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The influence of foreign cultural values on Dutch social security law

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A country's social security system is a mirror of its society's norms and values. That does not mean, however, that social security law is homogenous in the sense of its being based on a one-dimensional concept of humanity that disregards cultural diversity. For instance, Dutch social security law provides for exemption from public insurance on the basis of religious objections. This provision was instituted to accommodate the conviction held among certain Protestant Christians that it is not permissible to deliberately cover oneself against risks, which should be accepted as an inevitable expression of God's will. To an objective outsider, the cosmetic nature of this provision will be apparent. The fact is, while religious objectors do not contribute to social security funds, they are expected to cough up a kind of substitute tax. In the event a risk materialises, the objector can use the savings accumulated as a result of this taxation to support him or herself, in the form of a sort of substitute benefit or pension. The provision for objectors on religious grounds is full of legal oddities; it serves a small group of about 1,700; it shows how tolerant social security can be in respect of the feelings of minorities. *Multiculturality avant la lettre!*

The above provision reflects particularly the cultural diversity that exists within traditional Dutch society, and a tolerance towards deviant customs and ideas that has been further tested in recent decades by the arrival of minority groups from outside the Netherlands, not least as a result of migration. Dutch society has rapidly been becoming increasingly heterogeneous, and this has left marks on the interpretation and design of the legal system. The influence of new population groups on social security law takes place step by step under the influence of case law and the policy of the implementing organisations. The process is therefore not always immediately visible, but if the developments are observed over a longer period of time, the influence is clearly to be seen.

1. Three case studies of multiculturalism

The multiculturalisation of the law can be understood as a process in which foreigners contribute to the shaping and development of the law by their presence – whether permanent or not – in a country.¹ This article will investigate the way in which this process is taking place in social security law and will examine the questions to which this process gives rise. As it is beyond the scope of this article to give a complete overview of the multiculturalisation process within social security, we have opted for a case study approach, focusing on three areas where social security conventions have come under pressure through the arrival of groups of foreigners in the Netherlands.

The *first* topic is the gradual evolution of the criterion of residence used in Dutch national insurance. We are not speaking specifically about the penetration of new cultural ideas,

¹ Cf. M. C. Foblets and B. Hubeau, 'De inkleuring van het recht door toedoen van nieuwe culturen. De aanzet tot een sociaal-wetenschappelijke studie van de impact van de migratie op het rechtsvormingsproces in Nederland en België', in: M.C. Foblets, B. Hubeau and S. Parmentier (ed.) *Migranten kleuren het recht in*. Leuven, Acco 1997. NB: the writers refer specifically to a permanent stay, but we will not apply that limitation to this article because the confrontation with foreign cultural concepts in social security manifests itself just as clearly if the immigrant's stay is not permanent.

here, but rather about the influence of the phenomenon of migration on the law. It is particularly interesting to examine whether society's perception of immigration leaves traces in normative reality.

The *second* topic relates to the effects of foreign legal concepts such as adoption, marriage and acknowledgement on the Dutch National Child Benefits Act (hereafter: AKW). In relation to many countries, insurants are entitled to child benefit for children living abroad. The arrival of migrants from countries with a dissimilar legal culture has raised the question of whether the child's foreign family law status should be recognised for the purposes of Dutch child benefit. What does case law tell us about this? Does Dutch social security law promote or impede tolerance to foreign norms and values?

The *third* and final topic concerns the concept of the 'member of the family'. In this framework, we start by discussing problems associated with the export of Dutch cultural values to other countries. In Dutch social security law, marriage is equated with sharing a household with a partner, the sex of the partners being irrelevant. This modern view can lead to clashes with foreign cultural values when Dutch pensions and benefits are paid in other parts of the world. We then proceed to discuss the way in which the concept of member of the family as referred to in European social security law is finding itself under pressure from non-European ideas about the family.

Our article closes with a critical look at the multiculturalisation process taking place in social security. The question, after all, is whether it might be possible to arrive at more general conclusions for social security law on the basis of the three topics.

1.1. The evolution of the criterion of residence

The Dutch national insurance schemes cover the risks of old age, death, children and exceptional medical expenses. These four schemes have common descriptions for the insurants. Firstly, insurants include residents. These are people who live in the Netherlands and whose residence status is assessed according to circumstances as prescribed by the law. The concept of residence is further elaborated in case law, showing that a person must have long-lasting personal ties to the Netherlands; the focus of a person's social life must be in the Netherlands. Incidentally, this requirement of intensive ties with the country of residence is not unusual in European social security law. For instance, there is the UK term *ordinary residence*², and the German term *gewöhnlicher Aufenthalt*.³

As mentioned above, the interpretation of the central insurance criterion of residence has been subject to changes as a result of the arrival of migrant workers in the Netherlands in the late 1960s and the family reunifications that followed in the '70s and '80s. In a recent publication, O. Brinkman aptly reveals the way in which these changes have taken shape in the case law of the Central Court of Appeal.⁴ He juxtaposes three judgments, each concerning Moroccan nationals who had left their families in Morocco and come to work in the Netherlands.

In the early '70s, the Central Court of Appeal still believed that there was no question of residence in such cases.⁵ The Court judged that, "a foreign *gastarbeider* (literally: guest worker) whose family remains in his country of origin, who regularly visits

² Cf. A.Ogus, N. Wikeley's, *The law of social security*. London, Butterworths 1995, p. 393 ff.

³ Paragraph 30 of the general part of the *Sozialgesetzbuch*.

⁴ O. Brinkman, '*De AOW: grand old lady nog niet met pensioen*', in: *PS-special*, No.2, 2001, p. 59-68.

⁵ Central Court of Appeal, 11 Nov. 1971, *RSV* 1972/48.

this family when on leave and who also maintains normal contacts with this family, continues to be a resident of that country.” The use of the term guest worker in this consideration illustrates the expectation held at the time that the migration that was taking place for labour purposes would turn out to be a temporary phenomenon. It was assumed that guest workers would eventually return to their country of origin. It was further concluded on the basis of this expectation that coverage under Dutch national insurance was out of the question.

By the late 1970s, a shift is discernible in case law. In a judgment of 1977, the Court ruled that “it is going too far to assume that a foreign worker whose family stays behind in the country of origin and who maintains regular contact with the family can never be a resident of the Netherlands as well”.⁶ Here, we see that it was no longer inconceivable that a migrant worker could build up such intensive ties to the Netherlands that residence could be applicable. The term *gastarbeider* (guest worker) was dropped, and replaced by the term *buitenlandse arbeider* (foreign worker).

In the mid-80s, the Court took a step further. In a judgment of 1985⁷, it appears that maintaining economic ties with the Netherlands constitutes an important reason to assume residence: “The employment history of the person concerned leads to the conclusion that ties have gradually come about between that person and the Netherlands as a result of which he and his family have become entirely or almost entirely dependent on his possibilities for earning income in the Netherlands.” In this case, residence was assumed to apply from the point in time that a second job was accepted in the Netherlands. Regarding terminology, the migrant worker is now referred to neutrally as the person concerned.

On the basis of a quarter of a century of developments in case law, the concept of residence subsequently took further shape in implementational policy. Today, the assessment of residence is based on the actual circumstances, tested against three objective material criteria: the extent to which a person has legal, economic and social ties with the Netherlands.⁸ This legal development shows that the interpretation of the term residence has adapted to the reality of migration and the way in which this reality has been perceived in society. Rather than a subjective perception of the phenomenon of migration, the objective circumstances of a migrant in the Netherlands now constitute the deciding factor.

Incidentally, the concept of residence underwent a similar shift in meaning under the influence of migration with respect to the phenomenon of the dual place of residence. Initially, case law was based on the assumption that a person could only be a resident of one country at a time, i.e. either the Netherlands or another country. This idea, however, was at odds with the situation of older migrants who had become eligible for pensions/benefits and had not entirely severed their ties with their country of origin. Some of these people have kept the Netherlands as their country of residence while spending several months each year in their country of origin. It was situations like these that led the Central Court of Appeal to accept in 1994 that such cases are cases of dual residence.⁹ Therefore, maintaining ties with the country of origin does not preclude residence in the Netherlands.

1.2. *The effects of foreign legal concepts*

⁶ Central Court of Appeal 4 July 1979, RSV 1979/230.

⁷ Central Court of Appeal 19 Dec. 1985, RSV 1986/166.

⁸ Central Court of Appeal 7 June 1989, RSV 1990/420.

⁹ Central Court of Appeal 15 June 1994, AB 1995,76.

The effects of foreign legal concepts constitute a very different kind of issue. The question here is to what extent legal arrangements in foreign personal and family law can be considered as equivalent to the corresponding Dutch legal arrangements for the purposes of Dutch social security law. This question is of particular relevance to the implementation of the National Child Benefits Act (AKW). This is not only because the relationship between the carer and the child under family law is often crucial for entitlement to child benefit but also because the AKW comprises an important international component, notably because insured parents can be entitled to child benefit for children living outside the Netherlands. Until 1 January 2000, entitlement to child benefit for children living outside the Netherlands was unrestricted. Since the introduction of the Export Restrictions on Benefits Act (BEU)¹⁰, however, entitlement has been restricted to children living in countries with which the Netherlands has concluded an agreement comprising an obligation to export benefits.

The AKW provides for entitlement to child benefit for insurants who care for or support children. This applies to a person's own children, foster children or stepchildren.¹¹ The term 'own child' is not in itself a strictly legal term, but it has taken on a more specific legal meaning within the framework of case law and policy. In this context, 'own child' is taken to mean the children of the female insurant who is regarded as their mother pursuant to Article 1:198 of the Dutch Civil Code, and the children of the male insurant who is regarded as their father pursuant to Article 1:199 of the Netherlands Civil Code. As a consequence, acknowledged and adopted children are also considered as a person's own children.

This leads to the question of whether a child that is acknowledged or adopted under non-Dutch law is also regarded as a person's own child for the purposes of the AKW. On the face of it, one would think this would be answered by the provisions of international private law. That, however, is not the case. According to previous rulings by the Central Court of Appeal, whether a child is regarded as a person's own on the basis of the national law designated by international private law is not of decisive importance for the application of social security law. This question must be answered using the applicable provisions of the laws concerned.¹² For the application of the AKW, acknowledgements and adoptions that took place under non-Dutch legal systems only have the same legal consequences as adoptions and acknowledgements under Dutch law insofar that the requirements for and the legal consequences of those legal systems correspond with the Dutch equivalents.¹³

¹⁰ See O.P. Brinkman, M.A.H. van Dalen-van Bekkum and W.H. Bel, *Wet beperking export uitkeringen. PS-special*, 1999, No.3.

¹¹ Art. 7 AKW.

¹² Central Court of Appeal 22 May 1991, *KBW* 1990/40 n.g..

¹³ Central Court of Appeal 23 December 1987, *RSV* 1988/168. The fact that the rules of international private law are disregarded in case law can be explained from a legal perspective by the fact that the AKW itself does not attach any legal consequences to the acknowledgement or the adoption. As mentioned above, the law applies a substantive criterion, i.e. that of the 'own child', which has subsequently taken on a more specific legal meaning. Here, Dutch personal and family law (in the way in which it functions in context in Dutch society) was the frame of reference. The requirement then ensues that, if the foreign acknowledgement or adoption is to be accepted in the Netherlands, it must first be ascertained whether it corresponds to a sufficient extent with the Dutch equivalent. In situations where the social security laws themselves attach legal consequences to a family law situation, as in the case of marriage, the rules of international private law are considered applicable. This is not an entirely satisfactory situation, considering that, ultimately, Dutch personal and family law also served as the basis for the definitions in social security law itself. In Germany, the legal situation on this matter is more consistent. There, pursuant to paragraph 34 of the general part of the *Sozialgesetzbuch*, all foreign legal concepts are tested for equivalence to the German system: *Soweit Rechte und Pflichten nach diesem Gesetzbuch ein familienrechtliches Rechtsverhältnis voraussetzen, reicht ein*

From a perspective of multiculturalism, the requirement of comparison of non-Dutch adoption or acknowledgement with those under Dutch law is, on the surface of it, not necessarily a problem. This comparison is not so much about cultural values and norms than about differences ensuing from legal systems. For instance, it is possible for a foreign adoption not to be accepted because the non-Dutch legal system does not incorporate the Dutch requirement that the adoptive parents first have to have actually taken care of the child for a number of years. This is an objective fact that has little to do with any clash of cultural values. But this example is just the tip of the iceberg.¹⁴ Differences in legal systems may also be based on cultural differences. This becomes apparent, for example, in the problem of Ghanaian acknowledgement and the AKW, which we discuss below.

Acknowledgement in Ghana

In Ghana, acknowledgement is still regulated by tribal law. The simple acceptance of a duty to provide for a child is sufficient for acknowledgement to apply. A wide circle of blood relations may accept such a duty, provided the person acknowledging the child has achieved a certain position with regard to income. In Ghana, marriage is seen to a lesser extent as a source of familial duties.

The question has arisen, in the context of implementation of the AKW, of whether the Ghanaian system of acknowledgement should be accepted. The Sociale Verzekeringsbank was of the opinion that it should not, because Ghanaian acknowledgement was too dissimilar to the Dutch system. In relation to Ghana, child benefit was henceforth exclusively reserved for children for whom it could be proved that they were born out of a legal or equivalent marriage.¹⁵ This has to be demonstrated with copies of marriage and birth certificates that have to be authenticated twice.¹⁶ The effect of this policy was that child benefit for children living in Ghana had to be stopped in a large number of cases. Here we are seeing legal doctrine regarding non-Dutch legal concepts obstructing the importation of Ghanaian cultural values into the AKW.

Foster children and the Kafala

As regards the desirability of a multicultural social security law, opinions may differ on the Ghanaian example. But we would at least like to remark that, where the AKW extends entitlement to child benefit to children living outside the Netherlands, it seems reasonable to want to compare foreign legal concepts to the Dutch conditions. With such a generous provision, surely there should be some standards for relating entitlement to benefit to the objectives for which the Act was set up from a Dutch perspective. One must also realise that with the institution of the Export Restrictions on Benefits Act (BEU) in 1998, entitlement to child benefit for children living outside the Netherlands has been discontinued entirely, unless there is an international obligation in place to export benefits.

Rechtsverhältnis, das gemäß Internationalem Privatrecht dem Recht eines anderen Staates unterliegt und nach diesem Recht besteht, nur aus, wenn es dem Rechtsverhältnis im Geltungsbereich dieses Gesetzbuchs entspricht.

¹⁴ The example, moreover, is not so topical anymore. Pursuant to Art. 23 (1) in conjunction with Art (26)(a) of the Hague Adoption Convention, adoptions made in accordance with the convention are to be recognized in other contracting states. If the original family law ties are broken by the adoption, these children will have equal rights in the country of receipt to those ensuing from adoptions that have this consequence in each of these states. As the organisation that administers the AKW, the Sociale Verzekeringsbank (SVB) has now adjusted its policy on this matter. Adoptions that take place outside the Netherlands under the operation of the Hague Adoption Convention are henceforth recognized under the AKW.

¹⁵ RB Amsterdam 15 December 1995, 94/11368 AKW.

¹⁶ Ghana Decision AKW, Decision of 12 June 1996/No. 962820, *Government Gazette*.1996, No. 115.

There is no such obligation in relation to Ghana. From this angle, while the previous legal situation was not ideal, it was fairer to Ghanaians than the current situation.

Are foreign cultural values better respected if the whole family lives in the Netherlands? In situations where a child cannot be regarded as a person's own, the AKW provides for entitlement to child benefit for 'foster children'. Again, this is a factual term. In a foster child situation, a child is raised and supported in the household of the foster parent. The rationale behind entitlement to child benefit for foster children is to contribute towards the expenses of child maintenance in situations where the task of bringing up the child has been taken over by someone other than the child's own parents. For people from different countries, however, foster parenthood may also serve as grounds for entitlement to child benefit if the foreign status of the child under family law does not allow for the qualification of 'own child' for the purpose of the AKW. For families from certain countries, therefore, the foster child provision has an extra value. In the example of the *Kafala* given below, however, it appears that the concept of foster child has not been elaborated entirely neutrally with respect to foreign cultural values. The Islamic legal instrument of the *Kafala* is to some extent comparable to our concept of foster child.¹⁷ It has been a recognised instrument in Morocco and Algeria for centuries. The *Kafala* is a document that transfers the authority to look after a child to other members of the family. As Islam forbids adoption in the interests of preserving lineage, the *Kafala* provides a good alternative. The *Kafala* is a kind of foster care system whereby lineage is not broken. The interdiction of using the *Kafala* parents' surname sometimes even carries the punishment of disinheritance in some countries. The relations between the child and his or her natural parents under family law are not affected by this *Kafala*. The agreed authorities of the *Kafala* parents and the duration of the *Kafala* differ per document and are therefore not predefined. It is, however, possible to gather from the document whether it relates to the guardianship or the property of the minor, and also whether the authority to transfer guardianship via the *Kafala* lies with the father or the mother.

Within the framework of the current legal situation, the existence of the *Kafala* often offers no guarantee that the child will be regarded as a foster child for the purposes of the AKW, not even if the child has become part of the carer's household. Previous rulings by the Central Court of Appeal show that the concept of foster child is only met when the insurant behaves, as far as the child's upbringing is concerned, in such a way that he takes the place of the parents, and there is a relationship resembling that between child and parents.¹⁸ If the child has a parent still living who is authorised and able to take and continue to take important decisions, it will not, in principle, be possible for foster parenthood to be assumed. In such a situation, the child's carer can supervise the child and bear considerable responsibility for the child, but not exclusively. As long as there is a parent still living who has not been divested of parental authority, that parent will be expected to continue taking decisions relating to the child's upbringing.¹⁹ As the AKW does not, in principle, accept foster parenthood if a living parent of the child is authorised and remains able to take important decisions, the legal system the *Kafala*, if the currently applicable policy is used, will not always be equated with our concept of fostering. This strict policy leads to situations in which the apparent foster parents are denied entitlement to child benefit whereas they reasonably think they should be entitled to it. The objective

¹⁷ About the *Kafala*, see: L. Jordens-Cotran, *Het Marokkaanse familierecht en de Nederlandse rechtspraak*, Utrecht : Forum, 2000, p. 255 ff.

¹⁸ Central Court of Appeal 30 January 1991, *RSV* 1992/17.

¹⁹ Central Court of Appeal 29 July 1998, *RSV* 1998/288; if, however, the possibility to exercise parental authority and use parental powers has become merely theoretical, this does not stand in the way of another person taking over the task of raising the child from the natural parent(s).

of the AKW is, after all, to contribute toward the costs of a child's maintenance and upbringing. As we have seen, there can be a situation in which children are cared for and brought up entirely by different people than their own parents, and are fully the financial responsibility of their carers, yet neither the Kafala parents nor their own parents (not residents, after all) are entitled to child benefit. No foster child situation is recognised for Kafala parents because of the sole fact that parental authority lies formally with a child's own parent(s). One might ask oneself whether the Dutch legal situation should not be a bit more accommodating with respect to the Kafala and its significance in Islamic countries.

1.3. The term 'member of the family'

The interpretation and use of the term 'member of the family' is also liable to produce tension between cultural values in the field of social security. In the Netherlands, the significance of a person's family situation weakened considerably as benefit entitlements became more independent in the course of the 1980s. Where family situation is still accorded relevance, a material criterion has come to be used. For instance, many provisions for establishing the amount of a benefit have a calculation basis for single people, single-parent families and married people. The married category, furthermore, includes unmarried persons of majority age who share a household with another unmarried person of majority age. This equation of marriage with a sharing a household is understandable from the viewpoint of the rationality of the social security system. When the amount of a benefit is determined, it is not so much the formal family status that is decisive but rather the question of whether household expenses are shared. Moreover, from the point of view of the cultural interpretation of the family, the result of the equation of marriage with a shared household is modern. The law abstracts from the grounds for living together, the sex of the partners, and issues of morality. It is exclusively the actual situation that matters for the outcome.

The modern view of marriage applied by Dutch social security law can sometimes be problematic in situations where benefits are exported abroad. In such cases, the social security organisation in the other country is asked to verify entitlements on the basis of factual investigations. This request is particularly liable to meet with incomprehension in Islamic countries. These countries are not always tolerant towards unmarried people living together, and are even less so if the partners happen to be of the same sex. This lack of understanding towards the Dutch benefit schemes does not exactly promote loyal cooperation from social security organisations abroad with regard to verification activities. Just as Dutch social security law cannot embrace foreign cultural values without problems, Dutch cultural values cannot be smoothly and seamlessly exported abroad. This puts the traditionally export-friendly nature of Dutch social security arrangements under pressure. As we already mentioned, the introduction of the Export Restrictions on Benefits Act in 1998 restricted entitlement to Dutch benefits for people living abroad. Benefits are now only exported if an international export agreement has been concluded. The BEU Act is meant to safeguard proper verification and control. Export obligations are only entered into insofar that the Dutch government deems that the foreign authorities cooperate sufficiently with regard to verification and control.

In addition to the effect of the Dutch concept of the member of the family as described above, foreign cultural values concerning the family are also permeating Dutch social security law and influencing the Dutch notion of the family, although it is not easy to find examples. The Dutch definition of marriage is entirely abstracted from cultural values, and the relevance of such values is neutralised, as it were. An example of adaptation of the

definition of the family to foreign family values can, however, be found in European social security law, to be more specific, in the recent *Mesbah* judgement by the European Court of Justice.²⁰ In this case, the Labour Court in Brussels referred two questions to the Court for a preliminary ruling. The first question addressed whether the Moroccan mother-in-law of a Moroccan migrant worker established in Belgium could rely on the principle of non-discrimination laid down in the EEC – Morocco Cooperation Agreement and be entitled to a disability allowance under Belgian law. The second question asked whether she as a mother-in-law could be regarded as a member of the family for the purposes of Article 41(1) of the Agreement. This non-discrimination Article stipulates that ‘workers of Moroccan nationality and any members of their families living with them, are to enjoy, in the field of social security, treatment free from any discrimination based on nationality in relation to nationals of the Member States in which they are employed.’

In its answer to the question on the interpretation of ‘member of the family’ of the worker, the Court of Justice decided not to adopt the definition as found in EC Regulation 1408/71. This regulation, which is aimed at the coordination of social security systems of migrant workers, refers, with regard to the meaning of this term, to the status of a person as a member of the family insofar as that status is recognised in the applicable national social security legislation. Instead, the Court of Justice refers to the text of Article 10 (1) of Regulation 1612/68, which contains a specific definition of relatives of migrant workers covered with regard to entitlement to residence status, which mentions blood relations in both the ascending and the descending line. It was concluded in this case that a worker’s Moroccan mother-in-law who had lived in his household in Belgium for ten years had to be regarded as a ‘member of the family’ for the purposes of Article 41(1) of the EEC-Morocco Cooperation Agreement. In his conclusion, Advocate General Alber pointed out that the social security law interpretation of the term member of the family in Regulation 1408/71 could work out very limited indeed in practise, whereas the Cooperation Agreement with Morocco must have envisaged a broader term. In his opinion, cultural factors lead Moroccan families to show much greater solidarity between the generations than European families, in order to cover themselves against the risk of a neglected and unprovided for old age. These cultural differences must have been known when the agreement was concluded; therefore, for a narrower definition of the term family member, an explicit arrangement would have had to have been included.

If there is one example that epitomises the influence of foreign cultural values on social security law it is this *Mesbah* judgment and the Advocate General’s conclusion. The specific social security law definition of the term member of the family is overruled by another definition – one founded on empathy with the migrant’s cultural background in his country of origin.

2. A critical view

It is not easy to distil a cohesive picture of the process of adoption of foreign cultural values in Dutch social security law from the case studies presented above. The examples that we have given are incidental, widely different in nature, and are not the result of systematic research. In working out these cases, we have developed a notion of how social security law might best absorb foreign cultural concepts. Our impression is that benefits schemes that employ material terms and conditions (and fit in with the person’s factual circumstances) are more satisfactory from the point of view of cultural tolerance than

²⁰ Court of Justice EC 11 November 1999, No. C-179/98 (*Mesbah*), *RSV* 2000/55.

arrangements that are based on formal legal notions. Let us recap on the examples. First of all, the criterion of residence in national insurance. As we saw, this criterion presupposes the necessity of establishing the intensity of the ties with the Netherlands on the merits of each separate case. The legislator has decided not to use fixed criteria to assess these ties. The consequence of this is that, for action between implementational policy and case law, sufficient space has been created to accommodate the term of resident to changed circumstances of migration. The criterion has finally evolved to the extent that it is possible to assess whether residence applies on the basis of objective criteria, regardless of the person's background. In the second example, that of the Child Benefits Act, it was noted that the formal legal interpretation of the term own child is counter to consideration of the cultural background in the migrant's country of origin. In case of entitlement to child benefit for children who live abroad, we have been able to appreciate this disadvantage, but if the entire family lives in the Netherlands, the legal situation is less than rosy. On the other hand, this objection is balanced by the fact that entitlement to child benefit is also open to foster children. Again, the term foster child is a purely factual criterion, as it is established on the basis of the circumstances in each case whether the child is cared for and brought up in the person's own household. The example of the Islamic Kafala is therefore not so much directed against the foster child concept as such but rather against an overly rigid application of this concept in implementational practice. Within the AKW, a reinforcement of the position of foster parents with respect to that of the legal parents (for whom child benefit is not made payable) would indeed be a good development.

Finally, we discussed the modern definition of marriage in Dutch social security law, which is based on the equation of marriage with sharing a household. From a viewpoint of cultural tolerance, this equation is very important. It opens the way to recognition of alternative forms of living together without the law concerning itself with the cultural desirability of any of these forms. As mentioned previously, the definition of marriage abstracts from cultural values. The equation of marriage with sharing a household is sometimes liable to meet with incomprehension. Such lack of understanding has to do with people's strong attachment to their own culture and consequent inability to show understanding towards the heterogeneity of cohabitation forms recognised in the Netherlands. Here, other countries are showing a lack of multiculturalism. Moreover, Dutch social security law does not oblige anyone to share a household; formal marriage has the same status.

We could conclude that, from a viewpoint of multiculturalism, the introduction of legal concepts that are based on a person's factual situation is preferable to concepts based on a person's formal legal status. However, if this conclusion is correct, it also needs qualifying. Benefits schemes that are based on material characteristics of the beneficiary are a burden on implementation and are more difficult to verify and control. This disadvantage manifests itself primarily in situations in which beneficiaries live outside the Netherlands. If the Dutch social security system is to retain anything of its traditionally export-friendly character²¹, legal concepts that are sensitive with regard to verification and control must be introduced with caution. Viewed like this, between the dream of a multicultural social security law and its realisation stand not only formal legal notions but also practical objections - and interests, too. After all, let us not forget that the possibility to export benefits largely meets the interests of minority groups which often maintain intensive ties with the country of origin.

²¹ Cf. G.J. Vonk, '*Eigen land eerst, fort Europa of mondiale plichten?*' SMA, 1999, p. 393 ff.