De toekomst van de Nederlandse Antillen in staatsrechtelijke verhouding: een verkenning voor de constitutionele agenda van de 21ste eeuw
Rosheuvel, D.A.

Citation

Version: Corrected Publisher’s Version
License: Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden
Downloaded from: https://hdl.handle.net/1887/2714

Note: To cite this publication please use the final published version (if applicable).
Summary

**Constitutional questions regarding the future of the Dutch Antilles**

The political relations in the Netherlands Kingdom are defined in such a way that the Netherlands Antilles and Aruba are autonomous countries. This structure is unique in the world. There are more countries which have a political relation with an area which does not belong to its territory, such as the French Départements d’Outre Mer and the British Dependent Territories (Commonwealth). However, political relations which state that the countries have from a legal point of view a completely equal position, do not exist elsewhere in the world.

The relations of the Netherlands with the Netherlands Antilles and Aruba are founded on a number of cornerstones. These cornerstones are partially embedded in the preamble of the Charter of the Kingdom which dates from 1954. As stated earlier, the point of departure of the Charter is that the Kingdom consists of three countries.

There is an element which is not mentioned in the preamble of the Charter and which can be seen as one of the cornerstones of the Kingdom. The polity of the Kingdom and of the countries is based on the principles of democracy and the rule of law, as is expressed in section 43 of the Charter. The first paragraph of this section states that the countries shall see to it that the fundamental human rights as well as the legal security and the reliability of public administration are realized.

The three governments of the countries have the opinion that there is reason to simplify or modernize the Charter dating from the fifties, in due time. In the Netherlands, the Netherlands Antilles and Aruba the democratic and constitutional warrants of the Charter are experienced as the heart of the Kingdom ties. For this reason it is obvious that, when the political relations are possibly renewed, there will be a strong emphasis on the warrants for maintaining the principles of democracy and the rule of law, the human freedoms and human rights as well as the legal security in the individual countries. The issue will be too, whether the quality of upholding the law and the administration of justice in the Caribbean society are maximally warranted.
We may conclude that the legal order as laid down in the Charter has proved to be valuable and has functioned satisfactorily, during the past 47 years. We may note however that the Charter was drawn up during 1948-1954 and that its terms link on to the constitutional law of those days and the text of the Constitution which was already out of date in those days and which is replaced by now. The Constitution in the Netherlands was modernized thoroughly in 1938. When Aruba got the status of country in the Kingdom in 1986, that part of the Kingdom also got a State regulation which was strikingly modern. From the point of view of this development, it is also logical to cast the Kingdom relations in a modern mould. Such an approach will make it possible to work the experiences resulting from the application of the present Charter definitions into the text of the renewed regulation. Redundant definitions can be excluded, formulations causing misunderstanding can be improved, complicated procedures which are evidently complicated can be simplified and regulations of less importance can be entrusted to the lower administrative levels, either on Kingdom level or on country level.

In this manner we shall acquire a modern and adequate constitution because it is a union of independent countries which jointly have decided to enter into kingdom relations on a voluntary basis. There will be an international entity which exists of (island) countries as equal partners.

The five islands of the Netherlands Antilles are confronted with the following two big problems in the period of decolonization:
The problem of the forming of state and the forming of nation and the problem of economic development.

The problem of becoming a nation and a state is primarily related to the structure of the internal relations on the Netherlands Antilles and to the structure of the relations with the Netherlands. I have tried to give a description as neutral as possible of a few conceivable models which can be the basis of the political relations between the three countries participating in the Kingdom presently. It is a rough description of a few main models. Of course it is possible to combine certain elements of the several models in order to get other models.

In the description of the models I have taken into account the current political structures in the Kingdom. As we know, it is of less use to simply copy other foreign constitutional models which are fundamentally different and have their basis on different law systems as well as different historical developments.
The current situation. In order to get a good understanding of the present situation, the current political relations and the political structure of the Netherlands Antilles and Aruba are briefly described. My conclusion is that on Kingdom level, the Dutch institutions play a predominant role in the political structure. With respect to the distribution of powers, the following three levels can be distinguished in practice: First of all Kingdom matters, secondly the common matters and cooperation matters and thirdly the independent (autonomous) matters of the three separate countries.

A more integrated Kingdom. This part deals with a situation in which there is more integration between the countries of the Kingdom. In this model it is suggested among other things that the three partners as well as the number of Kingdom matters are extended, thus leading to the forming of a Kingdom Parliament. This implies that the position of the representatives of the Netherlands Antilles and Aruba are consolidated in the Cabinet Council of the Kingdom. Moreover, a Public Accounts Committee should be instituted, while the Administrative Judge as the highest judge should have jurisdiction for the entire Kingdom.

The status of a province. This part deals with a model in which the Netherlands Antilles and Aruba are transformed into provinces of the Netherlands. The Charter and the Antilles and Aruban State Regulations are withdrawn together with a large part of the legislation of the last mentioned countries. Essentially, the entire central Netherlands legislation then applies to the Caribbean territory. The island territories of the Netherlands Antilles acquire the status of a municipality and Aruba acquires the municipal powers along with the provincial powers, unless that island is divided in a number of municipalities. Apart from that, it is possible in the Netherlands polity to attribute overseas provinces a special position. This would give the overseas provinces, compared to an ordinary Netherlands province, a greater degree of autonomy.

Complete independence. This is a model in which the Netherlands Antilles and Aruba would end the Charter ties with the Kingdom and become completely independent states. It is assumed that these countries, but also the islands of the Netherlands Antilles separately, have the right of self-determination. The Charter procedures cannot affect this as such. In the end, the Kingdom will not have much influence on the eventual political structure of these possibly independent states in future. In this model, the Kingdom has essentially no authority at all with respect to these countries. However, it is possible to conclude treaties, which will enable the
Kingdom to guarantee aid to the Antilles and Aruba for instance in matters of defence, jurisdiction by the Supreme Court and financial and staff aid by the Netherlands.

A commonwealth with the Netherlands. According to this model, there is a commonwealth between the countries of the Kingdom. The autonomy of the countries is intensified, but the Kingdom continues to exist as an international entity. Commonwealth relations can be formed by transforming the current Charter into a Commonwealth Charter in which the fundamental rights should be positioned. The judge will have the power to examine the compatibility of laws with the provisions of the fundamental rights of the Commonwealth Charter. In order to emphasize the autonomy of the countries, the governments and parliaments of the three countries should agree to the realization of laws of the realm. There should also be an agreement between the governments of the three countries on the realization of orders in council.

‘Administration made to measure’. This model is based on the argument that there is an administration made to measure the needs of the several islands of the Netherlands Antilles and Aruba. This makes it possible to meet the large differences in needs between the islands in terms of territory, number of inhabitants, language, culture and social and economic problems. In such a model, the Kingdom again continues to exist. On the basis of a modified Charter, a constitution can be drawn up in which the administrative structure and set of powers according to the needs of the islands or group of islands are settled. Then, one administrative entity will have a more integrated tie with the Netherlands than the other one(s) because of the different circumstances.

In this model, it is assumed that the situation of Aruba will maintain its current position as an autonomous country and that Curacao will get such a position as well. The other countries can have closer relations with the Netherlands. They will acquire a special status as an island territory within the Kingdom.

Each model ends with a reflection as neutral as possible on a number of consequences. Of course, this is not an exhaustive enumeration.
A Constitutional structure for the Dutch Antilles in the 21st century

As previously mentioned, the Antilles and Aruba, together with the Netherlands, have since 1954 formed the Kingdom of the Netherlands. The basis of the Kingdom is anchored in the Statute for the Kingdom of the Netherlands. This state-law connection has come into being for an undetermined period of time. In 1986 the island region of Aruba received the Status Separate. This status did not lead to the agreed upon independence, but was transformed into the status of an sovereign state within the kingdom. Independence of the kingdom has never since been an issue within the islands.

It is a public secret that the five Antilles islands do not want pursue their current relationship with each other. Searching for an own identity plays an important role in the desire to take on more national responsibility. To be constantly corrected by Curacoa (administration) is considered by the other islands as tiring.

At the referenda held (Curacao in 1993 and the other islands in 1994), the majority of the Antillian population spoke for a continued existence of the Antilles-of-five. This means that, communally, solutions must be sought for the still unresolved, and new problems and a working state form of the Netherlands Antilles must be created.

Firstly, one could think of a new electoral system for the Netherlands Antilles. The states of Netherlands Antilles are not formed according to the system of equal representation of the entire Antillian population. The current electoral system of the Netherlands Antilles proceeds according to representation of the island-region, from which each island, has a fixed amount of seats.

The proposal of the author is to keep elections at a national level. The Netherlands Antilles must then, in choosing a prime minister, be turned into one election district. To prevent that someone be elected prime minister by just one island, through adjustment in law it must be recorded that the elected prime minister must have gained votes in all islands in order to be legitimately elected. Hence, we get a prime minister that is chosen directly by the electorate. The parliament thereby becomes much more independent of the government and can better oversee policy. The arguments for direct election of the prime minister are, amongst others, the trust of the electorate, the relationship between the electorate and the policy-formation and untwining of the parliament (states) and the government.
Good rule on the Netherlands Antilles is of utmost importance. If there is no speedy transferral to the delivery of precise rule, then the present system of rule will decent further due to crippling trust. Due to wanting results, the trust of the citizen in the government has been tarnished badly. The author pleas for a model of rule to be introduced on the Netherlands Antilles, in accordance to their needs. Structural grounding for this model is the communal approach of the problems by all parties on the islands (civilians, businesses and institutions). These parties carry the responsibility for the functioning of the island region. A decentralize approach could be chosen. A decentral approach can be defined here as the limited overhaul of the land-authorisation to the island administration of the Antilles. Hereby each of the island administrators would be able to decide autonomously over (limited) law, administration and financing. Also, the possibility should be created that the islands can go into agreements to execute certain tasks communally. The most important policy plans can be included in a covenant. In the conformity important agreements can be taken up. Furthermore, agreements can be made about official and administrative agreements to judge whether goals are achieved en if not, what the cause hereof is and how the process must be re-aligned.

Is the European Union the future for the Antilles?
As the 50 year existence of the Statute is approaching, the discussion has started regarding the position of the Netherlands Antilles and Aruba in the EU. The Dutch government has in its governing accord given preference for the position of Ulteripheria Area (UPA). Because ‘accession’ to the EU will have quite big repercussions for the islands, but also for the relationships between the Kingdom, two countries (Netherlands Antilles and Aruba), have decided to discuss the issue internally first, before taking any further decisions.
The government is also thinking about these problems. Soon the Council of the State will come out with an advice about eh consequences of the UPA.

The author is pleading to keep a civilian-consultancy on the Netherlands Antilles for both the political framework of the future as well as the choice of the UPA Netherlands Antilles.