ARTICLE

Religion and Law in the Netherlands

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ABSTRACT *Religion remains an influential force in our time despite the prophesy of secularization theory which argued that religion will fade away. In the context of migration this expectation hardly came through even in Europe where secularization is deeply rooted because presence of Muslim and other faith groups poses many challenges. This article examines the trajectory of state-religion relations in the Netherlands and looks at impact on Muslims in this country.*

Historic Background

The last explicit change to the model of church and state relationships in the Netherlands took place in 1796. In that year, "separation of church and state" was first proclaimed. The proclamation of separation of church and state– a quite novel step– came as a reaction to the system under the Republic of the United Netherlands (1579-1795) in which the Dutch Reformed Church was the established or privileged church. The proclamation of the separation of church and state constituted a fundamental change. At the time, it was obvious that both the Republic and its church and state system had outlived themselves. The period that followed (1796-1813) was politically and constitutionally quite turbulent. After being a Kingdom under the rule of Louis Napoleon, a brother of Napoleon Bonaparte, from 1810 to 1813, a fresh start was made in 1814. In this year the Kingdom of the Netherlands, a decentralized unitary state, was established, of which Belgium formed a part from 1815 to 1830.

The current state and its constitution gradually developed from 1814 onwards. During the 19th century, the constitutional system developed into a

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full-fledged parliamentary system with universal suffrage for every citizen of 18 years and older based on a mature understanding and functioning of the rule of law. The system of church and state relationships also developed over the course of time. The proclamation and acceptance of "separation of church and state" was important. However, in the beginning it was not altogether clear what it should mean in practice for all the relevant areas of the law. Furthermore, the social, religious and demographic realities did not change overnight. Religion remained engrained in the functioning of society and in societal institutions, and its continued importance was respected by the law.

In the beginning of the 19th century, the state had a substantial influence in church affairs. The recognition of institutional freedom of religion, for which the constitutional revision of 1848 was of paramount importance, led to more autonomy of churches vis-à-vis the state. The establishment of regulations and internal organization of the Dutch Reformed Church, the Lutheran Church, and the Jewish Community by the King, for instance, became obsolete in the decades to follow. The acceptance of the full institutional freedom of religion enabled the restoration of the Roman Catholic bishopric hierarchy in the Netherlands in 1853. Among the other most significant developments was the agreement regarding the dual school system, in which both public and private schools were funded by the state on equal footing. This agreement was reached in the Constitution in 1917.

Even up to the present day, the principle of separation of church and state has never explicitly been delineated in the Constitution or in any other legal document. It is useful to keep this fact in mind in order to understand the Dutch model of the church and state relationship, as well as the current dynamics and debates in this field.

The Netherlands has always been a pluralistic country in terms of religious belief. Christianity is predominant, yet within Christianity a wide variety of denominations is represented. Even during the time of the Republic, there were various protestant churches, and from the early 19th century onwards, a variety of separations took place which continues even in the present time. There are also various, long-standing Jewish religious communities.

Church membership in the Netherlands has undergone a strong decline over the last few decades.[1] In 2014, the Dutch population amounted to about 16.9 million in total, according to the Central Bureau of Statistics (CBS). Figures from the research institute KASKI of 2012 show that Roman Catholics in the

Netherlands number 4.044.000, comprising 24.1% of the population at the time of measurement. In 2012, the number of members of the Protestant Church in the Netherlands amounted to 1.762.000 members, equaling 11% of the population.[2] Membership numbers of the many other protestant denominations are small. Over the last few decades, the numbers of Hindu and Muslim believers have both increased significantly. It is estimated that there are currently about 1 million Muslims in the Netherlands. As there are no formal registrations of religious believers, and the various religious communities have different criteria as to whom they consider to be their members, the numbers are always estimates. Generally speaking, Dutch law has traditionally been sensitive to the religious needs of minorities.

The Netherlands is not only a pluralistic country in terms of religious beliefs; it is also a secularized country. By the end of the 19th century, the first wave of secularization had already occurred. Presently, religious issues, and issues regarding the relationship between church and state are returning to the forefront of public attention.

Religion, Culture, and Society in the Netherlands

Religion has traditionally played an important role both in individual people's lives, and in Dutch society at large. As we have seen, the Netherlands has always been highly pluralistic in terms of religion and belief. Dutch culture is also characterized by pragmatism. This may sound paradoxical, but highly pluralistic societies need a certain degree of pragmatism in day-to-day life in order to function. The existence of many Christian and Jewish minorities in the Netherlands has left an imprint on the formation of church and state relationships and, more generally, on Dutch laws relating to religion. Generally speaking, the Dutch system can be characterized as an open system, one adaptable to change.

A second characteristic of Dutch society is that of "pillarization" meaning that Dutch society was organized along denominational lines. Traditionally, in the Netherlands, churches or church-affiliated organizations have played, and continue to play, an active role in social and cultural domains. We may think, for instance, of schooling, youth activities, health care institutions, social support, and mass media. With the expansion of the state in these domains from the 19th century onwards, and more prominently in the 20th century, the state had to accommodate these initiatives in those areas in which the state itself became active. This resulted in a system of, on the one hand, state facilities in these domains, which are neutral from the point of view of religion and belief, and, on the other hand, the existence of confessional facilities. The quality requirements and the financing system are usually the same for both.

An action committee supporting high school student Imane Mahssan who was prohibited wearing a headscarf at the school in Amsterdam, on August 19, 2011.

AFP PHOTO / LEX VAN LIESHOUT

A third characteristic of Dutch society is that political activities are organized, at least in part, along confessional lines. The largest confessional party is the Christian Democratic Party. There are also a few smaller denominational parties. Dutch electoral laws are based on the model of proportional representation, which means that the variety of political opinions is reflected in parliament. Because a large variety of political parties are represented in Parliament, there is always the need to build coalitions between the larger parties.

The Dutch Model of State-Religion Relations

The Constitution

The current relationships between the state and religion are based on the Constitution. In 1983, a general revision of the Constitution took place. This revision also reformulated and modernized the first chapter on fundamental rights.

The Constitution does not explicitly make any statement regarding the form of church and state relationships. The principle of separation of church and state is regarded to be implicitly embedded in the Dutch Constitution, notably through the guarantee of freedom of religion and belief (Article 6), and the provision on equal treatment and non-discrimination (Article 1). Also of special importance is Article 23, which guarantees freedom of education and which introduces the system of publicly financed private elementary schools, the majority of which are confessional, as an option alongside public schools. This system has been extended by ordinary law to confessional secondary schools, as well as universities and professional schools. Of course, other fundamental

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human rights are important as well, both within the context of church-state relations and beyond, among them being freedom of expression and freedom of the press, as well as freedom of assembly and association.

The Constitution does not mention churches. In other words, it does not refer to the institutional dimension of freedom of religion. Article 6 of the Constitution speaks of freedom of religion or belief "individually, or in community with others". Nevertheless, it was acknowledged during the process of revising the Constitution that Article 6 protects institutions as well. Churches therefore also enjoy freedom of religion. They enjoy other fundamental rights as well, if applicable. Freedom of religion as guaranteed by the Constitution is meant to be far-reaching. It entails not only the right to hold a religious opinion, but also the right to act according to that opinion.

A particularity of the Dutch Constitutional system is that Acts of Parliament are inviolable (Article 120 of the Constitution). This means that the courts do not have the power to review Acts of Parliament as to their constitutionality.[3] Acts of Parliament, of course, must be in harmony with the Constitution, but Parliament is, itself, the legislative body which determines this. Because of the ban on constitutional review of parliamentary legislation and the absence of an explicit statement defining the separation of church and state, there is hardly any case law on the meaning of the principle of separation of church and state. The precise meaning of the separation of church and state in the Netherlands is thus a combined understanding of the Constitution and the whole system of secondary legislation and the way it has evolved.

Separation of Church and State

The Dutch system of separation of church and state is different from the French system of *laïcité* and the "Wall of Separation" of the United States. The Dutch system is much more open towards the presence of religion in the law and in the public domain more generally.

The Dutch separation of church and state refers to the institutional independence of the church from the state, and vice versa. The state does not choose sides in theological disputes; it is not allowed to set religious norms as such. On the other hand, public authorities may not exclude confessional organizations from receiving subsidies just because they are confessional; their appli-

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cation for subsidy must be considered purely on the basis of whether they fulfill the objective criteria for subsidies of that kind.[4]

There is no single office, ministry, or directorate responsible for the public administration of religious affairs. This fact is due to the separation of church and state. In the 19th century, for a brief period, such ministries did exist, one for the reformed and other non-Catholic religions, and one for the catholic religion. Also, there is no single "Law on Religion" in the Netherlands.

Naturally, in the ordinary course of their work, many public ministries have to deal with issues that touch on religion. The Minister for Education, for instance, has to deal with confessional schools. The Minister of Defense appoints chaplains in the armed forces. The Minister of Culture is involved with monumental buildings, including church monuments. The Ministers of Justice and Immigration are involved with issues of religion within the sphere of their competences, such as the chaplaincy service in penitentiary institutions and the immigration of foreign clergy members. The Minister of the Interior has a specific responsibility for constitutional affairs, including fundamental rights, which include the freedom of religion. The integration of minorities also touches on religious issues. Although these examples may give the impression that there is an enormous involvement of public authorities with religion, this has traditionally not been the case. However, it must be noted that in the last few years, a new dynamic is developing in this field.

Obviously, contact between churches and the state takes place. For issues concerning the legal church-state relationships, the Christian churches and Jewish synagogues have established a joint interface: the Interchurch Contact in Government Affairs (*Interkerkelijk Contact in Overheidszaken,* or CIO),[5] which currently represents over 30 churches of different persuasions, including Orthodox churches and the three Dutch Jewish communities. This organization was set up over 70 years ago by a handful of churches; its membership has increased in the course of time. It is not sponsored by any public funds; rather, it is solely an initiative of the churches and consists only of persons nominated by their respective churches or synagogues. The CIO discusses the development of issues of common legal interest to its member institutions, and formulates joint positions which it then communicates with the government and parliament, whenever necessary. The CIO has no formal power in relation to the government, and of course churches can contact the government on their own behalf as well.

Muslims have encountered difficulties regarding self-organization in the Netherlands. The large groups of Muslims emigrating notably from the 1970s onwards took time to get acquainted with Dutch society. Moreover, they may not have considered self-organization necessary, given the uncertainty as to whether they would permanently settle in the Netherlands. Furthermore, differences among Muslims themselves, in terms of national backgrounds or religious differences also played a role. At present, a few organizations have developed in this field; notably, the CMO (*Contactorgaan Moslims en Overheid*)[6] and the CGI (*Contactgroep Islam*), have emerged as discussion partners between their constituents and the public authorities. It is not always clear to what extent the issues in question are religious issues or, more generally, minority issues, or else whether the focus is on "church and state" issues or on more general societal issues, such as the position and integration of Muslims in Dutch society. It would be best to view these organizations as dealing with a mix of these matters.

The Church as a Legal Entity

The church as legal entity is a category *sui generis*, distinct from other legal persons and entities such as associations or foundations. The Civil Code simply states, "Churches, independent units of churches and structures in which they are united shall have legal personality" (Article 2:2 Civil Code). The inclusive wording of the code provides room for a variety of organizations to have legal personality. These range from highly decentralized churches, such as some reformed churches which regard every local parish as a "church" and the central organization as an umbrella structure, to the more hierarchically structured Roman Catholic Church, where the central organization is the Church and the parishes are independent units. There is no system of recognition for these entities, nor is there any obligatory registration of churches as such.

The Civil Code also states that these church entities: "shall be governed by their own statutes in so far as they do not conflict with the law". Churches may have their own system for dispute resolution (for certain types of disputes), but access to state courts, which is guaranteed by the Constitution, remains available in areas for which state courts are competent. Islamic organizations are not organized as a "church" (although they have the freedom to do so), but usually, rather, as an association or foundation for the management of a mosque and for the employment of an imam.

In addition to the Civil Code, the special position of churches is taken into account in other legislation as well. The General Equal Treatment Act,[7] for example, exempts churches and religious offices from its scope. This Act forbids the public and private sector to make distinctions between people on the basis of religion, among other things, in a wide area of social activity. Confessional organizations are not exempted from its scope, but the Act respects the right

of confessional organizations, including schools, to take religion into account in hiring and firing personnel. Thus, the Act tries to balance the fundamental rights of equal treatment on the one hand, and freedom of religion, education, and assembly on the other hand.

There are also other examples of Acts of Parliament that respect the religious identity of churches and confessional organizations. Traditionally, the clergy are not regarded as "employees" in the ordinary legal sense of the word. Therefore, and in order to secure the institutional freedom of the church, the ordinary legislation that governs employer-employee relationships, including grounds for dismissal, does not apply to clergy members. Over the course of time, some developments have taken place in this field. From the middle of the 1970s onwards, for example, the case law of the social security courts began to accept that a holder of spiritual office can be regarded as an employee for the purpose of the application of social security law. As a result, spiritual office holders are entitled to the benefits of that legislation.

The Interplay between Church and State: Financial and Institutional Aspects

Financial Relationships between Church and State in General

The system of church and state relations in the Netherlands does not allow for state funding of religious activities as such. For this reason, churches are generally funded by the believers themselves. However, in practice, there are a variety of ways in which funding of religious activities takes place. While it is not possible to give an exact indication of the actual amount of support, the following analysis will provide insights into the financial significance of that support.

Societal Activities Provided by Churches

Churches and church-affiliated organizations were active in such fields as education, welfare and health care, long before the establishment of the Dutch decentralized unitary state in 1814. In the course of the 19th century, the state slowly started to systematically organize and provide activities in these fields as well. Thus, eventually a system of parallel activities developed: those offered on a private, often denominational basis, and those offered by public authorities on a neutral, non-religious basis. This pattern continues to the present day, although increases in regulation and financial intervention by the state in these domains have also extended to private providers. As a result, these activities are usually regulated by the same body of law and share in the same financial system, which is often quite complex. The denominational background and inspiration of the activities provided on a confessional basis is respected by the law. Except for the field of education, notably elementary education, the

confessional, denominational dimension in these organizations has often become less pronounced in practice as a result of secularization processes.

The context of education is the most obvious place to make some remarks on the freedom of religion for youngsters

A new development in the social domain involves the transfer of many competences and responsibilities from regional and central government to local government. Among other things, these responsibilities include social support to enable people in need of special facilities to continue to live at home and participate in ordinary life. This transfer, that took effect in 2015, goes hand in hand with substantial budget cuts. It is expected that this development will lead to increased social initiatives on the part of religious organizations, and greater cooperation between religious bodies and local government.

Education

As regards education, the Constitution outlines the main elements of this dual system. Freedom of education allows private, confessional education to exist alongside public schools. Freedom of education entails freedom to found a school, to administer a school, and to determine the confessional identity of a school and its education. According to the Constitution, elementary confessional schools are financed by the state on the same footing as public schools. For secondary education and higher education, including universities, this system is adopted through ordinary legislation (as we have mentioned above). Currently, Islamic schools are also established and funded through this system, both at the elementary and secondary levels. Confessional schools are quite popular in the Netherlands; about two thirds of the schools are based on a religious confession.

The confessional school authorities determine the confessional character of the school. This can range from strict to quite liberal. Generally speaking, school authorities may also determine whether they have an open admission policy for pupils, and may require loyalty to the religious denomination for (specific) staff, or for both staff and pupils. However, in determining this, they need to remain within the margins of the law, notably the General Equal Treatment Act. This means, at minimum, that they cannot act at will, but must carry out their policy in a consistent manner.

Public schools teach religion. This is done on a neutral, non-confessional basis, and the school authorities do not interfere with the religious doctrines. Thus one might more accurately call this teaching *religious*. Public elementary schools may also offer the option for religious education on a confessional basis as an elective, outside of the normal curriculum. If they do so, this ed-

A woman taking part in a countermarch against a rally of the far-right group Pro Deutschland which staged a protest under the banner "Islam does not belong to Germany" near the mosque in Berlin marking the end of Ramadan, on August 18, 2012.

AFP PHOTO / BARBARA SAX

ucation is publicly funded. The same set of rules also applies to non-religious humanist education.[8]

The context of education is the most obvious place to make some remarks on the freedom of religion for youngsters. No age limits, minimum ages, or time limits exist for children who want to attend religious courses offered by churches or religious groups. In fact, it is very common, both in Christian Catholic and Protestant Church services, for parents to take their little children with them to attend the "children's church" or "Sunday school," which is often provided in tandem with the worship of their parents. Special Sunday schools offered after the church service also exist. Teenage Protestant children often attend catechism classes before officially joining the church as adults.

As a matter of legal doctrine, it is recognized that minors enjoy fundamental rights, including freedom of religion. The degree to which they can exercise these rights independent of their parents (and even in relation to their parents) is regarded as dependent on their age.

Other Socio-Cultural Activities

The Dutch state traditionally plays a significant role in the redistribution of financial resources through the tax system. It has developed a well-organized and complex system of facilities for the well-being of its citizens. Traditionally and certainly at the height of the welfare state, the state (including, notably, local authorities) funded many activities in the socio-cultural sector. This was

often done on a voluntary basis, not being required by the Constitution or parliamentary legislation, and could include cultural activities, sports activities, or youth activities. These were often carried out by the private sector but funded through public subsidies. If these activities were also offered on a denominational basis, and fell within the objective criteria under which subsidies were offered, they could not be excluded on the basis of the fact that they had a denominational background. The only exception would be if the denominational affiliation resulted in objective differences that were relevant in terms of the subsidy regulation. Although such subsidies have decreased in the last few decades, due to the pervasive necessity of public budget cuts, this general rule still applies.

Chaplaincy Services

Public institutions like the armed forces and penitentiary institutions have chaplaincy services, which are funded by the state. The justification for this practice is the right to freedom of religion for the individuals concerned: they live under extraordinary circumstances by which they cannot take part in ordinary religious life; the state has some responsibility for people living in these circumstances, and, therefore, the state has a positive obligation to provide for their religious needs. The chaplains are appointed by the Ministers of Defense and Justice respectively.[9] The religious denominations involved propose the chaplain to be nominated (whether Christian, Jewish or other). The Catholic Church proposes candidates for the Catholic chaplaincies. The Protestant Churches co-operate together for this purpose. Apart from Christian denominations, other religions are recognized for this purpose and represented as well. Of course, the numerical situation must be such that the employment of a chaplain of a certain denomination makes sense. When numbers remained too low to warrant the employment of a chaplain, as was certainly the case initially for those of Islamic belief, the practice developed of involving a chaplain on a contractual basis for the services delivered.

As hospitals are organized, run, and funded in a different way, the organization of the chaplaincy service there is slightly different. Hospital boards employ chaplains or involve them on a contractual basis. They are funded through the general hospital funds. An Act of Parliament guarantees the availability of such spiritual care as part of the overall care that the institution provides.

Church Buildings

Generally, church buildings are financed by the churches themselves. Many church buildings, notably Christian church buildings, are designated as monumental buildings. Such buildings typically qualify to receive public funds for their maintenance and restoration. Public funds also exist for other monuments that form part of the cultural heritage of the country, such as castles, windmills, farms, and city houses. However, these funds only cover part of the

costs. It is becoming increasingly difficult for churches to find the financial resources necessary for the upkeep and restoration of their buildings, both monumental and non-monumental alike. With regard to church buildings, some specific arrangements have developed in the fiscal sphere; their purpose is to alleviate any undue burdens on the owners of church buildings.

In the past, temporary arrangements have been made to support church communities in the establishment of new church buildings. This was the case, for instance, where land was reclaimed from the inland sea and new villages and cities were erected. For the purpose of supporting Muslims in the establishment of mosques, temporary subsidies regulations were also enacted. These have now expired.

Tax Facilities

The final category of public support for religions is that of tax facilities. A variety of mechanisms exist in this field. Exemptions or reduced tariffs are available in the context of the inheritance tax and donations by groups and individuals to churches. Thus, the state encourages private financial donations to churches and, more general, to religious causes. These facilities are not exclusively available to the religious sector. They are available for all sorts of charitable institutions and charitable purposes.

For a donor to qualify for tax benefits, the recipient must be registered as a charitable organization with the competent tax authority, and must meet a variety of criteria to qualify as an "Organization Aiming at Public Benefit" (ANBI). These criteria include norms on maximum payments for office holders, and the existence of a policy plan appropriate to the organization's charitable aims. These qualifications are assessed in advance and monitored by the tax authorities.

Religious Minorities and Islam in the Netherlands

The Legal Status of Minority Churches and Minority Religions

Although churches are considered legal entities, there is no definition of a church in the Constitution or in legal texts. There is likewise no definition for a religious minority in any legal text. Therefore, no religious groups can be "recognized" as a religious minority, because religions are not recognized in general. Nor do they need recognition.[10] "Minority" individuals enjoy the same religious freedom as other residents of the Netherlands, and groups enjoy religious liberty as well. They can organize themselves as a "church," but they can also organize themselves in a different way, such as an association or a foundation. As we have seen, no special requirements exist for establishing a church as a legal entity. Thus, religious majorities and minorities as legal entities have the same status under the law.

Because religion and church are not defined as legal categories, there is likewise no legal term for "sect." Although this word may be used in popular speech, it has no meaning whatsoever under the law. With that said, for a short while in the 1980s, an increased interest in "new religious movements" emerged. This interest concerned diverse religious movements, such as those of Hara Krishna or Bhagwan. The strong demands these movements placed on individual believers, both socially and financially, were viewed with a certain suspicion. Other issues, such as the use of psychological and emotional persuasion, and questions as to whether believers could exercise a realistically free choice in entering or leaving such a movement, were topic of public discussion. It was concluded that no specific regulations were needed. The general law would suffice to resolve problematic issues if they occurred. On the basis of a research report commissioned by the Minister of Justice at the request of Parliament and published in 2014, the government concluded that the policy established in the 1980s was still adequate.

This culture of taking minority religions into account, in social practice and within the framework of the law, could easily be extended to meet the needs of Islamic believers

Minority Religions and the Legal Infrastructure

Minority religions enjoy the same position and are entitled to the same freedoms as other religions within the framework of the law. This is also the case in the financial domain. The financial position of minority religions vis-à-vis the state is the same as that of majority religions, as the previous Section implies. Having said this, it is clear that minorities sometimes encounter specific difficulties, not so much because they are a *minority religion* as such, but due to sheer lack of numbers. Minorities can establish denominational schools, and homes for the elderly; they can participate in the public broadcasting system to the same extent as any other group, providing they meet the same objective criteria. But it is clear, for example, that if a minority population is not concentrated in a particular region of the country, but rather spread out over the whole country, it is more difficult in practical terms to establish an elementary school. Moreover, in order to participate in, or form infrastructural arrangements, a solid organizational capacity is also needed, as is an expectation of durability and viability. For smaller and especially newer groups this, per definition, is difficult.

On the other hand, being a pluralistic country, the Netherlands have often found creative ways to establish a fair position for minorities. The previous section mentioned temporary regulations enacted to provide financial support for the establishment of places of worship. Another example noted above is the pragmatic solution for making chaplaincy services available for minorities at a time when a fully-fledged chaplaincy service was not yet realistic.

Specific Needs of Minority Religions

More than once, minority religions are specifically taken into account by the law. This has traditionally been the case. For instance, although currently there is no conscription, exemptions exist for conscientious objection against military service; exemptions also exist for adherents of certain protestant denominations which have conscientious objections against insurance. For those of Jewish faith, traditionally arrangements have been implemented for ritual butchering, dietary prescriptions, and religious holidays. This culture of taking minority religions into account, in social practice and within the framework of the law, could easily be extended to meet the needs of Islamic believers. Examples are ritual slaughtering, dietary prescriptions, burial rites and religious holidays. Generally speaking, majority religions, therefore, have no "privileges," other than the sociological and perhaps cultural ones.

Islam

What has been said above about minority religions in general, also applies to the position of Islam in the Netherlands. From the very beginning, Muslims have enjoyed religious freedom just like any other believer, at both the individual and the collective level. However, it is clear that Christian belief has left the most important imprint on the organization of church and state relationships and on religious freedom. An example of this is the phenomenon of the "church" as a legal entity.

However, in the course of time, Dutch law has adapted to minority religions, especially the Jewish religion, in terms of offering different options for the observance of religious holidays and days of rest, as well as dietary prescriptions in institutions, and ritual slaughtering. (It should be noted, however, that ritual slaughtering has become more controversial over the years.) When it became clear that Muslims needed these exceptions as well, these could be applied to them without many problems.

Statistics

No census exists in the Netherlands. Prior to 1977, registration of one's religious affiliation in the civil registry was obligatory. This was replaced by a system according to which, the civil registry gave registrants the option of making a voluntary statement of their religious persuasion. Currently, .religious affiliation is no longer registered. With the abolishment of the registration of religion altogether, the state gave lump sum financial support to set up a registration system for the churches to use for this purpose. It's the reason for this was that religious communities themselves often relied on registry data for their own administration. The abolition of registering religion was in part justified on the basis of the view that religion is a private matter with which the state has no business. The separation of church and state was also mentioned as an argument. The issue of "privacy" enjoyed strong interest and popularity as well.

In the 1980s privacy legislation was developed, which labeled religion among the so-called "sensitive data" for which special safeguards were established.

The criteria for deciding who belongs to, or is an adherent of, a particular religion or a member of a church, differs from religion to religion and from church to church

In recent years, the general climate has changed. It is more widely realized now that religion is not simply a private matter, but that it has a public dimension as well. The presence of Islam in the Netherlands has certainly contributed to this change. The formerly predominant idea of a self-understanding process of secularization has also recently begun to wane. With these developments, an increasing interest is currently emerging in sociological facts and figures and in sociological studies concerning religion.

In the introduction to this essay, we gave a very general indication of the numbers of adherents of various religions and religious denominations. It must be repeated that these are only very general indications indeed. The criteria for deciding who belongs to, or is an adherent of, a particular religion or a member of a church, differs from religion to religion and from church to church. Some churches regard as members only those who have been baptized as adults. Other churches regard persons whose parents were baptized as members, even though such persons (or their parent) do not regard themselves as members or believers. Various other differing criteria can be cited as well.

Further, asking persons directly whether they consider themselves to be believers or members of a certain denomination reveals different figures altogether. These responses could be based on the basis of affiliation with religious doctrine or simply a statement of a religio-cultural sense of belonging. Surveys of church attendance on Sunday will likewise produce a very different set of statistics.

Religion, the European Union and the Netherlands

General

With the development of the EU from the original Coal and Steel Community, Euratom and the EEC, and the subsequent expansion of its competences to other fields than the initial, predominantly economical ones, the question of how to relate to religion has surfaced for the institutions of the EU as well. In essence, there are two questions that are relevant for the EU in this respect. The first question is: how to relate to religion at the level of the EU itself? The second question is: how should the EU position itself in relation to the variety

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of church and state systems within its Member States? These two questions are related, but it is possible and important to distinguish between them.

Religion in the European Union Itself

The most obvious anchor point for discussing the relationship between religion and the EU is that of fundamental rights. This relationship is quite evolving; one might call it a model developing along incremental lines. As is well known, the exercise of powers within the EU is based on the system of conferral. Only if, and insofar as explicit competences are attributed to the Union and its Institutions, do they have the competence to act. Religion, obviously, has never been a Union competence. Initially, this also meant that the Union had a blind spot for religious matters. This remained the case at the time of the first expansion of competences in the EU, and after the adoption of the European Single Act in 1986, and the Treaty of Maastricht in 1992. However, at that time it became clear that the powers the EU exercised did have spill-over effects into areas of law that were also relevant to religion in the Member States. Therefore, a mechanism was needed to take religion into account.

The development of such a mechanism from scratch to the situation that obtains today took place in three stages. The first stage was the establishment of Declaration nr.11 of the Final Act to the Amsterdam Treaty, which stated: "The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The European Union equally respects the status of philosophical and non-confessional organizations". This meant that the EU and its Institutions respect church and state relationships in the Member States. Being a mere Declaration, this provision was not legally binding. Nevertheless, it played a role in the process of enactment of legislation that touches on religion, and it has been referred to in several instances.

The second stage was the approach taken by the Treaty establishing a constitution for Europe ('Constitutional Treaty') (which never came into force). In the text of the Constitutional Treaty, the content of Declaration nr.11 was featured as a binding rule in Article I-52, in Chapter VI, "The Democratic Life of the Union". The content of the first two sections was a confirmation of Declaration nr.11. A new addition was the content of the third section. This stated: "Recognizing their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organizations".[11] This provision indicated the EU's interest in fostering a positive relationship towards religion, then in the process of development.

The Lisbon Treaty which replaced the Constitutional Treaty copied the material text of the Lisbon Treaty in this respect in what is currently Article 17 TFEU).[12] What changed was the context in which the text of the Article appears. In the TFEU it is placed in Part I (Principles), Title II (Provisions having general application).

From the previous discussion, it is clear that the EU itself is in the process of developing a relationship towards religion, in its law and policies. The basis of this relationship is respect for the member states' national church and state-systems. Obviously, Article 17 TFEU is not watertight. First of all, the general EU policies fit in with a different role of the state in general and with policies of liberalization and privatization which do have an overall general effect on the state and on society, and therefore, albeit quite indirectly, also on religion. Apart from that, it is just impossible to isolate church-issues from the general effects of EU policy. Nevertheless, the gist and the core of the Declaration are quite clear.

With the expansion of the EU's competences, another development occurred which is relevant to religion. The Treaties did not contain a fundamental rights catalogue. Nor was the Union itself bound by fundamental rights, as the Member States obviously were. In the course of time, the Court of Justice developed an extensive case law in which it acknowledged that the institutions themselves were bound by fundamental rights, as "common to the constitutional traditions of the Member States". And some fundamental rights were included with every treaty revision. More generally, the Maastricht Treaty adopted a provision stating that the EU should adhere to the fundamental rights common to the constitutional traditions of the Member States, and the rights guaranteed in international treaties such as the European Convention on Human Rights. In the Amsterdam Treaty (Article 6) this was reformulated in a more compelling way. In spite of this progress, the Treaty of Amsterdam did not contain a catalogue of fundamental rights, which was seen by some as a missed opportunity. However, it did not take long before a Convention for the Fundamental Rights of the EU was established. This Convention, under the chairmanship of the former German President Roman Herzog, drafted a Charter of Fundamental Rights for the EU, which was adopted (but not made legally binding) at the occasion of the Nice Summit in 2001. Since that time, the Court of Justice and its advocates general have often referred to this Charter. With some alterations to Title VII, concerning the General Provisions, this Charter found its way into the Constitutional Treaty (which, as we have seen, never came into force), and currently it is part of the EU Treaties through Article 6 of the TEU. This modern catalogue also contains freedom of religion, as well as many other rights which are relevant for religion such as privacy, cultural diversity, and equal treatment. In the headings of the Charter, the value system underlying its fundamental rights is expressed.

For the Netherlands, the (initial) effects of EU-law on Dutch church and state relationships are first and foremost general spill-over effects of EU-law into Dutch law

It must be remembered that these rights do not apply to the Member states but instead are meant to limit the actions of the EU institutions. It is stated expressly that the recognition of these rights does not imply competences to the EU; they rather intended, at minimum, to corroborate the minimum standard of protection that the European Convention on Human Rights (ECHR) guarantees. The TEU also provides the legal basis for adherence to and accession to the EU to the ECHR itself.

The Impact of the EU on Dutch Church and State Relationships

For the Netherlands, the (initial) effects of EU-law on Dutch church and state relationships are first and foremost general spill-over effects of EU-law into Dutch law. As far as religion is concerned, these effects were counterbalanced by Declaration nr.11 and currently are counterbalanced by its successor, Article 17 TFEU. There is no way in which the EU, as such, sets criteria for Dutch church and state relationships in general. The EU does not interfere with these issues. Furthermore, the Dutch church and state system and the way freedom of religion is guaranteed in the Netherlands fall within the margins allowed by international fundamental rights treaties, including Article 9 of the European Convention on Human Rights.

So, any shifts in the dynamics of church and state relationships in the Netherlands stem from causes other than that of the EU. The EU did not force or in any way put leverage on the country to make changes in regard to its church and state relationships.

Challenges to the System and Dynamics of Church-State Relationships

The Dutch model of church and state relationships that of a separation of church and state, is widely accepted in the Netherlands. As we have seen, this principle was first proclaimed in 1796. Obviously, major developments have since then taken place in the state, in society, and in the domain of religion. The actual legal arrangements regarding church and religion are influenced by these developments, as is the interaction between churches and the state. The development from a night watch state to a highly complex welfare state is of major significance in this respect. Currently, the position of the state is undergoing changes as a result of globalization and internationalization; at the same time, the state is repositioning itself in relation to society through decentralization, privatization and a certain withdrawal from the social domain.

These developments will also leave their mark on church and state relationships. Moreover, the society itself is changing. If we restrict ourselves to the domain of religion itself, the strong trend toward secularization in the 20th century must be mentioned. Currently, the increasingly visibility of religion in society in general, and of Islam in particular, adds a new dimension.

As we have seen, the principle of separation of church and state is not explicitly formulated in the Dutch Constitution or in any other law; furthermore, no system of judicial review for parliamentary legislation exists. Therefore, a systematic judicial interpretation of the principle of separation of church and state is lacking. It is the legislature itself which is the prime interpreter of this principle. The previous sections of this contribution have shown how church and state relationships have been given shape within the law, and offered a sketch of the framework within which the tradition of interpretation of separation of church and state must be viewed. Traditionally, the state's position has been marked by an open and friendly attitude towards religion. In recent years, however, debates on religion in the public, political, and academic domains have taken on a sharper edge, and the questions that now arise with regard to religion in the public domain have become more controversial. Three elements of this new dynamic must be mentioned.

First, until recently, church and state relationships were generally regarded to be in calm waters. The welfare state was at its height, the "secularization" thesis was dominant and, very importantly, the values of Christian believers were congruent with the dominant values of society in general. Now these presuppositions are no longer sound. With the increasing visibility of religion, both in the Christian and in the Islamic field, it becomes clear once again that people are motivated by religious views and that religious views matter. This draws renewed attention to the "values" side of religion. Especially in cases where these values do not easily mesh with the dominant values in Dutch society, religious "values" have become a source of discussion. As far as Islam is concerned, the general unfamiliarity with Muslim beliefs and the sociological dimensions of the occurrence of various beliefs makes the discussion more complex.

A second element concerns the balance between pluralism and social cohesion. Over the last few years, a general awareness has grown that a pluralistic society also needs cohesive structures and forces, and that the element of cohesion should be strengthened. Therefore, the stress of public policies has shifted toward achieving stronger cohesion. For immigrants, this means that integration policies are intensifying. In some areas, these policies are quite straightforward, such as where language is concerned. Other elements raise more discussion. We have mentioned the traditional Dutch "pillarization", and the existence of private (confessional) schools alongside public schools. It is absolutely clear that Muslim believers have the right to establish Muslim schools

and, in fact, various dozens of Islamic elementary schools do exist. However, it is a matter of debate whether such schools are vehicles for integration into Dutch society or whether they form an obstacle for such integration. Another topic of concern that has emerged over the last few years is the prevention of radicalism. What does this mean with regard to religion? In any case, it is clear that public authorities at both central and local levels are working to stimulate the development of representative organizations of Islamic believers to join them as discussion partners in order to address issues of mutual concern. More recently, preventing and dealing with jihadism and religiously-motivated terrorism has become a matter of concern for which policy measures are being adopted.

A third development concerns the functioning of fundamental rights in general and of freedom of religion in particular. Until recently, the focus was on extending fundamental rights as far as possible. The general revision of the Constitution in 1983 was a clear expression of this. Recently, fundamental rights are much more commonly discussed in terms of restrictions. This is the case for privacy rights and expression rights, for example, and also for religion.

These three driving forces constitute a whole new dynamic in the field of religion, public policy, and law. The years to come will certainly give further rise to a highly important and interesting debate.

Further Readings

Brief Bibliography on the Dutch Constitution, the nature of constitutional development, and on Dutch Church and State Relationships.

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P.T. Pel, *Geestelijken in het Recht. De Rechtspositie van Geestelijke Functionarissen in het Licht van het Eigen Recht van de Kerken en Religieuze Gemeenschappen in de Nederlandse Rechtsorde* (Bju: Den Haag, 2013).

SCP (Joep de Hart), *Geloven Binnen en Buiten verband. Godsdienstige Ontwikkelingen in Nederland* (SCP: Den Haag, 2014).

Endnotes

1. For the following figures, see SCP (Joep de Hart), *Geloven Binnen en Buiten Verband. Godsdienstige Ontwikkelingen in Nederland* (Den Haag: SCP 2014).

2. In this church, the former two largest reformed churches, the *Nederlandse Hervormde Kerk* and the *Gereformeerde Kerken in Nederland*, and the Evangelic Lutheran Church are united. The fusion took place in 2004.

3. Acts of Parliament *can* be reviewed on their compatibility with self-executing provisions of international treaties and decisions of international organizations (Article 94 of the Constitution). This is especially important in the field of fundamental rights.

4. See, notably, ARRvS 18 December 1986, AB 187, 260 (Jeugdcentrale Hellevoetsluis).

5. For CIO (*Interchurch Contact in Government Affairs*), see www.cioweb.nl, last consulted on May 20, 2015.

6. For CMO (freely translated as: Contact Organization Government), see www.cmoweb.nl, last consulted on May 20, 2015.

7. For an English text version of the Act of Parliament, see www.mensenrechten.nl, last consulted on May 20, 2015.

8. For more information, see www.gvoenhvo.nl, last consulted on May 20, 2015.

9. For the chaplaincy service in penitentiary institutions, see https://www.dji.nl/Organisatie/Locaties/Landelijke-diensten/Dienst-Geestelijke-Verzorging/; for the armed forces, see http://www.defensie.nl/onderwerpen/personeelszorg/inhoud/geestelijke-verzorging, both last consulted on May 20, 2015.

10. Nevertheless, various specific types of recognition or registration mechanisms exist, as we have seen in the discussion of tax benefits and the organization of chaplaincy services in the armed forces and penitentiary institutions.

11. In this section, "their" refers to "churches and religious associations or communities in the Member States "and" philosophical and non-confessional organizations.

12. The full text of Article 17 TFEU, therefore, reads: "1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

2. The Union equally respects the status under national law of philosophical and non-confessional organizations.

3. Recognizing their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organizations."

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