

NETHERLANDS

Arjen VAN RIJN

I OVERVIEW

The federal system of the Kingdom of the Netherlands is a heritage from the colonial period. After the Second World War, some of the Dutch colonies decided to maintain constitutional ties with the Netherlands. These colonies were Suriname in the northern part of the South American continent, and six islands in the Caribbean Sea (Aruba, Bonaire, Curacao, Saba, Saint Eustatius, Saint Maarten), which are called the Netherlands Antilles. Suriname and the Netherlands Antilles received an autonomous status within the Kingdom of the Netherlands. Negotiations between the Netherlands, Suriname and the Netherlands Antilles led to a federal constitution, the Statute of 1954. According to this Statute, the Kingdom of the Netherlands comprised three autonomous countries with equal status: the Netherlands (Holland), Suriname and the Netherlands Antilles. In 1975, Suriname became independent. In 1986, the island of Aruba seceded from the other islands of the Netherlands Antilles and became an autonomous country within the Kingdom of the Netherlands. Right now the Netherlands and the Netherlands Antilles are negotiating about a restructuring of their relations. The islands of Curacao and Saint Maarten will each receive the status of autonomous country within the Kingdom, similar to Aruba. The islands of Bonaire, Saba, and Saint Eustatius will become integral parts of the Netherlands. This means that in the near future there will be four autonomous countries instead of three: the Netherlands (Holland), Aruba, Curacao and Saint Maarten.

Because of the colonial past, the large distances between the European part of the Kingdom (Holland) and the overseas parts, and the decolonisation status of the overseas territories, the ties between the several countries of the Kingdom have always been quite loose. The overseas territories could always exercise their right to self-determination and become independent. However, there is a growing sentiment that the independence of the Caribbean territories is not a realistic option in the foreseeable future, because as a consequence of their size, the islands are economically and otherwise too vulnerable. As a consequence, the Netherlands are taking more and more responsibility for the development of the Caribbean islands, with their consent.

II. THE FEDERAL DISTRIBUTION AND EXERCISE OF LAWMAKING POWER

1. *Central Legislative Jurisdiction*

Constitutional text and doctrine formally allocate the following matters to the central legislative authority: foreign affairs, defence, nationality, matters concerning sea-going vessels, supervision of immigration policy, supervision in the field of good governance (Articles 3 and 43 of the Statute). These powers are all exclusive. The Statute of 1954 itself is the most important and most frequently used source authorizing central government regulation. In practice, the most important areas of central regulation are in the making and ratification of treaties, nationality law, maritime law, and supervision in the field of good governance.

2. *State Legislative Jurisdiction*

The Statute of 1954 reserves to the component states all areas that have not been explicitly allocated to the Federation. When activities in these areas require international agreements, the Federation is obliged to facilitate this, unless this would be against the interest of the Federation. There are no concurrent powers. Thus, all areas except the areas in which the Federation is the competent power are important

areas of component state regulation. Where there are conflicts between state and federal law, federal law takes precedence over state law through the principle of supremacy of federal law.

The local municipalities in the Netherlands have law making powers in the areas of the municipal household, unless the legislature of the country decides that the legislation concerning a specific issue must be determined at the central level of the component state. The municipalities in the Netherlands Antilles have law making powers in all areas that have not been specifically allocated to the country of the Netherlands Antilles as a whole. Aruba does not have local municipalities.

III. THE MEANS AND METHOD OF LEGAL UNIFICATION

1. *The Exercise of Central Power (Top Down)*

The central power does not harmonize law through directly applicable constitutional norms, but rather through central legislation. For example, this is the case in the field of nationality law and maritime law. While it is possible for the central power to pass legislation mandating that the component states pass conforming implementing legislation, this does not occur very often. Yet the central power will neither attempt to induce the states to regulate by conditioning grants on compliance with central standards, nor will it threaten to take the field in the face of state inaction (or state action that conflicts with central power), except for situations where good governance is at stake. The procedure to come to central regulation in such situations is very complicated. The courts also do not play a role in legal unification, and there are no other centrally-controlled means by which to harmonize Dutch laws.

2. *Formal or Informal Voluntary Cooperation among the States (Bottom Up)*

The component states are free to accomplish joint legislation in any field that belongs to the autonomy of the component states (Article 38 of the Statute). Furthermore, Article 39 of the Statute creates an obligation to seek concordance in the field of civil and criminal law and related issues such as intellectual property and measures and weight. Article 37 of the Statute creates an obligation for the component states to consult each other concerning certain issues like economic, financial, monetary, cultural and social relations.

The courts do not especially stimulate voluntary co-ordination and co-operation. Yet, there is exchange of expertise between government organisations on the working level. There is also exchange of personnel between government services.

3. *Legal Unification through Non-State Actors*

Non-state actors play a role in Dutch legal unification. There is a lot of co-operation on the working level between NGOs, Chambers of Commerce, local communities etc.

4. *The Role of Legal Education and Training on Unification*

Law schools draw students from throughout the Kingdom of the Netherlands: law students from the Netherlands Antilles and Aruba can attend law schools in the Netherlands and vice versa. The University of the Netherlands Antilles and the University of Aruba have made specific co-operation agreements with individual universities in the Netherlands (Erasmus University Rotterdam and University of Groningen, respectively). After law school, many graduates from the Netherlands work in the Netherlands Antilles and Aruba and vice versa.

Legal education focuses on component state law. Legal education in the Netherlands Antilles and Aruba also pays much attention to the federal law system because federal law plays an important role in Antillean and Aruban law. Legal education at universities in the Netherlands does not pay much attention to federal law because there is little awareness that the issues of federal law (foreign affairs, defence and nationality, etc.) are subject to rules that are different from the rules that apply to the law of the Netherlands as such.

Every component state has its own bar admission system. The Bar Associations are preparing for mutual recognition of admissions, but the actual admission to the bar is by the component State.

Besides the universities mentioned above, the courts in the Netherlands Antilles and Aruba play an important unifying role. Many judges from the Netherlands work as a judge in the Antillean and Aruban courts for some years.

5. External Influences on Legal Unification

Compliance with international legal obligations plays a role in legal unification, especially as far as human rights treaties are concerned. It is worth noting, however, that the Netherlands Antilles and Aruba are not full members of the European Union, so European law does not apply on the Caribbean islands of the Kingdom. Voluntary international coordination with harmonization does not play much of a role in legal unification.

IV. INSTITUTIONAL AND SOCIAL BACKGROUND

1. The Judicial Branch

There is no central court in the Netherlands; there are only state courts. These can interpret component states law except for acts of parliament.

2. The Relationship between the Central and Component State Governments

The central government has the power to force the component states to legislate on federal issues. The central government also has the power to force the Netherlands Antilles and Aruba on other issues if this is necessary from the perspective of good governance. Either the central government or the component states execute central law, depending on the choice of the legislature.

The federal government and legislature are composed of representatives of the component states. The representation of the Netherlands (Holland) is dominant, because the federal government and legislature uses primarily representatives from this part of the country, supplemented with representatives of Antillean and Aruban government and legislative bodies.

The Netherlands (Holland) government forms an integral part of the government of the Federation. The Antillean and Aruban representatives in the federal government are appointed by the governments of the Netherlands Antilles and of Aruba. The Netherlands (Holland) parliament also forms an integral part of the parliament of the Federation. The Antillean and Aruban representatives in the federal government form also *qualitate qua* part of the federal parliament. The other delegates from the Netherlands Antilles and Aruba in the federal parliament are appointed by the parliaments of the Netherlands Antilles and Aruba.

There is a federal act that regulates taxation issues between the component states, including the prohibition of multiple taxation. There is no revenue sharing between the federation and the component states. The Federation does not have its own budget; federal expenses are paid from the budget of the Netherlands.

3. Other Formal or Informal Institutions for Resolving Intergovernmental Conflicts

Article 12 of the Statute of 1954 provides for a special procedure for solving conflicts between the component states within the federal government. The objective is to find consensus; but if consensus is not possible, the opinion of the representatives of the government of the Netherlands within the federal government will eventually prevail.

4. The Bureaucracy

The central government does not have its own civil service. The civil service of the Netherlands also takes care of federal issues. For federal activities in the Netherlands Antilles and Aruba, the Federation makes use of both civil servants of the Netherlands Antilles and Aruba governments and of civil servants from the Netherlands. There is a lot of exchange between the systems on the working level. There is special legislation on the component state level in order to secure civil servants' pension and other rights.

5. Social Factors

The population of the Netherlands is dominantly European/white; the population of the Netherlands Antilles is dominantly African/black; and the population of Aruba is dominantly South American/white. The level of economic and social development in the Netherlands is substantially higher than in the Netherlands Antilles and Aruba. The official language in all countries of the Kingdom is Dutch. Most people in Aruba, Bonaire and Curacao speak Papiamentu, which is the second official language of those islands. Most people in Saba, Saint Eustatius, and Saint Maarten speak English. There is no concentration of distinct groups within certain regions.

Differences in development are due to the autonomy of the component states in social and economic fields.

V. CONCLUSION

In the Kingdom of the Netherlands, the federal relationship between the Netherlands (Holland), the Netherlands Antilles and Aruba is based on the decision of the Netherlands Antilles and Aruba not to become independent. This means that the co-operation on the federal level is restricted to matters of sovereignty (foreign affairs, defence, and nationality) and to federal supervision in the field of good governance. However, there is an obligation for the component states to seek concordance in the field of civil and criminal law and related areas. Because of the historical ties and because of the size of the Netherlands Antilles and Aruba, these countries have also adapted (the principles of) the Dutch legal system in many other areas of law. Legal developments in the Netherlands often have their impact on the development of law in the Netherlands Antilles and Aruba as well. The restructuring of the Netherlands Antilles in the near future will inevitably lead to closer co-operation between the Netherlands and the Caribbean islands of the Kingdom in many fields.