Tilburg University

The Frisian Language in the Netherlands

van Laanen, F.

Published in:
Minority Rights in Europe

Publication date:
2001

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):
van Laanen, F. (2001). The Frisian Language in the Netherlands. In S. Trifunovska (Ed.), *Minority Rights in Europe: European Minorities and Languages* (pp. 67-83). T.M.C. Asser Press.

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

THE FRISIAN LANGUAGE IN THE NETHERLANDS

Floris van Laanen*

1. INTRODUCTION

It is said that in the beginning all people on earth spoke the same language. Apparently, it is only thanks to Noah's descendants that nowadays we are blessed with a huge variety of languages.¹ It seems that our ancestors wanted to build a tower which was to reach up to heaven. By doing so, they displeased the Lord. He then interrupted building activities by causing a confusion of languages among the people. Subsequently, He scattered the people all over the earth.

Probably we will never know what language these first of mankind spoke. Once, a lady at the eighteenth century Court of Versailles said: 'What a dreadful pity that the bother at the tower of Babel should have got language all mixed up; but for that, everyone would always have spoken French'.² I presume that that was merely one of the noble lady's desires.

1.1 Central question and limitations

In this contribution I will deal with some aspects of one of the post-Babel languages,³ the Frisian language ('Frysk' in Frisian, 'Fries' in Dutch). The central question being the position of the Frisian language in Dutch law, the analysis which follows will be limited in three ways:

The most obvious limitation is, of course, the discussion only with respect to the situation of one language, i.e. Frisian. It is one of the languages spoken in the Kingdom of The Netherlands. The Kingdom is a State with a kind of a federal system, which is governed by the Charter for the Kingdom of The Netherlands.⁴ According to its preamble, the Kingdom consists of The Netherlands (which

* Fourth year student of International and European Law, Law Faculty, University of Nijmegen, The Netherlands.

¹ Genesis 10:32 and Genesis 11:1-9.

² According to a letter by Voltaire to Empress Catherine the Great, 26 May 1767. Quoted in: B.J. Palmer, *The Oxford library of words and phrases; Volume I; The concise Oxford dictionary of quotations*, 2nd ed., Oxford (1988), p. 265.

³ And perhaps even the pre-Babel language, who knows?!

⁴ *Statuut voor het Koninkrijk der Nederlanden* (Act of 28 October 1954, Stb. 1954.503; most recently amended by the Statute Act [Rijkswet] of 7 September 1998, Stb. 1998.579).

used to be called 'the Realm in Europe'⁵), The Netherlands Antilles and Aruba. In former times the Kingdom's territory was much larger, including for example Belgium (until 1839), The Dutch East Indies (the present Indonesia, until 1949) and Surinam (until 1975). In reigning over this whole territory, linguistic policies have always been of particular concern to the Dutch Government.⁶ Nowadays the Kingdom is confronted with many languages. Partly, these languages have been imported by modern immigrants (Turkish, Arabic etc.). Some other languages, such as Papiamentu (in the Caribbean part of the Kingdom), Low Saxon and Frisian, have been spoken in the Kingdom for many centuries.

Secondly, there is a geographic limitation. Frisian is spoken both in The Netherlands and in Germany. In my article I will only deal with the Dutch situation, thus excluding the position of the Frisian language under the German law and in cross-border situations.

Thirdly, there is a legal limitation with the focus being primarily on Dutch national law. With the exception of Chapter II and some remarks in the Conclusion, attention will be only paid to international law if it is relevant for a better understanding of national law.

1.2 Some remarks on the Frisian language

Frisian is a Germanic language spoken in the German Länder of Schleswig-Holstein and Niedersachsen as well as in the Dutch province of Friesland ('Fryslân' in Frisian, 'Friesland' in Dutch).⁷ Frisian is most closely related to the English language, and documents in Frisian go as far back as the 13th century.⁸ In those days Frisian was an official language, a position which it lost in the 15th century because of political reasons.⁹ A standard spelling has been agreed upon by provincial States in a bye-law, there is an authoritative dictionary in 20 volumes, and grammar is embodied in several handbooks, the most authoritative being the 1985 'Frisian reference grammar'.¹⁰ Furthermore, it should be noted that the Government states that Dutch and Frisian are 'The Netherlands' indigenous languages.¹¹

⁵ Articles 1 and 2 of the 1887 Constitution (Act of 10 August 1887, Stb. 1887.144). The present Constitution originates from and/or is based on the 1983 Constitution (Acts/Statute Acts of 19 February 1983, Stb. 1983.17 to 51; most recently amended by the Statute Act of 6 October 1999, Stb. 1999.454).

⁶ See for example K. Groeneboer (Ed.), *Koloniale taalpolitiek in Oost en West; Nederlands-Indië, Suriname, Nederlandse Antillen en Aruba*, Amsterdam (1997).

⁷ F.J. de Varennes, *Language, Minorities and Human Rights*, diss., Maastricht (1996), p. 41.

⁸ Microsoft, Encarta '95; *The Complete Interactive Multimedia Encyclopedia*, (1994).

⁹ Handelingen I, 1994/1995, p. 1160 (Postma MP).

¹⁰ Bijlagen II, 1994/1995, 24092, 5, p. 4 (MvT).

¹¹ Bijlagen II, 1993/1994, 23543, 3, p. 2 (MvT).

Friesland has a population of some 610,000 people.¹² 54.8% of the population states that Frisian is their mother tongue; 94.3% of Friesland's inhabitants have a passive knowledge of Frisian; 74.0% actually know how to speak Frisian; 64.5% are able to read Frisian; and finally, 17.0% are also used to writing in Frisian.¹³ Regarding civil servants of the province of Friesland, 30% know how to write in Frisian and 83% are able to read texts in Frisian.¹⁴

2. SOME REMARKS ON RELEVANT INTERNATIONAL LAW

It is obvious that the role of international law in the field of language can hardly be overestimated. Apart from provisions of international law dealing with expression, private life and non-discrimination in general, such as provisions of the ICCPR¹⁵ and ECHR¹⁶, there are provisions dealing with indigenous peoples, national minorities and their languages in particular. Mention deserves to be made of Article 27 of the ICCPR, the Framework Convention for Protection of National Minorities, the European Charter for Regional or Minority Languages, the European Parliament's Resolution on Cultural and Linguistic Minorities and the Draft Declaration on the Rights of Indigenous Peoples.

Article 27 of the ICCPR prohibits the denial of the right of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language, all this in community with other members of their group. It is the Government's opinion that the Frisian-speaking population forms such a linguistic minority.¹⁷ This opinion is supported by the Council of State.¹⁸ After all, it was agreed that Article 27 should cover only 'separate or distinct groups, well-defined and long-established on the territory of a State'.¹⁹ It should be mentioned that the fact that Frisian is considered to be one of The Netherlands' indigenous languages, and thus the fact that the Frisians may be an indigenous people, is not an obstacle for bringing the Frisians under the scope of Article 27.²⁰ What then are the obligations of the States parties? According to the 'travaux préparatoires', the original proposal, which implied

¹² Wolters-Noordhoff, *De Grote Bosatlas Basisstatistiek 96/97*, Groningen (1996), p. 3.

¹³ D. Gorter/R.J. Jonkman, *Taal yn Fryslân op 'e nij besjoen*, Leeuwarden 1995 (results: <http://www.ned.univie.ac.at/publicaties/taalgeschiedenis/nl/fries.htm>). In 1984 the figures were 90%, 70%, 65% and 10% (D. Gorter et al., *Taal yn Fryslân*, Leeuwarden (1984), results: Bijlagen II, op. cit. n. 11, 3, p. 7 [MvT]).

¹⁴ D. Gorter/R.J. Jonkman, *Taal op it wurk fan provinsjale amtners*, Leeuwarden (1993), (results: Bijlagen II, op. cit. n. 11, 5, p. 7 [NV]).

¹⁵ Trb. 1969.100.

¹⁶ Trb. 1951.54.

¹⁷ Bijlagen II, op. cit. n. 11, 3, p. 8 (MvT).

¹⁸ Bijlagen II, op. cit. n. 11, B, p. 6 (Council of State's advice).

¹⁹ M.J. Bossuyt, *Guide to the 'travaux préparatoires' of the International Covenant on Civil and Political Rights*, Dordrecht/Boston/Lancaster (1987), p. 494.

²⁰ De Varennes, op. cit. n. 7, pp. 134 and 135, referring to UNHRC case law (*Lovelace v. Canada*, *Kitok v. Sweden*, *Ominayak v. Canada*).

that a State had to ensure to national minorities certain linguistic and cultural rights, was rejected. The text which was adopted seems to imply that the obligations of the States would be limited to permitting the free exercise of the rights of minorities.²¹ This is also the view of the Dutch Government.²²

In the 1995 Council of Europe's Framework Convention for the Protection of National Minorities there are some provisions on minority languages as well.²³ For example, a person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing (Article 10). Furthermore, there are specific articles on the use of first names, surnames and geographic names in the minority language (Article 11), on research (Article 12) and on learning the minority language (Article 14). However, although The Netherlands has signed the Framework Convention, it has not yet ratified it.

The Netherlands is party to the 1992 European Charter for Regional or Minority Languages.²⁴ In conformity with Dutch constitutional law, the Charter was approved by the Act of Parliament in 1996.²⁵ Instead of conferring individual or collective rights on persons using a regional or minority language, the Charter imposes on States parties an obligation to take measures in order to ensure and improve the position of those languages.²⁶ It is the Dutch Government's opinion that Frisian is a regional or minority language as defined in Article 1, sub. (a) of the Charter: a language that is traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population and different from the official language(s) of that State.²⁷ A concrete result of signing the Charter was the establishment of a consultative organ on the Frisian language in 1998.²⁸ According to the Government, one of the reasons for signing the Charter was that it provides the position of the Frisian language in the province of Friesland with a solid legal basis, which is in conformity with the Government's policy.²⁹

The use of the words 'provides a solid legal basis' is remarkable: it might be concluded that in the Government's opinion such a solid legal basis had not existed before the signing of the European Charter. In my view a substantial part of such a basis had already been created by several acts of parliament, such as the Act of 4 May 1995³⁰ and the Act of 11 May 1956³¹. Furthermore, the non-

²¹ Bossuyt, op. cit. n. 19, p. 496.

²² Bijlagen II, op. cit. n. 11, 3, p. 8 (MvT).

²³ Text available on: <http://www.conventions.coe.int/treaty/en/Treaties/Html/157.htm>

²⁴ Trb. 1993.1 and 199.

²⁵ Act of 26 January 1996, Stb. 1996.136.

²⁶ Bijlagen II, op. cit. n. 10, 3, p. 1 (MvT).

²⁷ Bijlagen II, op. cit. n. 10, 3, p. 2 (MvT); Bijlagen II, op. cit. n. 11, 3, p. 9 (MvT); Bijlagen I, 1994-1995, 23543, 23d, p. 1 and 2 (NV).

²⁸ See: *Instellingsregeling consultatief orgaan Friese Taal* (Ministerial regulation of 15 January 1998, Stcrt. 1988.33).

²⁹ Bijlagen II, op. cit. n. 10, 3, p. 3 (MvT).

³⁰ Stb. 1995.302 on the use of Frisian in relations with administrative authorities.

existence of the European Charter does not preclude the legislator from initiating legislation which could improve the status of the Frisian language. My view is supported by the fact that the Government originally intended to pass the Charter's Approval Act in advance of the Acts of 4 May 1995 and 14 September 1995. This could not be achieved because of political reasons and capacity problems at the Ministry for Foreign Affairs.³² Moreover, the Government acknowledges that the text of the Charter is much broader than this national legislation; it even states that national legislation and the Charter will be mutually reinforcing.³³

The Resolution of the European Parliament on Cultural and Linguistic Minorities³⁴ was adopted in 1994. In it, the European Parliament expresses its opinion that a suitable legal status should be created for minority cultures and languages. This includes the use and promotion of these languages and cultures in the fields of education, judicial affairs, public administration, the media, toponymy and other parts of public and cultural life. It should be noted that the legal force of such resolutions is rather weak.

Finally, some attention should be paid to the Draft Declaration on the Rights of Indigenous Peoples.³⁵ As mentioned before, Frisian is considered to be one of The Netherlands' indigenous languages. For that reason, it could be concluded that the Frisians are an indigenous people. As with the concept of national minority, international law does not give an answer to the question of how an indigenous people should be defined. It is claimed that the crucial element is that they are the original inhabitants of the land on which they have lived from time immemorial.³⁶ The Draft Declaration contains some rights regarding the indigenous people's language. For example, an indigenous people has the right to revitalise, use, develop and transmit to future generations its language, writing system and literature, and it has the right to designate and retain its own names for communities, places and persons (Article 14). There are also provisions on the use of an indigenous language in the fields of education and the media. It should be noted that the Declaration has not yet been adopted. Once it will be adopted, being merely a declaration it will not have legally binding force.

³¹ Stb. 1956.242; as amended by the Act of 14 September 1995, Stb. 1995.440 on the use of Frisian in relations with judicial authorities.

³² Bijlagen II, op. cit. n. 10, 3, p. 1 (MvT).

³³ Bijlagen II, op. cit. n. 11, 3, p. 9 (MvT) and Bijlagen II, op. cit. n. 10, 5, p. 1 (NV).

³⁴ Resolution of 9 February 1994, OJ C 61/110.

³⁵ UN Doc. E/CN.4/Sub.2/1994/56.

³⁶ De Varennes, op. cit. n. 7, p. 238.

3. THE DUTCH CONSTITUTION

3.1 Language and the Dutch constitution

Together with Denmark, The Netherlands is the only European Union member State having a written constitution which has no section therein on the country's (official) language.³⁷ Regarding the Kingdom of the Netherlands such a section cannot be found in the Charter for the Kingdom either. In the 1970s the Institute for Linguistic Integration (*Instituut voor Taal-integratie*) suggested that the Constitution should be amended, so as to add a fundamental right to use one's mother tongue. A Member of the Dutch Parliament, H.J.G. Waltmans, while speaking in Parliament, pointed out that it concerned a matter which determined the further development of the Frisian language and culture.³⁸ In response, the Government though supporting this development, did not support the proposed amendment.³⁹ In 1995 the issue arose again in a proposal for an amendment submitted by two Members of Parliament, A.K. Koekkoek and E. van Middelkoop.⁴⁰ They wanted to insert an article in the Constitution implying that the promotion of the use of the Dutch language is a matter of concern to the Government.⁴¹ In the explanatory notes the initiators wrote that it was not their objective to weaken the position of minority languages in general and of Frisian in particular.⁴² This, they stated, would be contrary to the European Charter for Regional or Minority Languages and recent Dutch legislation concerning the public use of the Frisian language.⁴³ Nevertheless, a large number of representatives were worried about the position of the Frisian language, which was one of the reasons why the Second Chamber rejected the proposal. In my opinion the promotion of the Dutch language, as proposed in the bill, does not (necessarily) exclude the promotion of Frisian. Therefore I do not see any objection, resulting from the position of the Frisian language, to amending the Constitution as proposed. With regard to the use of the Dutch language in an ever growing European Union, it may even be considered to be useful to insert such an article, despite the fact that it is not strongly formulated.

³⁷ Bijlagen II, 1995/1996, 24431, A, p. 4 (Reaction to the Council of State's advice).

³⁸ Handelingen II, 1976/1977, p. 1981 (Waltmans MP).

³⁹ Bijlagen II, op. cit. n. 11, 3, p. 8 (MvT).

⁴⁰ Bijlagen II, op. cit. n. 37, 2 (Bill).

⁴¹ 'Artikel 22a. De bevordering van het gebruik van de Nederlandse taal is voorwerp van zorg van de overheid.'

⁴² Bijlagen II, op. cit. n. 37, 3, p. 2 (MvT).

⁴³ See the more detailed discussion on this aspect further on in the text.

3.2 Fundamental rights in the Dutch Constitution

Chapter 1 of the Dutch Constitution contains 23 sections granting basic classical and social rights,⁴⁴ while in other chapters of the Constitution other rights like, *inter alia*, the prohibition of the death penalty, can also be found. Some of these rights are of course very much connected with expression in general and language in particular. Before turning to the relationship between the position of the Frisian language and some of these constitutional fundamental rights, some general remarks should be made on the fundamental rights as established by the Dutch Constitution.

Firstly, it should be noted that according to Dutch law fundamental rights primarily concern the relationship between the State authorities and its subjects (vertical operation).⁴⁵ However, it is the Government's opinion that fundamental rights could also operate in relationships between citizens themselves (horizontal operation). Unfortunately, the Government's statements on this matter are very vague. The case law of the Supreme Court shows that a court should balance the interests of both parties to a dispute when dealing with this kind of question.⁴⁶

Secondly, the constitutionality of acts of parliament and treaties may not be reviewed by the courts. Such a review, both on material and on formal grounds,⁴⁷ is prohibited by Article 120 of the Constitution. The Supreme Court extended the scope of the prohibition by ruling that testing an act of parliament against fundamental principles of law and the Charter for the Kingdom is also prohibited by Article 120.⁴⁸ However, the importance of this prohibition must be slightly reduced, because Article 120 does not prohibit testing acts of parliament against provisions of treaties or of resolutions adopted by international institutions that are binding on all persons.⁴⁹ There is, indeed, an impression that Article 120 leaves too much competence to the legislative power. More importantly, it places the Dutch courts in a somewhat peculiar position by entitling them to test acts of Parliament against provisions of international law, but not against similar provisions contained in the Constitution, which can be used as an argument to suggest that Article 120 should be repealed, or at least amended.

Thirdly, it is important to realize that there is a system of limitations to fundamental rights. Such a limitation is lawful if it conforms to a constitutional

⁴⁴ For a brief description of these fundamental rights in English see: C.A.J.M. Kortmann/P.P.T. Bovend'Eert, *The Kingdom of the Netherlands; an introduction to Dutch constitutional law*, Deventer (1993), p. 129-142. For an analysis in Dutch: C.A.J.M. Kortmann, *Constitutioneel recht*, 3rd ed., Deventer (1997), p. 341-431.

⁴⁵ Bijlagen II, 1975/1976, 13872, 3, p. 15 (MvT) and HR 26 April 1996, AB 1996.372, *Gemeente Rijssen v. Universal Star Production GmbH*.

⁴⁶ See for example HR 22 January 1988, NJ 1988.891, *JBO v. Brucker*.

⁴⁷ For the latter: HR 27 January 1961, NJ 1963.248, *Van den Bergh v. Staat der Nederlanden*.

⁴⁸ HR 14 April 1989, NJ 1989.469, *Staat der Nederlanden v. LSVB and Kruisbrink*.

⁴⁹ See also Article 94 of the Constitution.

limitation clause or, sometimes, criteria developed in case law.⁵⁰ Regarding the former, sometimes the legislator (that is the Government (the monarch and ministers) and Parliament) is exclusively competent to do so, and sometimes the legislator may delegate the power to other offices. This should be determined by the text of the limitation clause.⁵¹

4 THE RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS IN THE DUTCH CONSTITUTION AND THE FRISIAN LANGUAGE

In principle individuals are allowed to use the Frisian language in private correspondence, communications, cultural and musical expression, private use of topographical names, private parts of (religious) ceremonies, private media and publications, private broadcasting, private economic activities and private (political) groups and organizations. If the Dutch Government would try and prevent individuals from doing so, it would be in breach of the freedom of expression, the right to private life and/or the right to non-discrimination as guaranteed by the Dutch Constitution.

Freedom of expression is guaranteed by Article 7 of the Constitution. Paragraph 1 focuses on the press: no one shall require prior permission to reveal thoughts or opinions through the press, without prejudice to everyone's responsibility established by act of parliament. Paragraph 2 focuses on television and radio: rules concerning radio and television shall be laid down by act of parliament; there shall be no prior supervision of the content of a radio or television broadcast. Paragraph 3 focuses on the remaining category of means: no one shall be required to submit thoughts or opinions for prior approval in order to reveal them by means other than those mentioned in the preceding paragraphs of Article 7, without prejudice to everyone's responsibility established by act of parliament. In Article 10 of the Constitution it is stated that everyone shall have the right to respect for his privacy, without prejudice to restrictions laid down by or pursuant to an act of parliament. Finally, there is a general non-discrimination article, Article 1: discrimination on any ground (some of the grounds are listed) is not permitted. This includes, of course, discrimination on the (non-listed) ground of language.⁵² It should be mentioned that any differentiation on the basis of knowledge of the Frisian language is prohibited as well, if there is no reasonable and objective justification.⁵³

⁵⁰ Kortmann/Bovend'Eert, op. cit. n. 44, p. 133; Kortmann, op. cit. n. 44, p. 360-361.

⁵¹ Kortmann/Bovend'Eert, op. cit. n. 44, p. 108; Kortmann, op. cit. n. 44, p. 318-320.

⁵² This was also the opinion of Koekoek and Van Middelkoop (Bijlagen II, op. cit. n. 37, A, p. 4 [Reaction to the Council of State's advice]) and of the Government (Bijlagen II, op. cit. n. 11, 3, p. 8 [MvT]).

⁵³ Bijlagen II, op. cit. n. 11, 3, p. 8 (MvT).

With respect to the media, I note that pursuant to Article 170 of the 1987 Media Act⁵⁴ there is a fund which promotes Dutch cultural broadcasting productions (*Stichting Stimuleringsfonds Nederlandse Culturele Omroep-producties*). It subsidizes the development and production of cultural radio and television broadcasts, one of the requirements being that for the most part the Dutch or Frisian languages are spoken.⁵⁵ Furthermore, there is a Frisian regional broadcaster (*Omrop Fryslân*), which broadcasts television and radio programmes both within the territory of the province of Friesland and on a national level.⁵⁶

Regarding private correspondence and private communications an additional remark should be made. Very often a letter, a telephone or a telegraph will be used for correspondence and/or communication. Article 13, paragraph 1 of the Constitution guarantees the privacy of correspondence, except in the cases laid down in an act of parliament, by order of court. Paragraph 2 protects the privacy of telephone and telegraph communication, except in the cases laid down in an act of parliament, by or with the authorization of those designated for the purpose by the act of parliament. Therefore, enforcement of any prohibition on using the Frisian language in private correspondence or communication would lead in most cases to an infringement of the privacy of correspondence or telephone and telegraph communication.

The general principle is clear: there is the freedom of expression, the right to private life, the right to privacy of correspondence and communication and the right to non-discrimination. However, apart from the right to non-discrimination, limitations on these rights and freedoms are allowed. Therefore, according to national law it would be possible for the legislator (in the case of the freedom of expression and privacy of correspondence and communication) or for the legislator and, if designated, an office with delegated authority (in the case of the right to private life) to limit the use of the Frisian language in the fields which are mentioned above. It should be noted that such a limitation, which at the moment does not exist, would violate certain international obligations (such as Articles 8 and 10 ECHR and Articles 17, 19 and 27 ICCPR) if they are not in conformity with the limitation criteria mentioned there. A limitation would also violate Article 1 of the Constitution if it is of a discriminatory nature.

With regard to the latter, one can express concern about the increasing number of job advertisements, in which local or provincial authorities require prospective civil servant to have knowledge of the Frisian language. This matter was specifically addressed by the Council of State and the Government: the Government complied with the Council's recommendation to change certain formulations in the explanatory notes to the Act of 4 May 1995 in order to prevent the possible misunderstanding that learning the Frisian language would

⁵⁴ *Mediawet* (Act of 21 April 1987, Stb. 1987.249; most recently amended by the Act of 22 December 1999, Stb. 1999.573).

⁵⁵ <http://www.stimuleringsfonds.rtv.nl/hand/inleiding/html>

⁵⁶ See also: <http://www.dds.nl/~cvdm/perb/12-06-98.htm>

be a requirement for being appointed as a provincial civil servant.⁵⁷ Of course, there may be a reasonable and objective justification for such a requirement: it is not difficult to imagine why it is required for a provincial advisor in the field of communication to be able to speak Frisian.⁵⁸ However, in this context it is difficult to understand why it is considered necessary for a municipal head of the department of facility affairs to speak Frisian,⁵⁹ if it is not considered to be necessary for a civil servant who grants environmental permits in the same municipality.⁶⁰

5. USE OF FRISIAN LANGUAGE BY AND IN RELATIONS WITH STATE AUTHORITIES

5.1 Rules on the use of the Frisian language in relations with administrative authorities⁶¹

A very important aspect of the position of a language in a State is, of course, the possibility for individuals and State authorities to use a particular language in mutual relationships. From the very beginning of the Kingdom of The Netherlands, the legislator has been aware of this, as can be seen by referring to an 1830 Royal Decree on the use of languages in The Netherlands.⁶² Article 7 of this Decree provided that Dutch shall be used in administrative, financial and judicial affairs in all Dutch provinces except Limburg.⁶³ Various courts confirmed the view that Dutch is the official administrative language,⁶⁴ though, for reasons which are unclear, they did not base their judgements on the Decree.

Article 107, paragraph 2 of the Constitution urges the legislator to lay down general rules of administrative law. This was done in the General Administrative Law Act 1992.⁶⁵ In 1995 seven sections, Articles 2:6 up to and including 2:12, on the use of language in relations with administrative authorities were inserted.⁶⁶ Two reasons underlie the adoption of this amendment.⁶⁷

⁵⁷ Bijlagen II, op. cit. n. 11, B, p. 7 ([Reaction to] Council of the State's advice).

⁵⁸ *Binnenlands Bestuur*, 5 May 2000, p. 34.

⁵⁹ *Binnenlands Bestuur*, Idem, p. 42.

⁶⁰ *Binnenlands Bestuur*, 21 April 2000, p. 66.

⁶¹ See also: T.C. Borman, 'De taal in het rechts- en bestuurlijk verkeer', *Ars Aequi* (1996), p. 28-34.

⁶² Royal Decree of 4 June 1830, Stb. 1830.19.

⁶³ Limburg's exclusion was due to the political situation at the time. The Decree intended to regulate the relationship between Dutch and French as administrative languages, and in those days French was a much-spoken language in Limburg.

⁶⁴ Case law – amongst others by the Legal Division of the Council of State – listed in Bijlagen II, op. cit. n. 11, 3, p. 3 (MvT).

⁶⁵ *Algemene wet bestuursrecht* (Act of 4 June 1992, Stb. 1992.315; most recently amended by the Act of 28 January 1999, Stb. 1999.30).

Firstly, the States General, presuming that the general rule that Dutch should be used in relations with State authorities had always remained uncoded, had requested for codification.⁶⁸ This presumption seems to be doubtful, since the above-mentioned 1830 Royal Decree had never been formally repealed.⁶⁹ In addition, it should be mentioned that the Government laid down its opinion on the use of the Frisian language both in administrative relations and in judicial relations, in a 1953 parliamentary document (the Cabinet's Position) and in a 1993 agreement.⁷⁰ The Cabinet's Position was a reaction to riots which took place on 16 November 1951 (the so-called *knuppelvrijdag* or 'truncheon Friday') between the police and adherents of the *Fryske Beweging* (Frisian Movement), caused by a judge who did not allow the use of the Frisian language in court.⁷¹ It was necessary to codify the rules in an act of parliament because of uncertainty surrounding the question whether or not these documents were binding upon third parties.⁷²

Secondly, the 1830 Royal Decree was still in force and the Legal Division of the Council of State had ruled that an act of parliament was required in order to allow exceptions to the general rule that Dutch is the language in relations with administrative and judicial authorities.⁷³

Thus, the general rule that administrative bodies and their staff use the Dutch language is laid down in Article 2:6, first part of paragraph 1 of the General Administrative Law Act. However, there are two exceptions to this general rule:⁷⁴ (1) a statutory provision may create an exception (Article 2:6, second part of paragraph 1); and (2) another language may be used if this is more efficient and if the interests of third parties are not harmed in a disproportionate manner (Article 2:6, paragraph 2). The position of the Frisian language, elaborated in Articles 2:7 up to and including 2:12 of the General Administrative Law Act, is an example of a statutory exception to the general rule.⁷⁵

These articles lead to four types/possibilities of use of the Frisian language: oral and written use by an individual and oral and written use by the administrative authority. Article 2:7, paragraph 1 provides that all individuals may use the Frisian language in relations with administrative authorities which are established in the province of Friesland. However, paragraph 1 is not

⁶⁷ Bijlagen II, op. cit. n. 11, 3, p. 1 (MvT) and preamble of the Act of 4 May 1995, Stb. 1995.302.

⁶⁸ See for example: Bijlagen I, 1990/1991, 21800 VII, 135d (Motion by Postma MP).

⁶⁹ Bijlagen II, op. cit. n. 11, 3, p. 3 and 20 (MvT) and article II of the Act of 4 May 1995, Stb. 1995.302.

⁷⁰ Bijlagen II, 1953/1954, 3321, 1 (Cabinet's Position of 9 December 1953) and *Bestuursafpraak Friese taal en letterkunde* (Agreement of 8 November 1993, Stcrt. 1993.237).

⁷¹ Handelingen II, 1993/1994, p. 6103 (Kalsbeek-Jasperse MP).

⁷² Bijlagen II, op. cit. n. 11, 3, p. 7 (MvT).

⁷³ ARRvS 17 January 1985, AB 1986.73, *Spithorst v. Gedeputeerde Staten van Friesland*.

⁷⁴ Bijlagen II, op. cit. n. 11, 3, p. 4 (MvT).

⁷⁵ Bijlagen II, op. cit. n. 11, 3, p. 17 (MvT). Other exceptions are listed in Bijlagen II, op. cit. n. 11, 5, p. 11 (NV), also referring to *Fryske Akademy/Berie foar it Frysk. Lykbe-rjochting en it Frysk. Momintopname fan in ûnfolsleine rjochtsstaat*, Leeuwarden 1987.

applicable if the administrative authority requests that the Dutch language be used, on the ground that using the Frisian language would lead to a disproportionate burden (paragraph 2). The counterparts of Article 2:7 are Articles 2:8 and 2:9. Administrative authorities may use Frisian orally within the province of Friesland (Article 2:8, paragraph 1). Again, paragraph 2 provides an exception: paragraph 1 is not applicable if the opposite party requests that the Dutch language be used, on the ground that using Frisian leads to an unsatisfactory state of affairs. Decentralized administrative authorities which are established in Friesland may lay down rules on the use of Frisian in written proceedings (Article 2:9). With regard to administrative authorities of the province of Friesland, this was done by provincial states in 1999.⁷⁶ Documents will be bilingual if they have to be used outside the province of Friesland as well or if they contain or prepare general binding rules (*algemeen verbindende voorschriften*) or policy rules (*beleidsregels*) (Article 2:10). Anyone may request a translation of documents which are written in Frisian upon payment of (a part of) the costs. An interested party can obtain a translation for free if the document contains a relevant decision or minute of a meeting (Article 2:11). In meetings of representative bodies Frisian may be used; that which is said in Frisian will be entered in the minutes in Frisian (Article 2:12).

5.2 Rules on the use of the Frisian language in relations with judicial authorities

Rules on the use of Frisian in relations with judicial authorities have been laid down in the 1956 Act on the Use of the Frisian Language in Judicial Matters.⁷⁷

Article 1 provides that oaths and affirmations that are required by law may be made in the Frisian language, unless the words of the oath or affirmation are (partly) laid down in the Constitution. Article 1 is an exception as provided for in Article 2 of the 1911 Act on the Wording of the Oath.⁷⁸ For that reason, oaths or affirmations which have to be made in court, such as oaths or affirmations made by witnesses, experts and interpreters, may be made in Frisian. This is not limited to courts in the province of Friesland.⁷⁹ Former Article XI of the Constitution contained the words of the oaths or affirmations to be made by the King and the regent. Since this article was repealed in 1999,⁸⁰ the present Constitution no longer prescribes any words for oaths or affirmations. The words of 'constitutional' oaths or affirmations are now laid down in the 1992 Act on

⁷⁶ *Oaarderding oangeande it skriftlik brûken fan de Fryske en de Nederlândske taal troch bestjoerorganen fan de provinsje Fryslân*, <http://www.fryslan.nl/html-ned/home.html>

⁷⁷ *Wet gebruik Friese taal in het rechtsverkeer* (Act of 11 May 1956, Stb. 1956.242; most recently amended by the Act of 28 January 1999, Stb. 1999.30).

⁷⁸ *Wet vorm van de eed* (Act of 17 July 1911, Stb. 1911.215).

⁷⁹ *Bijlagen II*, 1953/1954, 3553, 3, p. 4 (MvT).

⁸⁰ *Statute Act 1999*, 1999, Stb. 1999.151.

Swearing and Inauguration of the King,⁸¹ the 1994 Swearing of the Regent Act⁸² and the 1994 Swearing of Ministers and Members of the States General Act.⁸³ These oaths or affirmations may be made in Frisian as well, and in practice this has been done by some Frisian Members of Parliament.⁸⁴

Persons speaking in a court established in the province of Friesland may use the Frisian language (Article 2). A suspect or witness who wishes to use Frisian in criminal proceedings in a court outside the province of Friesland, may use Frisian if the suspect or witness demonstrates an insufficient knowledge of Dutch (Article 12). In criminal proceedings the president of the court may order that an interpreter shall be present (Article 3). The same applies to civil and administrative proceedings, provided that there will be no needless delay of the proceedings (Articles 4 and 5). In principle, what is said in Frisian will be entered in the minutes in Frisian; the president of the court may order a translation into Dutch (Article 6). Documents, except for summonses and charges, may be written in Frisian, if necessary with a translation (Article 7).

Article 8 deals with documents and statements which have to be registered in a public register, for example deeds of conveyance of real estate (Article 3:89 of the Civil Code). These documents may be written in the Frisian language. However, instead of the original Frisian documents, official translations in Dutch will be registered; the Frisian documents will be attached (paragraphs 1 and 2). Specific rules on notarial deeds in Frisian can be found in Article 42 of the 1999 Office of Notary Act;⁸⁵ rules on registration of Frisian documents in the land register were laid down in Article 41 of the 1991 Land Register Act.⁸⁶ Article 8, paragraph 3 of the Act of 11 May 1956, as amended, provides that birth, marriage and death certificates are made both in Frisian and in Dutch, which is an exception to the general rule that they are only made in Dutch.⁸⁷ With respect to birth certificates it should be noted that the registrar may only refuse first names proposed by the person registering the birth, if the name is inappropriate or if it corresponds with an existing surname which is not also a usual first name (Article 1:4, paragraph 2 of the Civil Code). This leads to the conclusion that the registrar may not refuse a Frisian name merely because it is a Frisian name: the grounds for refusing a first name have been listed exhaustively.

⁸¹ *Wet beëdiging en inhuldiging van de koning* (Statute Act of 27 February 1992, Stb. 1992.121).

⁸² *Wet beëdiging van de regent* (Statute Act of 25 March 1994, Stb. 1994.250).

⁸³ *Wet beëdiging ministers en leden Staten-Generaal* (Act of 27 February 1992, Stb. 1992.120).

⁸⁴ For example Atsma MP, on 19 May 1998: <http://www.telegraaf.nl>

⁸⁵ *Wet op het notarisambt* (Act of 3 April 1999, Stb. 1999.190).

⁸⁶ *Kadasterwet* (Act of 6 June 1991, Stb. 1991.376; most recently amended by the Act of 3 April 1999, Stb. 1999.190).

⁸⁷ Art. 17, paragraph 1 of *Besluit burgerlijke stand 1994* (Royal Decree of 25 February 1994, Stb. 1994.160; most recently amended by the Royal Decree of 27 March 1998, Stb. 1998.176).

5.3 Geographic names

Throughout the centuries the name of the 'province' of Friesland has sometimes changed. As early as 1579 we find the name 'Vriesche Ommelanden' in the Constitution.⁸⁸ From 1801 onwards, however, the Dutch name of 'Friesland' has been used.⁸⁹ Article 1 of the former 1962 Provinces Act⁹⁰ listed the 12 Dutch provinces, one of them being 'Friesland'. However, this situation changed with the entry into force of the new 1992 Provinces Act⁹¹: the list of provinces disappeared. For this paragraph, Article 156 of the present Provinces Act is relevant. According to paragraph 1 of Article 156, provincial states can change the name of the province. The decision has to be notified to the Minister of the Interior. It will enter into force at least one year after its date. Provincial states of Friesland have used their power to change the province's name: in 1995 they changed the name from the Dutch 'Friesland' into the Frisian 'Fryslân'.⁹² The decision entered into force on 1 January 1997. A similar power has been granted to the municipal council with regard to the names of the municipalities (Article 158 of the 1992 Local Authorities Act⁹³). Some of the Frisian municipal councils actually used this power,⁹⁴ the others did not.

It is the Government's opinion that the power to establish and change the names of villages, streets etc. is a part of the autonomous legislative power of the municipal council.⁹⁵ This power is granted by Article 124 of the Constitution.⁹⁶ As early as 1953 the Government stated that, in principle, it would not use its power to nullify municipal bye-laws on this matter.⁹⁷ That the power to change the names of villages may lead to some practical problems, is demonstrated by the question of traffic signs in the municipality of Tytsjerksteradiel.⁹⁸ The local council changed the names of the municipality's villages in the 1980s. In its decision, the council ordered new traffic signs indicating built-up areas. In The Netherlands, these signs contain the name of the village and, in a smaller letter,

⁸⁸ Van Hasselt, *Nederlandse staatsregelingen en grondwetten*, 17th ed., Alphen aan den Rijn (1987), p. 5.

⁸⁹ Art. 21 of the 1801 Constitution: Van Hasselt, *Idem.*, p. 107.

⁹⁰ *Provinciewet* (Act of 25 January 1962, Stb. 1962.17).

⁹¹ *Provinciewet* (Act of 10 September 1992, Stb. 1992.550; most recently amended by the Act of 28 January 1999, Stb. 1999.30).

⁹² *Beslut fan Provinsjale Steaten fan Friesland* (Decision of 13 December 1995, PBF 1996.7).

⁹³ *Gemeentewet* (Act of 14 February 1992, Stb. 96; most recently amended by the Act of 11 November 1999, Stb. 1999.505).

⁹⁴ Boarnsterhim, Ferwerderadiel, Gaasterlân-Sleat, Littenseradiel, Skarsterlân, Tytsjerksteradiel, Wûnsteradiel, Wymbritseradiel. Source: internet, op. cit. n. 76.

⁹⁵ Bijlagen II, op. cit. n. 11, 3, p. 9 (MvT).

⁹⁶ On autonomous legislative power see: H.Ph.J.A.M. Hennekens/H.J.A.M. van Geest/R. Fernhout, *Decentralisatie*, 4th ed., Nijmegen (1998), p. 14-18, 59-86.

⁹⁷ Bijlagen II, op. cit. n. 70, 1, p. 2 (Cabinet's Position of 9 December 1953).

⁹⁸ B. Olmer, 'Rimram in Tietjerk om plaatsnamen', *De Telegraaf*, 4 May 2000. Further information was provided by the municipal spokesman.

the name of the municipality. The council determined the layout of these signs: the official Frisian name, in a normal letter; the Dutch translation, in a somewhat smaller letter; and the municipality's name in the smallest letter. After a few years, some of the traffic signs had to be replaced and the council ordered new ones. The layout of these new signs differed significantly from the old one, this being caused by a ministerial rule, issued pursuant to an Order in Council, on the layout of Frisian traffic signs. As a result, some members of Tytsjerksteradiel's council complained about the non-implementation of the council's decision. This resulted in an exceptional position, granted by the Ministry of Transport and Public Works: Tytsjerksteradiel's traffic signs were saved...

5.4 Public instruction⁹⁹

Education is essential for preserving and promoting language and culture. It is the Government's opinion that the bilingual situation in Friesland requires special attention at all levels of education. The instruction in Friesland has to offer possibilities for students to educate themselves in their native language, as well as to prepare students for life in a bilingual society. For that reason the Minister for Education has to promote, initiate and adopt legislation on the position of the Frisian language in the field of education.

Regarding primary education the position of the Frisian language is primarily dealt with in Article 9 of the 1981 Primary Education Act.¹⁰⁰ In principle, the official school language is Dutch, but Frisian may also be used in areas where Frisian is a much-spoken language (paragraph 8). This is in conformity with the general idea that instruction in the mother tongue is, at least at the initial levels of education, the most effective way to instruct children.¹⁰¹ Paragraph 4 provides that, apart from the subjects mentioned in paragraphs 1, 2 and 3, there will be instruction in the subject of Frisian language at primary schools in the province of Friesland, unless the provincial executive (*Gedeputeerde Staten*) has granted an exemption from this requirement. Pursuant to paragraph 5, some main targets have been laid down in a 1998 Royal Decree.¹⁰² These targets concern, for example, sufficient speaking, reading and writing skills. The State refunds expenses entitled in instruction in the Frisian language to the province of Friesland, which has to ensure a student-based distribution to the schools (Article 134, paragraph 2). Furthermore, the State provides for educational guidance on the subject of Frisian and it encourages that final tests, which have an advisory function in admitting a child to a certain type of secondary education, will be prepared.

⁹⁹ See also: Chapter 4 of the *Bestuursafpraak*, op. cit. n. 70.

¹⁰⁰ *Wet op het primair onderwijs* (Act of 2 July 1981, Stb. 1981.468; most recently amended by the Act of 2 December 1999, Stb. 1999.527).

¹⁰¹ De Varennes, op. cit. n. 7, p. 184.

¹⁰² *Besluit kerndoelen primair onderwijs 1998* (Royal Decree of 2 June 1998, Stb. 1998.354; most recently amended by the Royal Decree of 27 July 1998, Stb. 1998.487).

With respect to secondary education, rules can be found in the 1963 Secondary Education Act.¹⁰³ During the first three years of secondary education Frisian is a compulsory subject for students in the province of Friesland, unless the inspector of education has granted an exemption from this requirement (Article 11a, paragraph 2, sub. b). Again, main targets have been laid down in a Royal Decree.¹⁰⁴ Regarding special secondary education, Frisian may be taught in schools in the province of Friesland, though this is not compulsory (Article 135, paragraph 3). Finally, the State provides for educational guidance, a coordinator and final examinations in the subject of the Frisian language.

6. CONCLUSION

Once an official language of The Netherlands, the Frisian language is nowadays primarily spoken in the Dutch province of Friesland. This Germanic language is considered to be a minority language as defined in several international documents, which was one of the reasons for the Dutch Government to initiate legislation on the position of the Frisian language in The Netherlands. The Dutch legislation provides the Frisians and their language with a stronger position than required is by Article 27 of the ICCPR. The right of a linguistic minority to use its own language in community with other members of its group is sufficiently guaranteed by several constitutional fundamental rights. Since no special measures granting specific rights to a minority are required, the specific legislation on, for example, the use of Frisian in relations with administrative authorities must therefore be regarded as being 'excessive' in this context. However, this kind of legislation is not excessive in the context of the European Charter for Regional or Minority Languages and the Draft Declaration on the Rights of Indigenous Peoples. On the contrary, The Netherlands has committed itself to applying some 50 provisions of the Charter concerning education (Article 8), judicial authorities (Article 9), administrative authorities and public services (Article 10), the media (Article 11), culture (Article 12), the economy and social life (Article 13) and cross-border exchanges (Article 14). In the field of language, literature, education in an indigenous language and the media, the Draft Declaration also provides rights to indigenous peoples. Special legislation was also required in order to fulfil the European Parliament's wishes, as laid down in its Resolution on Cultural and Linguistic Minorities. It will also be required in order to comply with the Framework Convention for the Protection of National Minorities, once it will enter into force for The Netherlands.

In the Constitution itself there is no provision on language as efforts to insert such an article have never reached the point of acceptance. However, the

¹⁰³ *Wet op het voortgezet onderwijs* (Act of 14 February 1963, Stb. 1963.40; most recently amended by the Act of 28 October 1999, Stb. 1999.474).

¹⁰⁴ *Besluit kerndoelen en adviesuren tabel basisvorming 1998-2003* (Royal Decree of 15 October 1997, Stb. 1997.484).

Constitution contains several fundamental rights which are related to expression and the use of language. In principle, individuals enjoy freedom of expression, a right to private life, a right to non-discrimination and a right to privacy of correspondence and communication. It should be noted that these rights can be limited (in most cases by an act of parliament) and that they operate primarily in a vertical direction, as discussed in Chapter 3 of this article.

In addition, as analysed in Chapter 4, detailed rules on the use of the Frisian language in relations with administrative authorities were laid down in the 1992 General Administrative Law Act, whereas the use of Frisian in judicial matters is regulated by the 1956 Act on the Use of the Frisian Language in Judicial Matters, as amended. The 1992 Provinces Act and the 1992 Local Authorities Act, as well as Article 124 of the Constitution, are of certain relevance too, as they provide a legal basis for changing toponymical names from Dutch into Frisian. Several acts in the field of education provide rules for the use and teaching of Frisian in schools.

As mentioned above, the enjoyment of certain fundamental rights can be limited by an act of parliament. Furthermore, the existing acts of parliament can be repealed or amended. Thus, it still remains possible to severely limit the position of the Frisian language. However, this seems to be a highly improbable scenario for various reasons. Firstly, such limitation would be contrary to international law guaranteeing fundamental rights and protecting minority languages. Secondly, such measures would be contrary to Article 1 of the Constitution which cannot be limited in any way. And finally, it would be contrary to continuous Government policy on the position of the Frisian language, which originates from the 1950s.