

## Seeking Access to Long-Term Care: Legal Consciousness of Dutch Retirement Migrants on the Costa Blanca

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### Abstract

As EU citizens, Dutch retirement migrants can move and reside freely within the European Union. This enables their fluid migratory pattern and the formation of transnational ties between the Netherlands and Spain. However, national laws and nationally organised welfare systems within the EU may bind some retirement migrants to one of the two countries. Retirement migrants move at a stage in their lifecycle associated with a possible deterioration of health, therefore they are forced to think about accessing care provisions in the Netherlands and/or Spain. By focusing on the ways Dutch retirement migrants talk about and seek access to long-term care in both countries, this contribution explores the legal consciousness of Dutch retirement migrants in a transnational setting. Since legal consciousness research mainly focuses on a nation-state setting, this contribution argues that theories on legal consciousness should develop further in order to open its analysis frame to include transnational migrants who have to deal with more than one legal system.

### Key words

Retirement migration; long-term care; legal consciousness; transnationalism; the Netherlands; Spain

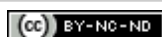
### Resumen

Como ciudadanos de la UE, los emigrantes jubilados holandeses pueden circular y residir libremente en la Unión Europea. Esto permite un patrón migratorio fluido y la formación de lazos transnacionales entre los Países Bajos y España. Sin embargo, las leyes nacionales y los sistemas de bienestar social organizados a nivel nacional dentro de la UE pueden obligar a algunos emigrantes jubilados hacia uno

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de los dos países. Los emigrantes jubilados se mueven en una etapa de su ciclo de vida asociada a un posible deterioro de la salud, por lo tanto, se ven obligados a pensar y organizar el acceso a los cuidados sanitarios en los Países Bajos y/o España. Al centrarse en los modos en los que los emigrantes jubilados holandeses hablan y buscan acceso a los cuidados a largo plazo en ambos países, esta contribución explora la conciencia jurídica de los emigrantes jubilados holandeses en un entorno transnacional. Dado que la investigación jurídica consciente se centra principalmente en un ajuste de estado-nación, esta contribución sostiene que las teorías sobre la conciencia jurídica deberían llegar más allá con el fin de abrir la ventana de análisis para incluir a los emigrantes transnacionales que tienen que hacer frente a más de un sistema legal.

**Palabras clave**

Migración de retiro; atención a largo plazo; conciencia jurídica; transnacionalismo; Países Bajos; España

**Table of contents**

1. Introduction.....	1026
2. Transnationalism and legal consciousness .....	1027
3. Legal rules and long-term care .....	1029
4. The research – methodology .....	1030
5. Setting the scene – Dutch retirement migrants on the Spanish Costa Blanca	1031
6. Accessing long-term care provisions .....	1032
6.1. “Illegal” – the story of Michiel and Fieke .....	1033
6.2. Unable to play with the law – Anne’s story continued .....	1034
6.3. Being footloose – the story of André and Hannie.....	1035
6.4. Retirement migrants and legal consciousness.....	1036
7. Conclusion.....	1037
Bibliography .....	1037

## 1. Introduction

When we bought the house we were told that we could receive [Dutch long-term care] abroad, but unfortunately when we lived here for a while they changed the law. That is a disaster, a real disaster. My husband is severely ill and I can't care for him; when he needs nursing care we're forced to go back now. ... We would not have taken the step if we would have known that.

Anne, 68 years old

Anne,<sup>1</sup> one of the interviewed Dutch retirement migrants on the Spanish Costa Blanca, paints a picture of how age, the need to access care, a desire to live abroad after retirement, and legal rules influence the decision-making process and transnational life of retirement migrants. Although the decision to move abroad after retirement is most often dictated by the wish to improve the quality of life, by moving to a country with a warmer and healthier climate, lower costs of living, a pleasant Mediterranean way of life, and more recreational activities (cf. Casado-Diaz 2006, Casado-Diaz *et al.* 2004, Huber and O'Reilly 2004, Warnes and Williams 2006), legal considerations also play a part in the decision-making process of where and how to retire.

As EU citizens, Dutch retirement migrants can move and reside freely within the European Union. This enables their fluid migratory pattern and also the formation of transnational ties between the Netherlands and Spain. However, as Anne expresses, national laws and nationally organised welfare systems may bind some retirement migrants to one of the two countries. Specifically because retirement migrants move at a stage in their lifecycle associated with a possible deterioration of health, they are forced to think about and arrange access to care provisions in the Netherlands and/or Spain. In this contribution attention is paid to the ways national and EU rules mingle with and influence the ways Dutch retirement migrants talk about and navigate between Dutch, Spanish, and European legal rules with regard to long-term care. By focusing on the ways Dutch retirement migrants talk about and seek access to long-term care, this contribution explores the legal consciousness of Dutch retirement migrants in a transnational setting.

Retirement migration is often studied from a sociological, geographical or anthropological perspective (e.g. King *et al.* 2000, O'Reilly 2000, Casado-Diaz 2006, Gustafson 2008). In these studies, the legal considerations which play a role in the different stages of the migration process may be hinted at, but they are not worked out in depth (e.g. King *et al.* 2000, Warnes and Williams 2006, Rodríguez *et al.* 2010).<sup>2</sup> In order to attract attention to the role of law in the daily lives and decision-making processes of Dutch retirement migrants in Spain, the analysis in this contribution is based on the tradition of legal consciousness – the ways people experience and interpret law when they engage, resist, or avoid the law (Ewick and Silbey 1998). This contribution looks at how long-term care rules are reproduced through commonplace interactions within the Dutch community in Spain and to how these rules constrain as well as enable choices of Dutch retirement migrants. These insights may contribute to legal consciousness studies, since in these studies the focus is most often on law in a national context without paying attention to the option that people have to deal with two (or more) national and international (EU) frameworks and its influence on the legal consciousness of individuals (cf. Schwenken 2013).

The following section of this contribution elaborates on theories of legal consciousness and transnationalism and discusses the need to combine both research fields. In order to frame the legal consciousness of Dutch retirement

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<sup>1</sup> Pseudonyms have been used to protect privacy of interview respondents. Interviews were conducted in Dutch and translated into English by author.

<sup>2</sup> The work of Ackers and Dwyer (2002, Ackers and Dwyer 2004) is an exception with a focus on the welfare and residency rights of retirement migrants in Spain.

migrants, I continue with a brief framework of the relevant legal rules with regard to long-term care. The empirical part of this contribution starts with a section on the methodology used and a section on the transnational life of Dutch retirement migrants on the Costa Blanca. In the subsequent sections I consider how long-term care matters in the transnational lives of Dutch retirement migrants based on three different stories told by the retirement migrants.

## 2. Transnationalism and legal consciousness

Transnationalism and legal consciousness are two separate fields of research, both with their own theories and analyses. In this contribution I try to bring these research traditions together as a step towards further research in the field of legal consciousness in a transnational setting.

Transnational migration, as defined by Glick Schiller *et al.* (1995), is “the process by which immigrants forge and sustain simultaneous multi-stranded social relations that link together their societies of origin and settlement” (Glick Schiller *et al.* 1995, p. 48).<sup>3</sup> The mobility, relationships, and social structures across borders encourage the formation of complex transnational connections between multiple localities across the world (Smith and Guarnizo 2009). These connections are located within transnational social fields which are created by the daily life activities of migrants and encompass those who move and stay-behind (Glick Schiller *et al.* 1995). Social fields can be seen as “sets of multiple interlocking networks of social relationships” and, within these social fields ideas, practices and resources are exchanged, organised and transformed through direct and indirect relations across borders (Levitt and Glick Schiller 2004, p. 1009). Faist (2000, p. 192) adds to these insights that transnational social fields are not only constituted by the exchange of various resources between mobile people and their immobile kin but also by regulations imposed by nation-states to control mobility. When transnational migrants cross borders they have to deal with regulations in both their home and host country and are thus influenced by multiple laws and institutions (cf. Levitt and Glick Schiller 2004, p. 1010). Although studies on transnationalism may acknowledge the role of law in the transnational experience of migrants, research is mainly conducted in the framework of dual citizenship. A legal consciousness perspective has so far hardly been adopted, while it may provide insight into the ways migrants build up transnational social fields and the ways in which they can exchange resources (cf. Schwenken 2013).

A social field perspective has also been taken up by socio-legal scholars.<sup>4</sup> Moore (1973) introduced the idea of semi-autonomous social fields (SASF) as a methodology to study complex societies. She argues that SASF can internally generate rules, customs, and symbols, yet the people in these fields are also “vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded” (*idem*, p. 720). Individuals who constitute a SASF are not isolated individuals but people who are connected in a relationship of dependency and together they produce norms of behaviour. Although the idea of SASF was originally designed with a local and national lens, it could potentially also be applied to social fields which transcend the borders of nation-states (cf. Sportel 2011).

Semi-autonomous social fields attract attention to the legal consciousness of individuals in an everyday life setting. Rather than referring to law as a “... distinctly bounded ‘thing’ that belongs exclusively to the state” (Engel 1995, p.

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<sup>3</sup> It is striking that most of the literature on transnationalism focuses on “non-Western migrants” who reside in “western countries” (e.g. Basch *et al.* 1994, Vertovec 2004, Grillo 2007, Levitt and Jaworsky 2007, Smith and Guarnizo 2009); the transnational practices of (retirement) migrants who move within the “western-world” as well as the specific experiences of older migrants are mainly left aside (exceptions are e.g.: O’Reilly 2000, Gustafson 2001, 2008).

<sup>4</sup> Socio-legal studies and sociology of law are used interchangeably and refer to the same research field.

125), studies on legal consciousness focus on ordinary people's perceptions of law in everyday life. Merry (1990) refers to legal consciousness as the ways people understand and use law – the commonsense understandings of the law. Current research on legal consciousness is often inspired by the work of Ewick and Silbey (1998). Although their research, as practically all legal consciousness research, is focused on law in a national context, their insights can potentially be applied to transnational research as well. Ewick and Silbey describe how residents in the US define, talk about, and use the law. Their work is based on a broad interpretation of law, using the concept of legality. Ewick and Silbey refer to legality as “an emergent structure of social life”.

Legality operates, then, as both an interpretive framework and a set of resources with which and through which the social world (including that part known as the law) is constituted (1998, p. 23).

Ewick and Silbey found that people tell three stories about law: before the law, with the law and against the law stories. In the “with the law” story, legality is seen as existing outside the social and personal lives of people. Legality in this story is: “discontinuous, distinctive, yet authoritative and predictable” (Ewick and Silbey 1998, p. 47). In the “with the law” story, law is seen as a game and people are playing with it. In this game the pursuit of self-interest is expected and the game can best be won by the skilful and resourceful who can make strategic gains. The third story, “against the law”, reflects the feelings of people who revealed a sense of being caught within the law. They are “unwilling to stand before the law and unable to play with the law”, therefore they act against it (idem 1998, p. 28). When people tell stories about legality, their stories do not always correspond to one of these schemas and a combination can often be observed (idem 1998, p. 50). Legal consciousness is fluid and individuals can tell different stories and refer to different forms of legal consciousness depending on time, context, and situation (cf. Hull 2003, Munger and Engel 2007, Abrego 2011). Analytically, the insights of Ewick and Silbey's work are useful for this study to observe “if, when and how legal concepts, constructs, or interpretations emerged” in the daily lives of retirement migrants (Silbey 2005, p. 348).

Previous studies on legal consciousness have often focused on marginalised groups, such as the (welfare) poor (Sarat 1990), same-sex couples (Hull 2003, Harding 2006), undocumented migrants (Abrego 2011, Schwenken 2013), people discriminated by their race (Hirsh and Lyons 2010), and the disabled (Munger and Engel 2007). Although retirement migrants may be marginalised because of their age, and they may officially be unregistered residents of the host state, they are generally depicted as privileged migrants (cf. O'Reilly 2000) – as the opposite to marginalised and undocumented migrants. The majority of retirement migrants have the financial means to maintain dual residencies and resources and, since they no longer need to work, they do not feel the pressure to integrate in the host society. However, as discussed in the introduction, retirement migrants face specific risks related to their age. Physical and health constraints may make people vulnerable and this may influence their legal consciousness (cf. Munger and Engel 2007 in relation to disabled people).

In addition to their age and health situation, it is also likely that retirement migrants' legal consciousness is influenced by their migratory experience. Although few studies have been conducted in the field of transnational legal consciousness, studies on migration and legal consciousness already give interesting insights into the need to take the migratory experience into account (Abrego 2011, Schwenken 2013, Kulk and De Hart 2013). Schwenken (2013) shows, in relation to undocumented migrants in Germany, that migrants have to negotiate their rights, because of their precarious residence status. In their narratives, undocumented migrants do not only refer to the law of the host country but also to their experiences with law and social services in other countries. Their legal

consciousness is transnational in a sense that the consciousness of these migrants transcends the borders of states. Thus, although the focus in studies on legal consciousness has for a long time been on research in a national context, the legal consciousness of migrants shows that it is time to broaden the field and to move beyond the methodological nationalism.

So far no research has been conducted about the legal consciousness of retirement migrants, yet the work of Ackers and Dwyer (2002, 2004) on international retirement migration provides useful insights. They argue that national welfare states are incapable of responding to the fluid nature of the lives of retirement migrants. This situation “significantly disadvantages some individuals, [but] it also generates clear opportunities for ‘cherry picking’ and the careful manipulation of European and national systems” (Ackers and Dwyer 2004, p. 471). Thus although the law may constrain possibilities of some people, it can potentially be enabling for others.

### 3. Legal rules and long-term care

The ways in which Dutch retirement migrants build up a transnational life and talk about and use long-term care provisions is influenced by regulations which are issued on a national – Dutch and Spanish – and on a transnational or supranational – European – level. Two macro-institutional mechanisms play a role in the decisions Dutch retirement migrants make on a micro-individual level.

Firstly, national welfare states tend to see migration as problematic and as an anomaly. States therefore try to channel the mobility across borders (Waldinger and Fitzgerald 2004, p. 1178). European welfare systems presume a more or less static, demographically balanced, and bounded populace and these welfare states are incapable of responding to the increasingly fluid nature of people’s lives, as Coldron and Ackers (2009) conclude in relation to British retirement migrants in Spain. As EU citizens, retirement migrants can move freely within the European Union; however they cannot export all social rights from the country where they spent their working life (the Netherlands) to the country where they are spending their retirement (Spain). Long-term care provisions are typically welfare provisions which can only be received within the borders of nation-states.

The second mechanism relates to the European Union as a coordinator of welfare states. Although the EU promotes free movement of its citizens between the different Member States, differences between the welfare states may impede mobility in practice. The EU is not a welfare provider, but it coordinates – especially for migrant citizens – the different welfare systems of the Member States and the access to the national welfare systems of the host-Member State (Pennings 2010). Therefore, the continued diversity between welfare states throughout Europe remains of crucial importance to the Dutch retirement migrants. Although all EU Member States provide for home care, residential care, and often also payments for care or care allowances, differences continue to exist with regard to the universality of these provisions and the allocation of the responsibility to the family, the state, or the market. This is enhanced by cultural expectations and preferences with regard to the role of the family (Brandt *et al.* 2009). These differences between welfare states are clearly reflected when Dutch long-term care provisions are compared with Spanish long-term care provisions.

The Dutch long-term care provisions are based on universal entitlements to state support for dependant individuals (Pavolini and Ranci 2008, p. 249; cf. Geerts and Van den Bosch 2012). In the Netherlands long-term care is covered by the general exceptional medical expenses insurance act (AWBZ). The universal AWBZ insurance covers long-term care, nursing in nursing homes, and long-term hospitalisation. Until 2006 retirement migrants had the possibility to obtain a voluntary AWBZ insurance, however due to possible fraudulent behaviour and little interest in the provisions, Dutch AWBZ care is no longer available for people living in a foreign

country – except for those who already received long-term care abroad and those who are on holiday abroad (Klosse and Noordam 2010, p. 400). However, because of economic and demographic pressures, the Dutch long-term care system is currently changing and more long-term care responsibilities are allocated to the family and the market.

Guillén and Álvarez (2001, p. 107) point out that in the Spanish welfare system the emphasis is on families as the provider of long-term care. Spain is traditionally a country with extensive familial obligations and a rudimentary care infrastructure (Pavolini and Ranci 2008, p. 249). However, Spain is a country with an ageing population and access to informal care is decreasing, specifically since women are also working nowadays. In 2006 a new law for the promotion of independent living and help for dependent individuals (*Ley de Promoción de la Autonomía Personal y Atención a las Personas Dependientes*) was introduced. Its incentive is to support the dependent, including the elderly, with more long-term care provisions based on the grade of dependency (Costa-Font and García González 2007). The implementation is however highly fragmented across regions and the current economic crisis partly delayed the implementation of the system (Naldini and Jurando 2013). As a result, the elderly still have to rely on informal care provisions most of the time.

The differences between the welfare states brings about the question how Dutch retirement migrants deal with the absence of family members in Spain and the impossibility to export long-term care provisions from the Netherlands. Baldassar, *et al.* (2007) show that family care is not restricted to people who live in close proximity to one another. Transnational care – care across national borders – is important in the lives of migrants and the “stay behinds”. The ties within transnational families are often based on a caring relationship between the migrant and the “stay behinds”. Migration, geographical distance, borders, and the passage of time influence and transform the way in which care can be exchanged (Baldassar 2007, p. 293). The fieldwork data for this study shows that Dutch retirement migrants often maintain transnational caring ties with their kin in the Netherlands. Families find creative ways, for example through Skype and e-mail, to maintain caring relationships, however long-term care, and specifically nursing care, is a type of care which can only be provided in close proximity or in a crisis event. Thus, how do Dutch retirement migrants talk about and seek access to the long-term care provisions they need when their family members are living abroad?

#### 4. The research – methodology

This paper is based on 23 open-ended interviews, lasting between two to five hours, and a number of informal talks with Dutch retirement migrants who reside on the Costa Blanca. The majority of the interviews were conducted with couples, however in order to obtain insight in specific perceptions of men and women, some interviews were also conducted with men and women separately. I used ten interviews with key informants as additional data, including officials or staff of local authorities, health insurance and social service providers, consular officers, property agents, interest groups, and active members of Dutch associations on the Costa Blanca. The interviews were conducted between January and April 2012.

In Spain, two areas can be identified as having a high concentration of Dutch nationals: the Costa Blanca and the Costa del Sol (Rodríguez *et al.* 2010, p. 4). The fieldwork for this study was carried out on the Costa Blanca, since there one can find a high number of Dutch companies, doctors, lawyers, and long-term care facilities. As one of the respondents explains:

If you want to go to a supermarket here, you can go to a Dutch supermarket ... . If you need to go to a dentist you can go to a Dutch dentist. If you want to go to a doctor, you can go to a Dutch doctor. You can go to “Clinica Levantes” [hospital]



and they help you in Dutch. You don't need [Spanish] here. There is such a high concentration of Dutch living here.

Harry, 55 years

For a variety of reasons, but mainly to retain access to Dutch social security provisions, a considerable number of Dutch retirement migrants do not register as a resident in the country of retirement or deregister in the Netherlands.<sup>5</sup> Therefore, the migration of Dutch (and other) retirement migrants to Spain is hard to capture in the statistics (cf. King *et al.* 2000, Casado-Díaz *et al.* 2004, Rodríguez *et al.* 2010). Because of the fluid migratory pattern of Dutch migrants, a purposive snowball sample was the most suitable selection method. A non-random snowball sample offered the opportunity to reach both registered and non-registered retirement migrants and migrants who stay on a temporal, seasonal, or permanent basis in Spain. The main criteria for selecting respondents was that they were retired in the sense that they had chosen or had been required to give up paid work and that they moved to Spain following their retirement.<sup>6</sup> The respondents have different backgrounds considering their income, health situation, and social status. These different factors influence the choices retirement migrants (can) make and will be taken into account in the following sections.

In their study, Ewick and Silbey (1998) analyse encounters of people with the law in general, whereas in my study the focus is on a specific part of law, namely care provisions. It appeared that this specific part of the law plays a significant role in the lives of Dutch pensioners. It was a recurring theme which was most often brought up by the retirees themselves, both in the interviews and in the naturally occurring conversations. In order to hear if, when, and how the law emerges in the daily lives of Dutch retirement migrants, the respondents were not asked directly about the role of law in their daily lives. Instead, the interviews followed a life history approach with a focus on the decision-making process and the daily life experiences in Spain. When necessary, I continued to ask questions about the considerations and needs of retirees with regard to long-term care and the role it played in the continuous migratory decision-making process.

## **5. Setting the scene – Dutch retirement migrants on the Spanish Costa Blanca**

An increasing number of studies describe the trajectory of Northern-European retirees to the Mediterranean (cf. ; King *et al.* 2000, O'Reilly 2000, Gustafson 2001, 2008, Ackers and Dwyer 2002, 2004, Casado-Díaz *et al.* 2004, Rodríguez 2004, Casado-Díaz 2006, Bahar *et al.* 2009). Williams *et al.* (2000, p. 31) explain that the flow of retirement migrants to the Mediterranean is influenced by longer life expectancies and a decline in the legal retirement age which have led to an extension of the duration of retirement.<sup>7</sup> Furthermore, an increasing number of individuals have sufficient resources to consider living in a foreign country after retirement. One of these resources is knowledge of foreign destinations through activities such as tourism and through working abroad.

Studies on retirement migration show that the stay abroad is facilitated by an easy access to the region through fast and cheap airline connections between the Netherlands and the Mediterranean (Casado-Díaz *et al.* 2004, Huber and O'Reilly

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<sup>5</sup> Similarly, Rodríguez, Lardiés and Rodríguez (2010, p. 6) have found that the majority of foreigners in Spain do not register because they fear that their registration would mean that they have to contribute to the Spanish social security system and have to pay taxes in Spain. Consequently, retirement migrants are afraid that they will lose entitlements and benefits in their country of origin.

<sup>6</sup> In this paper the experiences of Dutch retirement migrants who refer to Spain as their main country of residence are taken into account. Since seasonal migrants have to deal with a slightly different set of rules, their experiences are not included in this paper.

<sup>7</sup> Recently, the retirement age was increased and early retirement provisions are broadly being abolished in the Netherlands. At the moment of the fieldwork many of the interviewed Dutch retirement migrants made use of early retirement provisions.

2004, Casado-Diaz 2006, Warnes and Williams 2006). Furthermore, an increase in communication possibilities has made it possible to stay in close contact with relatives abroad. Telecommunication such as Skype creates a sense of closeness from afar and the possibility to stay “up-to-date”, as one of the Dutch respondents explains. Low cost flights and cheaper communication possibilities have made it possible for retirement migrants to: “exploit, maintain and continue to develop residential opportunities, social networks and welfare entitlements in more than one country” (Warnes and Williams 2006, p. 1265). Dutch retirement migrants keep travelling to the Netherlands and/or retain a house or postal address in the Netherlands. By creating Dutch networks in Spain, maintaining a double social and family network, double residency, and by accessing care provisions in both countries, Dutch retirement migrants build up transnational ties.

In the municipalities where I conducted most of the interviews, the streets are dominated by shops, insurance offices, doctors, cafes, and restaurants which cater to foreigners. Some focus exclusively on one nationality, for example a Dutch butcher shop. Others try to attract people from different nationalities by advertising in various languages. While walking along the streets of the municipalities, one can observe that the average age of its inhabitants is above the national average. This is for example reflected in the supply of a wide range of provisions specifically for the foreign ageing population, such as hearing tests, home care services, thrombosis tests, and burial services.

Social clubs play an important role in the transnational life and social division of retirement migrants on the Costa Blanca. In this region, clubs are the main place to meet people and to build up a social network when retirement migrants arrive in Spain. Social clubs often focus exclusively on one nationality or one language group and in this way the creation of new networks takes place based on nationality. Together with shops, restaurants, and doctors, who focus on one specific language group, these clubs contribute to the emergence of different ethnic economies and networks which exist alongside one another. At Dutch clubs, but also during informal gatherings, at internet-forums, and in local Dutch newspapers, legal information is reproduced and exchanged. In this way one can speak of the occurrence of a transnational semi-autonomous social field consisting of Dutch pensioners living on the Costa Blanca. Within this transnational SASF, Dutch retirement migrants talk about, use, reinterpret, and perceive their rights. The following sections further elaborate on this by focusing on three stories which are told within the SASF of Dutch retirement migrants on the Costa Blanca.

## **6. Accessing long-term care provisions**

The stories of Dutch retirement migrants about accessing long-term care provisions often focus on two aspects: registration in Spain and deregistration in the Netherlands. When retirement migrants live more than eight months per year abroad they should officially deregister in the Netherlands and reregister in Spain and as a consequence retirement migrants lose the right to access Dutch long-term care provisions. Generally, the Dutch retirement migrants tell three stories about accessing long-term care provisions. Firstly, a group of Dutch retirement migrants can be found who retain their residency in the Netherlands and do not register in Spain. They may refer to themselves – and other Dutch retirees refer to them – as “illegal” or “holiday-makers”. They do not seem to care about official rules concerning registration in Spain and prefer to play with the rules in order to get the best of both (legal) worlds. I will clarify this by using the story of Michiel and Fieke. The second story which was told is relatively similar to the first one. Retirees who tell this story do not register in Spain and deregister in the Netherlands in order to maintain access to Dutch care provisions, yet the incentive to do so is different. They decide not to register out of fear and are in this sense more vulnerable and unable to play with the law. I will explain this story using Anne’s case. The last group which can be identified are Dutch retirees who do register in Spain and

deregister in the Netherlands. Because they have sufficient financial resources they do not fear losing access to the care provisions they need. They buy private care when they need it and are more footloose in this sense than retirees who tell one of the other two stories. I will use the case of André and Hannie to explain this story. These three stories reflect the self-classification made by several of my Dutch respondents:<sup>8</sup>

You have the full tax residents, the people who are ill ... and are registered in the Netherlands and the people who stay here – sometimes all year round – but do not register at all.

Harry, 55 years

In the analyses of the stories I will take the schemas of Ewick and Silbey (1998) into account. The stories Dutch retirees tell are often not purely a “before the law”, “with the law” or “against the law” stories. In their stories a combination of these different schemas are reflected, as is also the case in the study of Ewick and Silbey (1998). Although stories about law and legality are personal and differ per individual, I selected three cases which reflect different considerations which play a role in the decision-making process of where to reside and register after retirement.

### 6.1. “Illegal” – the story of Michiel and Fieke

I met Michiel and Fieke during a coffee morning at the Dutch club. When we started to talk about their life in Spain, the following conversation occurred:

Anoeshka: Are you living here permanently or only part of the year?

Michiel: [laughing] You know, we’re illegal here! We live here all year round and only go back to the Netherlands for a few weeks per year. It is not allowed of course, but as long as no one comes to check our situation it’s not a problem.

Anoeshka: What do you mean?

Fieke: Well, we live here, but we are not registered. Listen, we don’t want to be registered either, there is so much wrong with my health. ... I can just go to the doctor here with my Dutch healthcare insurance and if I need long-term care I can get it now.

Michiel: And we own a house in the Netherlands, so we want to have that as our main basis. ... Moreover, we are registered with the *padron* [the municipal registry of births, marriages and deaths]. I think it’s fair for them to know that we live here, because they get financial compensation from Madrid for each person who lives in the municipality. It is important to do this, but many people don’t register. ... My registration means that I can use the local swimming pool for only 48 euro per year. ... The bus costs me almost nothing now.

Field notes of my conversation with Fieke (66 years) and Michiel (72 years)

It is worth emphasising that the conversation with Fieke and Michiel took place in an informal setting. While several conversations on illegality took place, in a formal interview setting the retirees had the tendency to define themselves as holiday-makers, obviously aware of the legal implication of the word illegal.

Fieke and Michiel’s incentive to register with the local authorities corresponds with a “before the law” story (Ewick and Silbey 1998). According to Michiel and Fieke, to register with the local authorities is something one should do in order to contribute to the budget of the municipality so that they can provide sufficient resources for its inhabitants. More clearly, the interview fragment shows aspects of a “with the law” story. Michiel is well informed about Dutch and Spanish legal rules and this knowledge enables the couple to shop strategically between the two systems. By retaining their official residency in the Netherlands and their second residency in Spain, Fieke and Michiel can, firstly, maintain access to Dutch long-term care

<sup>8</sup> A fourth and important group of retirement migrants can be identified as well: the seasonal migrants. As is discussed previously, these migrants are not taken into account in this article.

provisions. Secondly, their Dutch health care insurance provides them with direct access to private short-term care provisions in Spain. And thirdly, their second residence in Spain provides them with access to the better parts of Spanish life, such as economic advantages. Retirement migrants who tell a similar story to that of Fieke and Michiel state that at the moment when they need long-term care and cannot care for themselves or each other anymore, they will go back to the Netherlands in order to receive the care they need. Ewick and Silbey (1998, p. 48) state that their respondents who act with the law “display less concern about the legitimacy of legal procedures than about their effectiveness for achieving desires”. This is also reflected in the story of Fieke and Michiel – and retirement migrants telling a similar story – who only accept part of the formal legal procedures. Ackers and Dwyer (2004), in their study on international retirement migration, refer to this group of retirement migrants as cherry-pickers – people who pick the best cherries from both legal systems.

One could also observe “against the law” aspects in the story of Fieke and Michiel. The couple distrusts the Spanish health care and long-term care provisions and decide to oppose legality. Fieke and Michiel state that they have heard horror stories about the Spanish care provisions and because of the unstable health of Fieke they prefer to retain access to Dutch care provisions. Therefore, they decide to resist the law and to avoid the costs of being registered in Spain.

In order to understand Fieke and Michiel’s narrative it is interesting to look at the broader Dutch network in Spain and how legal rules are reproduced in this context. Dutch social clubs organise for example information sessions on long-term care issues by inviting representatives of hospitals and nursing homes. Although these representatives generally provide information about official rules, they tend to contribute to the strategies of “getting away with it” and the practice of “cherry-picking” by indirectly informing the participants how they can access private long-term care provisions by retaining their main residency in the Netherlands. Also, during informal gatherings the topic of accessing long-term care is frequently discussed. A prominent member of one of the Dutch clubs on the Costa Blanca explained for example that he advises fellow Dutch pensioners to retain their main residency in the Netherlands, while living most of the year in Spain, in order to be able to access Dutch care provisions. In this way the Dutch social network contributes to the reinterpretation of legal rights.

### *6.2. Unable to play with the law – Anne’s story continued*

As is described in the introduction, Anne’s husband is severely ill. Anne expresses that she and her husband are considering going back to the Netherlands when she is no longer able to care for her husband. Anne gives the example of how she and her husband negotiated the absence of long-term care provisions when Anne’s husband was in the hospital the year before. During this period Anne could not take sufficient care of her husband, because of her own rheumatism and their son stayed longer in Spain so that he could take care of them:

My son had to stay here for another week to help. It was chaos at his company, because he was here for a week. I had that support yes, but it is not always possible. ... If we are in the Netherlands we get that support as well. But here it’s less of course.

Because Anne’s son had to go back to the Netherlands, Anne and her husband felt trapped between two welfare systems – the Spanish system where family members are expected to care and the Dutch system which does not allow the export of its long-term care provisions.

As was discussed in the introduction, when Anne and her husband bought the house they still assumed that they would be eligible for Dutch long-term care provisions in Spain:

I can't say that we considered a possible return to the Netherlands to receive care, because when we took the step, it was all possible.

After the Dutch law on the export of long-term care changed, Anne and her husband could no longer receive Dutch long-term care abroad. They therefore feel caught within the law and are forced to go back to the Netherlands when Anne cannot take care of her husband anymore. To a certain extent, Anne tells a comparable story about seeking access to long-term care as Michiel and Fieke. Anne and her husband also maintain their official residency in the Netherlands, because they feel the need to retain their Dutch health care insurance. They try to treat the law as a game and try to act "with the law", but it is a game in which they express more insecurity and precarity than Michiel and Fieke do. Anne's story is different, because she would prefer to stay in Spain instead of returning to the Netherlands when she or her husband would need long-term care. Anne and her husband therefore fear the possibility that they have to defer to the law's authority when they have to return to the Netherlands in the near future. The story of Anne and her husband thus reflects mainly "against the law" aspects. This is in line with findings of Ewick and Silbey (1998) who argue that marginalised people more often have to stand "against the law". Although I would not describe retirement migrants as a marginalised group, the age and health situation of Anne's husband make the couple relatively vulnerable.

Anne and retirement migrants who tell a similar story may feel victimised by changes in the law and argue that their ability to move is constrained by Dutch rules. Anne indicates that a number of Dutch retirees who are in the same situation had to return to the Netherlands after the law changed. While living in Spain and having no family members around, the legal framework may therefore impede their wish to live a transnational life and to stay abroad after retirement. When the law changed, Dutch migrants in Spain contributed to the exchange of information about and the reformulation of the Dutch law by organising informational meetings, publishing informative articles about the changes, and by discussing it in informal settings.

### *6.3. Being footloose – the story of André and Hannie*

Unlike the migrants of the previous stories, André and Hannie are registered in Spain. Retirement migrants who tell a similar story as André and Hannie have the skills and financial resources to be "footloose" as I will argue.

Anoeshka: What would you do if you would need long-term care?

Hannie: Well, we know that there are nursing homes here. We regularly go to Ciudad Patrica [a private nursing home], because we know people there. We always say: if we need care we will go to Patricia and pay for it. As long as we are still together we can still take care of one another. If that is no longer possible, and you will do that until the last moment, you have to make sure that you have sufficient money as a safety net. You sell your house and you spend your last money on care.

André: We also have a guesthouse, so the care providers can just bivouac there.

Hannie: That's also much cheaper by the way! [laughing]

[...]

Hannie: The funny thing is that if we would return in ten years, or I don't know in how many years, then the Dutch state wouldn't welcome us. We will not be able to go to a nursing home, because you have to wait for half a year before they are allowed to receive you.

André (69 years old), Hannie (66 years old)

André and Hannie calculated that they would have to pay less taxes in Spain and therefore decided to become Spanish residents. André and Hannie do not fear the lack of long-term care provisions in the future, because they can pay for the care

they need. Because of their financial resources, André and Hannie are not bound to a state and are therefore more footloose than the retirement migrants who tell one of the previous stories. The law intrudes less in their life – compared to “against the law stories” – and they do not need to play with the law in their life – as in “with the law” stories. The story of André and Hannie may therefore be qualified as a third group composed of retirement migrants who act “footloose”. These retirees obey the law, but doing so is more a coincidence because the legal rules are in their favour. Thus, retirement migrants who tell a comparable story do not correspond directly with Ackers and Dwyer’s (2004) classification of cherry pickers; these retirees do not have to pick cherries in both countries, because they would argue that the best cherries can be picked in Spain. This is in line with Ewick and Silbey’s (1998) argumentation that class, and consequently income, influences the legal consciousness of people.

Dutch retirement migrants who tell this story buy their care in the private sector. They often pay a lady to clean their houses and to provide them with daily care when needed. In case they may need more intensive daily care, they will enter a private nursing home. Thus, financial resources and often also the knowledge of the legal systems enable these Dutch retirement migrants to live a transnational life. This is similar to findings of Coldron and Ackers (2009) who argue that retirement migrants with more financial resources are not only better off in material terms in relation to accessing health care, but they are also more footloose and able to exercise greater autonomy in terms of deciding where to live in retirement.

#### *6.4. Retirement migrants and legal consciousness*

The three stories show that access to long-term care provisions is not evenly distributed and depends on personal characteristics (cf. Ackers and Dwyer 2002, p. 30), such as financial resources, knowledge of the legal systems, and stable health. These resources determine the extent to which Dutch retirement migrants can strategically use the legal system. The legal consciousness of Dutch retirees is flexible and not straightforward; in one account they use before, with, and against the law aspects. Thus, legal rules in relation to long-term care provisions constrain the choices of some Dutch retirement migrants (such as Anne) and their ability to move transnationally, but for others it also offers opportunities for strategic action (such as André and Hannie) or “legal system shopping” (such as Fieke and Michiel).

The theory of Ewick and Silbey (1998) on legal consciousness is a useful theory; however the stories of Dutch retirement migrants show that theories on legal consciousness should develop further in order to open its analysis frame to include transnational migrants who have to deal with more than one legal system. Four considerations stem from this research with regard to legal consciousness in a transnational context. Firstly, dealing with more than one set of legal rules creates more possibilities to play with the law and to choose provisions in one of the two countries. Secondly, it is interesting that few migrants tell a “before the law” story, possibly because the law is no longer predictable when one lives in a foreign country. Thirdly, the possible absence of “before the law” stories may be enhanced, because talking about and dealing with legal rules plays an important role in the gatherings of Dutch retirement migrant communities. Finally, while talking about, using, and seeking access to national legal rules, these national rules become part of the transnational semi-autonomous social fields of retirement migrants. National legal rules do not only impact citizens who live within the borders of the state, but they also impact citizens who have the wish to move transnationally. Through analysing the perspectives of retirees who have to deal with national laws in a transnational setting, one can see that fixed national rules get a transnational aspect.

It is interesting that in the narratives of Dutch retirement migrants the Dutch rules take a central position. Also, Spanish private care provisions and Spanish rules with

regard to registration are present in the narratives of Dutch retirees. European rules are only visible in the background; this reflects the idea that although Dutch retirement migrants move freely within the European Union, they are still influenced by national (Dutch and Spanish) rules. This is also reflected in Anne's story. She states that she feels European, yet when asked if her EU citizenship provides her with specific possibilities, she states: "Well, you still have that handicap of the insurance problems. It is Europe, but I don't notice much of it".

## 7. Conclusion

By focusing on legal consciousness, transnationalism, and long-term care provisions, it is discussed how Dutch retirement migrants deal with and talk about legal rules at a micro-individual level. The stories of Dutch retirees about legal consciousness show that law both enables (free movement) and constrains (access to long-term care) the transnational life of Dutch retirement migrants. The legal consciousness of Dutch retirement migrants is diverse and is influenced by their age, wealth, and health. The finding that personal characteristics influence the way people talk about and (can) use the law is in line with conclusions of previous studies on legal consciousness.

Another important characteristic of the individuals in this study is the aspect of being a transnational migrant. The social life of migrants is not confined by nation-state boundaries, and therefore their legal consciousness also transcends the boundaries of nation-states. Because of their migratory experiences, retirement migrants in this study have to deal with other sets of rules than retirees who stay in the Netherlands after retirement. Paying attention to the migratory experience of the research objectives not only acknowledges that migrants have to deal with more than one set of legal rules, but it also deepens our knowledge about legal consciousness in general. It can help to understand in which context individuals tell a specific law story. It is for example striking that few of my respondents tell a "before the law" story, probably because their migratory experience forced them to deal with the law. Whereas most fields of research abandoned a national lens some time ago, it seems that this shift still has to take place among scholars researching legal consciousness. Especially when studying migrants, a transnational lens should be adopted, since it provides further insights into the dynamic forces of legal consciousness. Migrants may become undocumented or lose welfare rights and as a consequence they have to deal with this new legal framework which influences their legal consciousness. Furthermore, a transnational lens may also be useful for non-migrants because the process of globalisation has attracted the attention and focus of every citizen across the borders of nation-states.

These criticisms on existing studies on legal consciousness are inspired by the concept of transnationalism. Vice versa, one could argue that the law and dealing with the law should be more central in studies on (retirement) migrants' transnationalism. How does dealing with the law influence migrants' migratory experiences and their daily life experiences? And, how does dealing with law influences and/or intersects with migrants' feelings of belonging in one of the two or both countries?

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