

The criminalization of marriage

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The roots of the criminalization of marriage lie in the legislative attempts to avoid marriages of convenience ("*een schijnhuwelijk*" in Dutch, literally "a scam marriage", as in scam as a fraudulent scheme performed by a dishonest individual, group or company in an attempt to obtain something of value).

Even though the term "marriage of convenience" has been long known in case law¹, Belgian legislation only adopted the terminology in 1999.

This introduction of the terminology in the Civil Code² (C.C.) paved the way to the criminalization of marriage.

This lecture will go deeper into the evolution that has occurred since introducing the term "marriage of convenience" in the Civil Code by adopting the law in 1999 until the present day.

1. The introduction of the terminology "marriage of convenience" in the C.C.

Although the term "marriage of convenience" is never mentioned, the formulation of article 146bis C.C. clearly suggests so: "*There is no marriage when, despite of the given formal consents to marriage, the entirety of circumstances prove that at least one of the spouses' intention manifestly is not oriented towards forming a durable family life, but merely towards obtaining a beneficial residential status allied to the status of a married person.*"

By this definition the legislator immediately indicates what it is all about: only those who get married with the sole purpose of obtaining a residential benefit are targeted. For instance, those who wed with the mere goal to a fiduciary benefit are in the safe zone.

In order to avoid marriages of convenience, both preventive and repressive measures are taken³.

1.a. Preventive measures: avoiding the solemnization of marriages of convenience

¹ See i.a. Ghent, February 28th 1948, R.W. 1947-48, 1056

² May 4th 1999 law, B.B. July 10th 1999

³ See LEFEBVRE S., 'Schijnhuwelijken, preventie en repressie in een notendop', NJW p 818-824

By introducing article 167 to the Civil Code, the public civil servant is granted the opportunity to refuse the solemnization of a marriage when presuming to be dealing with a marriage of convenience: *"The public civil servant ("ambtenaar van de burgerlijke stand") refuses the solemnization of a marriage when there are no indications the qualifications and requirements to wed have been met, or if he considers the solemnization to be in violation of the principles of public order."*

In accordance with the third paragraph of article 167 C.C., *"the public civil servant immediately has to notify all parties involved of his with reasons substantiated decision. At the same time a duplicate, together with a copy of all relevant documents, is procured to the public prosecutor ("procureur des Konings") of the legal district where the refusal occurred."*

"If on the day of refusal one of the future spouses or both are not registered to the civil, foreigners or waiting register, or do no longer have their actual place of residency within the municipality, the refusal decision will also be brought to the attention of the public civil servant of the municipality of registration to these registers or of the actual place of residency in Belgium of the future spouse or spouses."

The husbands and wives-to-be who do not agree with this refusal decision can *"appeal to the court of first instance within one month after notification of the decision"* according to article 167, last paragraph C.C..

Article 167, 2nd paragraph C.C. allows the public civil servant to investigate when suspecting the parties intend to execute a marriage of convenience:

"If a grave presumption exists that the conditions required in the afore mentioned paragraph are not met the public civil servant can postpone the solemnization of the marriage, after possibly seeking advice of the public prosecutor of the legal district where the petitioners intend to wed, for at maximum two months upward of the by the interested parties' intended wedding date, in order to conduct additional research."

Some cities⁴ have formed special cells, the so-called "cell marriages of convenience and forced marriages". This cell's purpose is to assist the public civil servant in his duty to prevent the execution of marriages of convenience.

The modus operandi (m.o.) of these cells is not without controversy⁵. The most important formulated complaints are as following:

- The operation of the cell marriages of convenience lacks a legal foundation: any public civil servant who forms such a cell does this to his own discretion. There are no legal stipulations in this regard. Neither are there any rules about the way the lovebirds are to be questioned regarding their intention to get married. Any appointed deputy to the public civil servant acts in his sole discretion and poses those questions he deems relevant in a manner most befitting himself.

⁴ I.p. in Antwerp, Ghent, Kortrijk and Mechelen

⁵ Non-profit organisation De8 has drafted a memo on the operation of the cell marriages of convenience in Antwerp, which can be found on www.de8.be/downloads/opinie/nota_schijnhuwelijken.pdf

- The interrogated couple is not provided with a written transcript of the held conversations and therefore do not know what the interrogator has noted down and cannot verify whether this is in pursuance of what has actually been said during the interview. In many cases the conversation is conducted without the assistance of an interpreter, whereas this presence would be preferable. This is regrettable since both the public civil servant and if necessary the public prosecutor who will advise or the judge who will decide attach great significance to these notes.

- One could question if these methods are compatible with the right to privacy. A. Huygens⁶ formulates it thus: "*more specifically the question arises to the compatibility to the right to privacy which is not only protected by the constitution but also under treaty law (article 22 Belgian Constitution and article 8.1 E.C.H.R.). In this matter the Court of Cassation (Hof van Cassatie) has already ruled that an informative investigation conducted by the police service is not inconsistent with article 8 E.C.H.R..*" In the case however it is not about an investigation performed by the police but on the contrary handles about conversations held by deputees to the public civil servant who inquire to the intentions of the candidate couple upon their intended marriage.

*"Specifically with regards to the interview conducted by the cell marriage of convenience, one can question the lack of certain procedural guarantees, such as the absence of an instantaneous written transcript of the interview and the prohibition to legal assistance by a lawyer during the interview. Practice shows that this conversation is of significant value and that the conclusion is often taken into consideration in the event of legal proceedings. The Commission on Accessibility to Administrative Documents has recently ruled that the law of November 12th 1997 on open government in provinces and municipalities unabridgedly applies to documents in the context of an investigation into a marriage of convenience. This means that in principle the cell marriage of convenience is mandatorily required to provide a transcript of the entire dossier, including a rendering of the interview."*⁷

In an attempt to provide the public civil servant and by extension their cell marriage of convenience with some sort of guideline to their investigation, a circular was published on December 31st 1999⁸ listing elements which, in combination with each other, may strongly indicate the formation of a marriage of convenience:

- Parties do not understand each other or are merely able to communicate in a deficient manner or through the assistance of an interpreter;
- parties had not met each other prior to the marital intent;
- one of the parties cohabits with someone else in a durable way;
- parties have no knowledge of their partner's name or nationality;
- one of the parties does not know the partner's profession;
- statements regarding the circumstances of their encounter differ manifestly;

⁶ HUYGENS, A., 'Oneigenlijke huwelijksmigratie. Schijnhuwelijken : stand van zaken anno 2006', T. Vreemd., 2006, 238-277, p. 254

⁷ Still according to HUYGENS, A., 'Oneigenlijke huwelijksmigratie. Schijnhuwelijken : stand van zaken anno 2006', T. Vreemd., 2006, 238-277, p. 254

⁸ Circular on the May 4th 1999 law on amendment of certain stipulations regarding the marriage, B.B. December 31st 1999

- a certain amount of money is promised upon marrying;
- the exercise of prostitution by one of the parties;
- the occurrence of an intermediary;
- a big difference in age between the two parties.

Evidently any public civil servant is allowed to take any other elements into consideration. The cell marriage of convenience of Antwerp for instance also takes the following into account⁹:

- one of the parties has previously been involved in a marriage of convenience or a brief marriage granting the spouse residency;
- multiple close family members of one of the parties obtained a residential status following a short-lived marriage;
- involvement in criminal activities;
- mendacious statements or other attempts to mislead the civil servant;
- parties attest to contradictory statements or are uninformed about each other on plural aspects;
- a rapid course of events;
- legal preparation of the declaration to marry.

Once the cell's advice is in, the public civil servant can decide whether to execute the marriage. However, he can also request to seek the public prosecutor's advice, based on article 167, second paragraph C.C..

In the latter case, the marrying couple will be interrogated by the local police. Another arbitrary situation since every police officer performs this task to his own interpretation and poses those questions he himself deems necessary to be asked. Luckily this hearing is submitted for reading to the parties. Unfortunately enough as well in these cases the assistance of an interpreter is exceptional, often leaving the foreigner who does not fully master the Dutch language to sign a declaration he does not completely comprehend. The involved parties are provided a copy of the interrogation, offering them an opportunity to add a written reaction afterwards.

Even though in this phase "criminalization" of the marriage is not even on the radar, a police intervention is required. This often distresses the involved parties and their surroundings. The invitation to present themselves at the local police station is usually hand delivered by the local police officer -in uniform- at the house of the involved party. They are summoned to present themselves for interrogation in the police station, where they will be questioned by police officers in uniform, notwithstanding not a single criminal fact needs to be investigated. Policemen trained to interrogate suspects of a crime are now asked to ascertain whether *at least one of the spouses' intention manifestly is not oriented towards forming a durable family life, but merely towards obtaining a beneficial residential status allied to the status of a married person*, without having any training to the matter.

⁹ BEYENS, F., « *De strijd tegen schijn en afgedwongen huwelijken, de werking van de cel schijn- en afgedwongen huwelijken te Antwerpen, 2000-2004* » in *Huwelijksmigratie, een zaak voor de overheid?*, Leuven, Acco, 2005, p. 70

If the civil servant decides to postpone the solemnization of the marriage he must inform all parties involved in writing. This decision cannot be appealed.

In any case the civil servant must reach a decision within the period of two months starting from the proposed wedding date. Thus the wedding couple-to-be benefits from insisting on immediately setting a fixed wedding date when declaring their marriage, in order for the two month period to commence¹⁰. If the public civil servant does not notify the involved parties of his decision within these two months the marriage must be executed. The parties must be informed should the public civil servant eventually decide not to execute the marriage. How this needs to be done is not mentioned in article 167, fourth paragraph C.C.. In practice this is done via registered letter¹¹.

The question whether this decision needs to be motivated is subjected to discussion¹², however it is evident that a mere reference to the public prosecutor's advice is not sufficient¹³.

The refusal decision can be appealed to the court of first instance, who will rule in summary proceedings (*a rule nisi*). The set period to appeal is one month from the date of notification of the decision. In this phase the wedding party often encounters the obstacle of a bail deposit. Since at least one of the spouses is of another nationality the public civil servant usually invokes the exception of a bail deposit. This exception is often insurmountable to the lesser fortunate couple in love.

The law of July 8th 2011¹⁴ adds an extra preventive measure. Those who have received a decision based on article 167 C.C. will never qualify to acquire a residence permit based on a legally registered partnership.

1.b. repressive measures: the nullification of marriages of convenience

Those who have managed to get married do not have to chant victory quite yet. Based on article 146 in conjunction with article 184 C.C., any person with interest can solicit the court of first instance to request the nullification of a marriage not entered into with the goal of establishing a durable family life, but solely to attain a residential advantage. The public prosecutor's office can also set such a claim.

There is no set time period for introducing such a claim¹⁵. Furthermore a claim can be introduced even after the marriage has been dissolved. A divorce only affects the future,

¹⁰ Pres. Court. Brussels, Januari 16th 2003, Rev. Trim.dr.fam., 2003, 522, note

¹¹ See LEFEBVRE S., 'Schijnhuwelijken, preventie en repressie in een notendop', NJW, p 818-824,, p. 819

¹² See HUYGENS, A., 'Oneigenlijke huwelijksmigratie. Schijnhuwelijken : stand van zaken anno 2006', T. Vreemd., 2006, 238-277, p. 255

¹³ Court Brussels, March 12th 2001, J.L.M.B., 2002, 645

¹⁴ July 8th 2011 law, B.B. September 12th 2011

¹⁵ WUYTS, T., "B.W., artikel 184", in X, Artikelsgewijze commentaar met overzicht van rechtspraak en rechtsleer, Antwerp, Kluwer, 2004, p.6, nr. 6

whereas a nullification has retroactive effect up to the day of execution of the marriage.

If the claim for annulment is initiated by the public prosecutor's office the local police will perform a preliminary investigation into the marital intentions of the parties. The aforementioned criticism applies here as well.

In order to verify whether at minimum one of the spouses did not have the intention to establish a durable family but is merely out to gain a residential status allied to the marital status, the indications mentioned in the circular regarding the May 4th 1999 law on the reform of certain stipulations concerning marriage, Belgian Bulletin December 31st 1999.

This limited contribution does not allow me to elaborate on the case law of the nullification of marriages by the court of first instance, however one aspect must be addressed, which are the so-called "children of convenience" ("*schijnkinderen*" in Dutch, literally "scam children"). Although this terminology is not cited in any legislation, it is however in case law, albeit not in this wording.

It is evident that the person claiming the annulment of the marriage carries the burden of proof. Practice however shows that the spouses are forced to prove they did not engage into a marriage of convenience, forcing them to furnish a negative substantiation, which of course is clearly impossible to do. Couples with children often prove their family life and establishment of a family unit through the birth of their child, therefore ruling out the mere acquisition of a residence permit.

The mere fact that one of the partners is pregnant or that a child has been born already, is not considered to constitute as sufficient proof the marriage does not qualify as a marriage of convenience. This is derived by the public prosecutor's office from a January 28th 2011¹⁶ Court of Cassation judgment where the Court rules that recognizing a child does not preclude the possible existence of a marriage of convenience¹⁷. Fortunately there is other case law, such as the Court of Cassation's 2008 ruling that "*since plaintiffs clearly cohabit since 2004 and have been in treatment for medically supervised procreation since 2005, the reformed judgment could not have lawfully ascertained that plaintiff's intention was not clearly oriented towards establishing a family life with other plaintiff but merely obtaining a residential benefit.*"¹⁸

Except for nullifying the marriage, the court's ruling can gravely affect the spouse whose residency had a marital basis. Due to the annulment going back retroactively to the day of the execution of the marriage, the person involved loses the right of residence and is usually furnished with an injunction to leave the territory. This frequently leads to dramatic situations, especially since there is no statute of limitations to take legal action. Even a migrant residing and working legally in Belgium for many years who may have remarried after divorcing their Belgian partner, still risks a revocation of the residence permit. It

¹⁶ Cass, January 28th 2011, unpublished

¹⁷ For more references to similar case law; Court of Appeal Antwerp, November 7th 2011 and Court of Appeal Antwerp, December 21st 2011, both unpublished

¹⁸ Court of Cassation February 8th 2008, T. Fam., 2008/9, p. 162

becomes even more dramatic when children born in Belgium out of the second marriage are furnished with the same injunction to leave the Belgian territory with their parents, sometimes after many years of living and going to school in Belgium.

The new law on Belgian nationality¹⁹ explicitly provides the withdrawal (*vervallenverklaring/déclaration de déchéance*) of the Belgian nationality. The new article 23/1 § 1, third section of the Code of Belgian Nationality (C.B.N.) states that those who acquired the Belgian nationality through a marriage can be deprived of the Belgian nationality upon nullification due to a marriage of convenience. This withdrawal has to be claimed by the public prosecutor's office who has to define the alleged shortcomings in the summons and bring it in to the Court of Appeal.

[WEGGELATEN TEKST - In some cases they even take it to the next level by trying to abrogate the Belgian nationality that had been granted. Article 23 of the Code of Belgian Nationality (C.B.N.) is invoked to do so:

Art. 23. § 1. Belgians who did not obtain their nationality through a Belgian parent on the day of birth and Belgians whose nationality was not granted based on article 11, can be withdrawn (vervallenverklaring/déclaration de déchéance) from their Belgian nationality: 1° if they acquired the Belgian nationality based on a distorted presentation of the facts or by withholding facts, or based on false statements or false or forged documents that were of decisive importance in granting the Belgian nationality; 2° if they are in serious breach of their obligations as a Belgian citizen.

It has to be demonstrated that the marriage was of decisive importance in granting the Belgian nationality if they wish to revoke the Belgian nationality based on a marriage of convenience. The mere fact someone entered into a marriage of convenience does not suffice.

The legislator emphasized the important and exceptional nature of this withdrawal by installing a special procedure, provided through article 23, paragraph 1, section 1° and 2° C.B.N.:

"§ 2. The withdrawal is claimed by the public prosecutor's office. The indicted shortcomings are accurately defined in the writ of summons.

§ 3. The claim to withdrawal is prosecuted in front of the court of appeal of the appellee's main place of residence in Belgium or, failing that, the court of appeal in Brussels.

§ 4. The first president of the court appoints a counselor, whose report to the court will be used in sentencing within one month after the expiration of the term of summons.

§ 9. He who has been withdrawn from the Belgian status, can only acquire Belgian citizenship through naturalization.

In the cases meant in § 1, 1°, the statute of limitations bars the claim to withdrawal after five years counting from the date of acquisition of the Belgian nationality."

Under no circumstances will the person automatically be deprived of the Belgian nationality

¹⁹ December 4th 2012 law, B.B. December 14th 2012

upon the nullification of the marriage. This withdrawal of the Belgian nationality cannot be claimed in conjunction with the nullification. It is a separate and exceptional procedure to be held in the court of appeal. - EINDE WEGGELATEN TEKST]

2. Introduction of the terminology marriage of convenience in the December 15th 1980 law on the access to the territory, the residency, the settlement and the expulsion of foreigners

By adopting the January 12th 2006 law²⁰, the term "marriage of convenience" is introduced in immigration law, albeit without explicitly referring to the term of a marriage of convenience:

"Art. 179bis. § 1. anybody who is to wed under the circumstances stipulated under article 146bis of the Civil Code, will be penalized to a jail sentence of eight days till three months or to pay a fine ranging from twenty-six to one hundred Euro.

Anybody who receives a sum of money intended as a remuneration for the marriage, is penalized with a jail sentence of fifteen days up to one year or fined fifty to two hundred and fifty Euro.

Anybody using violence or threats against a person in order to force said person into marriage, is penalized with a jail sentence of one month to two years or fined one hundred to five hundred Euro.

§ 2. An attempted misdemeanor, defined in § 1, first section, is penalized with a fine ranging from twenty-six to fifty Euro.

An attempted misdemeanor, defined in § 1, second section, is penalized with a jail sentence from eight days to six months or a fine ranging from twenty-six to one-hundred and twenty five Euro.

An attempted misdemeanor, defined in § 1, third section, is penalized with a jail sentence from fifteen days to one year or a fine ranging from fifty to two-hundred Euro."

The preparatory actions of the law on the penalization of marriages of convenience clearly show the legislator's desire to focus on the misuse of the immigration procedures and more specifically on the marriages of convenience and fraudulent family reunification.²¹ It is obvious they want to punish the "malafide" or "rogue" partner. Only the person with a potential residential benefit is targeted, the unsuspecting partner remains unaffected²². A partner who knowingly cooperates with the marriage of convenience, or worse receives an amount of money, risks the same sanction as the partner who merely wanted to obtain a

²⁰ January 12th 2006 law, B.B. February 21st 2006

²¹ On this see i.p. Patrick Dewael in the report on behalf of the Commission for Interior Affairs and the Public office published by Mrs. Jacqueline Galant, doc 51 1861/004, p. 4 et seq. p. 14

²² This clearly shows from interventions, specifically Mrs. Nahima Lanjri in the report on behalf of the Commission for Interior Affairs and the Public office published by Mrs. Jacqueline Galant, doc 51 1861/004, p. 10 and 14 and the later lodged amendments

residence permit.

Certain jurisprudence maintains the superfluity of the introduction of these stipulations in immigration law²³.

This thesis assumes that a marriage of convenience can be restrained under the qualification of forgery: the deed of declaration and the marriage certificate are public documents protected under criminal law and the fraudulent objective is to attain a residential benefit linked to the marital status. Whoever gets sentenced under this qualification risks a criminal conviction of five to ten years, instead of eight days to two years under a misdemeanor conviction as it is provided in de January 12th 2006 law²⁴.

Furthermore, legal scholars quote more practical difficulties, such as²⁵:

1. In order to reach a criminal conviction one must prove that all constitutive elements to the crime are fulfilled. In the case of article 79bis Immigration Code the material element is the marriage that is or will be solemnized. The moral element however is harder to define since the article itself does not provide a definition of the crime. A reference to article 146bis, requiring a special intent²⁶. Only those who wed or wish to wed with the *sole* purpose of obtaining a residential benefit are prosecutable. Therefore those who get married with the intention of establishing both a residential benefit as well as forming a family life to secure the residence cannot be prosecuted!²⁷

2. When prosecuting based on article 79bis Immigration Code, the onus evidently lies with the public prosecutor's office and in compliance with the customs of criminal procedural law it can be proven by all legal remedies. The question however remains how to establish the presence of the moral element. One must not establish a material element but indeed prove someone's *intention at the time the marriage was executed*. According to A. Huygens certain elements listed in the circular²⁸ can also serve as presumptions of factual nature²⁹. In the circular issued on October 1st 2009³⁰ by the Office to the Attorney-General clear instructions are given. Great importance is attached to monitoring the society, which is apparently supposed to happen in the homes of the parties involved. In particular a check-up of the kitchen, the bathroom and the bedroom is recommended. Notwithstanding the

²³ See HERBOTS, P., « Nood aan specifieke wet voor strafbaarstelling schijnhuwelijk », Juristenkrant, December 1st 2004, p. 10

²⁴ Article 433 quinquies et seq.. S.W.

²⁵ See HUYGENS, A., 'Oneigenlijke huwelijksmigratie. Schijnhuwelijken : stand van zaken anno 2006', T. Vreemd., 2006, 238-277, p. 269-275; AERTS, C. and VAN HOOGENBEMPT, K., "de strafrechtelijke beteugeling van het schijnhuwelijk, ingevoerd door de wet van 12 januari 2006", in Echtscheidingsjournaal 2006/4, p 49 -54 and LEFEBVRE S., 'Schijnhuwelijken, preventie en repressie in een notendop', NJW, p 818-824

²⁶ HUYGENS, A., 'Oneigenlijke huwelijksmigratie. Schijnhuwelijken : stand van zaken anno 2006', T. Vreemd., 2006, 238-277, p. 269

²⁷ AERTS, C. and VAN HOOGENBEMPT, K., "De strafrechtelijke beteugeling van het schijnhuwelijk, ingevoerd door de wet van 12 januari 2006", in Echtscheidingsjournaal 2006/4, p 49 -54

²⁸ Circular on the May 4th 1999 law on the amendment of certain stipulations regarding the marriage, B.B. December 31st 1999

²⁹ HUYGENS, A., 'Oneigenlijke huwelijksmigratie. Schijnhuwelijken : stand van zaken anno 2006', T. Vreemd., 2006, 238-277, p. 271

³⁰ Attorney-General's office's circular , October 1st 2009

separate interrogation of both partners, utility companies are requested to communicate the names of the subscribers, as well as a close examination of the environment is performed and witnesses will be questioned, such as the parents, children, ex-partners, siblings,...

3. Furthermore the legal demarcation between the civil judge and the criminal judge is not clear. By adopting article 79bis in the Immigration Code the civil judge's competence based on article 184 C.C. is not terminated, leaving it unclear what has to happen when both civil and criminal proceedings regarding the same marriage are taken. In this case, according to A. Huygens³¹, the principle "le criminel tient le civil en état" is to be applied, meaning the civil judge must refrain from ruling until the criminal court has depleted its jurisdiction. In this case, both courts serve a difference in competence. The criminal judge can sentence those who married under false pretences, but cannot nullify the marriage, whereas the civil judge can nullify the marriage without sentencing the parties involved. Evidently a criminal ruling on the basis of a marriage of convenience indicates a moral judgment on the legitimacy of the marriage. The thesis that a civil judge has to take the criminal *res iudicata erga omnes* ruling into consideration seems to be correct³².

4. Lastly jurisprudence also points out the remarkable generosity in the sentences provided by article 79bis Immigration Code³³.

The preparatory documents show the contemplation of similar penalties comparable to those for human trafficking and smugglers. These amendments were not withheld, nor was the proposition to automatically sanction the residential status³⁴.

The question remains whether such mild punishments are as dissuasive as was hoped for when adopting these criminal stipulations.

Mister Yves Liégeois, Attorney-General to the Court of Labour in Antwerp and mister Piet Van Den Bon, Attorney-General to the Court of Appeal in Antwerp, have stated in their September 1st 2011 mercurials that the January 12th 2006 law was in vain: *"the lack of a selective system to contain the economic migration by means of an efficient policy and a drastic approach of family re-unification has led to the isolation of large groups of migrants in the social outskirts of certain cities over the past years where the indulgence to social alimony is elevated into a cultural phenomenon. The image one has is stereotypical but unfortunately harsh reality: dilapidated houses, unsafe surroundings, unemployment, the lack of integration or disintegration, etcetera"*³⁵.

As a result, a Parliamentary hearing was scheduled on September 21st 2011. The debates

³¹ HUYGENS, A., 'Oneigenlijke huwelijksmigratie. Schijnhuwelijken : stand van zaken anno 2006', T. Vreemd., 2006, 238-277, p. 271

³² HUYGENS, A., 'Oneigenlijke huwelijksmigratie. Schijnhuwelijken : stand van zaken anno 2006', T. Vreemd., 2006, 238-277, p. 274

³³ AERTS, C. and VAN HOOGENBEMPT, K., "de strafrechtelijke beteugeling van het schijnhuwelijk, ingevoerd door de wet van 12 januari 2006", in *Echtscheidingsjournaal* 2006/4, p 51

³⁴ Parl. St. Chamber 2005-06, 1861/4, 2-3 and Parl. St. Chamber 2005-06, 1861/2, 3

³⁵ Mercurial held on September 1st 2011 by Mr. Yves Liégeois, Att.-Gen. To the Court of Labour in Antwerp and Mr. Piet Van Den Bon, Att-gen. to the Court of Appeal in Antwerp, <http://assets.rug.be>

clearly showed the unanimity on the failure of this legislative initiative. The main reasons were:

- the mild character of the penalties;
- the criminal judge's inability to sanction as well as nullify;
- the lack of an immediate sentenced impact on the residential situation of the foreigner who attained a residential benefit.

It is strange nobody has suggested the fact that the possibility to prosecute the person who intended to avert the goal of marriage, which is the formation of a durable family life, is not often invoked because it is almost impossible to provide the required evidence.

Instead of contemplating the removal of this stipulation of the Immigration Code due to a lack of usefulness, pleas to tighten these stipulations can be heard. Harsher punishments, the criminal judge's competence to decide on the state of persons and an immediate abrogation of the residence permit of the convicted, without taking the actual situation into account.

One proposition over the other is more repressive. This summary on the evolution on this matter will be continued...³⁶

3. The future

The governmental coalition³⁷ indicated the willingness to battle the marriages of convenience and the cohabitational relationships of convenience. The legislative bill to amend the Civil Code, the Criminal Code, the Judicial Code, the December 15th 1980 law on the access to the territory, the residency, the settlement and the expulsion of foreigners and the December 31st 1851 law on consulates and consular competence, in order to combat the marriages of convenience and relationships of convenience³⁸, operates to this effect.

The following means are provided:

- marriages of convenience are targeted, as well as cohabitation of convenience. The term is defined and will be dealt with in the same manner as a marriage of convenience, be it that the public civil servant can postpone the declaration until the investigation has taken place, he can refuse to notify if there are indications towards a cohabitation of convenience and such a declaration is punishable by law;
- a time period is set to draft the deed of declaration of marriage;

³⁶ Noteworthy that by adopting the April 25th 2007 law, an article 391 sexies was introduced in the Criminal Code, penalizing the execution of a marriage of convenience. April 25th 2007 law, B.B., June 15th 2007

³⁷ Draft declaration on the general policy, December 31st 2011, p. 133 et seq.

³⁸ *ParL St.*, Chamber, 2012-2013, 53-2673/001

- the investigation period by the public prosecutor is prolonged;
- the consular posts are competent to furnish attestations to no marital impediment;
- a five year entry ban can be imposed to those whose residence permit have been withdrawn as a result of a marriage of convenience or a cohabitation of convenience;
- the penalty clauses and penalties are adjusted stricter:
 - upon entering into a marriage of convenience, penalties are augmented to one month till three years imprisonment or a fifty to five hundred Euro fine;
 - upon receiving an amount of money to willfully engage into a marriage of convenience, penalties range from two months till four years imprisonment or a 100 to 2.500 Euro fine;
 - when force is used penalties range from three months till five years imprisonment or a 250 to 5.000 Euro fine;
- lastly the criminal judge can nullify the marriage.

This bill was passed in the plenary meeting of the Chamber of Representatives and will be executed swiftly.