Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Recognition of Temporary Marriages from Iran in the Netherlands

Question(s) at stake:

Whether the Dutch legal system recognizes a temporary marriage contracted outside the Netherlands.

Outcome of the ruling:

The recognition of a temporary marriage would be contrary to the Dutch public order. Consequently, such a marriage cannot be recognized as valid by Dutch law.

Topic(s):

- Foreign Laws, Decisions, Acts and Institutions
- Personal Status, Family and Inheritance

Keywords:

- Customary marriage
- Foreign decisions/judgments
- Legal toolbox
- Limitations and justifications
- Marriage and partnership
- Public order
- Recognition

Tag(s):

- Temporary marriage
- Iranian marriage law
- Public order exception

- Sigheh marriage

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Country:

Netherlands

Official citation:

Court of Appeal of Arnhem-Leeuwarden, Judgement of 28 November 2019, 200.255.348/01 (Uitspraak Gerechtshof Arnhem-Leeuwarden, 28 November 2019)

Link to the decision:

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHARL:2019:10284

ECLI:

ECLI:NL:GHARL:2019:10284

Date:

28 November 2019

Jurisdiction / Court / Chamber:

Court of Appeal Arnhem-Leeuwarden

Remedy / Procedural stage:

Second instance, appeal

Previous stages:

- District Court of Noord-Nederland, Judgement of 27 November 2018 (unpublished)

Subsequent stages:

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Branches / Areas of law:

Family law, Private international law

Facts:

The parties argued that they had concluded a “sigheh marriage” (*mut’a*) in Iran, which subsequently led to the birth of their children. However, they could not provide either the original marriage certificate or the original birth certificates of the children. What they could present, however, was a marriage certificate issued by a mosque located in place C indicating that the marriage occurred in 1998, contrary to their own assertion of being married in place D. Notably, their marriage was not officially registered.

The parties were interviewed several times by the Immigration and Naturalization Service (IND). During these interviews, the mother stated that the date of their marriage was 15 May 1998. At the same time, the mother stated that she was two to three months pregnant with their first child at the time of the marriage. According to the parties, the date of birth of the first child was 20 February 2000. The parties also declared to the IND that their marriage had been a *sigheh* marriage.

The woman had not submitted any further documents that could shed more light on the marriage. The parties have now requested the Dutch Court to grant the divorce of their marriage.

Ruling:

The Court’s initial evaluation involved determining the validity of the marriage under Iranian law as well as establishing the presence of any legal familial ties between the man, woman, and children.

The following information was available to the Court for the purposes of making the abovementioned assessment: a marriage certificate and the interviews conducted by the IND. The parties possessed neither the original marriage certificate nor the birth certificates of their children.

The documents and interviews available to the Court indicate conflicting pieces of information. Firstly, the marriage certificate indicates a location for the marriage

which is at odds with the location given by the parties. Secondly, the woman had claimed that she was two to three months pregnant with her first child at the time of the marriage on 15 May 1998. However, according to the parties, the date of birth of the child is 20 February 2000, which is inconsistent with the claim that the woman was two to three months pregnant at the time of the marriage (15 May 1998).

The Court, therefore, argued that the information provided was insufficient to determine whether the parties had actually been married in Iran in 1998 or whether the children had legally recognized family ties with them. Consequently, the Court concluded that it could not pronounce the parties' divorce.

Even though it was not possible to establish that a marriage had taken place, the Court nevertheless examined whether the marriage could be recognized as valid in the Netherlands if the Court had been able to establish that a marriage had taken place.

According to Article 10:31 of the Dutch Civil Code, a marriage contracted outside the Netherlands can be recognized as valid if it is valid according to the law of the country in which it was contracted or in which it subsequently became valid.

In the present case, the parties entered into a *sigheh* marriage in Iran, which is considered a valid marriage under Iranian law, according to the March 2019 *Iran General Report* of the Dutch Ministry of Foreign Affairs. Sigheh, according to the report, is a legally valid union between a man and a woman for a predetermined period of time. During this period, any sexual relationship between the two is considered legal. Unlike a permanent marriage, a sigheh marriage does not entail any right to inheritance or spousal support. At the end of this period, the marriage is automatically dissolved.

Despite the general rule outlined in Article 10:31 of the Dutch Civil Code, the Court held that such a marriage could nevertheless not be recognized on the basis of the public order exception of Article 10:32 of the Dutch Civil Code.

According to the Court, marriages that can be terminated without the need for divorce or formal repudiation are deemed incompatible with Dutch public order

and thus cannot be acknowledged as valid. In other words, even if it was possible for the Court to determine whether a marriage had been contracted between the two parties, it would not have been possible to recognize it as valid under Dutch law.

Consequently, the Court would also not have been able to grant a divorce to such a marriage.

Main quotations on cultural or religious diversity:

- “Pursuant to the provisions of Article 10:31 par 1 of the Dutch Civil Code, a marriage contracted outside the Netherlands is recognized as such in the Netherlands if the marriage was validly concluded according to the law [of the jurisdiction] where the marriage was concluded or where it has subsequently become valid.” (para. 2.4)
- “Marriages that are contracted for a specific period of time and therefore do not have to be terminated by repudiation or divorce are considered to be contrary to Dutch public policy and can therefore not be recognized.” (para. 2.4)

Main legal texts quoted in the decision:

- Articles 10:31 and 10:32 of the Dutch Civil Code
- Article 11 of the Hague Marriage Convention 1978

Cases cited in the decision:

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Commentary

Recognition of Temporary Marriages from Iran in the Netherlands

This case is the first published case in the Netherlands that discusses the concept of a temporary marriage. It reflects how a Dutch court approaches the issue and how it views the question of temporary marriages.

Notably, two and a half years later, the District Court of Limburg also had to determine the validity of a *sigheh* marriage that had taken place in Iran. The Court came, as will be described later in the commentary, to the opposite conclusion (District Court of Limburg, Judgement of 15 June 2022, ECLI:NL:RBLIM:2022:4637).

The fact that the Dutch legal system only recognizes permanent marriages underlines the importance of the assessment of the public policy exception.

The temporary marriage

Temporary marriage, often referred to as *sigheh* or *mut'a*, is a form of marriage found primarily in Shiite Islamic law. Its central purpose is to allow sexual intercourse between the parties for a specified period of time. In contrast, a permanent marriage, known as *nikah*, is designed with procreation as its main purpose.

Temporary marriages are valid under Iranian family law (Article 1075 of the Civil Code of the Islamic Republic of Iran). In its current form, temporary marriage is a form of contract in which a man (married or unmarried) and a woman (virgin, divorced, or widowed) agree, often privately and verbally, to marry each other for a limited period of time. Individuals may have different motivations for entering into a temporary marriage. For instance, it may be used to facilitate prostitution; young people may decide to enter into a temporary marriage in order to be allowed to have intimate relations, including intercourse, prior to a permanent marriage; or it may be used by parents who arrange temporary marriages, e.g., to prevent honour violations resulting from prohibited relationships. According to Article 21 of the Iranian Family Protection Act, which only entered into force in 2013, registering this type of marriage is not legally required, except in a few cases. The couple also agree on a specific amount of bride price to be paid to the woman.

Furthermore, unlike a permanent marriage, a temporary marriage does not entitle the wife to maintenance rights (Article 1113 of the Civil Code of the Islamic Republic of Iran). If a child is born in the context of a temporary marriage, he or

she is accorded the full legitimacy and status of a child born in a permanent marriage. Consequently, children inherit from their parents but temporary spouses do not inherit from each other (Haeri 1992: 211). In practice, the children's social status depends on the father's recognition of them. To establish a clear lineage for children born within the marriage and to reduce the likelihood of confusion about the father's identity, Article 1152 of the Civil Code of the Islamic Republic of Iran requires the woman to observe a period of sexual abstinence.

It is worth noting how a temporary marriage can end. The marriage is automatically dissolved at the end of the predetermined period. No repudiation or divorce is required (Haeri 1992: 210-212). It is also possible for the husband to waive his rights to the remaining period of the marriage (Article 1139 of the Civil Code of the Islamic Republic of Iran), thereby ending the marriage before the end of the predetermined period.

Views on temporary marriage vary within Islam. Some see it as a natural way of satisfying the sexual desires of man and woman, while others see temporary marriage as a form of promiscuity and corruption (Haeri 1992: 206). In Iran, temporary marriage has been a longstanding practice for centuries and is generally accepted. However, individual perspectives on it may differ depending on social background and personal beliefs. As for the ramifications of temporary marriage, "sometimes it is used by women as means of asserting autonomy and exerting some degree of control over their lives; at other times they are abused by the same set of laws" (Haeri 2014: 10).

Temporary marriages within the Dutch legal order

Since the temporary marriage is not recognized by Dutch law, it is necessary to look to Dutch private international law to see whether such a marriage can be recognized if it was contracted abroad. Article 10:31 of the Dutch Civil Code stipulates that marriages concluded outside the Netherlands can be recognized as valid, provided they are recognized as such according to the law of the jurisdiction where the marriage was concluded. Through private international law,

the Dutch legal system can therefore recognize religious and customary marriages despite its secular laws on marriage and divorce.

As mentioned above, a temporary marriage is valid under Iranian family law (Article 1075 of the Civil Code of the Islamic Republic of Iran). It would therefore in principle be possible for the court to recognize such a marriage on the basis of Article 10:31 of the Dutch Civil Code. It bears mentioning here that the Court does not refer to these provisions. Instead, it acknowledges the recognition of the temporary marriage in Iran by referring to a General Official Report of the Dutch Ministry of Foreign Affairs.

However, a marriage validly concluded abroad in accordance with Article 10:31 Dutch Civil Code can be denied recognition if it is “contrary to public order” according to Article 10:32 of the Dutch Civil Code, which also provides a non-exhaustive list of marriages held as contrary to the public order, aligning with Article 11 of the Hague Marriage Convention 1978, to which the Netherlands is a party. Although temporary marriages are not included in said list, the Court retains the discretion to assess the applicability of the public order exception in other cases. This discretion is exercised when a marriage is found to be at odds with the fundamental values and norms of the Dutch legal system.

With regard to the temporary marriage which was the subject of the present case, the Court gave two reasons for considering it contrary to public policy. Firstly, the Court pointed out that this legal arrangement is temporary and can be terminated without any judicial intervention. There is no need for repudiation or divorce. In addition, a temporary marriage serves primarily to validate sexual intercourse and does not entail the same obligations as a permanent marriage, such as inheritance rights or spousal support.

Given the legal weight given to temporary marriage in Iran, one might wonder whether the above arguments are sufficient to justify its non-recognition under Dutch state law. This is especially the case if both parties, including the wife, want to end the marriage and apply for a standard civil divorce.

In this context, the potential invocation of the public policy exception also warrants examination given its potentially serious legal implications for the parties involved in a temporary marriage. In the present case, due to the fact the marriage is not recognized, the Court cannot grant the divorce. Further problems may also ensue regarding the legal status of children and inheritance rights. It is noteworthy that in its judgement of 15 June 2022 (ECL:NL:RBLIM:2022:4637), the District Court of Limburg found no compelling reason to deem the marriage incompatible with Dutch public policy and thus recognized the temporary marriage.

With regard to the temporal aspect which was the basis for the refusal of recognition, one might wonder why the Dutch legal system places so much emphasis on the idea that the duration of a marriage should be open-ended. The Netherlands has a longstanding tradition of viewing marriage as a lifelong commitment, which is reflected in traditional Christian wedding vows incorporating the phrase “till death do us part”. However, it is clear that the concept of marriage has changed over the last century. The divorce rate has increased substantially and the role of religion in society has significantly diminished. In light of these changes, one might ask why the introduction of temporary marriages cannot have its own advantages. Jan Smits, for example, has argued that allowing such marriages to take place can lead to more amicable separations, destigmatize divorce, and provide economic benefits to the parties involved. Deciding to separate in advance (with the option of renewing vows if desired) could be a less costly approach than dealing with it after the fact (Smits 2016: 7-8). It is important to note, however, that the Iranian temporary marriage differs from the temporary marriage proposed by Smits in that the former is primarily designed to satisfy sexual desires, while the latter is designed to establish rights and obligations associated with a predetermined duration of the union.

Literature related to the main issue(s) at stake:

General legal literature

- Kruiniger, Pauline. 2015. *Islamic Divorces in Europe: Bridging the Gap between European and Islamic Legal Orders*. The Hague, The Netherlands: Eleven International Publishing.
- Mir-Hosseini, Ziba. 2003. “Mut’a Marriage in Iran: Law and Social Practice”. *Register Amsterdam, Informal Marriages and Dutch Law*. Amsterdam.
- Rutten, Susan. 2020. “Traditional and Religious Marriages. Research, Practices and Policies in the Netherlands”. *Journal of Law & Islam* 12: 47–58.
- Rutten, Susanne W. E. (ed). 2011. *Huwelijk en burgerlijke stand*. Apeldoorn: Maklu.
- Smits, Jan M. 2016. “Till Death Us Do Part? On Lifelong and Fixed-Term Marriage”. *SSRN Electronic Journal*.
- Thoma, Ioanna. 2017. “Public Policy (Ordre Public)”. In Jürgen Basedow, Giesela Rühl, Franco Ferrari and Pedro De Miguel Asensio (eds), *Encyclopedia of Private International Law*, 1453–1460. Cheltenham: Edward Elgar Publishing.
- van der Velden, Frans. 2016. *Inleiding in de shari’a: Een kennismaking met het recht van de islam en van de islam-georiënteerde wereld*. Den Haag: Boom juridisch.
- Vonken, A.P.M.J., F. Ibili, and F.W.J.M. Schols. 2021. *Internationaal personen- en familierecht en erfrecht*. Deventer: Wolters Kluwer.

General literature on the topic from other disciplines

- Davoudi, M. 2009. Marriage and Divorce in Shi’ite Practice”. *Family, Law and Religion*: 107-116.
- Haeri, Shahla. 1992. “Temporary Marriage and the State in Iran: An Islamic Discourse on Female Sexuality”. *Social Research* 59 (1): 201–223.
- Haeri, Shahla. 2014. *Law of Desire: Temporary Marriage in Shi’i Iran*. Syracuse, New York: Syracuse University Press.
- Schlatmann, Ann-Marie. 2016. *Shi’i Muslim Youth in the Netherlands: Negotiating Shi’i Fatwas and Rituals in the Dutch Context*. Utrecht: Utrecht University.

- Shanneik, Yafa and Annelies Moors (eds). 2022. *Global Dynamics of Shi'a Marriages: Religion, Gender, and Belonging*. 1st ed. New Brunswick: Rutgers University Press.

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