



femmes for freedom

Response Femmes for Freedom to the concept legislative proposal pertaining to the fight against marital captivity

Femmes for Freedom (FFF) is pleased as well as disappointed about Minister Dekker's proposal to include marital captivity in Article 827 section 1 Rv [legislation with respect to civil procedures] as an express accompanying arrangement to facilitate the fight against the major injustice of marital captivity after the dissolution of a civil marriage.

Pleased because this finally meant a start of the implementation of proposals that FFF has been posing since 2012. This is a positive step towards the explicit identification of marital captivity in Civil Law by including it in the legislation with respect to civil procedures (Rv).

Disappointed because this amendment is only of limited interest for the target group and FFF's proposals to include marital captivity in the Civil Code was not addressed either while the proposals for a more general policy to deal with marital captivity were ignored.

Disappointed as well because the Minister did not actually fulfil his recent promise to involve FFF and therefore the women from the target group in policy development, except for the present consultation round. Unfortunately the government does not utilise opportunities for the emancipation of these communities in their entirety.

Further explanation

Marital captivity is a violation of the right of women to control their own lives. The government should enable women to exert the right to self-determination. For this reason FFF is pleased to see that marital captivity can nowadays not only be fought by Criminal Law but that preliminary steps are being taken to extend this to combatting marital captivity through Civil Law; this after FFF had already provided arguments in 2012¹ and

¹Parliamentary paper 32175 nr 31: LETTER FROM THE MINISTER AND THE SECRETARY OF STATE OF SECURITY AND JUSTICE OF 21 MAY 2012:

'Femmes for Freedom further advocates an amendment to Article 827, section f Rv with a view to achieving the required coherence with the application for divorce in such a way that it becomes possible to apply for the dissolution of a religious marriage as an accompanying arrangement to the divorce decree. This legislative amendment would result in a situation in which women no longer have to force their husbands to cooperate in the dissolution of their religious marriage through interlocutory proceedings, in addition to having to go through divorce proceedings. With respect to the aforementioned judgment from the Supreme Court from 1982, in which the Supreme Court ruled that it was possible to combine the claim in question with the divorce application, the Advocate General and the annotator concluded that the claim to order the husband to cooperate towards obtaining or achieving a rabbinical divorce decree, at least in so far this was within the husband's capacity, showed a close relationship with the divorce application. Section f of Article 827, subsequently added to the Civil Procedure Code, further provides that other accompanying arrangements than the ones mentioned in Sections a up to and including e are only admissible if they do not result in unnecessary delay of the lawsuit and are therefore not unduly complicated. Having the option to be able to submit to the Court other questions

subsequently in 2014² and 2017³. The Minister's proposal provides victims, lawyers and courts at least with more legal options than they had before. Although in principle it was already possible to submit a request to terminate the marital captivity to the Court through Article 827 Rv in the accompanying arrangement; on the advice of Committee de Ruiter⁴ (also refer to footnote 1) this option has now been included expressly.

than the accompanying arrangements already included in Article 827 Rv was included in the law during the revision of the procedural law after advice by Committee De Ruiter (Parliamentary Papers II 1996/97, 26 862, nr 3). In order not to complicate the divorce it has been provided that dealing with the accompanying arrangements cannot result in unnecessary delay. Whether this is the case is to be ascertained by the Court. In the light of the above at present we do not deem it necessary to amend Article 827 Civil Procedure Code.'

² Transcripts of Parliamentary debates TK 2013-2014, 65 and Tijdschrift Asiel & Migrantenrecht 2014 nr 02 [Journal Asylum and Migrant Law]

³ Een Vandaag [Dutch current affairs programme] 29-11-2017 CDA and GroenLinks want penalty for spouses who keep women captive in Islamic marriages <https://eenvandaag.avrotros.nl/item/cda-en-groenlinks-willen-boete-voor-mannen-die-vrouwen-gevangen-houden-in-islamitisch-huwelijk/>

⁴ *Parliamentary Papers II 1996/96, 26 862, nr 3*

In addition FFF is also **disappointed** about the scope of this proposal, which is supposed to bring a solution for women who concluded a civil as well as a religious marriage. However, the majority of women who find themselves in marital captivity have only concluded a religious marriage. In spite of the current legislative proposal these women are still left to their own devices. In order to counter each form of marital captivity effectively, once more FFF advocates the proposals that she discussed in 2013 with the legislative lawyer of Justice and Security and communicated verbally and in writing with members of Parliament in 2013 and 2014 and advocated in the journal *Migratie en Recht* [Migration and Law] in 2014, notably the introduction of an addition to Article 1:68 of the Civil Code. This addition should contain a general phrase that provides that parties should cooperate towards the dissolution of the religious marriage when the civil marriage ends; this provision should also be observed in those cases in which the parties had only concluded a religious marriage if one of the parties wishes to do so. A codification in Criminal Law of a counterpart of Article 1:68 Civil Law would prevent a lot of suffering and can solve many cases of marital captivity that are outside of the scope of the present concept legislative proposal. Since 2018 this proposal by FFF is also supported by Maastricht University⁵. FFF would appreciate it if the Ministry of Justice and Security would enter into consultations FFF about this proposal.

5 Kruininger, P. (2018). Niet langer geketend aan het huwelijk! Juridische instrumenten die huwelijkse gevangenschap kunnen voorkomen of oplossen. [No longer chained to the marriage! Legal instruments that can prevent or solve marital captivity.] Part I: subproject 2. Maastricht: Maastricht University / Nederlandse Organisatie voor Wetenschappelijk Onderzoek NWO. Page 71: 'Firstly a second section or an Article 1:68a could be added to Article 1:68 Civil Code with the following purport: 'At the same time of the dissolution of the civil marriage or if there is no civil marriage, on request of one of the parties, parties should lend their unconditional and complete cooperation, in so far as this is within their power, towards the dissolution of the religious marriage between them.'

In conclusion FFF regrets that the present concept legislative proposal does not make use of the opportunity to phrase a wider policy for the fight against marital captivity. For this purpose FFF refers to her earlier extensive reply⁶ to the Lower House and also to her response to the report by Maastricht University to which Minister Dekker in his letter to the Lower House⁷ refers as well. Unfortunately FFF can only conclude that the authorities do not wish to cooperate with FFF, in spite of the support expressed by Parliament and the government, this while FFF has defined the subject of marital captivity and has made successful proposals to fight marital captivity⁸

6 <https://www.femmesforfreedom.com/wp-content/uploads/2018/06/ReactieFFFBriefSanderDekker.pdf>

7 <https://www.femmesforfreedom.com/actie-fff-op-de-brief-van-minister-dekker-en-het-onderzoek-van-de-universiteit-van-maastricht/>

8 Parliamentary paper 32175 nr 31: LETTER BY THE MINISTER AND THE SECRETARY OF STATE OF SECURITY AND JUSTICE of 21 May 2012:

*'We deem information about the options available to victims to dissolve their religious marriage in this context of huge importance. **In this context organisations close to the victims and who can reach out to them have a special role to play; an example is Femmes for Freedom.***

Transcripts of Parliamentary debates TK 2013-2014, 65: Plenary discussion of the legislative proposal Amendment of Book 1 and Book 10 of the Civil Code concerning marriageable age, marriage impediments, annulment of marriages and the recognition of marriages concluded abroad (Act combatting forced marriages) (33488) on 20 March 2014:

Marit Rebel (PvdA):

'Being forced to conclude an informal religious marriage can deteriorate a victim's position.

*Focused attention for and prevention of this shortcut is also required for support services as well as the police and within the regular communities where this occurs. Ms Musa **from Femmes for Freedom rightly points out the importance of appropriate training of the parties involved, notably to see to it that no incorrect advice is being given. We are bound by international treaties to promote registered marriages and to combat informal marriages. The amendment that I submitted with my colleague Van Oosten from the VVD requests an evaluation after three years. Specifically in the case of this law it is important not to wait too long to examine its effect.'***

Foort van Oosten (VVD):

This immediately brings me to an additional question to the Secretary of State. It frequently occurs that foreign 'family law' forms an impediment to the recognition of divorce decrees issued in The Netherlands. Perhaps this is outside of the scope of the subject because we are discussing the prevention of forced marriages rather than divorce but can the Secretary of State share with the Lower House which efforts he has made in his dialogue with various countries that should result in the recognition of Dutch divorce decrees outside of The Netherlands? I am asking this especially

And this in spite of the fact that FFF disposes of expertise that has been tested and confirmed. Other NGOs for example, including proponents of the rights of LGBT+ people, are involved actively in the development and implementation of policies. Women from this target group are completely excluded because of the current choices such as opting for a law firm that advocates sharia courts⁹, for religious leaders or for a scientist who based her

*because this can also be relevant in the approach of the problems of marital captivity. I heard Mr De Wit discuss this but other colleagues as well. For me a situation in which women are kept captive in a marriage against their will is as unwelcome as having to enter into a marriage under duress. I have received signs that this is happening in The Netherlands. Apparently women in our country are kept captive in a marriage against their will. Is the Secretary of State aware of this problem? **Is he willing to look into this problem and to investigate this further for example with the organisation Femmes for Freedom?** Is this a problem that we cannot ignore - I find it difficult to assess? If so, what to do? Besides I was told that the United States have legislation to deal with marital captivity. Could this be of use in The Netherlands? I await the response of the Secretary of State.'*

Opzij, March 2016:

Sadet Karabulut: 'What does not help in this respect is that Minister Asscher only confers with imams and boards of mosques. It is typical of The Netherlands to want to reach consensus with interest groups but there are no women in boards of mosques. The interests of female muslims are not represented at ministerial level, do not think for a moment that male muslims ever discuss these topics. Therefore minister Asscher should enter into consultation with female muslims such as Shirin Musa.

[Parliamentary paper 28345 nr 186 General Consultation Child abuse / GIA / Victims of lover boys on 4 April 2018:](#)

Gert-Jan Segers: 'At the very end I want to raise a subject that merits special attention. It deals with a special subculture, a very specific group where honour-related violence and forced marriages might occur. This is another subject with which we need the help of specialists in the communities that are confronted with this. It concerns for example Shirin Musa of Femmes for Freedom, who has placed this subject on the agenda time and time again. It concerns a very small organisation that sometimes needs a little push. My recommendation is: can we not provide that push?

*My second question is intended for Minister Dekker, about forced marriages. Sometimes you need civil social organisations that achieve something, can achieve something and sometimes go a step further than the authorities themselves can. **I did mention the organisation Femmes for Freedom. This is only a suggestion. Maybe we will discuss this again later some other time. But this is an organisation that can take things a step further in a number of subcultures where the authorities' options are somewhat restricted. Therefore I would recommend this organisation whole-heartedly. Thank you.'***

⁹ Rotterdam, 18 September 2018: Response to the written questions of council member T.C. Hoogwerf (Leefbaar Rotterdam) about Partners, strategy concerning harmful and traditional

report on a no more than three case studies. And this while the Dutch population already in the Seventies have come to the conclusion that men do not know any better what is good for women than the women themselves. These remarkable choices have resulted in an unnecessary delay in the implementation of legislative amendments such as placing the present proposal on the agenda and therefore the essential ensuing policies are not being implemented. On 20 August 2018 FFF raised this topic in a conversation with Minister Dekker and was promised that she would be involved in policy development. The Minister's civil servants interpreted 'being involved' as: 'being allowed to participate in the internet consultation'. Other Ministries (such as Health, Welfare and Sport and Social Affairs and Welfare) keep boycotting FFF systematically, with the result that effective solutions keep being impeded so that effective policies and legislation are delayed. There is no integrated policy to fight marital captivity. From this FFF can only infer that there is no intention to involve FFF - an organisation established by women from the target group - in the process of developing a policy with respect to marital captivity, in spite of frequent pressure by the Lower House and promises by the government concerning this. CEDAW has expressed her concerns about this to the Dutch government about the fact that policies about women from migrant communities are developed without involving them¹⁰.

FFF is conscious of the fact that she has strong views in the debate, but these views are based on unique, substantive and detailed expertise. FFF is of the opinion that the subject of marital captivity (and the emancipation of girls/women from patriarchal communities as a whole) can only be addressed effectively if the government has a clear policy with respect to the enforcement of the fundamental rights of the girls and women from these communities.

However, developing effective policies is only possible if women from the target group are involved in the process. Surely it is not possible to acquire a good insight into the problems of marital captivity without involving these women. This becomes clear when we view the quality of the proposals and the slow rate at which these policies are being implemented. As a result the emancipation of women from migrant communities is delayed and with that the emancipation of these communities as a whole undergoes a further and unnecessary delay. Needless to say that the unnecessary delay of the emancipation of these communities has a detrimental effect on Dutch society as a whole.

Shirin Musa
Director Femmes for Freedom

Appendixes:

1. Response FFF to the letter by Minister Dekker and the research performed by Maastricht University.