consented to the divorce, or clearly accepted the divorce. The Standing Government Committee proposed that a divorce validly decreed abroad should be accepted as a *fait accompli*, in order to avoid limping marriages, in particular if both of the former spouses do not contest the divorce. In addition, the adoption of a specific rule for (informal) repudiation was proposed and accepted for similar reasons.[90] Article 10:58 DCC therefore provides that:

> *A dissolution of a marriage that has been proclaimed outside the Netherlands solely by means of a unilateral declaration by one of the spouses shall be recognized if:*
>
> *a. the dissolution of the marriage in this form reflects the national law of the spouse who has dissolved the marriage one-sided;*
> *b. the dissolution has legal effect in the State where it took place, and;*
> *c. it is apparent that the other spouse explicitly or tacitly has consented to or has accepted the dissolution of the marriage.*

**21.** The predecessor of Article 10:58 DCC only applied in the context of repudiation in the traditional sense, i.e. by the male spouse,[91] but was formulated in a gender-neutral manner pursuant to its transposition to Book 10 DCC.[92] However, Article 10:58 DCC only applies in the absence of any form of procedural supervision by a religious or public authority. The Dutch national rules for the recognition of foreign divorces are in this respect based on a principle of *favor divortii* and aim to avoid limping marriages.[93] Recognition on the basis of Article 10:57 or 10:58 DCC can in any case be withheld if recognition of the divorce or unilateral dissolution would be manifestly incompatible with Dutch public order, which is now codified in Article 10:59 DCC.[94]

## 3. Marriage

**22.** The PIL Act on Marriage was introduced in 1989, following the ratification of the Hague Marriage Convention. The Dutch legislator decided to bring the national provisions on the private international law aspects of marriage as much as possible in line with the general principles on which the Hague Marriage Convention is based, including the rules for the recognition of marriages celebrated

[86] A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 202.

[87] Explanatory Memorandum to the PIL Act on Divorce, p. 17.

[88] A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 200-205.

[89] Ibid, para. 199.

[90] Explanatory Memorandum to the PIL Act on Divorce, p. 10.

[91] Explanatory Memorandum to the PIL Act on Divorce, p. 19.

[92] Explanatory Memorandum to Book 10 DCC, p. 45.

[93] A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 202.

[94] The PIL Act on Divorce did not contain an explicit, codified public order exception. The legislative history mainly referred to general principles. See Explanatory Memorandum to the PIL Act on Divorce, p. 19. The public order exception was codified when the PIL Act on Divorce was transposed to Book 10 DCC. See Explanatory Memorandum to Book 10 DCC, p. 45.

abroad, notwithstanding the universal scope of Chapter II of that Convention.[95] Article 10:31 DCC is almost an exact copy of Articles 9 and 10 of the Hague Marriage Convention:

> *(1) A marriage that is contracted outside the Netherlands and that is valid under the law of the State where it took place or that has become valid afterwards according to the law of that State, is recognised in the Netherlands as a valid marriage.*
> *(2) A marriage contracted outside the Netherlands in front of a diplomatic or consular civil servant in accordance with the requirements of the law of the State that is represented by this civil servant, is recognized in the Netherlands as a valid marriage, unless it was not allowed to contract such a marriage in the State where the marriage took place.*
> *(3) For the purposes of paragraph 1 and 2, the word 'law' includes rules of private international law.*[96]
> *(4) A marriage is presumed to be valid if a marriage certificate has been issued by a competent authority.*

**23.** A marriage certificate that was issued by a competent foreign authority, including religious authorities, presumptively establishes the validity of the marriage, absent evidence to the contrary. In principle, the recognizing authority does not have to establish whether the marriage was valid according to the law of the place where it was celebrated, although additional documents may be requested if the validity of the marriage is disputed.[97] Moreover, the requirement that the marriage is valid according to 'the law of the state where it was celebrated' under Article 10:31(1) DCC includes the uncodified (religious) law of that State, provided that such marriages are valid in that state.[98] In addition, even informal marriages that are valid according to the law of the state where they were established can be recognized on the basis of Article 10:31(1) DCC,[99] notwithstanding the fact that informal marriages are excluded by Article 8 of the Hague Marriage Convention. The legislator decided to utilize the option provided by Article 13 of the Hague Marriage Convention to adopt more favourable rules for recognition and equally recognize the types of marriage excluded by the Hague Marriage Convention.[100] However, recognition is not unconditional.

**24.** Article 10:32 DCC provides that a marriage celebrated abroad shall not be recognized if its recognition is manifestly incompatible with Dutch public order; and in any case if one of the spouses at the time that the marriage was celebrated:

> *(a) was already married or entered into a registered partnership with a Dutch national, is a Dutch national itself or was habitually resident in the Netherlands, unless the earlier marriage or registered partnership was dissolved or annulled;*
> *(b) was directly related to the other spouse in the direct line or the brother or sister of that spouse, by blood or by adoption, unless the familial ties were broken due to the absence of a biological relationship or the revocation of the adoption decision;*
> *(c) had not attained the minimum age of eighteen required for marriage, unless both spouses reached that age at the time the recognition of the marriage is requested;*
> *(d) did not have the mental capacity to consent, unless that mental capacity is present at the time that recognition of the marriage is requested and explicitly consents to the recognition of the marriage; or*

[95] Explanatory Memorandum to the PIL Act on Marriage (*Kamerstukken II* 1987-88, 20 507, nr. 3), p. 1-2.

[96] Article 10:31(3) DCC is an interpretative provision. Unlike the Hague Marriage Convention, Dutch private international law excludes *renvoi.* See Explanatory Memorandum to the PIL Act on Marriage, p. 8; A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 106.

[97] A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 107-112. Hof Arnhem-Leeuwarden 6 Februari 2014, NL:GHARL:2014:822; Rechtbank Midden-Nederland 19 June 2015, NL:RBMNE:2015:4394; Hof Arnhem-Leeuwarden 2 July 2015, NL:GHARL:2015:7802.

[98] A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 100.

[99] Ibid, para. 101.

[100] Explanatory Memorandum to the PIL Act on Marriage, pp. 1-2, 8. The Dutch legislator simply saw no good reasons to exclude these types of marriage from the scope of recognition.

*(e) did not freely consent to the marriage, unless that spouse expressly consents to the recognition of the marriage.*

The imperative grounds for non-recognition listed in paragraphs above were not included in the PIL Act on Marriage,[101] nor introduced pursuant to the transposition of that Act to Book 10 DCC,[102] despite the fact that they reminiscence the facultative grounds for non-recognition in Article 11 of the Hague Marriage Convention.[103] Notwithstanding the idea of *favor matrimonii* that underlies the rules for the recognition of marriages celebrated abroad, the legislator decided to adopt these imperative grounds in the context of the broader Act against forced marriages in 2015.[104] As far as child marriages are concerned, the Dutch Minister of Justice has adopted a restrictive position on their recognition.[105] In addition, sham marriages are deemed incompatible with public order, whereas same-sex marriages are recognized under Article 10:31 DCC since their introduction in Dutch law in 2001.[106]

**25.** Lastly, Article 10:33 DCC provides that Articles 10:31 and 10:32 DCC shall apply even where the recognition of the validity of a marriage is to be dealt with as an incidental question in the context of another question, which mirrors Article 12 of the Hague Marriage Convention and aims to avoid that different rules are applied to determine the validity of a marriage celebrated abroad.[107]

## 4. Names

**26.** The impact of the case law of the CJEU on the principle of non-discrimination and the free movement of persons of Articles 18 and 21 TFEU is felt most prominently within this specific area of Dutch private international law.[108] In particular, the conflict rules that were initially introduced in the PIL Act on Names for cases involving a Dutch national with a dual nationality are still incompatible with the CJEU's ruling in *Garcia Avello* (A). The rule for recognition, which was introduced pursuant to an amendment to the PIL Act on Names, instead preceded the CJEU's rulings in *Grunkin Paul*. However, it must be noted that the Dutch Supreme Court blurred the line between the conflict rule and the rule for recognition with respect to Dutch nationals (B).

### A) The PIL Act on Names and its provision on Dutch and dual nationality

**27.** The PIL Act on Names was introduced in 1989 to incorporate CIEC Convention (No. 19) on the law applicable to names and surnames and initially only established conflict rules based on nationa-

[101] Explanatory Memorandum to the PIL Act on Marriage, pp. 8-9.

[102] Explanatory Memorandum to Book 10 DCC, p. 33.

[103] The grounds for non-recognition listed in Article 11 of the Hague Marriage Convention were deemed incomplete and already implied in the general public order exception or Article 14 of the Convention. A general, but restrictive public order exception was adopted consequently.

[104] Act against forced marriages (*Wet tegengaan huwelijksdwang*) , Act of 7 October 2015, *Staatsblad* 2015, 354. See Explanatory Memorandum (*Kamerstukken II*, 2012-2013, 33 488, nr. 3), pp. 10-14.

[105] See Letter of the Minister of Justice (*Kamerstukken II* 2019-20, 33863, nr. 47). Foreign child marriages should in principle not be recognised according to the Minister, unless exceptional circumstances mandate recognition. See for example Rechtbank Oost-Brabant 19 November 2019, NL:RBOBR:2019:7023. The case concerned the recognition of a child marriage celebrated in Eritrea. Notwithstanding the claim of the female spouse that she was married, a formal declaration to that effect and its subsequent registration in the Dutch Registers of Civil Status, the court denied recognition of the marriage on the basis of Article 10:32(c) DCC.

[106] A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 116.

[107] Explanatory Memorandum to the PIL Act on Marriage, pp. 9-10. See Rechtbank Zeeland-West Brabant 3 December 2019, NL:RBZWB:2019:6036. In the latter case, the court had to determine whether a marriage celebrated in Kenia was recognised in the Netherlands on the basis of Article 10:31 DCC in order to reach a decision on the law governing its annulment.

[108] See para II.2 and II.3 above.

lity, similar to Article 1 of the Convention.[109] However, unlike the Convention, the PIL Act also provided a rule for Dutch nationals with a dual nationality, which is currently reflected in Article 10:20 DCC:

> *The surname and the forenames of a person of Dutch nationality shall be determined by Dutch law, irrespective of any other nationality that the person possesses. This rule equally applies if foreign law is applicable to the familial relationship and the existence or ending of that relationship may have effect on the surname*

The limitation to Dutch law in cases of dual nationality was generally deemed acceptable and in line with existing case law at the time when the PIL Act on Names was enacted.[110] Nonetheless, in the light of the CJEU's ruling in *Garcia Avello*, Article 10:20 DCC is in all likelihood incompatible with Articles 18 and 21 TFEU, which has attracted wide support in legal doctrine and judicial practice.[111] A minor modification was made to the Decree on the change of surnames, but in effect only applies for Dutch nationals, the scope of application is limited to minors and the option to choose the applicable law is severely restricted.[112] However, this provision only applies whenever a name or surname has to be established in the Netherlands, at least in principle.

### B) The amended PIL Act on Names and its provision for recognition

**28.** The provision for the recognition of names acquired or changed abroad was introduced in 1998. The Dutch legislator observed that in practice, the names and surnames evidenced in a foreign civil status document were usually registered as evidenced by that document, notwithstanding the law pursuant to which the name was established. A specific rule for the recognition of names evidenced by such documents would consolidate existing registration practices, in addition to being congruent with the "growing trend" to recognize a legal status established abroad in other areas of Dutch private international law.[113] Article 10:24(1) DCC therefore currently provides that:

When the surname or forenames of a person have been recorded at the occasion of a birth outside the Netherlands or have been changed as a result of a change made in the civil status of that person outside the Netherlands, and the surname or forenames have been laid down in a certificate drawn up for this purpose by a competent authority in accordance with local regulations, then such recorded or changed surname or forenames shall be recognized in the Netherlands. Such recognition cannot be refused as being incompatible with public order on the sole ground that another law has been applied than the law that would have been applicable pursuant to the provisions of the Dutch Civil Code.

**29.** Article 10:24 DCC applies indiscriminately to Dutch and foreign nationals, for which reason the CJEU's rulings in *Grunkin Paul* and *Sayn-Wittgenstein* were not particularly spectacular from a Dutch point of view.[114] Moreover, the conditions for recognition in fact closely resemble the conditions

[109] Explanatory Memorandum to the PIL Act on Names (*Kamerstukken II* 1987-88, 20 213, nr. 3), p. 1.

[110] Explanatory Memorandum to the PIL Act on Names, p. 2. Several years prior to the enactment of the PIL Act on Names, the Hoge Raad held that "*in the interest of the administrability of name law and the legal certainty that it requires, it must be assumed that the authorities of every State apply the law of that State with respect to their own nationals. The question under which name a person who possesses the Dutch nationality should participate in the Dutch legal order, should therefore be answered in accordance with Dutch law, even if that person additionally possesses a foreign nationality, irrespective of its effective nationality*." See Hoge Raad 1 November 1985, *Nederlandse Jurisprudentie* 1986/603, para. 3.1.

[111] A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 63. See also para. II.1 and II.2 above.

[112] Decree on the change of surnames, Act of 6 October 1997 (*Besluit geslachtsnaamswijzing*), *Staatsblad* 2004, 239. See E.C. Maclaine Pont, Partijautonomie in het 'nieuwe' internationale namenrecht, *Nederlands Internationaal Privaatrecht*, 2010, nr. 3, para. 3.1-3.4.

[113] Explanatory Memorandum to the amended PIL Act on Names (*Kamerstukken II* 1997-98, 25 971, nr. 3), 2-3.

[114] D. van Iterson, "De exportwaarde van Nederlandse beslissingen en rechtsfeiten op het gebied van het familierecht", in: T.M. De Boer (ed.), *Strikwerda's Conclusies*, Deventer, Kluwer 2011, pp. 239-240. See para. II.1.

for the registration of foreign birth and marriage certificates in the Dutch registers of civil status, which must have been issued by a competent foreign authority in conformity with its local regulations.[115] The link between recognition and registration became evident in two cases that were decided in 2008 and 2009 by the Supreme Court.

**30.** The first case, commonly known as the *Hungarian Marriage* case,[116] arose in the context of the registration of a marriage certificate issued by the Hungarian authorities, which concerned two Dutch nationals. In accordance with Hungarian regulations, the surname of the woman was changed into the surname of the husband on the marriage certificate. The changed surname was automatically recognized pursuant to Article 10:24 DCC and changed upon registration, even though the woman wanted to retain her Dutch surname. The Supreme Court ultimately held that:

> "*if a Dutch national, who is habitually resident in the Netherlands, requests the registration of foreign marriage certificate, it cannot be accepted in general that the interested person expect that, in derogation of Dutch law that is applicable pursuant to Article 10:20 DCC, its surname has been changed pursuant to the marriage. If the foreign marriage certificate evidences that its surname was changed, the changed surname can be registered in accordance with Article 10:24 DCC, provided that the person accepts the change of surname. If the interested person declares not to accept the change of surname, the civil registrar shall not change the surname. In order to promote legal certainty, this choice can only be made upon registration of the foreign marriage certificate and the choice must be registered pursuant to a declaration signed by the interested party*."[117]

The Supreme Court stated that Article 10:24 DCC establishes the competence to register a name evidenced by a foreign document, rather than an obligation that cannot be derogated from, except if registration would be incompatible with public order.[118] Moreover, Article 10:24(1) DCC should be considered as an expression of the principle of *fait accompli*,[119] which derogates otherwise applicable conflict rules if the interested party legitimately expected its surname to have been changed in accordance with foreign law.[120] In the second case, which was based on virtually identical facts, the Supreme Court confirmed its ruling in the *Hungarian Marriage* case.[121]

**31.** The ruling in the *Hungarian Marriage* case has been criticised for blurring the distinction between a status that is established in the Netherlands and a status established abroad,[122] although the fact that it facilitates party autonomy in line with case law of the CJEU has been welcomed.[123] Nonetheless, Article 10:24 DCC was principally inspired by Dutch case law, administrative practice and existing

[115] Article 1:25 DCC.

[116] Hoge Raad 26 September 2009, *Hungarian Marriage*, NL:HR:2008:BD5517

[117] Ibid, para. 3.4.4.

[118] Ibid, para. 3.4.2

[119] The *Hungarian Marriage* case was decided before Book 10 DCC was drafted. The principle of *fait accompli* should not be confused with the *fait accompli*-exception of Article 10:9 DCC. As pointed out by Vonken and Ibili, the *fait accompli*-exception serves to correct the outcome of the application of a conflict rule, rather than a rule for recognition. See A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 74. Article 10:9 DCC in this respect provides that: *Where a fact has certain legal effects under the law that is applicable according to the private international law of a foreign State involved, a Dutch court may, even when the law of that foreign State is not be applicable according to Dutch conflict rules, attach the same legal effects to that fact, as far as a non-attachment of these legal effects would be an unacceptable violation of the parties' justified confidence or of legal certainty*.

[120] Hoge Raad 26 September 2009, *Hungarian Marriage,* NL:HR:2008:BD5517, para. 3.4.3.

[121] Hoge Raad 10 July 2009, NL:HR:2009:BI0462, para. 3.4. The marriage was celebrated in New York and the surname of the woman was changed in accordance with the local regulations of New York, but this case is in all other aspects similar to the *Hungarian Marriage* case.

[122] A.P.M.J. Vonken, F. Ibili, *Asser 10-II Internationaal personen-, familie- en erfrecht* (3rd edition), Deventer, Wolters Kluwer, 2021, para. 57.

[123] Ibid, para. 66. See also E.C. Maclaine Pont, "Partijautonomie in het 'nieuwe' internationale namenrecht", *Nederlands Internationaal Privaatrecht*, 2010, nr. 3, para. 6.3.

legislation, including the rule for recognition in the Hague Marriage Convention and the PIL Act on Marriage, rather than EU obligations.[124]

## 5. Filiation

**32.** The PIL Act on Filiation was introduced in 2002 and was considered to codify one of the most difficult fields of private international law, in particular due to a lack of case law or legal doctrine to support legal practice.[125] The Dutch legislator observed that the question how foreign decisions and legal facts that establish filial relations – such as the recognition of a child, acts of legitimation or a judicial decision that establishes paternity, etc. – should be considered under Dutch law was a matter of great practical significance, in particular for Registrars and other civil servants tasked with registration who are confronted with such questions on a daily basis. The recognition of filial relations principally takes place in the context of registration by the Registrar and the registration of a foreign status in principle confirms its recognition.[126] The legislator explicitly questioned whether Dutch conflict rules should be applied in such matters, which was proposed by the Standing Government Committee for some forms of legal status, but explicitly rejected by the legislator.[127]

**33.** The Dutch legislator instead established two rules for the recognition of filial relations that facilitate the recognition of judicial decisions and public documents, notwithstanding the law that has been applied to establish the status. Article 10:100 therefore establishes that:

> *(1) A foreign irrevocable judicial decision, which, on the basis of filiation, established or changed family relations, is recognized in the Netherlands by operation of law, unless:*
>
> *a. the jurisdiction of the court was apparently not based on a sufficient connection with the legal sphere of its State;*
> *b. no proper investigation or proper administration of justice preceded the decision, or;*
> *c. the recognition of that decision would be manifestly incompatible with public order.*
>
> *(2) The recognition of the foreign judicial decision cannot be refused on the ground of incompatibility with public order, not even when a Dutch citizen is involved, on the sole ground that another law has been applied to this decision than the law which would have been applicable according to the provisions of the present Title.*
> *(3) The foreign judicial decision is not recognized if it is incompatible with a final and binding judicial decision of a Dutch court that concerns the establishment or alteration of the same legal familial relationships.*
> *(4) The preceding paragraphs do not affect the application of the Convention referred to in Article 10:98(1).*[128]

Whereas Article 10:101 DCC provides that:

> *(1) The provisions of Article 10:100(1)(b)-(c), (2) and (3) apply accordingly to foreign legal facts and foreign legal acts that, on the basis of filiation, established or changed family relations, provided that these facts or acts have been laid down in a certificate issued by a competent authority in accordance with local regulations.*

[124] D. van Iterson, "De exportwaarde van Nederlandse beslissingen en rechtsfeiten op het gebied van het familierecht", in: T.M. De Boer (ed.), *Strikwerda's Conclusies*, Deventer, Kluwer 2011, pp. 239-240.

[125] Explanatory Memorandum to the PIL Act on Filiation (*Kamerstukken II* 1998-99, 26 675, nr. 3), p. 1.

[126] Explanatory Memorandum to the PIL Act on Filiation, p. 19. The refusal to register a status can be appealed before the courts on the basis of Article 1:27 DCC.

[127] Ibid.

[128] Articles 10:100(4) and 10:101(3) DCC give effect to Convention (Nr. 12) on legitimation by marriage, which contains a special rule for recognition, although the rule is considered to be of little practical importance. See Explanatory Memorandum to the PIL Act on Descendance, pp. 14-15.

> *(2) A ground for refusal as referred to in Article 10:100(1)(c), arises in any event with regard to the recognition of a child:*
>
> *a. if the child has been recognized by a person of Dutch nationality, who under Dutch law would not have able to recognize the child;*
> *b. if, with regard to the approval of the mother or the child, the requirements that are set for this purpose by the law applicable pursuant to Article 10:95(4), are not met, or;*
> *c. if the certificate or document apparently relates to a sham act.*
>
> *(3) The preceding paragraphs do not affect the application of the Convention referred to in Article 10:98(1).*[129]

**34.** Article 10:100(1)-(3) DCC introduce traditional criteria for the recognition of judgements, which the legislator deemed congruent with the approach under the PIL Act on Divorce and was supported by the Standing Government Committee.[130] Article 10:101(1) DCC extends those criteria *mutatis mutandis* to the recognition of filial relations evidenced by documents in a manner that is similar to registration, which was deemed in line with the approach under the PIL Acts on Marriage and Names.[131] In addition, the *Koranteng* case of the Dutch Supreme Court served as a major source of inspiration.[132] In *Koranteng*, the Supreme Court held that a foreign act of recognition can be recognized if the recognition of the child is valid according to the law of the place where the child, father or mother were habitually resident at the time the status was established, or valid according to the law of the nationality of the mother or child, unless recognition is incompatible with public order.[133] As virtually all connecting factors were deemed acceptable, the legislator decided to choose a procedural form of recognition over recognition on the basis of conflict rules.[134] Consequently, recognition cannot be withheld on the sole ground that a different law has been applied than the law designated by the Dutch conflict rules, although other grounds for the refusal of recognition and the public order exception are available.[135]

**35.** The grounds for refusal in Article 10:101(2) DCC aim to prevent *fraus legis* with respect to foreign documents that evidence an act of recognition,[136] but recognition must be equally withheld if recognition would otherwise be incompatible with public order, for example if the foreign recognition of a child is clearly intended to circumvent Dutch adoption law.[137] Moreover, if filial relations were established or changed pursuant to a marriage that is not recognized through Article 10:32 DCC, for example because of its polygamous nature, recognition of those filial relations is deemed incompatible with public order under Article 10:100(1)(c) and 10:101(2) DCC.[138] Nonetheless, if the marriage lost its polygamous nature and subsequently became recognizable under Article 10:31 DCC, the filial relations established by the marriage are recognized under Article 10:100-10:101 DCC,[139] although Dutch nationality that would be acquired upon birth is not established retroactively.[140] In addition, the recognition of an act of recognition may be incompatible with public order if the child already has two legal parents,[141] although the idea

[129] Ibid.

[130] Explanatory Memorandum to the PIL Act on Descendance, pp. 19-20.

[131] Explanatory Memorandum to the PIL Act on Descendance, pp. 20-21.

[132] Hoge Raad 31 January 1992, *Rechtspraak van de Week* 1992/39 (*Koranteng*). See Explanatory Memorandum to the PIL Act on Descendance, p. 21.

[133] Hoge Raad 31 January 1992, *Rechtspraak van de Week* 1992/39 (*Koranteng*), para. 3.2.3.

[134] Explanatory Memorandum to the PIL Act on Filiation, p. 21. See also D. van Iterson, "De exportwaarde van Nederlandse beslissingen en rechtsfeiten op het gebied van het familierecht", in: T.M. de Boer (ed.), *Strikwerda's Conclusies*, Deventer, Kluwer 2011, pp. 235-236.

[135] The issues arising in the context of surrogacy were already addressed in para. II.3 above.

[136] Explanatory Memorandum to the PIL Act on Descendance, p. 20.

[137] Hoge Raad 2 November 2012, NL:HR:2012:BX696, para. 3.4.

[138] Hoge Raad 5 May 2017, NL:HR:2017:942, para. 3.6.

[139] Ibid, para. 3.9.

[140] Ibid, para. 3.10-3.11.

[141] Rechtbank Den Haag 4 October 2018, NL:RBDHA:2018:11885.

of multiple legal parents has been debated in the Netherlands.[142] Moreover, whether the Dutch legislative framework should include specific rules on international (commercial) surrogacy is still debated.[143]

## 6. Adoption

**36.** The PIL Act on Adoption was introduced in 2003 to supplement the Hague Adoption Convention. The Hague Adoption Convention takes precedence over the Dutch rules.[144] The legislator carefully coordinated the scope of the national rules with the rules of the Convention,[145] which resulted in two specific rules for the recognition of foreign adoption decisions that are currently found in Article 10:108-10:109 DCC. Article 10:108 DCC applies to wholly foreign adoptions that are not governed by the Convention:

> *(1) A foreign adoption decision is recognised by operation of law if it was taken by:*
>
> *a. a competent authority in the State of origin, in which both the adoptive parents and the child had their habitual residence at the time that the application for the adoption was made, as well as at the time that the adoption decision was taken; or*
> *b. a competent authority in the state of origin, in which either the adoptive parents or the child were habitually resident at the time that the application for this adoption was made, as well as at the time that the adoption decision was taken.*
>
> *(2) A foreign adoption decision shall not be recognised if:*
>
> *a. it was clearly not preceded by a proper investigation or not subject to a proper administration of justice, or;*
> *b. in the case referred to in Article 10:108(1)(b), the adoption decision is not recognised in the State in which the child or, as the case may be, in the State in which the adoptive parents were habitually resident at the time that the application for this adoption was made, as well as at the time that the adoption decision was taken, or;*
> *c. recognition of that adoption order is manifestly incompatible with public order.*
>
> *(3) Recognition of a foreign adoption decision shall in any be withheld on the ground referred to in Article 10:108(2)(c), if the adoption decision is clearly based on a sham act.*
> *(4) Even if a foreign adoption order involves a person who possess the Dutch nationality, recognition may not be withheld on the ground referred to in Article 10:108(2)(c), solely because a different law has been applied to it than would have been applied in accordance with the provisions of Section 10.6.2.*

Article 10:109 DCC instead applies to the recognition of foreign adoption decisions that concern prospective parents who were habitually resident in the Netherlands at the time that the adoption decision was taken.

> *(1) A foreign adoption decision taken by a competent authority in the State of origin, in which the child was habitually resident at the that the application for its adoption was made, as well as at the time that the adoption decision was taken, while the adoptive parents were habitually resident in the Netherlands, shall be recognised if:*

[142] See I. BOONE, "Meerouderschap en meeroudergezag: raakt Nederland de tel kwijt?", *Tijdschrift voor Familie- en Jeugdrecht*, 2017/27; P. VLAARDINGERBROEK, "Kind en (meer)ouderschap in de 21ste eeuw, *Tijdschrift voor Familie- en Jeugdrecht*, 2017/30. The idea to introduce legislation that would allow a child to have three or four legal parents in the Netherlands appears to have been stalled. On 21 July 2019, the Minister of Justice informed the parliament on that legislative developments will first focus on forms of partial and shared parental responsibility. See *Kamerstukken II* 2018-19, 33 836, nr. 45.

[143] See R.J. BLAUWHOFF, Internationaal commercieel draagmoederschap en de beoordelingsvrijheid binnen het EVRM, *Tijdschrift voor Familie- en Jeugdrecht*, 2019/51.

[144] Article 10:107 DCC.

[145] Explanatory Memorandum to the PIL Act on Adoption (*Kamerstukken II* 2001-02, 28 457, nr. 3), pp. 12-17.

*a. the provisions of the Dutch Adoption Act were observed, and;*
*b. recognition of the adoption is clearly in the best interests of the child, and;*
*c. recognition would not be denied on a ground referred to in Article 10:108(2) or (3).*

*(2) An adoption as referred to Article 10:109(1) shall only be recognised if a court has established that the conditions for recognition referred to in that paragraph have been met. The procedure set out in Article 1:26 DCC shall apply.*
*(3) A court establishing that the conditions for recognition of an adoption have been met, shall, of its own motion (ex officio), order to add a subsequent mark of the adoption on the relevant civil status certificate. Article 1:25(6), Article 1:25c(3) and Article 1:25g(2) DCC shall apply accordingly.*

**37.** The Dutch legislator decided to distinguish between adoption decisions that were subject to a wholly foreign procedure, e.g. because both the parents and the child were not habitually resident in the Netherlands at the time that the adoption decision was taken, and procedures in which the requirements under the Dutch Adoption Act ought to be taken into account.[146] Consequently, the former decisions are automatically recognized without any formal recognition or exequatur proceedings being required,[147] whereas the latter decisions are subjected to judicial scrutiny before they become effective in the Dutch legal order.[148] The Dutch legislator did not feel inclined to enact a special regime for adoption decisions that do not meet the requirements of the Hague Adoption Convention.[149] However, it anticipated that the non-recognition of certain foreign adoption decisions would under some conditions violate Article 8 ECHR and explicated that recognition in such a context would be possible if the existence of 'family life' is demonstrated.[150] Nonetheless, the recognition of foreign adoptions in the Netherlands has been suspended since 8 February 2021 due to systemic vulnerabilities in the Dutch legislative framework and in anticipation of new legislation.[151]

## 7. Registered Partnerships

**38.** The PIL Act on Registered Partnerships was introduced in 2004 and contained the last set of rules for the recognition of personal status that are now found in Book 10 DCC. We will not discuss these provisions in detail. Article 10:61-10:63 DCC for the recognition of registered partnerships entered into outside of the Netherlands are analogous to Articles 10:31-10:33 DCC for the recognition of marriage,[152] whereas Articles 10:88-10:89 DCC for the recognition of the dissolution of a registered partnership are analogous to Article 10:57 and 10:59 DCC for the recognition of divorce.[153] Nonetheless, two specific additions are worth mentioning. The first addition is Article 10:61(5) DCC:

*(5) Irrespective of Articles 10:61(1)-(2), a registered partnership which was entered into outside the Netherlands can only be recognised as such, if it concerns a legally regulated form of cohabitation of two persons maintaining a close personal relationship with each other, that at least:*
*a. is registered by a public authority competent to make such registrations at the place where the act of registration took place;*
*b. excludes the existence of a marriage or another legally regulated form of cohabitation with a third person, and;*
*c. creates duties (obligations) between the partners that in essence correspond with the marital duties of spouses that the law connects to a marriage.*

[146] Explanatory Memorandum to the PIL Act on Adoption, pp. 5-6.
[147] Explanatory Memorandum to the PIL Act on Adoption, p. 14.
[148] Explanatory Memorandum to the PIL Act on Adoption, pp. 16-17.
[149] Explanatory Memorandum to the PIL Act on Adoption, p. 17.
[150] Explanatory Memorandum to the PIL Act on Adoption, p. 17. See para. II.3 above.
[151] See para. II.3 above.
[152] Explanatory Memorandum to the PIL Act on Registered Partnerships (*Kamerstukken II* 2002-03, 28 924, nr. 3), pp. 5, 10-11
[153] Explanatory Memorandum to the PIL Act on Registered Partnerships, pp. 8, 17-18.

The second addition is Article 10:88(1) DCC:

> *(1) Where a registered partnership has been ended outside the Netherlands by mutual consent of the partners, the ending will be recognised in the Netherlands if the registered partnership has been ended validly according to the law of that other State.*

**39.** Articles 10:61(5) and 10:88(1) DCC were drafted to take into account national differences with respect to the effects of registered partnership and do not require much elaboration.[154] The principles of *favor matrimonii* and *favor divortii* that underlie the Hague Divorce Convention and the Hague Marriage Convention, as well as the corresponding PIL Acts on Divorce and Marriage, were simply extended to, and adapted for registered partnerships in the absence on an international convention and the reluctance of the HCCH to initiate a discussion on the matter.[155] In the remainder of this paper, the terms marriage and divorce will be considered to include the conclusion and dissolution of registered partnerships, unless indicated otherwise, due to virtually identical nature of the rules for recognition.

## IV. Methods of recognition

**40.** The discussion in the previous parts helps to highlight that Dutch private international law employs a broad variety of methods of recognition, although most rules for recognition were oriented towards registration. Before we discuss the methods for recognition in Dutch private international law, it is helpful to briefly discuss the link between recognition and registration. Most rules for recognition employ a procedural method that is traditional with respect to judgements and simplified with respect to documents. Other methods instead tend to facilitate recognition in the absence of a decision or document.

### 1. Recognition and registration

**41.** A foreign legal status that meets the statutory criteria of one of the rules for recognition discussed above is recognized by operation of law. Only foreign adoptions that are subject to the Dutch Adoption Act (Article 10:109 DCC) are subject to a separate procedure in order to become effective within the Dutch legal order. The court will in such cases order the registration of the adoption in the Registers of Civil Status. In all other cases, registration public documents, decisions and court orders that evidence a foreign legal status may be requested by any interested party from, as well as done *ex officio* by the Registrar, provided that the relevant documents were issued by the competent foreign authorities, in conformity with the local regulations; unless registration is incompatible with Dutch public order.[156]

**42.** Registration is not a precondition for recognition, but recognition is a precondition for registration and, consequently, the registration of a foreign legal status is deemed to confirm its recognition in the Dutch legal order.[157] The registration of a legal status must in this respect be refused by a Registrar if the preconditions for recognition are not met, which can be appealed before a court.[158] In addition, a declaratory order may be requested from the court by an interested party, including by the Registrar, to confirm whether the status can be registered.[159] Moreover, the court can be requested to order the correction or removal of a civil status record.[160] The Registrar or court is in each case bound to examine

[154] Explanatory Memorandum to the PIL Act on Registered Partnerships, pp. 2-3

[155] Explanatory Memorandum to the PIL Act on Registered Partnerships, pp. 1-2.

[156] Article 1:18b, 1:20b DCC. The interested person does not have to be a Dutch national, as long as that person is registered in the Registers of Civil Status on the basis of Articles 1:25-1:25g DCC.

[157] See Rechtbank Limburg 18 February 2019, NL:RBLIM:2019:3672, para. 2.1.4.

[158] Article 1:27 DCC.

[159] Article 1:26 DCC.

[160] Article 1:24 DCC.

out of their own motion whether the preconditions for recognition of a foreign legal status are met.[161] The Registrar and the court may require legalisation for the purpose of registration,[162] although the absence of a legalized document does not preclude that the underlying status can be recognized.[163] Hence, the question of recognition often comes up in the context of registration, although it may also arise as a preliminary question, irrespective of whether the status is registered and whether the document that evidences that status was legalized.[164]

### 2. Recognition of decisions and legal facts evidenced by documents

**43.** As indicated at the outset, the Dutch private international law employs a method that is traditional with respect to (judicial) decisions and simplified for documents that respectively establish or evidence a legal status. Traditional criteria for the recognition of judgements are used for judicial decisions that establish or change filial relations (Article 10:100 DCC), adoption decisions (Article 10:108-109 DCC) and divorce decisions (Article 10:57(1), 10:88(2) DCC). A legal status that is established pursuant to a (judicial) decision by a foreign court (or other authority) is recognized, provided that the court (or other authority) assumed its competence on an internationally accepted ground for jurisdiction and no procedural irregularities took place. Simplified criteria apply for the recognition of public documents that evidence filial relations (Article 10:101 DCC), as well as names evidenced by a public document (Article 10:24 DCC) and marriage certificates (Article 10:31(4), 10:61(4) DCC). A legal status that is evidenced by a public document is equally recognized, provided that it was issued by a competent foreign authority in conformity with local regulations. In either context, recognition can be withheld for being incompatible with Dutch public order, albeit not pursuant to the fact that a different law than the law designated by the Dutch conflict rules was applied to establish the status.

### 3. Recognition of legal facts in the absence of a (valid) decision or document

**44.** The rules for the recognition of marriage (Article 10:31(1)-(3), 10:61(1)-(3) DCC) and the consensual dissolution of registered partnerships (Article 10:88(1) DCC) tie the validity of either status to their validity under the law of the State where the relevant acts took place (*lex loci celebrationis* and *lex loci registrationis*) and allows for *de facto* recognition in the absence of a public document. The rules for the recognition of divorce and dissolution of registered partnerships (Article 10:57(2), 10:88(3) DCC) are backed up by a provision that facilitates their simple recognition on the basis of consent, while the rule for the recognition of informal unilateral dissolved marriages (Article 10:58 DCC) combines *de facto* and simple recognition.[165] Moreover, since the *Hungarian Marriage* case, the conflict rule for Dutch nationals in Article 10:20 DCC can be invoked to prevent the change of a surname that would otherwise have to be recognized pursuant to Article 10:24 DCC.[166] In addition, acceptance on the basis of EU/human rights obligations is prevalent in the context of names and filiation (including surrogacy).[167]

**45.** In the absence of a rule for recognition described above, Dutch conflict rules ought to be applied for the purpose of recognition,[168] although case law of the Dutch Supreme Court indicates that even

[161] Hoge Raad 16 November 1992, *Nederlandse Jurisprudentie* 1992/790, para. 3.1; Hoge Raad 5 September 2003, *Nederlandse Jurisprudentie* 2004/5, para. 4.3.

[162] Articles 10:18, 10:20c, 10:26d DCC. See Hoge Raad 5 September 2003, *Nederlandse Jurisprudentie* 2004/5, para. 4.3.

[163] Hoge Raad 5 September 2003, *Nederlandse Jurisprudentie* 2004/5, para. 4.3.

[164] See e.g. Rechtbank Den Haag 16 January 2019, NL:RBDHA:2019:420 (recognition of a non-registered religious Ethiopian marriage under Article 10:31 DCC and subsequent divorce in accordance with Dutch law).

[165] See para. III.2 above.

[166] See para. III.4 above.

[167] See para. II.3 above.

[168] A.P.M.J. Vonken, *Asser 10-I Algemeen deel IPR* (2nd edition), Deventer, Wolters Kluwer, 2018, para. 549.

in the absence of a public document that evidences the status, there may be reasons to nonetheless recognize the status. In particular, a status can be recognized if its existence under the law pursuant to which it was established can be demonstrated with reasonable certainty. The burden of proof should in this respect be placed on the party that seeks to demonstrate the existence of the status.[169] In order words, Dutch conflict rules are seldom applied for the purpose of recognition, even in the absence of a rule for recognition.

[169] Hoge Raad 19 February 2016, NL:HR:2016:293, para. 3.4.5-3.4.6. The possibility to demonstrate the existence of a legal status acquired abroad by other means is particularly important in cases involving refugees who do not have access to documents in their country of origin. See Hof Amsterdam 7 January 2020, NL:GHAMS:2020:70. The case concerned spouses who had the Syrian nationality, were married in Syria and sought refuge in the Netherlands. The female spouse filed a request for a divorce, although the male spouse contended their marriage could not be recognized due to the absence of an (official) marriage certificate. As Syria was still a war zone at that time, the court considered that the female spouse could not be required to travel to Syria to acquire the original certificate. The court held that she had sufficiently demonstrated the existence of the marriage by other means by providing a copy of the certificate that she received from the Dutch immigration service.