De minister zonder portefeuille

Engels, Johannes Wilhelmus Maria

SUMMARY

This study deals with the *constitutional* position and the *political* functions of the Minister without Portfolio. According to the Dutch Constitution (section 44, paragraph 2) a minister without portfolio is a minister not in charge of the management of a ministerial departement. A minister without portfolio is a *non-departmental minister.*
The central issue of this research is the right to exist of the Dutch minister without portfolio. Recent reports on the structure and organization of the Dutch government indicate, that the first way to reduce the size of the cabinet is the non-appointment of ministers without portfolio. Consequently the purpose of this study is to get a full and clear picture of the non-departemental minister, both from a legal and a political point of view, in order to check the validity of the used arguments for abolishing the minister without portfolio.
The first argument is, that the tasks of a minister without portfolio are too small and not important enough to justify a constant appearance in the cabinet. Secondly, the conflicts between the minister without portfolio and the ministerial head of the department concerned could cause serious problems. (Chapter I).

Before 1938 it was not certain whether the Dutch constitution allowed the appointment of ministers without portfolio. In 1938 this uncertainty was taken away by the explicite introduction of this institution in the Constitution.
The constitutional legislator indicated two possible applications for a non-departmental minister: in behalf of the prime minister in order to relieve him from departmental duties, and to create the possibility of taking into the cabinet leading politicians from the opposition, especially in times of trouble in order to widen the confidence of the people in the government.
The constitutional review of 1983 confirmed the legal difference between a minister without portfolio and a departmental minister on three points: he is not in charge of managing a ministerial department, but instructed with a governmental assignment; he does not have an independent departmental budget at his disposal; he misses the authority to pursue departmental staff-management.
In spite of this lack a management authorities, from a legal point of view a minister without portfolio has a position in the cabinet equal to the departmental ministers. (Chapter II).

To evaluate the actual position of the minister without portfolio, the functioning of this institution in practice is examined in two parts. Between the *experimental phase* (1945-1956) and the *systematic phase* (1965-1986) no ministers without portfolio were appointed. As a matter of fact, the (political) reasons for taking non-departmental ministers into the government were quiet different from the intentions of the constitutional legislator.

The basic constitutional principle of *ministerial responsibility* is the main perspective from which the application of this non-departmental institution is considered. Essentially: "no authority without responsibility". The experimental phase shows, that the major problem in this period was the relation between the minister without portfolio and the ministerial head of the department concerned. Three concepts for this relationship were applied: a *subordination-variant,* an *equalization-variant* and an *independence-variant.*

In the *subordination-variant* the departmental minister as head of the department claimed full responsibility for the actions of the minister without portfolio. The main objection against this concept was, that as a result of this claim the departmental minister also claimed authority to instruct the minister without portfolio. This conclusion involved a violation of the constitutional principle, that all ministers are legally equivalent.

In the *equalization-variant* the departmental minister and the minister without portfolio both took full responsibility for the management and the policy of the department. The objection against this concept was, that the minister without portfolio was given authority regarding the departmental management. This consequence meant a violation of the constitutional principle of one-headed management of a ministerial department.

A more balanced relation between departmental policy and departemental management offered the *independence-variant.* Both ministers only accepted responsibility for their own actions. This concept of a strictly devided ministerial responsibility within one department was agreeable with the principles of one-headed management and mutual equivalence of ministers. The departmental minister did not claim authority to instruct the minister without portfolio and the minister without portfolio did not claim authority to lead the department.

This last concept therefore appeared to be the only acceptable model from a constitutional point of view. (Chapter III)

As from 1965 (the systematic phase) ministers without portfolio were only appointed for two specific areas of governmental policy: the Aid to Development Countries and the Science Policy (only from 1971 until 1981). Both tasks contained certain *executive,* but especially *co-ordinating* activities. The main reason for appointing ministers without portfolio again after ten years was the political problem of forming a coalition-government.

The departmental situation was less complicated than during the experimental phase. Departmental minister and minister without portfolio acted according to the "independence-variant".

The accent on the co-ordinating character of the assignments moved the attention from the *internal* (departmental) point of view to the *external* perspective. The main obstacle for the minister without portfolio appeared to be the lack of real legal authority to co-ordinate the policy of all

departmental ministers. The competencies of the non-departmental minister were not sufficient to prove his responsibility. The constitutional principle of mutual equivalence of ministers prevented the minister without portfolio from really fulfilling his task. (Chapter IV).

The *flexible* British governmental system offers many opportunities for the development of non-departmental ministers. The different kinds of ministers, the hierarchical relations between the ministers and the distinction between cabinet and government make it understandable why the minister without portfolio was more succesfull in Great-Britain.
The more *rigid* Westgerman governmental structure offers less opportunities for the non-departmental minister. Unlike in Britain, the Westgerman minister needs a department to make a stand against the government-leader and the other ministers.
Nevertheless, in both systems the minister without portfolio particularly succeeded in realizing an acceptable position in connection with the prime minister. (Chapter V).

The experiences with the actual position of the Dutch minister without portfolio in practice does not confirm the suggested inferior position of the minister without portfolio in the Dutch government. However, the position and functioning of this institution can be improved by giving him a specific, non-departmental, temporary, incidental and new task with a co-ordinating and inter-departmental character.
To achieve this task properly, the minister without portfolio must be placed at the department of the prime minister; the minister without portfolio must be given full and exclusieve responsibility for his task and sufficient authority. (Chapter VI).