

Text of key articles on Registered Partnership in the Dutch Civil Code

summary-translation by Kees Waaldijk (www.emmeijers.nl/waaldijk)

Universiteit Leiden, The Netherlands, c.waaldijk@law.leidenuniv.nl

July 2001

The incorporation of the new civil status of "registered partner" into Dutch legislation has been effected by a series of Acts. The two most important acts are the Act of 5 July 1997 amending Book 1 of the Civil Code and of the Code of Civil Procedure, concerning the introduction therein of provisions relating to registered partnership (*Staatsblad* 1997, nr. 324); and the Act of 17 December 1997 providing for the adjustment of legislation to the introduction of registered partnership in Book 1 of the Civil Code (Registered Partnership Adjustment Act; *Staatsblad* 1997, nr. 660). Both laws came into operation on 1 January 1998, and effected changes in more than one hundred existing statutes. In Book 1 of the Civil Code several new articles were introduced, especially articles 80a to 80e. These and other articles have since been amended by the acts opening up marriage and adoption for persons of the same sex, by the Act of 13 December 2000 (*Staatsblad* 2001, nr. 11) and by various other acts. The three acts mentioned entered into force on 1 April 2001. The resulting text of the key articles of Book 1 of the Civil Code is as follows:

"Article 80a

- (1) A person can simultaneously be in a registered partnership with one other person only.
- (2) Those who enter into a registered partnership, may not already be married to someone.
- (3) Registration of partnership is effected by a document of registration of partnership drawn up by a registrar. ..."

The further paragraphs of article 80a declare applicable almost all provisions on the formalities of contracting a marriage. Article 80b declares applicable all provisions on the mutual rights and duties of married spouses and on matrimonial property.

"Article 80c

The registered partnership ends:

- a. by death;

- b. by disappearance of one partner followed by a new registered partnership or by a marriage of the other partner ...;
- c. with mutual consent by the registrar's recording ... of a dated declaration, signed by both partners and by one or more advocates or public notaries, stating that, and at what moment, the partners have concluded a contract relating to the termination of the registered partnership [as specified in Article 80d];
- d. by [judicial] dissolution at the request of one partner [as specified in article 80e, which declares applicable the provisions on marital divorce];
- e. by conversion of a registered partnership into a marriage [as specified in article 80g]."

The hundreds of other new or amended articles merely state that certain (groups of) provisions relating to the procedures and/or consequences of marriage are also applicable to registered partnership.

Thus, registered partnership is almost identical to marriage. The main differences are the following (apart from numerous mistakes and oversights in the partnership legislation):

- for different-sex couples a registered partnership does not lead to a presumption of paternity when a child is born into the partnership (while for same-sex couples such a presumption is never made, even when the child is born into their marriage);
- due to a transitional provision a few dozen surviving registered partners will receive a lesser pension than surviving married spouses in similar situations;
- the parties to a marriage marry each other through their declarations (Civil Code, Book 1, Article 67), whereas the parties to a registered partnership are registered by the registrar (Article 80a(5));
- a church "wedding" (which has no legal consequences in Dutch law) can only take place after the marriage has taken place at the registry office (Article 67), whereas the parties to a registered partnership can go to church before the partnership registration takes place;
- the King or Queen, or a person in line for the throne, does not need permission by Act of Parliament before entering into a registered partnership (Article 28 of the Constitution requires such permission for a marriage);
- even in the case of mutual consent of the married spouses, a divorce can only be obtained in court (Articles 150-165), whereas in the case of mutual consent, a registered partnership can be dissolved through a contract (Article 80c(c));
- the rules on separation (Articles 168-183) do not apply to registered partnerships;

- various rules of private international law, and rules based on international or European law, that apply to marriage have not been declared applicable to registered partnership;
- some rules of Dutch secondary legislation might not yet have been made applicable to registered partnership;
- in law, words like "marriage", "spouse", "divorce", "widow", etc., remain the exclusive domain of married persons (including married lesbians and gays since 1 April 2001).

If a private law document (such as a contract or a will) attaches significance to someone's being married, and the document dates from before 1998, then the transitory provision of Article V of the Act of 5 July 1997 provides that the same significance will be attached to someone's being registered as partner. But if the document dates from after 31 December 1997, then such equality can only be based on the General Equal Treatment Act, which not only prohibits direct and indirect discrimination based on sexual orientation, but also discrimination based on civil status. The status of being a registered partner is now considered to be a new civil status. Because the General Equal Treatment Act only applies to employment and the provision of goods and services, private discrimination between married and registered partners in other fields might not always be unlawful.