

FAMILY LAW LEGISLATION OF THE NETHERLANDS

**A translation including Book 1 of the Dutch Civil
Code, procedural and transitional provisions and
private international law legislation**

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**A translation including Book 1 of the Dutch Civil
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**IAN SUMNER
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A WORD OF INTRODUCTION FROM THE TRANSLATORS

If “words are the physicians of the mind diseased” (Aeschylus, 525-456 B.C.), then the path of a translator is a precarious one. A poor choice of words and the reader may suffer as a consequence. The task of a translator is thus doubly confounded: to accurately convey the wording of the original text, whilst at the same time expressing the meaning in a way able to be comprehended by the other. It is against this background that we began work on this translation more than one and a half years ago. Obviously, choices have had to be made and decisions taken in terms of style and terminology. As much as possible, we have tried to use the prevailing terminology in legislative instruments in the European Union *e.g.* Article instead of Section. Where no close equivalent exists, we have left the Dutch word untranslated in italics *e.g. procureur-generaal*, unless it was considered unnecessary in the context of the translation *e.g.* the term notary has been used for *notaris*, even though the position and functions of a notary differ from those of a notary public.

Difficulty has obviously sometimes been encountered in fully expressing the meaning of the Dutch terminology. For example, the term *gezag* has been translated as custody, since *gezag* is used as the overarching term for *ouderlijk gezag* (parental authority) and *voogdij* (guardianship). Reference to parental responsibility has thus not been made. The *ambtenaar van de burgerlijk stand* has been translated as the Registrar of Births, Deaths, Marriages and Registered Partnerships. The concept of civil status being absent in the common law countries, reference has been made to the equivalent system of registration. However, complete adherence to such a term would provide confusion in other areas of the translation, and thus the term “registered partnerships” has been included in the title of the Registry and the occupation of the Registrar. When confusion is possible, a footnote has been used to explain the difference between the two systems *e.g.* degree and *graad*. Sometimes the Dutch terminology used is legally imprecise, thus resulting in an equally imprecise English word or phrase being used *e.g.* life-companion for *levensgezel*; outlook on life for *levensovertuiging*.

Problems have also been encountered in basic questions such as the title. We have opted for reference to the Dutch Civil Code instead of the Civil Code of the Netherlands and entitled all statutes in the field of private

international law in a similar manner as the most recent English statute in this field: Private International Law (Miscellaneous Provisions) Act 1995. Since the majority of the private international law legislation refers to recognition and enforcement of judgments as well as conflict of laws, reference to the term private international law was preferable. Whenever the masculine gender has been used, this has been extended to include the feminine gender when the legislator clearly did not intend a distinction to be made. In a similar vein we have also chosen to translate *Koning* as Sovereign (not as King) to indicate the gender-neutral status of the monarch.

Where the enactment of Bills is expected shortly after publication of this Book, the text of the articles to be amended is printed in italics after the relevant Articles. Where reference is made in Book 1 to other Books of the Dutch Civil Code or to the Dutch Code of Civil Procedure, a translation of the pertinent Articles is included in Part II, which also contains a translation of other significant legislation to which reference is made in Book 1. A translation of the Dutch Penal Code can be found in “The Dutch Penal Code of March 3, 1881” translated by L. Rayar and S. Wadsworth (1997, Fred B. Rothman). A translation of Books 3, 5, and 6, Dutch Civil Code can be found in “Netherlands Business Legislation” translated by P. Haanappel, E. Mackaay, H. Warendorf and R. Thomas (loose-leaf, Kluwer Law International).

Such a work can obviously not be undertaken without the help of others. The translators are indebted to Professor K. Boele-Woelki for her collaboration in this endeavour and the eventual publication in the EFL Series. We would also like to express our gratitude to Professor J. de Boer, Professor S. van Erp, Professor C. Forder and Mr. P.J. Kell. Although every effort has been made to ensure that this translation correctly reflects the law in force, mistakes are inevitable. Please address suggestions, corrections and comments to: I.Sumner@law.uu.nl or warendorf@leidsegr.xs4all.nl. We have sought to take account of developments in the law up to 1st October 2003.

Ian Sumner
Hans Warendorf

AN IDEAL TEAM OF TRANSLATORS

It is with great pleasure that I have been asked to write this preface for the English translation of Dutch family law legislation by Ian Sumner and Hans Warendorf. As they have written in their introduction, the “path of a translator is a precarious one”. However precarious it may be, Sumner and Warendorf have proven with this translation that if the work is executed with care and precision, the result will be an excellent and accessible translation that clearly conveys the meaning of the original Dutch text.

This translation is the result of co-operation between a native English speaker who is currently undertaking comparative family law research in the Netherlands and also speaks Dutch (Ian Sumner) and a native Dutch speaker who is an experienced practising lawyer and has enormous expertise in translating Dutch legal texts into English (Hans Warendorf). In other words: Sumner and Warendorf are an ideal team of translators! They are both members of the so-called Pinyin Commission, which, under the auspices of the Netherlands Comparative Law Association, translates Dutch legal terms into English, French, German, Russian and Spanish. The Commission consists of both academic comparative lawyers as well as professional translators. The aim of the Commission’s work is to offer well-balanced translations to all those who translate or explain Dutch legal texts to a non-Dutch audience. In this way the Commission aims to promote uniform translations to avoid possible misunderstandings that may result from divergent translations. The results of the Pinyin Commission’s work have been published in *Nederlandse Rechtsbegrippen Vertaald* (1998, 2nd Edition, The Hague, T.M.C. Asser Institute). A forthcoming third edition will include English, French and German translations of terminology in the area of family law and the law of succession. The Russian and Spanish translations will be added in the fourth edition, which is due to be published shortly after the third edition.

A translation of Dutch legal texts into one of the major languages in Europe contributes to the further development of a European legal discourse that not only examines the law of the larger European jurisdictions, but also the law of the smaller ones. The existence of linguistic diversity in Europe does not mean that a truly European legal discourse is impossible, as I have already argued in “Linguistic Diversity and a European Legal Discourse” (editorial), *Electronic Journal of Comparative Law (EJCL)*, Vol. 7.3, September 2003:

| An ideal team of translators

<http://www.ejcl.org/73/editor73.html>. In the area of family law this discourse has already led to the creation of a Commission on European Family Law, chaired by Professor K. Boele-Woelki. The work to be done by this Commission can only benefit from this translation of Dutch family law legislation.

Prof. dr. J.H.M. van Erp,
President Netherlands Comparative Law Association
Chair Pinyin Commission

DUTCH FAMILY LAW IS MORE ACCESSIBLE

The editors of the EFL series are pleased to publish the first integrated English translation of all Dutch statutory provisions in the field of family law. It is the first time in legal history that such a monumental project has been completed. It is my firm belief that this volume prepared by Ian Sumner and Hans Warendorf is of great value for both practitioners and legal scholars alike. Dutch scholars writing in English about Dutch family law and foreign scholars who are not able to read Dutch but who want to study and compare Dutch family law with their own family law provisions can from now on make use of an English translation which – due to the translators’ experience and knowledge of both the Dutch and English legal system – is completely reliable. Although it is generally acknowledged that principally a comparative study should not only pay attention to the ‘law in the books’ but also to the ‘law in action’, a comparative endeavour will not be successful if the main materials, in the case of the Netherlands, the statutes, are not accessible to those who are unable to read the primary sources. This publication provides the necessary assistance. The same holds true for practitioners dealing with cross-border family relations and officials of Dutch consulates and embassies who are competent to act as Registrars of Births, Deaths, Marriages and Registered Partnerships. Making use of this translation can easily facilitate their task of providing information on Dutch family law in a foreign setting. In addition, the list of publications on Dutch family law in foreign languages will help one to obtain a better insight into Dutch family law. In this respect it is interesting to note that Dutch family law is considered to be both trend-setting and, at the same time, somewhat straggling behind. This proposition seems to be ambiguous. However, to put it succinctly, Dutch family law is unique in two ways. On the one hand, the Netherlands was the first country in the world where two partners of the same sex can enter into a marriage and where they can adopt a child. On the other hand, the Netherlands is still the only country in the world where the universal community of property scheme is the applicable legal matrimonial property regime. In the near future, however, a more modern property relationship law will hopefully come into force. The Bill is included in this volume.

This volume is of enormous value for the work of the Commission on European Family Law whose main objectives are to launch a theoretical and practical exercise in relation to the harmonisation of family and succession law in Europe. It would be greatly appreciated if translations

of family and succession law statutes of other European jurisdictions in English but also in French or German could be added to the EFL series.

Due to the magnitude of the project the editors have decided not to include both the Dutch and the English versions in this book, but instead, to publish a printed version of the English text only with the Dutch text being available on the website of the Commission on European Family Law, see www2.law.uu.nl/priv/cefl.

Henceforth, Dutch family law will be substantially more accessible to and be better known by foreign lawyers. The credit for this important achievement must be completely attributed to both of these translators.

Prof. dr. Katharina Boele-Woelki
Chair of the CEFL

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