

## BIJLAGE 9

# Summary

### 1 The request for advice

The regulations governing the admission and residence of aliens in the Netherlands for religious purposes are to some extent out of date and at present provide no consistent policy based on a thorough consideration of the issue. The Minister for Immigration and Integration therefore requested the Advisory Committee on Aliens Affairs (ACVZ) to produce an advisory report on a policy framework for the admission and residence of aliens for religious purposes. In doing so, the ACVZ was also asked to discuss the feasibility and desirability of imposing additional civic integration requirements on clergy, partly in the light of the separation of church and state on the one hand and the principle of equal treatment on the other.

There is already a policy framework governing clergy. In 2004, an interim supplement to the Aliens Act implementation guidelines (TBV 2004/02) was published to assist the assessment of the grounds for granting permission to reside in the Netherlands in order to serve religious or belief-based organisations. Pending the publication of the present report, the interim supplement was extended for another year in December 2004.

This advisory report distinguishes between different types of residence for the purposes of religion or belief. A special admission policy is deemed necessary for clergy, members of religious orders and missionaries, under which 'residence permits for the purposes of religion or belief' may be granted. The report contains proposals to this end. A separate policy framework governing students undergoing religious training, teachers of religion in ordinary schools and spiritual counsellors in prisons, the army or health services was considered either wrong or undesirable. Such applicants should meet the conditions that apply to applicants for regular permits and the religious aspects should not lead to specific admission requirements.

### 2 Migration and religion

In this report the ACVZ touches on the relationship between migration and religion in Dutch society. Religion is equated with all other philosophies of life with an existential vision that gives rise to standards and values (whether based on a transcendental reality or not). The ACVZ concludes that being able to practise a religion or belief together with others within a community is of great importance for a large proportion of the Dutch population, as well as for many migrants and refugees in this country. A church or mosque serving migrants can also offer a basis for exploring the new society in which they find themselves and for building their own networks, both of which promote integration. Spiritual leaders can play a significant role on the interface between the preservation of ethnic identity and integration in the larger community.

### 3 Admission of clergy

In the past, members of clergy usually had no difficulty in obtaining permission to reside and work in the Netherlands for a few years, whether it was the 100 or so imams

trained, selected and paid for by the Turkish authorities ('Diyaret') to serve the Turkish community in the Netherlands, the 80-odd Mormon missionaries admitted every year or the foreign members of religious orders intended to strengthen their congregations established in the Netherlands. This changed in the nineteen nineties. As early as 1996, the then Minister of the Interior, Hans Dijkstal, advocated training imams in the Netherlands and – "if necessary" – the introduction of civic integration contracts. The events of 11 September 2001 in the United States, the wider debate on the integration issue in the Netherlands as well as the pronouncements of various imams concerning homosexuality focused ever greater attention on the role played by the clergy in moulding the attitudes of immigrants to Dutch society and the rule of law.

## 4 Admission of clergy to other countries

The ACVZ asked the International Centre for Migration Policy Development (ICMPD) in Vienna to carry out a comparative study in certain EU member states and some non-EU countries of admission and residence for the purposes of religion and belief. Their findings are extremely varied as the attitude to admission for religious purposes is always dependent on the specific relationship between church and state in the country concerned. With the exception of one country (the Czech Republic), all the countries examined have special rules governing the admission and residence of foreign clergy. The most common form of admission for 'religious workers', as the report calls them, is a temporary permit. Nevertheless, it is in principle possible in all the countries surveyed to obtain a permanent residence permit as well as to apply for naturalisation. Until recently, civic integration requirements were not imposed in any of the countries either before or after admission. The United Kingdom and Switzerland have however recently amended policy in this respect, while the other countries are considering introducing civic integration requirements for foreign nationals admitted to their countries for religious purposes.

## 5 Legal basis

The legal basis for Dutch policy on admission and residence for religious purposes is largely shaped by the following principles.

### *5.1 Freedom of religion, the principle of equal treatment and the separation of church and state*

On the basis of the principle of freedom of religion as enshrined in the Constitution and the associated separation of church and state, the government is obliged to refrain from creating obstacles to the practice of religion, insofar as public order or national security does not require such measures to be taken. Because of the importance of religion and the need experienced by faith communities to choose their own clergy, such communities perceive having their own clergy as a significant part of freedom of religion. However, this freedom does not entail an unrestricted right to entry to or residence in the Netherlands for foreign clergy. Only if the practice of religion is not feasible without the presence of clergy from outside this country can the refusal to admit persons falling into this category might be seen as a restriction on freedom of religion that must be in accordance with the relevant clauses of the Constitution and human rights treaties. What is more, on the basis of the principle of equal treatment, no distinction should be made between the different religious and belief groups. The state is after all the "neutral

and impartial organiser” whose duty it is to ensure that the various religious groupings have equal opportunities to pursue their activities within the limits imposed by the Dutch legal order. With this in mind, it needs to adopt a cautious approach.

### *5.2 Essential Dutch interest*

Section 13 of the Aliens Act 2000 (Vw 2000) states that an application for a residence permit will be granted only if:

- a. this is required as a consequence of international obligationst;*
- b. the presence of the alien serves an essential Dutch interest, or*
- c. there are compelling reasons of a humanitarian nature for doing so.*

Because the admission and residence of persons for religious purposes is not as a rule required by international obligations or compelling reasons of a humanitarian nature, the assessment that hence will have to be made is whether the presence of the person concerned serves an essential Dutch interest. In deciding whether there is such an interest in a particular case, the Dutch government – partly as a result of the parliamentary history of the Aliens Act 2000 – may exercise a considerable degree of discretion in making such an assessment, as well as having considerable freedom to make policy when it comes to formulating the relevant conditions.

The ACVZ is of the opinion that the ability of a faith community to function well within the national legal order can generally be considered as an essential Dutch (social and cultural) interest. The consequences of this premise for the admission requirements for clergy, members of religious orders and missionaries are discussed below.

### *5.3 Clergy and the Foreign Nationals (Employment) Act*

Foreign clergy must in general comply with the criteria imposed by the Clergy and the Foreign Nationals (Employment) Act (Wav) and must therefore apply for a work permit, be able to show an employment contract and earn at least the minimum wage. The ACVZ notes that the application of the Wav to this category of foreign workers gives rise to a number of problems. In practice, it is often clear that there is no question of providing prioritised labour and the requirement to advertise is seen as a meaningless procedure. The Centres for Work and Income are aware of this. In addition, for some religious groupings it is not financially feasible to offer the required remuneration (the minimum wage). Sometimes the payment of wages is in conflict with the vow of poverty taken by certain clergy. In the ACVZ’s view, this type of work should be exempted from the scope of application of the Wav in view of the special nature of the relationship between the clergy and the faith community, in terms of labour law and otherwise. The Committee therefore advocates incorporating the entire corpus of admission and residence rules in the Aliens Act 2000, the Aliens Decree 2000 and the Aliens Act implementation guidelines 2000.

### *5.4 Public order and fundamental rights and freedoms*

Section 3 of the Aliens Act 2000 states that entry to the Netherlands will be refused to aliens who constitute a serious threat to public order or national security. This applies to all categories of aliens, and therefore also to those who wish to come to the Netherlands

for religious purposes. The ACVZ considers this an important aspect, partly because through their specific role, members of clergy occupy an important position within the relevant faith community. The ACVZ would adopt the following premises with regard to admission and residence for religious purposes:

- the religious or belief community for whose benefit admission of a member of clergy is being applied for must be of a reasonable size, have an adequate organisational structure and must operate within the limits of the Dutch legal order;
- the basic tenets of the religion or belief in question may not be examined by the Dutch authorities or subjected to restrictions; the only exception to this rule is if the religion or belief in question incites behaviour or condones behaviour that is incompatible with the Dutch legal order;
- partly in view of the Dutch interest at stake, specific consideration of public order issues resulting in a security assessment (security, public order, fundamental rights and freedoms of others) is appropriate in the case of applications for admission and residence in the Netherlands for religious purposes.

## 6 Framework for admission and residence for religious purposes

The ACVZ would recommend the following framework (given here in summary) for the admission and residence of members of clergy and of religious orders, and missionaries. For details of the grounds on which the choices have been made, please see the full report.

The first point which should be made is that it is not always possible to draw a clear demarcation line between the various categories. Persons who at first sight would seem to belong to one particular category may also perform activities that are more appropriately classified under another. In the case of a combination or accumulation of activities (for example a member of a religious order who teaches at a nearby school, or a missionary who acts as a minister of religion) the person concerned must conform, in the opinion of the ACVZ, to the 'strictest' or most far-reaching requirements. This may have an impact on the period of residence and admission and civic integration requirements.

### 6.1 *Members of clergy*

Members of clergy are at present allowed entry to the Netherlands for a temporary purpose: residence is only allowed for the duration of the activities as a member of clergy/religious teacher. Once these have ended, the person concerned must leave the country, even if he/she has worked here for a long period of time. Residence permits are granted for a period of one year and have to be extended annually, which incidentally leads to considerable expense in terms of administrative charges. Naturalisation is not possible. Members of the person's family may come to the Netherlands for the purposes of family reunification, provided the rules in force are complied with. They are not however entitled to enter the labour market.

The categorical refusal to allow members of clergy a permanent residence permit can lead to undesirable side-effects. Partly in the light of the principle of equal treatment and the requirement of neutrality, there is no way to justify the fact that – contrary to general policy – a member of clergy who has served his community for many years has to leave the country on resigning from his post (for example because he has reached retirement age or has fallen ill) and that his family members have to remain economically inactive

throughout the period that he is so employed. On the other hand, many members of clergy do not have a normal contract of employment and have therefore never paid social contributions. It is not acceptable for such persons to automatically become a burden on public funds after their employment ceases.

On the basis of the arguments outlined above, the ACVZ would recommend the following criteria for the admission and residence of members of clergy.

**a Wav criteria inapplicable**

Members of clergy should be exempted from the provisions of the Wav (see also section 3.3 of the full report below). All the conditions governing admission and residence should be laid down in the Aliens Act 2000, the Aliens Decree 2000 and the Aliens Act implementation guidelines 2000.

**b Conditions to be imposed on the religious/belief community**

The religious/belief community for whose benefit admission and residence is being applied for should meet the following conditions:

- the community must be of sufficient size and have a sufficient organisational structure to allow it to act as a legal entity in relation to the state;
- the application must be furnished with grounds (in other words, it must present convincing reasons why it is important to recruit a member of clergy from outside the Netherlands);
- the community must guarantee to provide financial support for the member of clergy and should insure him/her against illness and accidents.

A distinction should be drawn between clergy:

- a without family: these persons should be able to function economically in Dutch society at an acceptable level (for example, they should receive board and lodging and a supplementary allowance);
- b with family: the remuneration provided must be at least equivalent to the minimum wage.

In addition, a member of clergy residing in the Netherlands who wishes to form a family here with a foreign national residing abroad will have to meet the standard conditions that apply in such cases (including the obligation to apply for an authorisation for temporary stay (mvv) for the foreign national) and have an income equal to 120% of the minimum wage.

**c Conditions governing the admission of members of clergy**

Members of clergy must meet the following specific conditions:

- they must provide a written declaration that they will not perform any work within the meaning of the Wav;
- they must have passed the civic integration test within the framework of the Civic Integration (Preparation Abroad) Act;
- they must have taken an additional civic integration course and passed a civic integration examination (in the framework of the new Civic Integration Act);
- a security check must have shown that the person concerned does not present a threat to public order or national security.

#### **d Duration of residence**

- On the basis of the admission and residence conditions outlined above, a residence permit to be renewed annually during the first five years may be granted. The aim of residence should be described as ‘temporary’ during this time. Naturalisation after five years’ residence should therefore not be an option for members of clergy;
- in the following five years a residence permit may again be granted, to be renewed annually, if the additional requirement of earning at least the minimum wage has been met. The terms of employment with the faith community should be such that the member of clergy is obliged to pay tax and social security contributions in the Netherlands in accordance with the provisions in force. The aim of residence remains temporary, so naturalisation is still not possible;
- following this second period of five years (and thus following ten years of uninterrupted legal residence) the person concerned becomes eligible for a permanent residence permit without restrictions, provided at the time of the application he/she is still employed as a member of clergy and earns at least the minimum wage. After a total of ten years’ legal residence, he/she may also apply for naturalisation;
- during his/her period of residence a member of clergy may change from one congregation to another (as long as there is no interval between posts) provided the ‘new’ faith community complies with the conditions imposed.

#### **e Family members**

- During the first ten years of residence family formation and reunification is possible in accordance with the usual conditions. Family members will be able to enter into employment in the same way as the family members of other labour migrants. This means that the Wav test (prioritised labour) will apply;
- if after ten years’ legal residence the member of clergy has been granted a permanent residence permit, the members of his/her family are free to enter employment;

#### **f Civic integration**

Clergy entering the Netherlands after the entry into force of the WIB will like all other newcomers be obliged to take the standard, limited civic integration test abroad prior to entry. In line with the recommendations of the Advisory Committee on Civic Integration Standards, the ACVZ takes the view that they should not be required to take an additional, more difficult examination abroad. This might lead to selection on improper grounds, which would be incompatible with the freedom of religious communities to choose their own clergy. After arrival in the Netherlands members of clergy should follow the civic integration programme provided for in the Civic Integration Act (including examination). In their case, the examination should contain a separate component testing their ability to perform pastoral tasks as described in the handbook on civic integration of clergy provided to local authorities by the Ministry of the Interior and Kingdom Relations (2003).

Members of clergy who have resided in this country for a long period of time may be required to follow the general civic integration programme with examination described above, but no additional requirements should be prescribed. Imposing *post facto* an additional civic integration requirement cannot in the case of this group be linked to a sanction such as refusal to extend or withdrawal of a residence permit. It is also of relevance that all migrant churches and belief communities including Muslim organisations have announced that they will encourage members of clergy who are already resident in the Netherlands to follow of their own free will the additional training that is to become compulsory for newcomers.

To sum up, the ACVZ considers that members of clergy entering the Netherlands should first undergo the standard civic integration test abroad, and follow an adapted, extra civic integration programme including examination in the Netherlands within two years' of admission on penalty of refusal to extend the residence permit. Foreign clergy already working in the Netherlands for a long period of time should take the standard civic integration examination here and should not be required but should be encouraged to take the extra component followed by newcomers.

## *6.2 Members of religious orders*

As stated above, the ACVZ believes that an essential Dutch interest is served by faith communities being able to function well within the national legal order. A religious order, as part of religious life in various beliefs, contributes to that functioning and thus serves an essential Dutch interest. In this light, there are sufficient grounds for granting a residence permit to a member of a religious order entering the Netherlands from outside the EU/EEA. However, the following conditions should be attached to the provision of a residence permit in such cases.

**In general, the ACVZ considers the interim supplement to the Aliens Act implementation guidelines (TBV 2004/2) a sound basis on which to admit members of religious orders and recommends giving its contents, with certain modifications, the status of permanent policy rules.**

The following conditions should be met by foreign members of religious orders entering and wishing to reside in the Netherlands for religious purposes:

- 1 The alien concerned should be of age (18 yrs.).
- 2 The religious order or community concerned should not be viable or insufficiently viable if served only by Dutch nationals or aliens who have already been granted admission to the Netherlands. This condition would not apply if the alien in question has resided for a long period of time in a community belonging to the same religious or belief organisation abroad.
- 3 The belief organisation in question should guarantee that it will provide financial support to the person in question and ensure that he/she has medical insurance.

These conditions should be supplemented by a policy rule stating that residence in the Netherlands as a member of a religious order will not be permitted if the order in question will consist of a majority of aliens or will do so as a result of the arrival of the person in question.

### **Requirements to be met by the community**

The religious orders where residence is being sought, should meet conditions relating to their size and structure, possession of a deed of establishment or charter, to the relationship between the community and the church or organisation to which it belongs, and to appropriate accommodation.

### **Duration of residence**

In the opinion of the ACVZ, residence as a member of a religious order should be and continue to be on the basis of a temporary entitlement and be linked to the alien's residence in the community concerned. In exceptional cases, a residence permit may be granted following a person's departure from the community if compelling reasons of a humanitarian nature are at stake. The ACVZ believes that use of this option should be

on a restricted basis as the person in question may quite possibly have a claim on public funds.

#### **Work and civic integration**

Members of religious orders mainly work within the walls of the monastery or convent, but also outside. Any kind of work except that as a member of clergy should only be possible if a work permit has been granted in application of the Wav. The ACVZ proposes to exercise some leniency when applying the Wav.

**Because of the fact that in practice many members of religious orders are active in the wider community, the ACVZ considers compulsory civic integration appropriate. It therefore proposes making such persons part of the WIB target group and obliging them to follow the envisaged compulsory civic integration programme in the Netherlands.**

### *6.3 Missionaries*

The ACVZ notes that it is difficult to discern an essential Dutch interest that would be served by admitting missionaries since their aim is to spread their beliefs among the Dutch population. However, as explained under section 5.2 of this Summary, the Dutch government enjoys a considerable degree of discretion in assessing whether the presence of a missionary in the Netherlands serves an essential Dutch interest. Both the interest that lies in the existence of a plural society and the fact that accepting foreign missionaries in this country prevents Dutch missionaries from being refused entry in other countries (reciprocity) can be seen as elements of an essential Dutch interest. The ACVZ was unable to come to a unanimous view on this issue and considers it the task of the Dutch government to make a choice in this matter.

If the government should decide that the admission and residence of foreign missionaries do serve an essential Dutch interest, the ACVZ would propose a number of criteria governing their admission. It would then also recommend making most of the rules laid down in the interim supplement (TBV 2004/2) permanent. The admission of missionaries should be subject to the following conditions:

- they should be of age (18 years);
- there should be a need to spread the faith of a religious community established in the Netherlands that cannot reasonably be met by members already resident here;
- before his/her arrival the missionary must demonstrably have been a member of a foreign branch of the religious community established in the Netherlands;
- the religious community concerned must guarantee financial support for the missionary and ensure he/she has medical insurance.

The ACVZ would recommend that the entry of missionaries who are not part of an organisation that is active in the Netherlands be refused. Admission criteria for such persons would entail some kind of assessment by the state of the religious beliefs in question, or would mean that the arrangement is open to abuse. In the ACVZ's opinion, the Aliens Act 2000 should not offer a basis for admission for anyone who believes that he/she should disseminate a religious belief in this country and merely for that reason wishes to be admitted to reside in Dutch territory for a long period of time.

#### **Duration of residence**

The ACVZ would advocate a relatively short period of residence for missionaries and recommends a limit of two years. Many missionaries will need a certain amount of time



to become acquainted with Dutch society. From this point of view, a maximum period of one year seems too short. After a maximum period of two years, a period of five years should elapse before a person may be readmitted in that capacity. This will prevent a situation arising in which consecutive two-year periods of residence as a missionary amount to long-term residence for that purpose.

### **Civic integration**

In view of their relatively short period of residence in the Netherlands, the ACVZ deems it unnecessary to subject missionaries to an obligation to undergo a civic integration test or examination, either abroad or in the Netherlands. In principle, the legislation concerned (WIB) is solely intended for aliens who wish to take up long-term residence in this country. Furthermore, as a rule, it may be assumed that missionaries prepare themselves in their own way for their time in the Netherlands. After all, they will hardly be successful in their missionary work if they do not to some extent speak the language and have some knowledge of Dutch society.

## **7 Training imams in the Netherlands and possible implications for admissions policy**

The Minister also asked the ACVZ for advice regarding two motions introduced in the House of Representatives by MPs Mirjam Sterk (Christian Democrat Alliance) in May 2004 and Wouter Bos (Labour Party) in November 2004. Both motions were related to the government's desire to establish training facilities for imams in the Netherlands. Mirjam Sterk's motion asked the government to impose a requirement to train in the Netherlands on imams wishing to come and work here. This motion was passed. The motion introduced by Wouter Bos asked the government to stop granting residence permits to foreign imams by 2008 at the latest and in the transitional period to grant only temporary permits with a maximum expiry date of 2008. This motion has since lapsed.

**The ACVZ strongly supports the government's endeavour to support and encourage the establishment of training for imams in the Netherlands. However, it is of the opinion that the establishment of such training should not lead to a ban on the admission of imams from abroad, or to imposing on them the requirement that they follow a training course in this country. Such general prohibitions/requirements are incompatible with freedom of religion, in conjunction with the principle of equal treatment, and with the reserve which the government should exercise in relation to the choice of clergy made by a faith community.**

Furthermore, the ACVZ foresees other objections. As a religion, Islam has many branches. The theological and professional requirements that communities themselves impose on their clergy are also highly differentiated. It would be extremely complicated to create government-approved individual training courses for each of the branches of Islam, or to lump them all in one training course. Only if the training for imams offered in the Netherlands has the full support of all the different practising Muslim groupings in this country can such requirements have sufficient practical value. In addition, religion is often experienced through religious-ethnic identity. For this reason, a number of faith communities will continue to prefer to be served by clergy with close links to their country of origin, or who worked there until they came to the Netherlands. And it is highly questionable whether the measures envisaged would be effective in eliminating undesirable external influences on imams working in the Netherlands. Both motions obviously aim to prevent the admission of imams who think and act in a way that is

incompatible with public order and national security. Yet the measures they propose are not expected to be effective for this purpose.

Nor can they prevent imams trained in the Netherlands from being subjected to influences in the country where their communities originate, through study trips or internships, or through modern means of communication such as the Internet. Finally, a large proportion of imams currently in the Netherlands are residing here on a basis other than for religious purposes. Imposing the requirements proposed by the motions would encourage this practice.

## 8 Implementing the recommendations

In order to assist implementation of its recommendations, the ACVZ would make three further recommendations.

- The transfer of admission responsibilities from the aliens services to the IND in 2004 has led to a lack of uniformity in dealing with relevant applications. In the past, the aliens services built up a relationship based on trust with the religious organisations in their region. Now the IND deals with such cases on the basis of anonymity, and furthermore, applications relating to a single religious organisation are dealt with by different IND units and regional offices. Unequal treatment for comparable cases damages legal certainty. The ACVZ would therefore urge that applications for admission as a member of clergy or a religious order or as a missionary be dealt with by a single, central office. This would improve uniform implementation and in addition, would once again make it possible to build up efficient relationships with religious organisations.
- When aliens are admitted for religious purposes, inquiries should always be made with the local police, since they are better informed than the IND concerning the activities of the organisation concerned.
- The ACVZ would recommend an evaluation of policy on admission for religious purposes, and its implementation, after five years. Such an evaluation should take into account both actual admission and residence, and subsidiary aspects such as the implications under the WIB, WIN and in terms of additional civic integration requirements.