

The Dutch Approach:
familial relations of various kinds
in The Netherlands, under current law
and a preview of possibly coming attractions

21st century parenting
in The Netherlands
Reassessment of parenthood

mr. Emilie van Empel
18 May 2018
FBE Congress Bologna

In recent decades: **increasing diversity in family forms**

one-parent families, patchwork families, families with parents of the same-sex (rainbow families), multi-generational families and families in which multiple people care for and raise children;

socially felt need to amend Dutch legislation and policy in the field of parentage to legally protect the interests and rights of children and parents in these various family forms;

Government Committee on the Reassessment of Parenthood, assigned 2014: to reassess the laws on parenthood, the desirability of a law on multi-parenthood and multi-parent custody, the desirability of a law on surrogacy

report 'Child and Parents in the 21st Century' in December 2016, followed by a domestic Conference in February 2017 where all relevant professional and interest organisations, the judiciary, child protection agency, the academic world and the world of experience (i.e. children) discussed the 68 recommendations made by the Committee;

advice presented at the **ISFL World Conference in Amsterdam, July 27, 2017**: introduction of multi-parenthood & multi-parenting - regulate surrogacy - place of the child in legal proceedings - registration of the 'Origin Story' of children - registration of custodial rights, how to hear children in legal proceedings - important issues regarding good enough parenting

Legal emancipation of same sex families :

- 1990 access to shared custody / registered partnership
- 2001 marriage / domestic adoption
- 2009 intercountry adoption
- 2014 automatic parenthood for co-mothers/fathers

Best interest of the child

Seven core elements of 'good parenting'

1. Unconditional personal commitment
2. Continuity in the child-rearing relationship
3. Care for bodily welfare
4. Raising to independence, and social and societal participation
5. Organising/monitoring the upbringing in the family, the school & the public setting
6. Creation of a parent-child identity
7. Ensuring contact moments with persons who are important to the child, including the other parent.

Role of the State

- No place for a state-moral or general ethics on family form
- Need for protection and respect for the rights and interests of the child (and other 'weaker' parties)
- Equal protection for all children, regardless of family form

Legal parentage

- important for continuity/family connection in interest of the child
- relevant for surname, nationality and inheritance/succession rights
- at present only two parents are legally possible

Multi parenthood

- a maximum of four legal parents, spread across a maximum of two households
- pre-conception multi-parent contract subject to judicial approval (strict conditions)

Joint parental authority (custody)

Multi person joint custody

Regulation of surrogacy

- at present no provisions under Dutch law
- to ensure both surrogate mother's rights and parents' rights

Child's right to information regarding origin story

NEW:

the so-called Simple adoption

- envisaged as new legal instrument under Dutch law, to also enable multi parentage
- strict conditions regarding authority/custody – judicial approval

AT THIS TIME

- no concrete plans for amendment of Dutch family law,
- questionable how many of the recommendations will be codified

INTERESTING but not without practical problems:

- the Children's Ombudsman in The Netherlands has held a wide survey, in which children were questioned and children took part in open discussions with the Children's Ombudsman and representatives of interest organisations regarding the "Child Friendly Lawyer".

Children have a marked preference for one single lawyer in divorce cases (at al), the "Family Lawyer", with hopes to avoid polarisation;

- this might conflict with the fundamental tenets for Dutch lawyers