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NON-JUDICIAL DIVORCE - ENGLISH SUMMARY

Background

Currently, marriages can only be dissolved in the Netherlands by means of a court-issued divorce decree. On several occasions, the question has arisen as to whether a non-judicial divorce procedure should be made possible. Although this question has led to legislative proposals on several occasions, it has never been fully resolved, particularly as such a procedure is expected to entail lower costs (for both the spouses and the judiciary), a shorter processing time and a reduction in the workload of the judiciary. In response to questions from MP Sneller (D66) regarding the necessity of always having to go to court for a divorce decree during the Committee debate on Personal and Family Law on 3 April 2024, the Minister for Legal Protection undertook to commission a study into the advantages and disadvantages of a non-judicial divorce. This study fulfils that commitment.

Objective and research questions

The objective of this study was established in consultation with the client and is twofold:

1. To provide insight into international developments since 2017 regarding the non-judicial divorce procedure (divorce without court intervention); and
2. To provide insight into the (expected) advantages and disadvantages of the non-judicial divorce procedure.

The first objective of the study leads to the following research questions:

- a) To what extent is the option of a non-judicial divorce available in other European countries? If so, are there any evaluations of (the consequences of introducing) these procedures and what are the main findings?
- b) In countries that offer this option, what considerations underpinned the introduction of the non-judicial divorce procedure?
- c) What advantages and disadvantages are encountered in these countries regarding the non-judicial divorce procedure?

The second objective of the study gives rise to the following research questions:

- a) What are the advantages of a non-judicial divorce? In the context of this question, this report also examines the extent to which there is a need among citizens for the option of a non-judicial divorce.

- b) What are the disadvantages of a non-judicial divorce? This question focuses on both potential legal and practical disadvantages, as well as disadvantages for the relevant stakeholders. Specific attention is paid to the extent to which the legal protection of spouses can be expected to be guaranteed, and to the question of what demands a non-judicial divorce places on citizens' capacity to act, and to what extent it is realistic to assume that these requirements can be met during a stressful and emotional period such as a divorce. In this context, attention is paid to situations involving unequal power relations between spouses, and consideration is given to the potential consequences that may arise in the period following a non-judicial divorce (for example, in terms of conflict).
- c) What impact does a non-judicial divorce have on the various parties and bodies involved (local authorities, attorneys, the judiciary, mediators), given their current roles and understanding of their duties?
- d) How do the advantages and disadvantages of a non-judicial divorce compare?

The divorce proceedings

In the Netherlands, judicial divorce proceedings where there are no minor children are governed by the rules of the petition procedure. The joint application for divorce is filed with the court by an attorney-at-law, with the spouses having the option of being represented jointly by a single attorney or each engaging their own attorney. The petition must in any case state that the marriage has irretrievably broken down, which forms the legal basis for divorce. In addition, the parties may formulate ancillary claims relating to the consequences of the divorce, such as the division of property or spousal maintenance. These agreements are usually set out in a divorce agreement.

Chapter 2 outlines the limited role of the court in these proceedings. The court does not review the content of the agreement but may incorporate the arrangements made into or attach them to the divorce decree. This gives these arrangements an enforceable title, meaning that they are enforceable if necessary. A further characteristic of the procedure is that, as a rule, no oral hearing takes place. Once the case is ready for a decree to be issued, a decision is issued within a period of three weeks. The divorce becomes legally effective upon registration of the decree in the registers of the civil registry, which must take place within six months of the decree becoming final.

In addition, Chapter 2 discusses the costs of the judicial divorce proceedings, which consist of various components. In addition to court fees and the costs of legal representation by an attorney, costs may arise for gathering the necessary documents and – if the parties so choose – for assistance from other professionals, such as mediators, attorneys or financial experts. The extent of these additional costs depends on the nature and complexity of the case and is difficult to estimate in advance. For parties with limited means, there is the option of state-funded legal aid, whereby the

government bears most of the costs, subject to a personal contribution. In addition, legal expenses insurance and online platforms offer alternative financing options.

Finally, the legal protection afforded under the current procedure is examined. This is largely rooted in the role of the attorney. Mandatory legal representation ensures that parties are assisted by a legal expert who is bound by statutory, professional and ethical rules and is subject to disciplinary law. Requirements also apply regarding expertise, the provision of information and the duty of care. Where a single lawyer acts for both parties, additional obligations rest upon him or her. However, other professional groups involved, except for notaries, are not subject to a uniform regulatory framework, which can lead to differences in the level of legal protection.

Legislative history

Against the backdrop of these court proceedings, the introduction of a non-judicial divorce procedure has been the subject of repeated discussion since the 1970s. The various attempts to introduce a non-judicial divorce procedure are laid out in Chapter 3. In particular, the Luchtenveld (2004) and Teeven (2014) legislative proposals are relevant in this context. The Luchtenveld proposal provided for a non-judicial procedure involving a mandatory agreement and the involvement of a legal expert, whilst the Teeven proposal was based on a more minimal variant without mandatory guidance or agreements. Ultimately, neither proposal was adopted due to a lack of political support.

Two central themes emerge from the parliamentary debate and the legal literature. Firstly, this concerns the protection of the weaker party. Unequal power relations – for example, of an emotional, financial or factual nature – can result in one of the parties being disadvantaged. A non-judicial procedure must, therefore, contain sufficient safeguards to mitigate such inequality. Secondly, there is the question of the role of experts. There is debate regarding the necessity of mandatory supervision, the nature of the expert's duties, and the question of which professional groups are eligible for this. These issues proved difficult to resolve in practice and contributed to the failure of the legislative proposals.

Although no new legislative initiatives have been launched since 2017, relevant developments are nevertheless evident. For instance, the Report on the Exploration of Workload in the Judiciary and the Public Prosecution Service (2024) highlights the possibility of non-judicial divorce as a means of relieving the burden on the courts. In addition, there is growing support for mediation and an increasing digitalisation of legal procedures. Comparative legal research also illustrates that non-judicial divorce has already been introduced in various European countries, which further fuels the debate in the Netherlands.

An important point of reference is the registered partnership scheme. The dissolution of such a partnership by mutual consent can already take place without the involvement of the court. It is striking that, when this scheme was established, there was relatively little discussion about the role of the experts involved and that reaching agreements is not made compulsory, although this is facilitated. This scheme thus serves as a relevant framework for comparison with any non-judicial divorce proceedings.

In parallel with these developments, a shift is evident in practice towards more efficient and digital forms of divorce support, including via online divorce platforms. These platforms vary greatly in their structure and working methods. Some offer exclusively digital communication with an attorney, whilst others largely automate the process and guide clients through online modules to draw up a settlement agreement. In such cases, the final submission of the petition by the attorney often takes place outside the direct view of the parties.

The costs and processing times of these platforms vary, as shown in Chapter 4. Many providers work with package prices, whereby the level of support determines the cost. The duration of the procedure generally varies between three and ten weeks and depends in part on the complexity of the case and the intensity of the support. The diversity of professionals involved is striking, including attorneys, mediators, financial experts and case managers. This variation makes it difficult to provide a clear-cut assessment of the quality and legal protection offered by these platforms.

Comparative law within the EU

Comparative legal research shows that, in many countries, divorce by mutual consent is now the predominant form of divorce. In these countries, divorce by mutual consent was introduced primarily to relieve the burden on the courts and to make proceedings more efficient. Other considerations for introducing non-judicial divorce included intended improvements regarding the costs, time and accessibility of the procedure for citizens. In many of these countries, the court is now only involved if the parties cannot reach an agreement or if spouses have custody over minor children.

Chapter 5 examines non-judicial divorce procedures existent in nine other EU countries. These countries are: Estonia, France, Greece, Italy, Latvia, Portugal, Romania, Slovenia and Spain. Denmark has been excluded from this analysis, as it is not bound by EU regulations regarding private international law. The comparative legal analysis shows that the practical implementation of non-judicial divorce procedures varies considerably from country to country. The authority to decide the divorce is granted to various professionals, namely the civil registrar, the civil law notary or the public prosecutor. Some countries also have different procedures with the divorce decided by different authorities, for example depending on whether the spouses have minor

children. The extent to which it is mandatory to reach agreements regarding the divorce, varies from country to country. Where agreements are mandatory, these may, for example, relate to the marital home, matrimonial property, maintenance, custody and care agreements, or shared pets.

The extent of examination carried out by the competent authority also varies from country to country and from procedure to procedure. In all countries, there is at least a formal, procedural examination to establish that the legal requirements have been met. In some countries, there is also a substantive examination of the agreements reached by the parties, for example to protect the interests of both parties. However, no connection can be established between the extent of the examination and other aspects of the procedure, such as which authority conducts the examination or the extent to which it is mandatory to reach agreements. There are also various other safeguards in place to protect vulnerable parties, such as mandatory legal representation or a mandatory cooling-off period.

In literature and in practice, points of concern regarding non-judicial divorce proceedings are raised, such as the lack of control mechanisms or problems in international situations.

International recognition of the divorce

As regards the international recognition of non-judicial divorces, these are, in principle, automatically recognised within the European Union under the Brussels II^{ter} Regulation. This does, however, require that the divorce has been granted by, or under the supervision of, a public authority, and that the authority granting the divorce examines whether the national conditions for divorce have been met.

For non-EU countries, recognition may take place based on international treaties, such as the 1970 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Matrimonial Matters or the 1967 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Family Matters, provided that the conditions set out therein are met. Outside these frameworks, recognition depends on national rules of private international law.

Empirical research

The empirical part of the study consists of several components. Firstly, the empirical research among citizens shows that the current role of the court is limited in practice (Chapter 7). Most respondents have made their own arrangements regarding the consequences of the divorce, usually with the support of a professional. Only a small percentage have experienced legal disputes following the divorce. It also appears that in most cases the court remains out of the picture and is regarded by respondents as offering little added value, other than formalising the divorce.

In line with this, a large majority of respondents state that it should be possible to obtain a divorce without going to court. However, they emphasise that certain conditions must be met, such as making agreements on the consequences of the divorce mandatory and having these agreements assessed for fairness by an independent professional. The need for mandatory guidance from an expert is less unanimously endorsed.

These findings are countered by the results of interviews with (legal) professionals and an expert meeting (Chapter 8), which show that removing the court does not automatically lead to significant time savings, cost reductions or improved legal protection. The benefits for the judiciary itself also appear to be limited. It is noted, however, that efficiency can be increased by reducing mandatory professional support, but this simultaneously raises concerns about the protection of vulnerable parties.

Concluding remarks

The non-judicial divorce procedure has no general advantages or disadvantages compared to the judicial divorce procedure. Potential advantages frequently cited, such as efficiency, cost savings and the alleviation of pressure on the courts, cannot be confirmed by the research and, moreover, depend on the way in which the non-judicial divorce procedure is organised, as evidenced by the empirical part of this study. The study also shows that the frequently cited disadvantage of a non-judicial divorce, namely reduced legal protection for the spouses, is not necessarily realised either and is, once again, entirely dependent on the chosen route. Moreover, in the current judicial procedure, legal protection is not achieved through a substantive review by the court, but rather through the guidance of legal professionals during the preliminary phase. Depending on how the non-judicial divorce procedure is structured, the same level of legal protection can be provided.

Taking everything into account, a nuanced picture emerges. On the one hand, there is a clear social and practical need to simplify and make the divorce procedure more flexible. On the other hand, ensuring adequate legal protection, particularly for the weaker party, remains a key concern. The key question is therefore not so much whether a non-judicial divorce procedure is desirable, but under what conditions it can be designed in a responsible manner. The decision to permit non-judicial divorce is thus a political one. Should this option be chosen, the underlying report provides an overview of how the procedure could be structured, as well as the advantages and disadvantages of these potential procedures, drawing on insights from other EU countries that have already introduced such procedures.