Foreign birth and marriage documents: the voice of Belgian and Dutch public servants

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Abstract

In 2019, the Institute of Private International Law at Ghent University (Belgium) launched a bilingual (Dutch/French) online survey in Belgium and the Netherlands. The objective of the survey was to examine how Belgian and Dutch public servants deal with foreign documents that record the personal status of people. Thanks to the cooperation of the Belgian and Dutch associations of registrars (Vlavabbs, Gapec and NVVB), the Belgian Immigration Office (DVZ/OE), the Dutch Immigration and Naturalisation Service (IND), the Belgian Federal Public Service Foreign Affairs and the Dutch Ministry of Foreign Affairs, it was possible to use and analyse the data of 219 respondents. This article elaborates on the Belgian and Dutch rules on the recognition of foreign marriage and birth certificates, and explores how those rules are (not) applied in practice by examining the results of the survey.

1. Introduction

The increasing mobility of people[1] has led to the worldwide circulation of documents that record the personal status of people (e.g., birth, marriage, death). The recognition of these documents traditionally belongs to the field of private international law. This branch of law aims for cross-border harmony and continuity in the lives of people, which is a noble objective, yet hard to put into practice. For instance, some people have a different personal status (e.g., unmarried) in their host country than in their country of origin (e.g., married). Such discrepancies, also called 'limping legal relations', generate legal uncertainty and unpredictability.

The aim of this article is to explore how Belgian and Dutch public servants deal with foreign documents that record the personal status of people. Public servants are often the first ones to decide whether a foreign document can have any legal consequences in their State. The scope of this article is limited to the recognition in Belgium and the Netherlands of two types of documents: birth and marriage documents.

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1 In 2017, 258 million people were residing in a country other than their country of birth. This represents 3.4% of the world's total population. See: GMDAC and IOM UN Migration, *Global migration indicators 2018*, Berlin: Global Migration Data Analysis Centre (GMDAC) International Organization for Migration 2018, p. 18, available at https://publications.iom.int/system/files/pdf/global_migration_indicators_2018.pdf.

The article will give an overview of the rules in place in Belgium and the Netherlands. For Belgium, only national private international rules are discussed as there are no international conventions or European regulations on the recognition of foreign marriage and birth certificates (including children's legal parentage). For the Netherlands, the situation is slightly different for marriage certificates as it has ratified the Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages.[2] The article will elaborate on the application of those rules in practice. For this 'field test', we launched a bilingual (Dutch/French) online survey in January 2019. We will start with a brief presentation of the design and distribution of this online questionnaire before elaborating on how the law in the books is put into practice.

2. Online survey: methodology

2.1 Research question and design of the online survey

The Institute of Private International Law at Ghent University launched an online survey in January 2019, simultaneously in Belgium and the Netherlands. The main objective of the survey was to investigate how private international law rules are applied in practice, and more specifically how Belgian and Dutch public servants deal with foreign documents that record the personal status of people.

The online survey consisted of 11 questions.[3] The questions were uploaded to the online testing environment Curios of Ghent University. The survey was available in Dutch and French. It was estimated that the respondents needed approximately 20 minutes to complete the entire questionnaire. No personal data of the respondents were collected and/or stored.[4]

In question 1, the respondents were asked to indicate whether they were employed in Belgium or the Netherlands and their function (a public servant at the local level, an official at the immigration service, a consular official or other). If they indicated that they are a public servant at the local level, they were asked, in question 2, to indicate whether they work for a small (< 50,000 inhabitants), medium-sized (between 50,000 and 100,000 inhabitants) or large (> 100,000 inhabitants) municipality. In question 3, the respondents were asked how often they are confronted with foreign documents that record the personal status of people. The next two questions dealt with whether they make a distinction between authentic instruments and judgments (question 4), and whether the country of origin of the document plays a role (question 5). In question 6, the respondents were asked if they follow a certain procedure when receiving a foreign personal status document. In question 7, the respondents had to indicate whether they have ever refused to recognise a foreign document recording a personal status (question 7). If they answered in the affirmative, they were invited to elaborate on the grounds for refusal. Question 8 assessed whether and to what extent good faith and the legitimate

2 See https://www.hcch.net/en/instruments/conventions/full-text/?cid=88.

3 The authors would like to thank Prof. Dr. Patrick Wautelet, Université de Liège; Steve Heylen, president of the Flemish Association of Registrars; and Eric Gubbels, Basic Information Service (*Dienst Basisinformatie*) City of Amsterdam and president of the Registration of Persons Commission within the Dutch Association of Civil Services for reviewing the questions of the survey and for their helpful comments.

4 Not even the names of cities and so on.

expectations of the person seeking recognition play a role. Question 9 dealt with whether the respondents are aware of the case law of the European Court of Human Rights (hereinafter 'ECtHR') and whether they apply this case law in their daily practice. Finally, question 10 gave the respondents room to make some general remarks, and, in question 11, consent was asked in order to be contacted for a follow-up.[5]

2.2 Distribution of the survey

The online survey was distributed among several administrative authorities in Belgium and the Netherlands: public servants at the local level, immigration and naturalisation services and consular officials. In this article we will use the term 'public servants' as an umbrella term to encompass all these administrative officials. The online survey was open from 24 January 2019 until 30 August 2019.

Distribution in Belgium – In order to reach as many public servants at the local level as possible, the presidents of the local associations[6] were contacted. In both Flanders and Wallonia, a request to participate was posted on the website of the local associations (Vlavabbs and Gapec). In Flanders, the online survey was also promoted during two information sessions on the modernisation of the civil registry.[7] Although equivalent steps were taken to attract public servants at the local level in both language regions in Belgium, Dutch- and French-speaking public servants are not equally represented in the survey (see *infra* section 2.4).

We also attempted to reach officials working at the Immigration Office (DVZ or OE).[8] Within the framework of family reunification and the issuing of visas, foreign documents recording the personal status of people are often needed. The president and the Director-General of the Immigration Office were contacted via email. We were informed that the survey had been forwarded to the relevant department. In the end, however, only a small number of officials working at the Immigration Office participated (see *infra* section 2.4).

Lastly, we were interested in the application of private international law rules by consular officials. With the aim of attracting a high number of respondents, an email was sent to our contacts within the Federal Public Service Foreign Affairs.

In addition, we wrote to our own professional contacts within several administrations with the request to participate and/or circulate the survey.

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5 If the respondent wished to be contacted, he was asked to send an email to the authors.

6 In Flanders, there is the Flemish Association of Registrars (Vlavabbs) (*Vlaamse Vereniging voor Ambtenaren en Beambten van de Burgerlijke Stand*), https://www.vlavabbs.be/. In Wallonia, there is *le Groupement des Agents Population Etat Civil* (Gapec), http://www.gapec.be/. In Brussels, the *Groupe de Travail et d'Information des Responsables des Services de Population et d'Etat civil des Communes de la Région de Bruxelles-Capitale* (GTI 19) is active.

7 On 18 February 2019, a flyer was distributed among the members of Vlavabbs attending the information session in Hasselt. On 25 February 2019, a brief presentation was given to and a flyer was distributed among the members of Vlavabbs attending the information session in Ghent.

8 *Dienst Vreemdelingenzaken/Office des Etrangers*, https://dofi.ibz.be/sites/dvzoe/FR/Pages/home.aspx.

Distribution in the Netherlands – In the Netherlands, the participation of public servants at the local level was achieved through the cooperation of the Dutch Association of Civil Services (NVVB).[9] Both the president of the Dutch Association and the president of the Registration of Persons Commission within the Dutch Association took the necessary steps to have the survey distributed. In April 2019, the survey was mentioned in the Association's online newsletter. With the aim of boosting the number of participants, emails were also sent out to our professional contacts with an appeal to participate and distribute the survey.

The practices of officials at the Dutch Immigration and Naturalisation Service (IND)[10] were surveyed in collaboration with the Research and Analysis Department of the IND. Unfortunately, the latter was not willing to distribute the online survey among its entire staff.[11] The Research and Analysis Department, however, proposed to share the online survey with a few file managers (*dossierhouders*). According to the Research and Analysis Department, all employees of the IND follow the exact same procedure when confronted with foreign documents. Consequently, there was no need to question all employees of the IND. From a scientific perspective, the argument invoked by the Research and Analysis Department is to be regretted. The recognition of foreign documents that record the personal status of people is not an exact science. It is of course possible to have general rules and guidelines in place, but a case-by-case analysis is always required. This was communicated to the Research and Analysis Department, but they did not change their point of view. As a result, we only have a few respondents from the IND.

Gaining an insight into the practices of Dutch consular officials also turned out to be a challenge. Through the online contact form of the Dutch Central Government (*Rijksoverheid*) and a contact at the Dutch Ministry of Foreign Affairs, we tried to get the survey distributed among Dutch consular officials. Several attempts proved to be unfruitful (as evidenced by the low number of respondents). We can only speculate about the reasons for this lack of participation. An explanation could be that, unlike in Belgium, Dutch consular officials abroad do not have the authority to recognise or refuse the recognition of foreign judgments and authentic instruments. Only officials working at the central back office in The Hague deal with the issue of (non-)recognition.[12] The aim of this centralisation was to collect knowledge and to achieve an uniform decision-making process.[13] This possible explanation, however, does not sufficiently disclose why the survey was not distributed among the officials working at the central back office.

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9 *Nederlandse Vereniging voor Burgerzaken*, https://nvvb.nl/nl/.

10 *Immigratie- en Naturalisatiedienst*, https://ind.nl/en.

11 We were informed that distributing the survey among all employees is a 'labour-intensive process' (*bewerkelijk proces*).

12 Since mid-2016, Dutch consular officials are only competent to check the authenticity of foreign documents. Decisions regarding the validity of the content of foreign documents are centralised at the Consular Service Organisation ('CSO') in The Hague, see Directorate of International Research and Policy Evaluation (Ministry of Foreign Affairs), *De burger centraal? Consulaire dienstverlening in beweging 2011-2018*, The Hague 2019, p. 99 and Ministry of Foreign Affairs, *De Staat van het Consulaire voor Nederland en Nederlanders wereldwijd editie 2018*, The Hague 2018, p. 32.

13 Directorate of International Research and Policy Evaluation (Ministry of Foreign Affairs) 2019, p. 105 (*supra* n. 12).

2.3 Number of participants

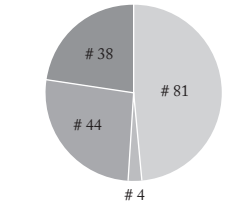
In total, **242 Belgian and Dutch public servants** filled out the questionnaire or at least a part of it. This was an unexpectedly high number. After a thorough analysis, we decided to use the data of **219 respondents** and thus to delete the data of 23 respondents: 10 people left all fields blank; another 10 respondents only indicated whether they were employed by the Belgian or Dutch government; another 3 respondents dropped out after having indicated the size of their municipality. Bearing in mind the objective of the survey, namely gaining an understanding of how Belgian and Dutch public servants deal with foreign documents that record the personal status of people, we decided to only use the data of the respondents who completed at least the third question of the survey which explores how often public servants are confronted with foreign personal status documents.

Of the 219 respondents, 167 (or 76%) indicated that they were Belgian public servants. 52 respondents (or 24%) stated that they were Dutch public servants. Our efforts to reach public servants in the Netherlands and Belgium were equally intensive, but the fact that our own professional network mostly consists of Belgian contacts may (partly) explain these figures (76% v. 24%).

2.4 Composition of participants

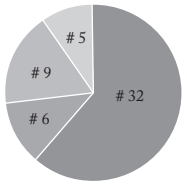
Tables 1 and 2 – Composition of the Belgian and Dutch public servants

Composition of the 167 Belgian public servants



Public servants at the local level (# 81)
Officials at the Immigration Office (# 4)
Consular officials (# 44)
Other (# 38)

Composition of the 52 Dutch public servants



Public servants at the local level (# 32)
Officials at the Immigration and Naturalisation Service (# 6)
Consular officials (# 9)
Others (# 5)

In both Belgium and the Netherlands, **public servants at the local level** were well represented in the study. In Belgium, 49% of the respondents indicated that they work as public servants at the local level. This group includes civil-status registrars (*ambtenaren van de burgerlijke stand/ fonctionnaires de l'état civil*) and officials at the Population Office (*ambtenaren bij de Dienst Bevolking/fonctionnaires du Service Population*). Of the 81 public servants at the local level, 65 respondents (or 80%) filled out the Dutch survey, while 16 respondents (or 20%) completed the survey in French. The overrepresentation of Dutch-speaking public servants is striking, especially since the survey was distributed equally in Flanders, Brussels and Wallonia. In the Netherlands, 62% of the respondents were public servants at the local level, more specifically civil-status registrars (*ambtenaren van de burgerlijke stand*).

At the level of the **Immigration Offices**, we observed a low participation rate in both Belgium and the Netherlands. In Belgium, only 4 respondents declared that they were employed at the Immigration Office. In the Netherlands, 6 officials were granted permission to participate in the online survey.

The representation of **consular officials** is not the same for Belgium and the Netherlands. In Belgium, 44 consular officials participated. Unlike the linguistic composition of the Belgian public servants at the local level, that of the Belgian consular officials was more balanced: out of the 44 consular officials, 24 officials took part in the Dutch survey, 20 officials used the French survey. In the Netherlands, only 9 consular officials participated (see *supra* section 2.2).

Lastly, it is important to point out that 43 respondents indicated that their **function** was **not listed**. Most of them explained that they work as a public servant at the local level dealing with civil and migration issues. Probably, they work for local immigration or integration offices.

After having indicated their function, the respondents were asked to specify the size of their municipality. Of the 219 respondents, 47 respondents (or 21%) indicated that this question was not of relevance for them, for example, because they work at an Immigration Office (federal level), a consulate or an embassy. In addition, 114 respondents (or 52%) replied that they work at a municipality with less than 50,000 inhabitants. Twenty-five respondents (11%) operate in a municipality where the number of inhabitants is between 50,000 and 100,000, while 33 respondents (15%) work for a municipality with more than 100,000 inhabitants. In other words, local public servants at small municipalities were well represented.

3. From the law in the books…

3.1 Introduction

The recognition of foreign marriage and birth certificates is not governed by any European regulations although the recognition of foreign documents recording the personal status of people was envisaged in Regulation (EU) 2016/1191.[14] However, this regulation did not fulfil its full potential as it only exempts documents[15] originating from EU Member States[16] from the requirement of legalisation.[17] This regulation only deals with the formal validity of foreign documents and not with their content.

Specifically for marriage certificates, there is the 1978 Hague Convention on Celebration and Recognition of the Validity of Marriages. This convention, however, was only ratified by Australia, Luxembourg and the Netherlands. Therefore, the rules enshrined in the convention only play a role in the Netherlands (see *infra* section 3.3.2) and not in Belgium. The Hague

14 Regulation (EU) 2016/1191 of the European Parliament and the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No. 1024/2012, *OJ* 2016, L 200/1-136, available at https://eur-lex.europa.eu/eli/reg/2016/1191/oj.

15 Not all documents recording the personal status of people fall within the scope of the regulation. See Art. 2 Regulation (EU) 2016/1191.

16 Preambles 17 and 48 and Art. 2 Regulation (EU) 2016/1191.

17 See Preamble 19 and Arts. 1 and 4 Regulation (EU) 2016/1191.

Conference on Private International Law is currently studying the private international law issues with regard to the legal parentage of children.[18]

In other words, national private international law rules still play an important role in the recognition of documents on the personal status of people. The recognition of foreign birth certificates (including legal parentage) is still fully covered by these national rules, in both Belgium and the Netherlands. This is also the case for foreign marriage certificates in Belgium. Although Belgium and the Netherlands are neighbouring countries, there are differences when it comes to the recognition of foreign marriage and birth certificates.

The Belgian private international law rules can be found in the Belgian Code of Private International Law[19] (hereinafter 'Belgian Code of PIL').[20] In its general provisions, it makes a clear distinction between the recognition of foreign judgments, on the one hand, and that of foreign authentic instruments, on the other hand. In the Netherlands, the private international law rules can be found in Book 1 of the Dutch Code of Civil Procedure[21] (rules on international jurisdiction) and Book 10 of the Dutch Civil Code (rules on applicable law).[22] Currently, there is no codification of the Dutch rules regarding the recognition and enforcement of foreign documents.[23] However, the recognition of certain foreign documents, such as foreign marriage and birth certificates, is mentioned in Book 10 of the Dutch Civil Code. For the Netherlands, a distinction must be made between the rules on the recognition of foreign marriage certificates, on the one hand, and those on the recognition of foreign birth certificates, on the other hand.

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18 See https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy (last consulted on 6 November 2019).

19 Law of 16 July 2004, *Belgian Official Gazette* 27 July 2004. English translation: C. Clijmans and P. Torremans, 'Law of 16 July 2004 holding the Code of Private International Law (Belgian Official Journal 27 July 2004 – in force as from 1 October 2004)', in: P. Šarčević, P. Volken and A. Bonomi (eds.), *Yearbook of Private International Law*, Vol. VI, Munich: Sellier European Law Publishers 2005, pp. 319-375. For an updated version, see https://www.ipr.be/nl/wetgeving.

20 The Belgian Code of PIL entered into force on 1 October 2004.

21 Law of the Ministry of Justice of 14 December 2001 (*Beschikking van de Minister van Justitie van 14 december 2001, houdende plaatsing in het Staatsblad van de tekst van het Eerste Boek en de overige wetsbepalingen van het Wetboek van Burgerlijke Rechtsvordering die met de nieuwe nummering in overeenstemming zijn gebracht, zoals deze met ingang van 1 januari 2002 zullen luiden*), *Dutch Official Gazette* 2011, No. 623, publication date 27 December 2001. Dutch version available at https://wetten.overheid.nl/BWBR0039872/2019-01-01 (last consulted on 26 September 2019).

22 Law of 19 May 2011 (*Wet van 19 mei 2011 tot vaststelling en invoering van Boek 10 (Internationaal privaatrecht) van het Burgerlijk Wetboek (Vaststellings- en Invoeringswet Boek 10 Burgerlijk Wetboek)*), *Dutch Official Gazet* 8 September 2011, No. 272, publication date 8 June 2011. Dutch version available at https://wetten.overheid.nl/BWBR0030068/2019-01-29#Opschrift (last consulted on 25 September 2019). English translation: M.H. ten Wolde, J.G. Knot and N.A. Baarsma, 'Dutch Civil Code Book 10 – On the Conflict of Laws (19 May 2011)', in: A. Bonomi and G.P. Romano (eds.), *Yearbook of Private International Law*, Vol. XIII, The Hague: Kluwer Law International 2011, pp. 657-694.

23 L. Strikwerda and S.J. Schaafsma, *Inleiding tot het Nederlands International Privaatrecht*, Deventer: Wolters Kluwer 2019, p. 10.

3.2 Formal validity

3.2.1 Formal requirements in Belgium

The person seeking recognition of a personal status obtained abroad must produce *a certified copy* of the foreign judgment or authentic instrument which, according to the law of the State where it was rendered, meets the conditions of authenticity.[24] Depending on the country of origin, this includes the *legalisation* of the document or the attachment of an Apostille seal (Article 30 Code of PIL).

Foreign documents not available in Dutch, French or German often also need to be translated. The Belgian Language Law of 15 June 1935[25] grants Belgian courts the right to request a certified translation of the submitted document. Depending on its location, the court may ask for foreign documents to be translated into Dutch, French or German by a sworn translator. With regard to administrative authorities, the language used in interactions between the Government and private persons[26] is regulated by the Laws on the use of languages in administrative matters of 18 July 1996[27] and the Flemish Decree of 30 June 1981.[28] In principle, local authorities must use the language of their language area in interactions with private individuals.[29] Research has shown that, in practice, some Flemish municipalities ask for a sworn translation in Dutch, while other municipalities are more willing to accept documents drawn up in other languages, including English.[30]

3.2.2 Formal requirements in the Netherlands

A person seeking recognition of a personal status obtained abroad must submit the authentic instrument establishing the (change in) personal status. An authentic instrument is an original document drawn up by a person who is competent to record the (change in) personal status at the place where he is competent to do so.[31] Depending on the country of origin, the document must be legalised or have an Apostille seal.

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24 Art. 24, §1, 1° Belgian Code of PIL and Art. 27, §1, sections 2 and 3 j° Art. 24, §1, 1° Belgian Code of PIL.

25 Arts. 1-10 Belgian Language Law of 15 June 1935, *Belgian Official Gazette* 22 June 1935.

26 The Flemish Decree only regulates the use of languages in the Dutch language area.

27 Law of 18 July 1996 concerning the use of languages in administrative matters, *Belgian Official Gazette* 2 August 1966, available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=1966071831.

28 Flemish Decree of 30 June 1981 (*Vlaams Decreet houdende aanvulling van de artikelen 12 en 33 van de bij koninklijk besluit van 16 juli 1966 gecoördineerde wetten op het gebruik van de talen in bestuurszaken wat betreft het gebruik van de talen in de betrekkingen tussen de bestuursdiensten van het Nederlandse taalgebied en de particulieren*), *Belgian Official Gazette* 10 November 1981, available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1981063036&table_name=wet.

29 In 27 'municipalities with facilities', there is a special language regime obliging authorities to use a protected language in some cases.

30 T. De Pelsmaeker, L. Deridder and F. Judo, *Taalgebruik in bestuurszaken*, Bruges: Die Keure 2004 and F. Gosselin, *Pratique du droit 73. L'emploi des langues en matière administrative*, Waterloo: Wolters Kluwer 2017.

31 *Handboek Burgerzaken Amsterdam. Brondocumenten: de vorm van brondocumenten*.

Unlike in Belgium, the Netherlands has no general legal provision regulating the requirement of legalisation. On the basis of Article 1:26d of the Dutch Civil Code and Article 986, paragraph 3 of the Dutch Code of Civil Procedure, the courts have the possibility to demand the legalisation of foreign documents when dealing with whether a foreign public document on a person's personal status can be recorded in a Dutch civil status register.[32] For public servants, the Circular of 22 December 2010 regarding the legalisation and verification of foreign evidence[33] states that the starting point in the Netherlands is that every foreign document must be legalised before it can have any effect.[34] The Circular of 22 December 2010 ceased to have any effect on 1 January 2020. On 16 December 2019, however, a new circular was signed to extend the effects of the previous circular by one year.[35] It is unclear whether a new circular will enter into force before 1 January 2021 or whether the Circular of 22 December 2010 will continue to operate.

With regard to foreign documents that are not available in Dutch, Article 2.38, section 3 of the Act on the Registration of Persons[36] obliges citizens to submit sworn translations in Dutch.

3.3 Substantive validity

3.3.1 Belgium: foreign judgments v. foreign authentic instruments

Recognition of foreign judgments – Before elaborating on the rules regarding the recognition of foreign judgments, we must clarify the term 'foreign judgment'. A foreign document recording the personal status of a person is considered to be a foreign judgment if the decision has been rendered by an authority exercising judicial power.[37] In family matters, divorce decrees and adoption orders are typical examples of foreign judgments. In surrogacy cases, pre-birth orders instructing the civil registrar to record the intended parent(s) as the child's legal parents on the birth certificate are also considered to be foreign judgments. The recognition of foreign judgments is governed by Articles 22-25 of the Belgian Code of PIL.

Regardless of whether the foreign document is presented to a Belgian judge or an administrative authority, recognition is only possible if the eight requirements prescribed in Article 25 of the Belgian Code of PIL are met. First, a foreign judgment shall not be recognised if the result of the recognition would be manifestly incompatible with Belgian international public policy. Article 25, §1, 1° Belgian Code of PIL clarifies that 'upon the determination of incompatibility with public policy, special consideration is given to the extent to which the

32 See also Dutch Supreme Court (*Hoge Raad*) 5 September 2003, ECLI:HR:2003:AF8578, *NIPR* 2003, 240 and Dutch Supreme Court (*Hoge Raad*) 21 December 2007, ECLI:HR:2007:BB8076, *NIPR* 2008, 4. Both available at www.rechtspraak.nl.

33 *Dutch Official Gazette* 2010, No. 20882.

34 For more information, see also 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, p. 240.

35 Circular of 16 December 2019 regarding the legalisation and verification of foreign evidence, *Dutch Official Gazette* 2019, No. 70119 (https://zoek.officielebekendmakingen.nl/stcrt-2019-70119.html).

36 Act of 3 July 2013 (*Wet Basisregistratie Personen*), *Dutch Official Gazette* 2013, No. 315.

37 Art. 22, §3, 1° Belgian Code of PIL.

situation is connected to the Belgian legal order and the seriousness of the consequences which it will cause'. Second, recognition must be refused if the rights of defence have been violated. Third, the foreign judgment cannot be recognised if the decision (dealing with a matter in which parties cannot freely exercise their rights) is only obtained to evade the application of the law designated by the Belgian Code of PIL. Fourth, recognition will be denied if the presented judgment can still be subjected to an ordinary appeal in the State where the judgment was rendered. For example, in the event that the filiation established by a judge can still be challenged before a higher court, recognition cannot be granted by the Belgian courts and authorities. Fifth, a foreign judgment cannot have any consequences in Belgium if the judgment is irreconcilable with a Belgian judgment or an earlier foreign judgment that is amenable to recognition in Belgium. Sixth, recognition will be refused if the claim for recognition was made abroad after being made in Belgium and is still pending between the same parties and with the same cause of action. Once a Belgian judge has decided that he is competent to hear the case, (one of) the parties concerned cannot go abroad to evade the competence of the Belgian judge. Seventh, recognition is not possible if the Belgian courts have exclusive jurisdiction to hear the claim. In the field of filiation and marriage, however, there is no such exclusive jurisdiction for the Belgian courts. Lastly, a foreign judgment cannot be recognised in Belgium if it has been established that the jurisdiction of the foreign court was based exclusively on the presence of the defendant. In addition, under no circumstances can the foreign judgment be reviewed on its merits.

Recognition of foreign authentic instruments – In contrast to foreign judgments, foreign authentic instruments are documents drawn up by authorities without any judicial power, for example a civil servant. The civil servant does not create a legal situation. He merely records the will of the parties concerned in an official document.[38] Authentic instruments can be drawn up by civil-status registrars (e.g., marriage certificates and birth certificates) or notaries (e.g., matrimonial contracts and wills). The recognition of foreign authentic instruments is governed by Article 27 of the Belgian Code of PIL.

A foreign authentic instrument can only be recognised in Belgium if (1) its validity is established in accordance with the law applicable by virtue of the Belgian Code of PIL and more specifically with due regard to (2) Article 18 and (3) Article 21 of the Belgian Code of PIL.[39]

The Belgian Code of PIL includes a conflict-of-laws test ('*contrôle de la loi applicable*') with regard to authentic instruments drawn up abroad. This means that a foreign authentic instrument can only be recognised in Belgium if it has been ascertained that the foreign document was drawn up in accordance with the rules on the applicable law enshrined in the Belgian Code of PIL. For both foreign marriage certificates and foreign birth certificates, the Belgian Code of PIL has rules on their formal and substantive validity. With regard to foreign marriage certificates, Article 46 of the Belgian Code of PIL stipulates that 'the conditions regarding the validity of the marriage are governed, for each spouse, by the law of the State of the spouse's nationality when the marriage is celebrated'. Article 47 of the Belgian Code of PIL states that 'the formalities regarding the celebration of the marriage are governed by the law of the State on the territory of which the marriage is celebrated'. For foreign birth certificates, Article 62

38 J. Erauw and H. Storme, *Internationaal Privaatrecht*, Mechelen: Wolters Kluwer Belgium 2009, pp. 232-233.

39 Art. 27, §1, section 1 Belgian Code of PIL.

specifies that 'the establishment or the contestation of the link of lineage with a person is governed by the law of the State of the person's nationality upon the birth of the child or, if the establishment results from a voluntary act, at the time such act is carried out'. Consequently, foreign authentic instruments are submitted to a thorough substantive check.

Facts and acts committed with the sole purpose of evading the application of the law designated by the Belgian Code of PIL are not taken into account.[40] With regard to marriage and filiation, earlier research has demonstrated that the principle of the evasion of the law has been interpreted and applied differently.[41] In surrogacy cases, for instance, a much milder approach can be observed than is the case in the application of the *fraude à la loi* in court decisions on the recognition of foreign marriage certificates. In the latter, migration policies are at stake.[42]

More frequently invoked is the public policy exception. The recognition of a foreign authentic instrument is refused if it has been established that the application of a foreign provision designated by the Belgian Code of PIL would lead to a result that is manifestly incompatible with Belgian international public policy.[43] In determining this incompatibility, the Belgian authorities and courts must give special consideration to the degree which links the situation to the Belgian legal order as well as to the significance of the consequences produced by the application of the foreign law.[44] By invoking the public policy exception, the Belgian legal order can protect its fundamental values and norms.

3.3.2 The Netherlands: matter-specific rules

Recognition of foreign marriage certificates – Together with Australia and Luxembourg, the Netherlands ratified the 1978 Hague Convention on Celebration and Recognition of the Validity of Marriages.[45] The convention entered into force on 1 May 1991. On 1 January 1990, however, the Conflict of Laws Marriage Act had already entered into force.[46] The latter translated the provisions of the 1978 Hague Convention into Dutch legislation and supplemented the convention where allowed. With the entry into force of Book 10 of the Dutch Civil Code, the Conflict of Laws Marriage Act was replaced by Articles 27-34 of Book 10.[47]

Article 10:31, 1° of the Dutch Civil Code stipulates that 'a marriage that is contracted outside of the Netherlands and that is valid under the law of the State where it took place or that

40 Art. 18 Belgian Code of PIL.

41 J. Verhellen, *Het Belgisch Wetboek IPR in familiezaken: wetgevende doelstellingen getoetst aan de praktijk*, Bruges: die Keure 2012, pp. 297-310.

42 T. Kruger and J. Verhellen, 'Private International Law as a Basis for Reconstructing Legal Relationships Between Adults and Children: Four Illustrations', in: J. Sosson, G. Willems and G. Motte (eds.), *Adults and Children in Postmodern Societies : a Comparative Law and Multidisciplinary Handbook*, Cambridge: Intersentia 2019, p. 717; Verhellen 2012, pp. 297-310 (*supra* n. 41).

43 Art. 21, section 1 Belgian Code of PIL.

44 Art. 21, section 2 Belgian Code of PIL.

45 See https://www.hcch.net/en/instruments/conventions/status-table/?cid=88 (last consulted on 26 September 2019).

46 Act of 7 September 1989 (*Wet Conflictenrecht Huwelijk*), *Dutch Official Gazette* 1989, No. 392.

47 When Book 10 of the Dutch Civil Code entered into force, on 1 January 2012, the provisions of the Conflict of Laws Marriage Act were merely reproduced in Book 10. Over the years, the provisions have been amended, however. See Strikwerda and Schaafsma 2019, p. 228 (*supra* n. 23).

has become valid afterwards according to the law of that State is recognised in the Netherlands as a valid marriage'.[48] In addition, a marriage certificate issued by a competent authority is presumed to be valid.[49] However, the willingness of the Netherlands to recognise marriages validly contracted abroad does have its limits. Even if the requirements prescribed in Article 10:31 of the Dutch Civil Code have been met, recognition is refused if it has been established that such recognition would be manifestly incompatible with Dutch international public policy.[50] The Dutch Civil Code enumerates five situations in which recognition is always considered to be manifestly incompatible with Dutch international public policy:

> 1° A polygamous marriage in which one of the spouses is connected to the Netherlands by nationality or habitual residence, unless the previous marriage was dissolved or declared null and void;
> 2° A marriage between first and/or second-degree family members;
> 3° A child marriage, unless both spouses have attained the age of majority at the time recognition is sought;
> 4° A marriage contracted with a person who was mentally incapable of giving his consent, unless it has been established that at the time the marriage was contracted, the person was capable of giving his consent and agreed to the recognition of the marriage;
> 5° A marriage in which one of the spouses has not freely given his consent, unless that spouse explicitly agrees to the recognition of the marriage.[51]

In contrast to Belgium, there is no conflict-of-laws test in the Netherlands.

Recognition of filiation established abroad – The conflict-of-laws rules regarding filiation and the rules dealing with the recognition of filiation established abroad are stipulated in Articles 92-101 of Book 10 of the Dutch Civil Code.[52] Book 10 of the Dutch Civil Code makes a distinction between the recognition of filiation established abroad based on a judgment (Article 10:100) and the recognition of foreign birth certificates (Article 10:101). Article 10:101, paragraph 1 gives a clear definition of the term 'authentic instrument': a document drawn up in accordance with the local rules by a public authority that is competent to draw up documents on personal status.

Foreign judgments on legal parentage are recognised in the Netherlands if they meet the five substantive requirements prescribed by Article 10:100 of the Dutch Civil Code.[53] First, the foreign judgment must be final. Second, there must be a close connection between the international jurisdiction of the foreign court and the legal sphere of that country.[54] Third, the case must have been properly investigated, and it must have been established that there was no

48 As clarified in Art. 10:31, 3° Dutch Civil Code, the term 'law' includes rules of private international law.

49 Art. 10:31, 4° Dutch Civil Code.

50 Art. 10:32 Dutch Civil Code.

51 Art. 10:32 Dutch Civil Code.

52 Arts. 92-101 Book 10 of the Dutch Civil Code replaced the Conflict of Laws Filiation Act of 14 March 2002, *Dutch Official Gazette* 2002, No. 153.

53 Strikwerda and Schaafsma 2019, pp. 245-246 (*supra* n. 23).

54 This does not entail the application of the Dutch rules on international jurisdiction. The seized Dutch authority can only examine whether the foreign judge declared himself competent to hear the case in line with what is internationally accepted.

violation of the due process principle. Fourth, recognition of a foreign judgment will be refused if it would lead to a violation of Dutch international public policy. Lastly, the foreign judgment must not be irreconcilable with an earlier Dutch decision.

Birth certificates drawn up abroad are recognised in the Netherlands if they meet the three substantive requirements stipulated in Article 10:101, section 1 of the Dutch Civil Code. First, the case must have been properly investigated, and the due process principle must not have been violated. Second, recognition of a foreign birth certificate will be refused if it would lead to a violation of Dutch international public policy. Third, the content of the foreign birth certificate must not be irreconcilable with an earlier Dutch judgment.[55]

In contrast to Belgian law, Dutch law does not offer the possibility to review the law applied by the foreign authority registering the legal parentage. The decision not to include a conflict-of-laws test was explicitly discussed in the preparatory work on the Conflict of Laws Filiation Act, which is the precursor of Articles 100 and 101 of Book 10 of the Dutch Civil Code.[56] To counter the elimination of a conflict-of-laws test, the legislator deemed it necessary to identify three situations in which recognition is always considered to be manifestly incompatible with Dutch international public policy.[57] These three situations can be found in Article 10:101, section 2 of the Dutch Civil Code:

> 1° If the acknowledgement is made by a Dutch national who, according to Dutch law, is not entitled to acknowledge the child;
> 2° If the consent of the mother or the child does not meet the requirements laid down in Article 10:95, section 3 of the Dutch Civil Code;
> 3° If the instrument manifestly relates to a sham action.

4. … to the law in practice

4.1 Representation of foreign documents at the public servants' level

The question of how often public servants have to deal with requests for recognition sets the scene to process the results of the survey. The answers to this question make it clear that dealing with the (non-)recognition of foreign documents is not an oddity. As many as 109 respondents, which is **half of the total respondents, indicated that they deal with foreign marriage and/or birth certificates at least once a day**. 27% of the respondents deal with foreign marriage and/or birth certificates on average once a week and 20% on average once a month. Only 3% stated that they are never or only rarely confronted with foreign marriage and/or birth certificates. In other words, the survey provided us with a solid basis to gain an insight into the working methods of public servants dealing with foreign documents on personal status.

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55 Strikwerda and Schaafsma 2019, pp. 246-247 (*supra* n. 23).

56 *Kamerstukken II* 1998/99, 26 675, No. 3, p. 21, available at https://zoek.officielebekendmakingen.nl/kst-26675-3.html.

57 Strikwerda and Schaafsma 2019, p. 247 (*supra* n. 23).

4.2 Distinction between judgments and authentic instruments?

As discussed above, both Belgian and Dutch PIL rules make a distinction between filiation established abroad by a judge and filiation recorded by a civil servant. In our survey, the respondents were asked whether such a distinction is made in practice as well. Only 33% of the respondents indicated that they make a distinction. When they were asked to clarify their answer, most participants reported making this distinction because their national PIL rules require this. 55% of the respondents, however, do not differentiate between foreign judgments and authentic instruments. 12 % of them did not answer this question or the following questions of the survey, which was a remarkable drop-out rate.[58]

A comparison of the answers of the Belgian and Dutch public servants reveals that, in Belgium, only 28% of the respondents make a distinction between judgments and authentic instruments, while, in the Netherlands, this percentage was much higher (46%).[59] The question arises whether this difference could be explained by the different legal framework. Are Dutch public servants more aware of this distinction because Book 10 of the Dutch Civil Code makes a 'concrete' distinction between the recognition regimes for marriage and filiation, whereas the Belgian PIL Code has general rules which apply to both?

4.3 Does the country of origin play a role?

Starting from the hypothesis that documents from certain countries raise suspicions more easily, the respondents were asked whether the country of origin plays a role when assessing the formal and/or substantive validity of the presented document. The survey reveals that our assumption was well grounded. Out of the 185 respondents who answered this question, 117 (or 63%) indicated that they act differently depending on the country of origin of the marriage or birth certificate. There is no significant difference between the answers of public servants in Belgium and those in the Netherlands.[60] As for Belgian consular officials, 87.5% indicated that the country of origin does play a role. A possible explanation could be the proximity to the country where the documents were issued.

The participants gave two reasons for applying a different approach depending on the country of origin. First, the respondents (rightly) stated that the requirements of legalisation depend on the country of origin. Depending on whether the issuing and the receiving State are a party

58 Of the 26 respondents who stopped participating in the survey, 8 respondents (or 31%) stated that they are never or only rarely confronted with foreign marriage and/or birth certificates. Thirteen respondents (or 50%) indicated that they have to deal with foreign documents at least once a day. The drop-out rate of respondents cannot therefore be explained by the fact that those respondents do not deal with foreign documents in their capacity as public servants.

59 When examining the answers in more detail, we observed that 69% of the Belgian public servants at the local level do not make a distinction, while, in the Netherlands, only 41% of the public servants at the local level do not differentiate between the two. As for Belgian consular officials, 50% of them make a distinction while the other half do not.

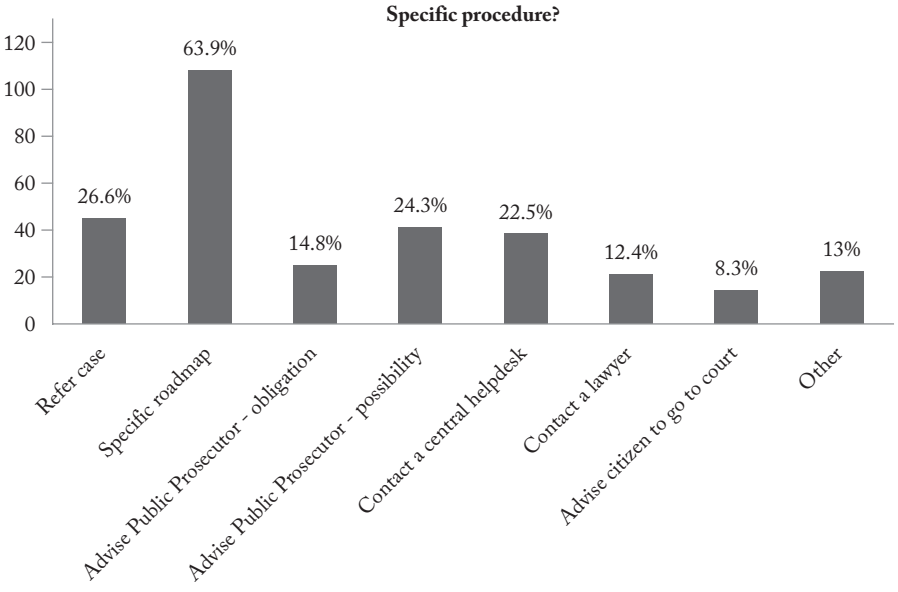
60 In Belgium, 61% of the respondents make a distinction, whereas, in the Netherlands, 71% use a different approach depending on the country of origin.

to the 1961 Hague Apostille Convention,[61] the provision on legalisation will (not) play a role. Second, a high number of respondents mentioned fraud, forgery and (to a lesser extent) corruption. Documents from certain countries, for example, Cameroon, Congo, Ghana and Morocco, are subjected to a thorough investigation. Nevertheless, one respondent emphasised the need to be more lenient towards documents originating from, for example, Syria. Another participant admitted that the distinction between documents originating from the United States of America or France, on the one hand, and African countries, on the other, is based solely 'on a gut feeling'. Our survey, however, did not reveal whether public servants receive sufficient support in the execution of their task to examine documents from countries described as less reliable.

4.4 Do public servants apply a certain procedure when dealing with foreign documents?

After having established that 50% of the participants deal with foreign marriage and/or birth certificates at least once a day, we looked into their practice. Do they follow a certain procedure when receiving a foreign document that records the personal status of a person? Do they have the possibility or an obligation to contact the public prosecutor's office for advice? Do they have to inform their superiors or a specific general administrative body and do they advise citizens to contact a lawyer or to commence legal proceedings? The results of the survey show that 93% of the respondents who answered this question follow a certain procedure when they are confronted with a foreign marriage and/or birth certificate. The chart below gives an overview of the methods used by Belgian and Dutch public servants when dealing with foreign documents on personal status.

Table 3 – Procedure(s) followed by public servants



61 See https://www.hcch.net/en/instruments/conventions/full-text/?cid=41.

When confronted with a foreign marriage and/or birth certificate, 63.9% of the respondents reported that they *follow a specific roadmap*. **In Belgium**, public servants at the local level indicated that they first check the formal validity of the presented document (legalisation or Apostille). If the document is drawn up in a foreign language, a translation is required. When in doubt, many public servants stated that they ask the public prosecutor's office or a colleague (at a larger municipality) with more experience for advice. One public servant at the local level stated that (s)he might contact the Belgian Immigration Office for advice. Consular officials, on the other hand, pointed out that they have to follow the instructions issued by the Federal Public Service Foreign Affairs. In case of doubt, consular officials can contact a specific service (*C3*) within the Federal Public Service Foreign Affairs. The public servants who indicated that they deal with civil and migration issues revealed that they discuss the (non-)recognition of foreign documents with colleagues. One respondent referred to a specific team within the municipality. Another respondent stated that, if it is deemed necessary, the Flemish Agency for Integration and Civic Integration[62] is contacted. This public authority functions, *inter alia*, as a helpdesk on migration law and PIL matters.

In the Netherlands, the survey revealed that, unlike in Belgium, public servants at the local level make use of the expertise available within the Dutch Immigration and Naturalisation Service. The IND has a specific office dealing only with the validity of foreign documents (*Bureau Documenten*). In addition, public servants at the local level often consult colleagues when dealing with foreign documents. Lastly, a number of public servants at the local level as well as an official at the IND referred to DISCS (Document Information System Civil Status), which is a web-based reference system developed by the authorities of the Netherlands, Canada, Australia, the United Arab Emirates/Dubai and Norway. The aim of DISCS is to help public servants deal with foreign (and national) documents which contain information on, for example, marital status, identity and nationality. The website encompasses information on what authentic documents should look like, how to recognise false documents and recent developments.[63] Like in Belgium, Dutch consular officials referred to the instructions issued by the Ministry of Foreign Affairs.

4.5 Grounds for refusal

Not all foreign marriage and birth certificates are given legal consequences in Belgium and the Netherlands. Out of the 219 respondents, 148 stated that they have refused to recognise a foreign marriage and/or birth certificate. Only 11 respondents indicated that they have never denied recognition of foreign documents. 60 participants left this question blank, which is again a remarkable drop-out rate. More interesting, however, is finding out why the recognition of foreign documents is refused. In our survey, we listed the following grounds for refusal:

A. Is a (sworn) translation missing?
B. Is the document drawn up in a language that the recipient does not understand?
C. Is the required legalisation (or Apostille) missing?
D. Are there doubts concerning the authenticity or trustworthiness of the document?

62 See https://www.agii.be/.

63 See https://www.nidsenter.no/en/services/reference-databases/discs/ (last consulted 29 October 2019).

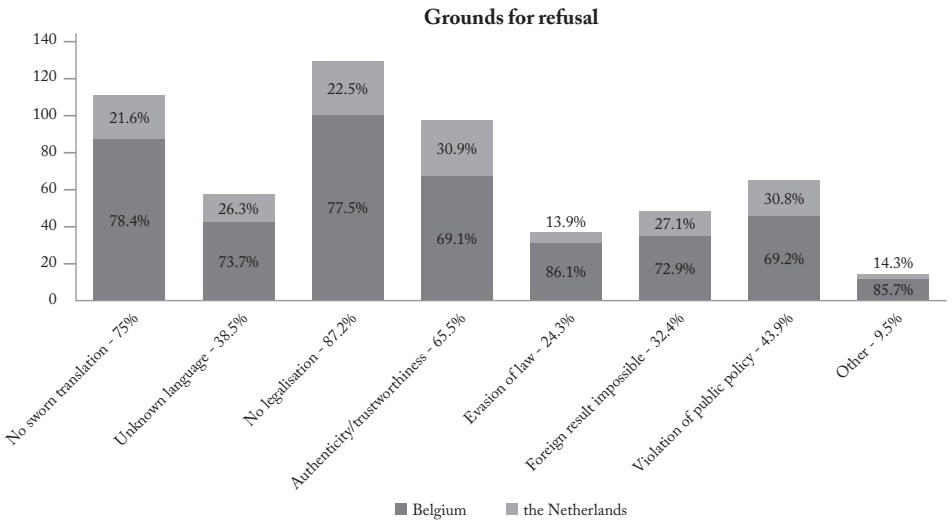
E. Has there been an evasion of the law?

F. Did the person(s) concerned obtain a result which would have been impossible to obtain in Belgium or the Netherlands?

G. Is there a violation of public policy?

H. Other

Table 4 – Grounds for refusal



In general, recognition is most often refused because the required legalisation or Apostille stamp is missing. Of the respondents who indicated that they have refused recognition (#148), 129 (or 87%) selected the absence of the required legalisation as their number one reason for refusal. This is a remarkably high number, knowing that legalisation is not given much attention in academic legal writing and legalisation is only the first 'formal' step in getting a foreign document recognised.

In second place, 75% of the respondents stated that they often refuse recognition of a foreign document because a (sworn) translation is missing. This is an interesting finding. Unfortunately, we are unable to tell whether this concerns a (sworn) translation in Dutch (Flanders and the Netherlands) or French (Wallonia), or a (sworn) translation in any common language (for example, English).

In third place, ⅔ of the participants indicated that they refuse to give (any) legal consequence(s) to the foreign document because they have doubts concerning its authenticity and trustworthiness.

When comparing the answers of the Belgian public servants with those of the Dutch public servants, we observed the same grounds for refusal in the top 3, only in a different order.

Table 5 – Top 3 grounds for refusal: Belgium v. the Netherlands

Belgium	**the Netherlands**
1. Required legalisation or Apostille is missing	1. Doubts concerning the authenticity and trustworthiness of the document
2. No (sworn) translation	2. Required legalisation or Apostille is missing
3. Doubts concerning the authenticity and trustworthiness of the document	3. No (sworn) translation

The survey results show that public servants focus more on the formal validity of foreign documents rather than on their content. This can be easily explained. When confronted with foreign documents that record the personal status of people, public servants will first examine whether the formal requirements have been met. Only after having established that the formal requirements have indeed been met will an examination of the substantive requirements take place. Despite this simple explanation, it is important to realise that, for many people, this formal step is often a first, significant hurdle in getting their personal status recognised.

4.6 Legitimate expectations

In question 8, the respondents were asked whether or to what extent good faith and the legitimate expectations of the persons concerned play a role. Of the 156 participants who answered this question, only 39% reported that they take into account good faith and the legitimate expectations of the person(s) seeking recognition. The division of tasks between the public servant and the judge undoubtedly plays a role here. One Dutch public servant explicitly stated that he can only check facts. The rest is up to the judge to decide. Another Dutch public servant remarked that Dutch law does not grant civil servants the right to examine the conflicting interests at stake. Investigating the interests at stake, including the (non-)existence of good faith, is a matter for the courts.

When comparing the practice of Belgian public servants with that of their Dutch counterparts, we found that Dutch public servants are somewhat more willing to consider good faith and the legitimate expectations of the person(s) seeking recognition (18 of the 39 Dutch respondents, or 46%), in comparison to only 37% of the Belgian respondents. The difference is, however, too small to draw any firm conclusions.

4.7 Case law of the ECtHR

Over the years, the case law of the ECtHR[64] has demonstrated that the European Convention on Human Rights (hereinafter 'ECHR') has the potential to oblige Contracting States to recognise personal statuses validly created abroad even if the private international law rules of the

64 For example, ECtHR 28 June 2007, No. 76240/01 (*Wagner and J.M.W.L./Luxembourg*); ECtHR 20 July 2010, No. 38816/07 (*Dadouch/Malta*); ECtHR 5 December 2013, No. 32265/10 (*Kismoun/France*); ECtHR 16 December 2014, No. 52265/10 (*Loudoudi/Belgium*); ECtHR 26 June 2014, No. 65192/11 (*Mennesson/France*); ECtHR 26 June 2014, No. 65941/11 (*Labassee/France*); ECtHR 21 July 2016, Nos. 9063/14 and 10410/14 (*Foulon and Bouvet/France*); ECtHR 19 January 2017, No. 44024 (*Laborie/France*); ECtHR

receiving State do not allow recognition.[65] With this study, our aim was to map public servants' awareness of the case law of the ECtHR in this field. Do the rules and guidelines developed by the ECtHR find their way into the daily practice of Belgian and Dutch public servants? Unfortunately, this does not seem to be the case. Of the 155 public servants who answered this question, 80% stated that they are not aware of the case law of the ECtHR regarding the recognition of a personal status obtained abroad. This illustrates the clear need for (better) cooperation between academia and practice. The research conducted at the level of universities on the protection of human rights must reach practitioners, because they are responsible for guaranteeing the rights and freedoms enshrined in the ECHR in practice. This is all about the societal impact of research and its impact on the lives of people.

After having established that only 2 out of 10 public servants are aware of the case law of the ECtHR, the survey examined to what extent this case law has an impact on the decisions of administrative authorities. In Belgium, 18 public servants indicated that they are aware of the case law of the ECtHR.[66] Of those 18 public servants, 11 stated that they use the case law of the ECtHR in their daily practice. In other words, 39% of the respondents stated that, although they are aware of the case law of the ECtHR, they do not use the Court's case law in their daily practice. In the Netherlands, 13 public servants indicated that they are aware of the case law of the ECtHR.[67] Of those who are aware of the case law of the ECtHR, 75% indicated that they use it in their daily practice.

This study revealed that only a handful of public servants are aware of and apply the rules and guidelines laid down by the ECtHR. Moreover, of the public servants who indicated that they apply the case law of the ECtHR in their daily practice, some referred to *Garcia Avello*[68] and *Grunkin and Paul*,[69] which are cases of the Court of Justice of the European Union, not the ECtHR. These results illustrate that there is still much work to be done.

4.8 General remarks

In the second to last question, the respondents were given the opportunity to make some general remarks. A total of 33 respondents made use of this opportunity. An analysis of their answers reveals that many of them have similar needs and concerns. First, many respondents expressed the need for a central body or an umbrella organisation that is competent to deal with foreign documents. Especially in smaller municipalities, public servants indicated that they often lack the required expertise to rule on foreign marriage and/or birth certificates. One

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24 January 2017, No. 25358/12 (*Paradiso and Campanelli/Italy*) and ECtHR 14 December 2017, Nos. 26431/12, 26742/12, 44057/12 and 60088/12 (*Orlandi and Others/Italy).*

65 P. Kinsch, 'Private International Law Topics before the European Court of Human Rights. Selected judgments and decisions (2010-2011)', in: A. Bonomi and G.P. Romano (eds.), *Yearbook of Private International Law*, Vol. XIII, Munich: Sellier European Law Publishers 2011, p. 42.

66 Those 18 public servants consisted of 9 public servants at the local level, 1 official at the Immigration Office, 6 consular officials and 2 others.

67 Those 13 public servants consisted of 9 public servants at the local level, 1 official at the Immigration and Naturalisation Service and 3 others.

68 CJEU 2 October 2003, C-148/02, ECLI:EU:C:2003:539, *NIPR* 2004, 2.

69 CJEU 14 October 2008, C-353/06, ECLI:EU:C:2008:559, *NIPR* 2008, 253.

civil servant pointed out that better cooperation with the embassies would already be a big step forward. Second, public servants from the local and national level argued in favour of (clearer) guidelines, more and better training and more resources to access specialised databases. Two public servants at the local level expressed their concerns with regard to 'city shopping'.[70] In the end, each public servant should come to the same conclusion when confronted with a request to have a foreign birth and/or marriage certificate recognised. Citizens should be discouraged from submitting the same request for recognition in another municipality.

With the entry into force of the new Article 31, §3 of the Belgian Code of PIL on 31 March 2019, the Belgian legislator introduced a Central Civil Status Authority (*Centrale Autoriteit Burgerlijke Stand/Autorité centrale de l'Etat civil*). The objective of this authority is to assist civil-status registrars with whether a foreign civil-status document can be recognised, without undermining their autonomous decision-making authority.[71] Currently, no royal decree has yet been issued to regulate the organisation and functioning of this authority. Without a doubt, the Central Civil Status Authority has great potential, but it is too early to tell whether it will be able to provide an answer to the questions and concerns of civil-status registrars.

5. Conclusion

For the first time in Belgium and the Netherlands, this study offered public servants applying private international law rules in their daily practice a platform to report their good practices, struggles and concerns. Especially public servants at the local level from smaller municipalities (less than 50,000 inhabitants) were well represented in our study.

The objective of the survey was to examine how Belgian and Dutch public servants deal with foreign documents that record the personal status of people. After having established that 50% of the respondents deal with foreign marriage and/or birth certificates at least once a day, we examined the application of Belgian and Dutch PIL rules in practice. In total, we processed the answers of 219 respondents and were able to empirically ground the following results. First, although the Belgian and Dutch PIL rules make a distinction between the recognition of judgments, on the one hand, and authentic instruments, on the other hand, only one-third of the respondents make this distinction in practice. Second, the country that issued the document has a major impact on the decision. Documents from countries like Cameroon, Congo, Ghana and Morocco are treated with more suspicion. Third, two-thirds of the respondents follow a specific procedure when dealing with foreign marriage and/or birth certificates. Fourth, the survey revealed that public servants focus mainly on the formal validity of foreign documents. The lack of the required legalisation or Apostille stamp, the absence of a (sworn) translation and doubts concerning the authenticity of the submitted document are the most invoked grounds for refusal. Fifth, public servants do not attach much weight to the intentions of the people seeking recognition of their personal status. At the administrative level, there is little room for good faith and the legitimate expectations of the person(s) concerned. Lastly, the survey demonstrated that the rules and guidelines set out by the ECtHR are not (properly) applied in practice by public servants. However, in open question 10, public servants expressed their need for more assistance when dealing with foreign documents.

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70 This term was first used by Verhellen 2012, no. 348, 351, 353 and 534 (*supra* n. 41).

71 The advice given by the Central Civil Status Authority is not binding.

Although some conclusions are not groundbreaking, they are for the first time empirically grounded by a large-scale comparative study.