



Religious Diversity  
and Secular Models  
**in Europe**  
Innovative Approaches  
to Law and Policy



# **Challenges of Religious Accommodation in Family-law, Labour-law and Legal Regulation of Public Space and Public Funding.**

## **Dutch Socio-Legal Research Report**

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## Executive Summary

The interviews indicate an emerging framework in the Netherlands consisting of elements of individual liberalism, anti-discrimination legislation, visions on human rights and equal treatment that is used and proclaimed to make decisions in religious conflicts. This obviously leaves less room for reasonable accommodation when conflicts arise and leads to more heated conflicts between religious groups and secular models. However, the effect of this differs per domain.

**In Family law** not much seems to have changed in practices regarding family and divorce law and this is striking. With regard to practices, only orthodox Christians (civil servants refusing to conduct same-sex marriage ceremonies) are targeted with legislative initiatives related to ‘marriage and divorce’, but only as representatives of the ‘neutral’ state.

**In Labour law:** more or less a continuation of **reasonable accommodation** on the **individual level** – certainly in a comparative international perspective. However, **faith-based organisations** as employers are **under pressure**. We identified several tensions and conflicts and fewer possibilities for reasonable accommodation, although the position of faith-based schools in the Netherlands is still strong. Hiring policy is at the core of these faith-based organisations, and in order to protect their religious identity, these organisations need to make direct and indirect distinctions when hiring people (make religious distinctions, but for some orthodox groups also distinctions on gender and sexual preference). This right is not only questioned, but it is also increasingly diminished.

In addition to that we found ambiguity by respondents, but also by the Commission for Equal Treatment, in treating issues of individual religious **civil servants** and finding forms of reasonable treatment for conflict regarding them. We identify this as ambiguity **regarding ‘religious symbols’ in ‘public employment’**. Respondents tend to look at conflicts regarding religious people and religious symbols in public employment differently (so for instance finding reasonable accommodation for the refusal to shake hands, but not for the refusal to conduct a same-sex marriage, or the other way around).

Many examples of **reasonable accommodation in the public space**. For instance regarding wearing hijab in schools, which is remarkable considering different developments in nearby countries like Belgium, Germany and France.

Regarding collective associational freedom for religious groups, we find that **public funding** for faith-based organisations is under strong pressure in the Netherlands. Using similar arguments as in the domain of Labour Law, many respondents (secular and otherwise) would like to end state funding to faith-based organisations.

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## Introduction

In this part of the RELIGARE project, we are interested in how relevant actors perceive tensions and conflicts that arise in religiously diverse societies in which people and groups may differ in their opinions about certain important social issues. We are especially interested in how secular states deal with some of these tensions, and what kinds of decisions are made when citizens are in disagreement about different religious norms and beliefs.

The tensions or conflicts that we are interested in within this socio-legal research are inherent basic tensions in and between the norms of international treaties of human rights, the European Convention, as well as in constitutional law of Member States and certain religious beliefs. In the broadest terms, these tensions can be defined as tension between individual and collective autonomy. In terms of religious freedom, they are tensions between individual or internal religious freedom (freedom of conscience) and collective or external religious freedom (religious practices and associational freedoms of organised religions). More specifically, we can at least for the Dutch case describe them as tensions between collective religious freedom and other basic human rights, such as *freedom of speech/expression and anti-discrimination*; protection of *essential basic rights of individuals* (particularly minors, dissenters, women, ethnic and gender minorities – the so-called vulnerable minorities) within religious minorities and within religious majorities and their organisations.

In these socio-legal interviews, we are interested in 1) the *empirical way* in which our respondents perceive these tensions; 2) how our respondents argue for finding a reasonable solution for perceived tensions in specific contexts and circumstances; and 3) whether these processes are influenced by deeper, implicit cultural biases, and if so, how. In addition, we are interested in how our respondents perceive the more general basic tensions and deal with them. Do they engage in some sort of reasonable accommodation or not? Are the respondents looking for practical solutions possible within a specific context or do they take a more principal stand and use a confrontational approach? In the former case, we are interested in conflicts that do not end up in court ('non-cases'), and the kinds of solutions that are found.

For the different domains we cover in these socio-legal interviews (family law, labour law, public space and public funding), we will discuss more specific basic tensions related to that particular domain. For each of these domains, we will start with a brief discussion of the following points: what kinds of basic tensions can be identified throughout the different interviews and what do the respondents think these tensions are really about. Second, to what extent do these respondents identify these tensions as such, in what way do they describe the tensions, and how do they try to balance conflicting rights? Do they engage in any kind of reasonable accommodation or not, in which contexts and why?

Before we start with the description of the different domains, we will first provide a brief overview of methodology and the Dutch church-state relations to explain the context in which these arguments are situated.

## Methodology

For this socio-legal research, our primary interest was not in how these basic tensions are dealt with in legislation and jurisprudence, but the way in which our respondents perceived which, if any, tensions in which domains. And whether respondents felt it was possible to find a reasonable solution for perceived tensions or conflicts in specific contexts and circumstances. For these reasons, we refrained from a large-scale quantitative survey research strategy (e.g. questionnaires with fixed questions and yes/no/don't know choices). Instead, we distributed a general text inquiring into basic tensions (see Annex II). We asked the respondents to reflect on these tensions, selecting our *method of open, structured interviews* because it provides the most room to order the importance of issues and to frame them in respondents' own terms. This method clearly had consequences for the representativity of the expected results. In 2011, we conducted roughly 180 interviews that took between 70 and 100 minutes each – an average of 30 interviews per country – but we still cannot claim any quantitative representativity for the respective countries, the involved category of relevant actors or the four domains. We hope this shortcoming might have been compensated by capturing relevant, interesting and informed views from actors deeply involved in the issues at hand.

There were other caveats, too. First, we knew beforehand that we could not expect all respondents to have equal experience, first-hand information (i.e. not only information on the basis of highly mediatized 'dramatic events') and knowledge with regard to all four domains of law or all issues at hand. We trusted that respondents would select those domains and issues they were familiar with and about which they had something interesting to contribute. These limitations proved to be most serious regarding issues of family law, particularly concerning private international law (PIL).

Second, the limited number of interviews also implied that we should expect only tentative answers, if any at all.

*Respondents* were selected according to *three categories* (for list of respondents see Annex I):

- 1) *Religious and philosophical* (10 interviews): highly placed leaders from the big churches (Catholic, Protestant, Orthodox); Jewish synagogues; significant sects; representatives of Islamic groupings that reflect the internal diversity within national Islam; and where relevant, representatives of secular humanist groups, representing different political orientations.
- 2) *Political and administrative* at the national and local levels (10): highly placed representatives of the major political orientation across the spectrum, from the far right to the far left; senior civil servants in charge of religious affairs at the ministerial and inter-ministerial levels; various officials at local authorities, depending on the administrative structure of the country in question (centralized, federal).
- 3) *Associations, trade unions and employer organizations* (10): the major representative unions, including the principal teachers' union; representatives of business and of civil society.

## **Context: church-state relations in the Netherlands (based on Maussen 2009 and Knippenberg 2006)**

Over the past 40 years, Dutch church-state traditions have been changing under the influence of various social and political trends. These trends include accelerated secularisation, individualisation and depillarisation, increasing religious diversity as a consequence of immigration, and the emergence of new political cleavages and changes in political culture. In the most recent constitutional changes of the Dutch church-state regime (change of the Constitution in 1983), we see according to Maussen (2006) three principal elements emerging:

First, the Dutch approach is based on the idea that principles such as state neutrality, equal treatment of religions and separation of church and state should be interpreted in a non-secularist way. Secularism and liberalism are seen as particular worldviews in themselves and by consequence a state that aims to be truly neutral should not itself embrace a secularist viewpoint. Justice requires the state to act in an even-handed manner with regard to all citizens, regardless of the philosophy of life these citizens adhere to.

Second, the Dutch approach is based on the idea that organised religions and other ideology-based associations are constitutive of a robust and independent civil society. In the Dutch tradition, it is not legitimate for the state to dominate the public sphere, and unlike in French Republican thought, the public sphere is not seen as a neutral sphere that is created by the state. It is acknowledged that religion inherently has public dimensions, meaning that visible expression of religion is legitimate and that organised religions can play a role in media, education, health care and recreational activities.

Third, the Dutch model is supportive of religious freedom, both in the sense of negative and positive freedom and in the sense of individual and associational freedom. Citizens should not be hindered by the state or by others from living according to their philosophy of life and practicing their religion. In addition, citizens should have the effective possibilities to 'live out their religious faiths', i.e. they should also have positive freedom of religion (Monsma & Soper 2009). Religious freedom is also seen as the right to believe and practice in a community with others and as including collective freedoms and associational autonomy (Bader 2007).

In order to understand the effects of the Dutch approach on the emergence of possible basic tensions in the domains we look at in this report, we need to provide a brief historical overview of the way in which religious diversity has been governed in the Netherlands in the last centuries.

Around 1800, 55% of the Dutch belonged to the Calvinist Church, 38% of the Dutch population was Roman Catholic, 4.4% belonged to one of the small protestant minority churches, and 1.8% was Jewish (Knippenberg 2006). In the second half of the 19th century, however, Dutch society was transformed significantly in political, demographic, cultural, economic, but eventually also in religious terms. These changes would lead to an increase in the number and political influence of non-religious groups in Dutch society, such as the liberals or the socialists. Liberal and conservative elites even managed to take a leading role in government affairs and politics in the first half of the 19th century, but in the second half they were challenged in that position by socialist and the different confessional groups. The two largest and most influential denominational groups in the Netherlands, the Roman Catholics and the orthodox Protestants, challenged the dominant position of liberals, and this would have great social consequences, also in the way religious diversity was to be governed in the Netherlands. Religious groups as well as secular groups such as the socialists or the liberals started to build their own pillar in society. These pillars were organised hierarchically with a national political party on the top of the pillar (and later on, together with a national newspaper, a broadcasting organisation and their own labour union) and locally affiliated institutes such as schools, associations, etc. on the bottom. This development resulted in clearer boundaries between the various confessional groups, making Dutch society eventually almost completely pillarised. For instance, orthodox Protestants developed their own

institutions, including the Anti-Revolutionary Party (ARP, founded in 1879), the Orthodox Reformed Churches (formed in 1892) and the Free University (founded in 1880).

In addition to these developments, confessional groups would be united in opposition to liberal factions, notably around the issue of education. The 1857 school law had secured the freedom of parents to establish their own schools, but in 1878 the liberal politician Jan Kappeyne van de Coppello introduced a school law that mandated higher standards for all schools, but proposed only to finance subsidies for public non-religious schools to pay for these improvements. Protest against this law brought confessional factions together in opposition to liberal factions and resulted in an alliance of orthodox Reformed groups and Catholics. This confessional coalition succeeded in adapting the law in 1889, allowing for government subsidies for confessional schools.

The second half of the 19th century was the period in which some of the foundational ideas of the Dutch approach to church-state relations were being theorised. Religious intellectuals and politicians challenged the idea that the liberal worldview was neutral and that it alone should form the basis of government and shape public institutions. Abraham Kuyper (orthodox Protestant) was one of the most influential voices in this debate. He argued that religious communities had as much right as the liberals to educate and socialise their members in their own institutions. Kuyper grounded his political doctrine firmly in Calvinist theology and argued that democratic thought and practice was very much indebted to Calvinism. Kuyper developed the idea of 'sphere sovereignty', meaning that the state should intervene as little as possible in societal spheres and institutions that could function independently, such as schools and churches (Monsma & Soper 2009; Maussen 2009).

The emancipation of Catholics and orthodox Protestants and the growth of socialist movements led to a situation in which Dutch society would become completely pillarised in the first decades of the 20th century. The identity and image of the Dutch nation was also changing in this process. The Protestant nation had to make room for a nation in which people belonged to different groups and communities as well. It seemed impossible to participate in Dutch society without membership in one of these pillars – alliance to the nation could only be expressed through membership in one of these groups. This situation influenced specific ideas about state neutrality in the Netherlands, which was understood as the state governing on an even-handed basis and respecting the different religious and secular worldviews.

The Constitution of 1917 further established these pluralistic principles, by introducing general suffrage and proportional representation and by guaranteeing the equal funding of all schools, which was elaborated in the 1920 Primary School Act. The ideas of 'parallelism' legitimised the further development of dense networks of denominational organisations and institutions, including labour unions, modern political parties, associational life, broadcasting companies, newspapers and other media. Between 1900 and 1967, Dutch society was pillarised, meaning that most citizens led their social lives in their respective Catholic, Protestant,

Socialist or Liberal pillar institutions and spheres separate from other groups in Dutch society.

The cultural revolution of the late 1960s put an end to the dominance of the existing confessional culture patterns. The traditional unbreakable bond between marriage, sexuality and reproduction loosened considerably, which in combination with the introduction of the contraception pill caused a sharp decline in fertility. Secularisation accelerated both in terms of belief and practise and undermined the moral authority of the churches. Higher education levels, increasing prosperity, growing geographical mobility and media participation (television) encouraged individualism and broke through the isolation of the 'pillars'. Dutch society 'depillarised' and the political power of the confessional parties declined. The proportion of religiously mixed marriages grew from 18% in 1960 to 29% in 1980. The proportion of the Catholic electorate that voted for the Catholic party (KVP) declined from 78% in 1963 to 37% in 1972 (Knippenberg 2006). One of the effects of depillarisation was a reconsideration of church-state relations and traditions. Traditionally, religious freedom had been understood as the state respecting the autonomy of religious communities and refraining from intervening in the internal affairs of church bodies (Maussen 2009). Increasingly,

however, religious freedom was also seen as the right of the individual to be free from the authority of religious elites and oppressive social communities. Yet as a result of its legal establishment, the pillarised system had a lasting influence on important fields of society such as education, social welfare or the media. For instance, even after the Constitution was changed in 1983, parents remained able to set up their own school on the basis of their faith, and this school was not only financed by the Dutch state, but was also granted rights to protect its identity.

In other regards, we do see important and far-reaching changes in the church-state regime: the many existing direct financial relationships between the state and churches were increasingly perceived as inappropriate. A constitutional revision in 1972 abolished Article 185, which had formed the legal basis for the financing of religion. A precondition for the actual ending of financing was that an agreement would have to be reached with representatives of the churches, which occurred in 1981. The Constitution of 1983 now forms the basis of church-state relations in the Netherlands. Article 6 on religious freedom states that ‘everyone shall have the right to manifest freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law’ (Van Bijsterveld 2006). Other articles lay down the principle of equal treatment and non-discrimination (Article 1) and the freedom of education and equal funding of denominational schools (Article 23). The principle of separation of church and state does not figure explicitly in the 1983 Constitution. It does, however, have clear significance for organisational independence of religious organisations and for financial relationships between churches and the state.

That Constitution mirrors the fact that as a consequence of the cultural revolution of the 1960s, the Netherlands has become one of the most secularised countries in the Western World. The church is not even mentioned any longer. Thus, since 1983 it is better to speak about the relationship between state and religion than about state and church. In the Constitution, no distinction is made between religion and non-religious belief; both are granted the same freedom. Specific articles on religion have been replaced by general constitutional guarantees. According to the first article of the Constitution, discrimination because of religion, belief, political opinion, race, sex or any other grounds whatsoever is forbidden. Anybody, individually as well as in community with others, has the right to profess his religion or belief freely (Knippenberg 2006). However, despite the ongoing depillarisation of Dutch society, the very important constitutional articles on the freedom of education and the equal financing of public and confessionally private education have not been changed. Therefore, especially in the domain of education and media, the current Dutch Constitution and laws still provide ample possibilities for religious groups to claim collective religious rights that have, as we will also see in this report, effects on the four researched domains (family law, labour law, public space and public funding) and cause certain tensions and conflicts.

The 1960s brought immigration to Dutch society, which increased religious diversity in the Netherlands. According to recent estimates (2005), these religious ‘newcomers’ comprise 6.4% of the population: 5.8% or 944,000 are Muslims; 0.6% or 99,000 are Hindus.

**Percentages of different religions in the Dutch population (2005-2006)**

Non-religious	42
Catholic	29
Protestant	19
Muslim	5
Other	5

Source: CBS Statline

Starting in the 1980s and 1990s, this growing group of Muslims and Hindus made use of the existing (‘pillarised’) legal opportunity structure (Rath et al. 2001). This is especially visible



in the realm of education, where several Muslim and Hindu schools were established in the Netherlands, although the actual number of these schools is still small and seems to remain like this. Versteegt and Maussen (2011) state that the majority of Dutch schools are still organised on the basis of a religious identity, mainly Catholic or Protestant, although many of them do not have a distinctive religious character.

### Schools in 2009

	Total of 7,517 primary schools	Total of 657 secondary schools
Public	32.1 %	29.6%
Roman Catholic	29.9%	24%
Protestant-Christian	3.4%	19.1%
General denominational (Montessori, Jenaplan, Steiner)	7.3%	14.4%
Reformed	3.4%	2.0%
Evangelical	0.1%	0.6%
Muslim	0.5%	0.3%
Hindu	0.1%	--
Collaborative school (i.e Protestant/Catholic)	0.8%	9.4%
Jewish	--	0.2%

Source: Versteegt & Maussen 2011: 8-9

In the realm of the media, we also see the emergence of new Muslim and Hindu organisations funded by the state because of existing legislation. A Muslim and a Hindu broadcasting network was launched in the 1980s. But despite initial steps in that direction, no Islamic pillar developed that is comparable to the Roman Catholic and orthodox Protestant pillars in the past. The formation of Islamic institutions has been a rather selective process. Compared with the traditional Roman Catholic and orthodox Protestant pillars, there are no daily and weekly Islamic papers, no hospitals, no trade unions, and no housing associations. The most important difference is perhaps the lacking of a national Muslim political party.

## Family law

In this part of the interviews, we tried to find out whether our respondents perceive basic tensions in cases in which rules and practices of *religious family and divorce laws and customs* are at odds with basic principles of international family and divorce law. Because of the increasing importance that the ‘legal regulation of intimate relations’ has recently gained with issues of marriage, same-sex marriage and adoption, we have included issues of polygamy and same-sex marriage and the respective challenges and defences of the ‘norm’ of monogamy and nuclear family. Same-sex marriage is something that was covered by almost all respondents, while polygamy was only discussed by several of them. From this, we can conclude that for most religions in the Netherlands, same-sex marriage and homosexuality are controversial issues. We know from other research that polygamy does exist in the Netherlands and is also an issue that causes tension in Dutch society. In 2009, the Dutch Minister of Justice stated that there were 1,374 of these cases in the Netherlands. Most of our respondents, however, had not encountered these cases and could not provide information about them, or they did not have any specific opinions on the subject, other than mentioning that polygamist marriages cannot be carried out in the Netherlands.

In general, religious respondents felt that social changes had a significant impact on religiosity among different communities, which caused tensions between religious laws and practices of believers. We will address this in greater detail later on. Some explicitly mentioned that, quite generally, religious communities were sometimes forced to change accordingly. Willem Smouter (54 years old, preacher and president of the Evangelical Alliance), describes the general tensions as follows:

*WS: About 30 years ago, there were no tensions at all, but Dutch society has changed. Nowadays, people think it's ridiculous if you have a problem with same-sex marriage, and people think it's even more ridiculous if you have a problem with divorce. Indirectly there's tension, but up until now it hasn't gone so far that people would call it discrimination when churches refuse to consecrate same-sex marriages.*

Ruard Ganzevoort (46 years old, professor of pastoral/practical theology, Vrije Universiteit Amsterdam and member of the board of De Linker Wang, a platform for faith and politics that is affiliated with the Green Left Party) identifies the same developments as Smouter, but also sees in some instances a role for the state to stimulate this process:

*RG: In the long run, I believe that religious communities will change because of the fact that societies change. Religious groups are not separated from the rest of society and its culture. So as soon as a culture secularises, you see that religious groups have a tendency to secularise as well. [...] As soon as the culture individualises, the religion also individualises. [...] Only yesterday the Scottish Church decided to accept homosexuals in all posts. They are slowly going along with the spirit of our time, and that will also happen with other orthodox churches [...] The good thing is that when you accept the underlying philosophy that you need to find your own truth and follow your heart, then it becomes more and more complicated to reject homosexuality. They used to say that homosexuality was a sin, and nowadays they just say it's a bad thing. [...] In that sense, I am not pessimistic. Governments have to push them a bit, and forbid things (partly as a trigger but also because some things just really shouldn't be allowed), and you also have to believe in the process of change itself.*

It is interesting to see that Ganzevoort states that one has to push and pull, which means for him that the state, in certain instances, has the duty to not only make clear what its standpoint is concerning some of these sensitive social issues, but also to force religious communities to change their views on these matters (homosexuality, divorce, etc.), for instance by formulating new legislation. In the end, the discussion is about what these circumstances are

(what is acceptable and what not, according to whom and why?) and what kinds of measures authorities take to put pressure on religious communities.

Obviously respondents differ on these issues as we will see below, but it also makes a difference what kind of religion we are dealing with. Not only in terms of religious beliefs, but often in terms of actual religious practices, which for some religions are more easily adaptable to Dutch mainstream society than for other religious groups. For instance, Dharmachari Varamitra, the president of the largest Buddhist organisation in the Netherlands (and chief Buddhist preacher at the Ministry of Justice and Dutch Prisons), states the following:

*Buddhism has never been dogmatic. Buddhists always adapt to the situation. [...] A beautiful quotation of the Buddha reads, 'As the ocean tastes like salt, my doctrine tastes like liberation'. So no restrictions but space and liberation. Then you shouldn't try to come up with all kinds of dogmas of course, because that doesn't leave any room for liberation. That is also the vulnerability of Buddhism. [...] Buddhism fits into Dutch society. That's also why Buddhism is growing so much. Secularisation is taking place. I actually prefer not to call it secularisation but rather a sort of deinstitutionalisation, because people are still religious or at least they are feeling religious. People cannot find what they are looking for in the old institutions and the old institutions aren't capable of adapting themselves to what people want nowadays, and that is why so many people are attracted to Buddhism. It is also a good thing that Buddhism doesn't have any history in the Netherlands. So people still have to figure out what works and what doesn't, and how they are going to deal with possible issues.*

For many other religious groups, and especially the more orthodox versions of these religions, the above statement does not apply. On the contrary, it is sometimes especially difficult to combine the individualistic approach of Dutch society with a more traditional collective approach of most religious groups. It often makes a difference whether religions require specific activities or rather the abstinence of certain activities because of religious reasons. One of our orthodox Jewish respondents, Ruben Vis, secretary of the Dutch-Israeli Religious Community (*Nederlands-Israëlitisch Kerkgenootschap*), explains why this may cause additional tensions.

*RV: I refer to Judaism, as a do-religion. The more you do, the better a believer you are and the better a Jew you are. So you really have to do certain things and abstain from other things. It is more about this than about meditating or about thinking about what is right. You really have to do all kinds of things, all kinds of acts. Judaism exists of 613 dos and don'ts, and together they form a complex aggregate of rights and wrongs, and these dos and don'ts vary from you shall not murder, you shall give money to the poor and other fundamental, generally accepted rules to rules that are only applicable to Jews. Non-Jewish people probably wouldn't understand what it's all about. Well, those second kind of rules are sometimes difficult to follow [and therefore difficult for Western societies to accommodate them].*

Sometimes, it is not possible for certain religious groups to make these adjustments, and in those instances tensions will arise. This will be the focal point of our study. Ruben Vis, for instance, mentions ritual slaughtering as an example for which his group cannot make an exception:

*RV: Well, if it's possible we do try to make adjustments. But for example with stunning animals, the law says the animal has to be able to walk four steps when it's being slaughtered. Everybody knows that when you are stunned, or when an animal is stunned, it's impossible to walk four steps. It's simple – we cannot make any adjustments here.*

Other religious respondents expressed the opinion that often they feel society is changing too rapidly, and that many of the things that have become mainstream in Dutch society are often unacceptable for religious communities. It seems that many religious respondents feel that a

line should be drawn somewhere. Many of these social changes are not considered to be a positive thing. Or, as Willem Smouter of the Evangelical Alliance puts it,

*WS: Things like trying to master life employing all possible means, so that a woman of 63 years old should be able to have a child without any of her own genes passed on to that child. Can this get any crazier?. I've also had to give advice to a lesbian couple who had a child with donor sperm and that wanted to get the child baptised. If I try to explain these kinds of situations to my colleagues in the rest of the world, then it's not just about the ethics of the lesbian marriage but also about messing around with the foundations of being human, thinking that we know best. I think that's quite questionable. The huge number of divorces nowadays is also part of the craziness. As far as divorces are concerned, I wouldn't be surprised if in 25 years, the current generation would ask us to account for what we have done to them. When you divorce, your children are 2.3 times more likely to end up in prison and lead a life of crime. These children need 1.5 years longer to finish school, they lag behind in social development, and I have not even mentioned the psychological problems.*

Nonetheless, as we will see in the description of some of the opinions of our respondents, people draw the line where they feel they cannot accept the social changes in relation to their religious beliefs.

In the interviews, possible tensions in different domains of family law were discussed: (i) private international law; (ii) domestic religious law versus state law; (iii) alternative dispute resolution. The second of these is by far the most discussed, but we will examine the main results of all three.

### **Private international law**

On private international law, our respondents did not have much to say, mostly because they lacked knowledge about it or felt it was not a real source of tension. Again, we should not understand this result as a sign that tensions on this item in the Netherlands do not occur. Other scholars have shown that there are cases in which Dutch courts have to deal with issues in which international law conflicts with Dutch law. The fact that respondents did not perceive this item as problematic is probably due to the fact that many respondents we spoke to are not involved in any way in these cases. In addition, it is not something that has been widely discussed in Dutch public debate, so most respondents did not consider this item very seriously. Perhaps the following statement from Patrick van Schie (47), director of the Telders Foundation, a liberal think tank affiliated with the People's Party for Freedom and Democracy (VVD), illustrates the way most respondents think about this issue. When discussing custody issues, he responded as follows:

*PvS: In the Netherlands, we have made it so that generally speaking, both parents should be allowed to have contact with their child [...] This is what Dutch law calls for and it applies to everyone [regardless of where someone comes from or what his religion is].*

In more general terms, some respondents from Jewish and Islamic backgrounds touched upon the question of which system of law should prevail when conflicts between different systems arise. Mustafa Hamurcu is a Muslim and the secretary of Millî Görüş, the Turkish Diaspora organisation. In his words:

*MH: When a Dutch judge says the guidelines I use [originating from Islamic law] are in conflict with Dutch law, we have a problem, because I am attached to these guidelines. That's indeed a very difficult question: what should you do as an organisation, what should you tell your members about what to do? Will you distance yourself from ... your religious guidelines? Yes, that's very difficult but in the end we as an organisation [...] we have to abide by the law and legislation. [...] But it is possible to combine Islam and Dutch law. We always believe that you can only practice pure Islam when the circumstances let you practice it. But when*

*you live in Dutch society, where laws are made democratically, that's the framework in which you have to operate. And then even if it hurts, you have to let go, because that's the legislation you have to deal with. If I want to stay here, I need to abide by the laws of this country.*

One of our orthodox Jewish respondents, Lody van der Kamp, argues in a similar way at first, but then makes an important distinction between general laws and laws that concern religious matters.

*LvdK: We have a rule, in Aramaic it is 'dina de maguta', and it means that the law of the country is the law we abide by. This rule is binding for every Jew, also for orthodox Jews [...] This goes for all Dutch legislation, as long as this legislation doesn't conflict with Jewish legislation (e.g. by requiring Jews to work on Sabbath or imposing unfair and discriminatory taxes on Jews only). In our case, the [Dutch civil] marriage legislation goes quite well with the religious legislation. A marriage is only consecrated in the synagogue after a civil marriage is entered into, just as Dutch law prescribes. If there isn't any civil marriage, we cannot consecrate the marriage in the synagogue.*

It is particularly interesting to see that this respondent makes a distinction between marriage and divorce law.

*Divorce is actually a totally different story. When people get a civil divorce, then for Jewish law they are still married until they obtain a Jewish divorce. The Jewish divorce isn't linked to the Dutch law, and it's not necessary that a Jewish divorce take place after the civil divorce. [...] A religious divorce can never take place under pressure. Both partners have to agree to have a religious divorce, and if they don't, the religious divorce doesn't take place.*

Ron van der Wieken, a respondent from the Liberal Jewish community in Amsterdam, agrees.

*RvdW: The state should stay out of these things [divorce matters in religious communities] because the state does enough, sometimes even a bit too much if you ask me. The state should especially refrain from interfering in religious matters. Not only refrain from interference in our religious matters, but also in all other religious denominations. [...] And these divorce issues are religious matters.*

### **Domestic religious law versus state law**

As mentioned in the above citations, there are sometimes tensions and conflicts between religious laws and state laws, especially when it comes to marriage and divorce. This basically goes for all religious respondents we spoke to. Most of them make a distinction between marriage and divorce. Marriage is no problem, whereas divorce is another matter. At first, almost all religious leaders use marriage as an example to illustrate that there are no tensions between religious and state law when it comes to family law. Arjen Plaisier (55 years old) is the secretary of the largest organisation of Dutch Protestant Churches. In his words,

*AP: When you talk about the Dutch Protestant Church, you are talking about a church that, unlike Islam, has operated for a very long time in a secularised society. Therefore, I believe that if you compare our church to Islam, you will find far fewer tensions between how things are organised in society and how we do it, also in the realm of family law.*

The leader of the liberal Jewish community in Amsterdam, Ron van der Wieken, comes with a similar argument.

*RvdW: When it comes to marriage law, of course we conform to Dutch law that calls for a civil marriage before a religious marriage. This rule makes sense, and everybody sees that it can prevent a lot of problems. You will not find a rabbi in this country who thinks otherwise.*

Nonetheless, both respondents provide a different analysis when it comes to divorce matters. This difference can be explained by the different position on marriage in both religions. In the Protestant view, a marriage is a civil matter. A religious marriage does not exist. After the civil marriage, the couple can come to church to have the marriage blessed. Within Jewish, Muslim or Catholic circles, the marriage is a religious ritual. A religious marriage is conducted after the civil marriage. This also has important consequences for the issue of divorce. Arjen Plaisier explains.

*AP: We do not conduct a religious marriage, so therefore we cannot dissolve a marriage. For our church, conducting a marriage is a secular business. The Protestant Church will only bless a marriage. To bless it, a civil marriage must already exist, and we do not have any religious rituals for divorce. But this does not cause any tensions.*

The fact that the Protestant Church does not have a ritual for marriage makes it easier for them to organise the way in which they deal with divorce (or to decide not to deal with the issue), which eventually leads to fewer conflicts. The liberal Jewish respondent Ron van der Wieken explains how divorce matters are dealt with in his community.

*RvdW: With regard to divorce it is more complicated, because people can get a civil divorce and then they are legally divorced in the eyes of the law. But in Judaism, it's a problem if you are not also religiously divorced, for there is a separate procedure for this. Problems can arise concerning children that are born from another (later) relationship. Because if children are born from a relationship of a woman who is still religiously married to another man than the biological father of the children, these children are bastards, which actually is not the exact translation of the Jewish judicial term. This has a lot of undesirable repercussions. These are of course ancient laws that can be perceived as inconvenient because they don't have a direct (immediate) meaning nowadays, but they nonetheless exist and cannot be abolished overnight. So there is a problem, and so we try to convince everyone who gets a divorce and has had a church marriage, a Jewish-religious marriage, to also get a Jewish-religious divorce. Otherwise, problems can arise. And almost everyone goes along with it.*

Tensions may arise in the Jewish community when the man does not agree to the divorce, but in this case the Dutch state usually does not interfere, allowing the Jewish community to settle things for themselves.

*[...] It is actually a simple procedure, especially when people have already obtained a civil divorce, for then the official in question, the rabbi or someone else, will not try to convince the couple to reconcile. If it's before the civil divorce, he will always try to bring about a reconciliation, for it's always better not to separate once you've decided to spend your lives together. But it's not forbidden to divorce, as it is in the Catholic Church. People can divorce and there's a particular ritual in which certain religious sayings are said, and then the woman is free to have children with another man if this is even under discussion. That's actually what it is about.*

He continues:

*In Israel, it often happens that a man does not allow his wife to get a divorce, but this occurs much less often in the Netherlands. For the ritual law is as follows: if the man wants to get a divorce, he has to present his wife with a piece of paper or have someone do it for him, in which is stated that he wants a divorce. Then it is in fact already settled, although a kind of ceremony or whatever you want to call it still has to take place. This piece of paper is called a 'get', which is an old term, and if a woman wants to divorce, she has to make sure her*

*husband gives her a get. It's true that this is an unfair system, but it's been this way for thousands of years, so what can we do? If the man doesn't want the divorce but his wife does, then you have a problem, because you have a woman who cannot divorce, who wants to have another relationship or who knows what and her husband won't let her go. According to Dutch law, this hasn't been allowed for a long time, but Jewish law still allows it, and then what you get is a so-called anchored woman, a woman who is anchored to the ground – that is the technical term. And it depends on the rabbinical court how these cases are dealt with. There is a lot of arbitrariness.*

*[...] We are a liberal community and we abide by the law, but we interpret it a bit freely. I mean we take it easy, we don't abide by the law at all costs like some radical orthodox communities. Within our community, the law is seen as a means to lead a sensible Jewish life. Let me put it this way: if this law makes it really difficult to lead a sensible Jewish life, then we have to take it easy. [...] Sometimes, the religious official, the rabbi, will try to influence the situation, but I've never seen it not work out. I've been personally involved in some situations: their were even some friends of ours who were getting a divorce and the man didn't want to grant his permission. But after some time had passed, and after a lot of friends had talked to him, it became clear that the marriage was a lost cause, so he decided to accept it and allow for the divorce.*

After having spelled out the problem and also the way in which liberal Jews in the Netherlands try to deal with it, Ron van der Wieken comes back to the issue of the **limits of accommodation** of religious law. Generally speaking, he reiterates that he

*would be extremely opposed to any interference of the Dutch state in these kinds of matters. Such a state can only do this in an inappropriate manner, as it concerns matters the state knows nothing about and should know nothing about. It's none of the state's business. So I would like to search for the solution within our own community, as long as that solution is indeed being looked for. If you can make a reasonable case for the fact that nobody is actually looking for a solution and that harm is being done to innocent people, then maybe the state should play a role in the most extreme cases. But that should only happen in the most exceptional and extreme cases.*

The only indication we got from our interviews that serious tensions can arise in marriage issues between religious and Dutch state laws comes from the Islamic community in Amsterdam, especially the second generation. Interestingly enough, one respondent finds the social effects of some of these religious marriages so problematic that he welcomes involvement of the state as a way of 'reasonable accommodation'. The state reaffirms that there can be no religious marriage without a secular marriage first, making it illegal for religious leaders to grant a religious marriage without proof of an earlier secular marriage. Yassin el Forkani is a 28-year-old imam who preaches mainly to Islamic youngsters. He explains this issue as follows:

*YeF: It used to be common to consecrate a lot of marriages in mosques, less so within the Moroccan community, but a lot within the Turkish and Surinamese community – this is currently still the case. The question you immediately ask yourself is whether there is an authority that can intervene when a marriage fails. If it goes well, you really do not have to intervene, but when it fails, intervention becomes necessary. In addition, there are several aspects you need to deal with, and the problem is that there are multiple causes for this. One person will operate from a theological perspective and say, 'I do not acknowledge civil marriages because within theology these marriages aren't acknowledged as a real "Islamic marriage"', and this person will have a certain standpoint and will say he is not going to commit himself to these arrangements. People like this just want to get married quickly and get out of the marriage if necessary. So then you are in a very difficult situation, and there will probably be a lot of societal problems created as well: lots of women who are left alone, lots of men who aren't allowed to visit their wife and kids because of a fight, etc. That's why*

*we created clear guidelines [...] They really have to have a civil marriage, otherwise there can be no religious marriage. As long as they do that, there's no problem, but if they don't do that, we do have a problem. [...] As long as you print out your CV and it states that you're unmarried while you have three children running around the house, then something isn't right in your marriage. These are things that are all of a sudden very normal within the Moroccan community, as well as within other Islamic communities. People get married in Morocco and neglect to tell the [Dutch] tax authorities and other authorities. For me, that's unacceptable because if you live in a system, then you have to be able to justify theologically that you have a certain position within that system, especially when it comes to marriage.*

Yassin el Forkani feels that the Dutch state plays an important role in finding a reasonable solution to these potential problems:

*YeF: The intervention of the Dutch state is actually an advantage for the Muslims in the Netherlands. I don't even have to tell you how many divorces and family problems there are in the Netherlands nowadays, and thank God there is an authority that protects, monitors and intervenes whenever that's necessary. In past times, when imams were authorised to consecrate marriages, the imam was the person who would intervene as soon as married couples had problems. So he wasn't only an imam or a leader in the mosque, but he also held a legal position. And nowadays in little villages in Morocco, when there isn't anyone holding this position, the standards for marriage are higher. In Morocco, for example, when there isn't a legal framework in which the marriage takes place, you need more than two witnesses for your marriage. Also theologically speaking, you need twelve witnesses who will be a collective form of social control and who are able to monitor the marriage should it start to fail. So the theology has taken that into serious consideration. [...] I know women who were married to a man and discovered after two years that he had another wife. When you consecrate a marriage, both partners should be able to check the legal background of the partner. If someone isn't able to give you a certificate of residence stating that he or she is unmarried, I actually think it's kind of naïve of you to still marry the guy or girl.*

Interestingly enough, this respondent finds the social effects of some of these religious marriages so problematic that he welcomes involvement of the state to demarcate the limits of 'reasonable accommodation', even with regard to marriage issues where most respondents feel that 'the state should stay out of these things [...] The state should especially refrain from interfering in religious matters [...] not only in our religious matters, but also in all other religious denominations' (Ron van der Wieken, liberal Jewish community, Amsterdam). This position is shared by most secular respondents (for instance Patrick van Schie, who says that 'Religious marriage is a private marriage and is part of the private domain').

In terms of divorce, we see similar discussions among members of the Muslim community in Amsterdam. Yassmine el Ksaihi (25 years old), the first woman in the Netherlands to become president of a mosque, explains how these issues were discussed in her 'Polder Mosque': a mosque in which Dutch was the language of all imams, and one that attracted a large crowd of youngsters of diverse ethnic background, unlike other mosques in Amsterdam.

*YeK: When discussing some topics, like divorce, we first presented the Islamic view and then the societal view. Seen from an Islamic point of view, it is fundamentally allowed to divorce, but from a cultural point of view, such as in Moroccan culture, you are almost totally written off as soon as you get a divorce. This eventually leads to the topic of man-woman relations, and I have to say that we talked about that topic a lot in our lectures, and in our Friday sermons women rights were often discussed as well. It was often related to having a female chairman, so that's why these kinds of themes were on the agenda, and I have to say that I didn't play a big part in that happening. That freedom was given to the imams, but these topics were discussed quite often one way or another.*



### **Secular respondents on family law**

Not many secular respondents felt able to react to issues related to family law in religious communities. Almost all felt that religious communities should decide for themselves on how they deal with these issues. Of course, as mentioned above, issues concerning women, homosexuality and children play an important role in the arguments of most secular respondents in the other domains, so indirectly these respondents provide opinions on these issues within religious communities. One of the few direct comments on family law in religious communities from a secular respondent comes from Patrick van Schie, director of the Telders Foundation, a liberal think tank affiliated with the People's Party for Freedom and Democracy (VVD). His comment is illustrative of the opinion of many other secular respondents when it comes to these matters, judging from their indirect comments.

*PvS: I think it's essential to be consistent, so that religious people do not have any privileges that people without religious motives do not have. If I then look at divorce, divorce is legally allowed, which means no church can demand an exception to this law. A religious marriage is a private marriage and is part of the private domain. I think that a community, and in practice this mainly goes for religious communities, should be allowed to say that they see marriage as being joined together by God, and what God joins together cannot be broken by man. Most of the time, this is the line of reasoning. The church can decide on that. I don't think that citizens can demand from the church that it recognise a divorce. So then the question remains for people who want to divorce whether they decide to stay together after all, or whether the need to get a divorce is so great that they are willing to accept the consequences and leave the church. For the church you are then still married, but there are no legal consequences linked to that. It should always be possible to dissolve the marriage legally according to the applicable rules.*

### **Homosexuality**

In relation to homosexuality, most religious respondents do not feel much tension between state and religious laws, as the Dutch State does not force religious communities to accommodate same-sex marriage or to accept homosexuality as a practice. Here, the tension was felt between religious laws and the daily practices of and requests from individual believers looking for reasonable accommodation in different ways. Willem Smouter, president of the Evangelical Alliance and himself a pastor, explains:

*WS: Well, there are people who are members of this church and at the same time are openly homosexual and even live together in that way. I once received a request from outside of the community to consecrate a lesbian relationship.*

He deals with this tension as follows:

*WS: There are a lot of homosexuals living together and we make the pastoral, ethical choice and say that you cannot ask us to think that it's all the same. So we accept that it is the case, as long as you also accept our belief it was never meant to be that way. So that excludes the consecration of marriage. But I attach more value to societal pressure to change my opinion than to political pressure. Societal pressure is fairer because it's part of the public discourse.*

He also explains why they have changed their attitude.

*WS: Pastoral considerations [have been the reason for changing our opinion]. There are situations in which it cannot happen the way it should happen. In our times, we see can simply not see people hanging themselves. I know religious people who had to go through that, and it's just not right. Our churches also officially support some national project against societal discrimination of homosexuals because it's just wrong and it should not happen. You end up in a situation and you just know you cannot solve it. We believe that it isn't meant to*

*happen and that it isn't a reflection of Christ and the congregations. [...] What I am describing now is how this has developed in this church even before I came here, but I myself (I've been a minister for 30 years) once had to tell this kid who was going to live together [with his partner] that he wasn't allowed to do that. And I almost had to convey the fact that he would be thrown out of the church community. Already in those days I wasn't at all happy doing that.*

Other religious groups deal with similar problems and some of them have come with similar solutions. Bishop De Korte of Groningen explains how some priests deal with homosexuality among members of their community.

*BdK: No, it does occur and then the local priest has to say very carefully that it's not allowed. That requires a lot of tact, certainly when it concerns practicing Catholics. Sometimes it involves people who are an important part of the parish, so it's also a tense issue pastorally. But in any case, no marriage can be consecrated publicly. In practice there are all sorts of shades of grey, like some priests who pray at home for God to bless the couple. You can always pray, that's in fact a pastoral emergency construction. But it has to end with that. If I get a call that a gay marriage has taken place in a certain church, then I have to set things right. But there are all sorts of situations that don't necessarily reach the press. Of course it works this way, but that's to guide homosexuals in making their choice. Principally, the Catholic vision on homosexuality is that any act of violence is fundamentally wrong: this is a statement we subscribe to, but homosexuals are asked to lead a celibate life. In practice, I've been a priest for twelve years myself, and we say that it's both a gift and not altogether natural, which is very hard. When I was a parish priest in Utrecht, I experienced on numerous occasions that someone indeed wanted to try to live celibately, but then things got tough and the individual grew lonely, choosing to be in a relationship after all. So that's the conscientious decision of that man or woman. I myself was very close to a young man who tried hard to live according to the morality of the church. He made his confessions regularly, was very religious and also had an aesthetic approach to religion. He tried to live in celibacy for a long time but didn't succeed, eventually meeting a boyfriend with whom he went to live together. He didn't ask for a church wedding or a blessing, but he did want to confide in me about it. My opinion is that it's his decision that he's making and nobody should be condemned to eternal loneliness. What's more, you could of course still have a relationship within the boundaries of Catholic morality as well. So that you enter into a sort of a life pact. As the church, we aren't called upon to look behind closed doors and find out whether it's really only a life pact. That's part of the private sphere.*

The leader of the **liberal Jewish** community provides the following description of how things are done:

*RW: Homosexuality does occur [in our community], but tensions no, they don't arise. In the past tensions did occur of course, within Judaism in general and from radical-orthodox communities to our own liberal community. In that sense, we are not that liberal. We are more of a conservative movement close to orthodoxy but not orthodox. Homosexuality is not a sin, not even within orthodox communities, but only the practice of homosexuality is a sin – the tendency is not. Yes, people have all kinds of tendencies, often very evil ones of course, and the trick is to restrain them. If you have a tendency to kill other people, then the trick is repress this tendency. If you give in to it, you are guilty. This goes for homosexuality as well. This is the traditional attitude, and what you don't see does not exist. That's the way it is. It is the case in almost all synagogues that if a person who everybody knows is a homosexual walks into a synagogue, he will count for the ritual ten men, or the ten men and women in our community, and this person can also be summoned. He won't be treated differently, and he won't be treated worse. The person will be part of the community just like anybody else. He would be well-advised to not openly talk about his sexual experiences, but also a heterosexual*

*is requested not to talk about these kinds of things, it's just not the place for these things.*

*So homosexuality is actually accepted in individual cases and persons should really figure it out for themselves. It is something between them and their God, and neither I nor other people have anything to do with that. We as a community will soon start to consecrate ritual relationships. In such a way that if two homosexuals want to consecrate their civil marriage in the synagogue, the rabbi will offer them this opportunity. Because yes, what is a Jewish marriage? It's two people who hopefully love each other and establish a Jewish household in which they raise their children – this is actually the idea. Well yes, where homosexuals are concerned this could be a little bit difficult but not impossible, so we would like to go along with this, at least if people are truly in love. It's true they are of the same sex, and we don't think it's ideal, but people should decide for themselves. I don't have anything to do with that and if we can support them by formulating some kind of ritual, because it really is formulating a new ritual, because that ritual did not exist before, then we have to.*

This of course does not mean that all religious groups in the Netherlands have found such pragmatic ways of dealing with homosexuality in their community; especially the more orthodox groups tend to be strict in this sense. Lody van der Kamp, head of the **orthodox Jewish** high school and a former local politician and rabbi, explains it as follows. In the process, he reacts to the fact that the liberal Jewish community has changed its position on homosexuality.

*LvdK: The liberal Jewish community has the freedom to make this choice for their own community. We are orthodox Jews. Within the framework of freedom of religion they can make this decision. I do not lay down this framework and I do not pass any value judgement on it. Just as I don't pass any value judgment on what happens in a mosque or a church, I don't pass any judgment on what happens in another synagogue. [...] But in our synagogue this doesn't happen, it can't happen. If you talk about the orthodox community, this isn't under discussion. [...] Because orthodox Jews only recognise marriage between a man and a woman. Without passing any judgments on homosexuals though. That's a completely different story and has nothing to do with this. Just like a brother and a sister cannot get married, two homosexuals cannot get married, either.*

We found similar standpoints and arguments among other orthodox groups, both Protestant and Islamic. It is interesting to note that among **less orthodox Islamic** groups, the question of how to accommodate the issue of homosexuality in the community is also debated.

Yassmine el Ksaihi notes that *'at the moment, homosexuality is not something that can be discussed openly in our mosque. But I feel it is just a matter of time. People tend to be more tolerant to homosexuals than before'*.

She attended a same-sex marriage at a synagogue and articulates her individual struggle after witnessing this as follows:

*A while ago, I went to the wedding of a homosexual Jewish colleague in the synagogue, and I have to be honest and say that personally I really liked being there. I believe there was even a rabbi, who of course mentioned that it was actually not allowed and that he had warned the couple but that he couldn't change their minds, and if they want it themselves and if they have chosen to do it together, let them figure it out on their own. I have to say that at that moment I thought, yes, that's certainly a way of looking at it. On the one hand, and that's also my internal conflict, you can justify just about anything by reasoning like this, but on the other you have individual freedom of choice. I am struggling with that myself, but my primary opinion is that I thought the ceremony was really beautiful.*

### **(iii) Alternative dispute resolution**

Separate religious dispute resolution is not discussed much by our respondents, besides those examples already given concerning marital problems, which may lead to in divorce.

Respondents who talk about these religious dispute resolutions are clear that they do not want any state involvement in them, nor do they see them as clearly recognised institutions. Nonetheless, they place great value on these forms of dispute resolution. It is part of the everyday activities of the established religious institutions, often without having a clear or separate platform or institute that deals with conflict resolution for their constituency. Priests, rabbis, imams and other religious officials discuss, mediate and try to overcome problems in marriages on a day-to-day basis. They feel this is a fundamental element in their duties.

Again, we must emphasise that the fact that official forms of conflict resolutions in separate institutions do not seem to play an important role for the respondents does not mean that we can generalise this and apply it to the entire Dutch context. In a recent report by the University of Leiden on the existence of sharia practices in the Netherlands, the following conclusions were reached. These conclusions were more or less in line with what we found in our interviews, and are most likely applicable to the Netherlands as a whole:

*The research findings show that counselling and conflict resolution based on sharia do have a role in the Netherlands, but that they generally come to the fore as attempts to agree upon the best solution under the given circumstances. Sharia is referred to in order to test the religious validity of the proposed solution. For nearly all respondents, sharia in the Netherlands is dissimilar to sharia in, for instance, Pakistan or Morocco. Our respondents pointed out that they live in a Western democracy and must, whether they agree to them or not, obey the laws of the state. Each Muslim must find a modus vivendi for him or herself in following Islamic rules in a non-Islamic country. We hence feel that our initial definition of sharia as 'Islamic law' places, with regard to the lives and experience of Muslims in the Netherlands, too much emphasis on 'law'. A definition of sharia as 'Islamic norms and values' seems more accurate.*

*We have found no indications of the existence of a 'sharia court of law' (sharia-rechtbank) in the Netherlands. Moreover, the ethnic diversity of the Muslim population in the Netherlands makes it unlikely that such an institution would be accepted by all groups without diverse interpretations of, competition over, and doubts regarding the institution's authority. The situation in the Netherlands hence does not resemble the arbitration that has place in Great Britain and where compliance with a decision reached by the Muslim Arbitration Tribunal can, in principle, be enforced by a court of law. In the Netherlands, the practice of conflict resolution based on sharia does not have the status of arbitration, since Dutch law does not allow for arbitration for such (family law) subjects as respondents indicate to be subject to conflict resolution. Insofar as a comparison with a legal form can be made, mediation probably comes closest. Led by an expert who actively participates in the process, parties seek to come to a solution that is acceptable to all involved and in line with the law in force. It is important that the solution is actually accepted by parties since compliance cannot be legally enforced. Social pressure can be an alternative to legal or judicial enforcement, but if pressure results in oppression the law is on the side of the oppressed. We hence believe that such events cannot be considered sharia-based conflict resolution, but rather should be seen as conflict settlement (Bakker et al. 2010).*

## Summary of family law

### 1. The **privileged status of traditional Christian Marriage and Divorce**

(patriarchal nuclear family) seems to be increasingly **under pressure in the Netherlands** by

(a) **external** pressure (Private International Law and the recognition of polygamy, divorce by *khul*, *tatliq*, but also by *talaq (unilateral repudiation by the man)*, adoption, dowry, etc.), even if this is not dramatised.

(b) **'internalised'** pressure (new immigrant religious minorities as citizens), hence PIL issues are 'internalised' and the borderlines between PIL and domestic law become blurred);

(c) **internal** pressure: feminism versus patriarchal family; same-sex marriage versus heterosexual family; new forms of civil registration (potentially opening 'marriage-like' rights and obligations for new forms of intimate relations among more than two partners, 'extended families' and non-kin relations, e.g. in child-care, etc.).

Some of these developments (equality between spouses, same-sex marriage) are taken into account by Dutch legislation and in recent court decisions, but an extension of the 'rights and obligations' connected to marriage and registered partnership to new forms of intimate relations still seems to be 'one step too far'.

2. According to our respondents, the existence of civil marriage and divorce law (e.g. contrary to Israel) as well as the temporal **priority of civil registration** before religious ceremonies is **broadly accepted by old religious majorities as well as old and new religious minorities in the Netherlands**. Actually, we did not find any exceptions at all in contributions by representatives of religious organisations, whether majority or minority, old or new, contrary to statements by Arjen Plaisier, secretary of the largest organisation of Dutch Protestant Churches, who insists that this church, *'different from Islam, has been operating in a secularised society for a very long time . Therefore, I believe that if you compare our church with Islam, you will find much fewer tensions between how things are organised in society and how we do it, also in the realm of family law'*. Furthermore, this remarkable 'consensus' is clearly not only the result of smart strategic thinking. How should we interpret the exceptions? Is it true that they concern only second-generation, young, unorganised 'salafist' Muslims?

3. **Legalisation of same-sex marriage** in the Netherlands seems to have a considerable **impact on** those religions (**Catholicism, orthodox Christianity, orthodox Islam**) that still condemn homosexuality and same-sex partnerships, particularly marriage, as a sin but try to find ways to accommodate. Can we draw conclusions from comparisons to their eventual acceptance of legal divorce that had been so fiercely opposed for so long?

## Labour law

Labour law is certainly one of the more contested issues in the Netherlands when it comes to basic tensions between collective religious rights and individual rights, and principles such as non-discrimination and equal treatment. In the Netherlands, these discussions focus on two things. First, the right for faith-based organisations to protect their religious practices and identity by demanding employees to subscribe or at least not oppose their mission and/or to live according to their religious principles. This may for instance mean that homosexuals or women cannot apply for certain positions or have to leave the organisation when their sexual preferences become publicly known. Often when this happens, it is contested by secular voices claiming the right of individuals to equal treatment regardless of gender, race, ethnicity or sexual preference. What we see here is a clash between collective autonomy (practices of majority or minority religious organisations and associations that are protected by collective religious freedoms, the *collective religious freedom cluster*) versus labour law principles of non-discrimination on the basis of religion, gender, and sexual orientation (and possibly race). These discussions are especially important and intense with regard to religious schools and faith-based welfare organisations. Second, labour law plays a role in the rights of individual employees to express their religious beliefs and follow religious norms and practices (asking for exemptions), which may conflict with the rules of the employer. These basic tensions can be described as religious interests of employees versus interests of other parties (employer, co-workers, customers, general public) and other liberal principles such as non-discrimination (sex and gender equality), the *individual religious freedom cluster*.

### Equal treatment law in the Netherlands

In the Netherlands, Article 1 of the Constitution prohibits discrimination, and the Dutch equal treatment laws elaborate on this norm. These laws are complex and prohibit unequal treatment in specific fields and on a limited number of grounds. The Equal Treatment Act came into effect in 1994. This act elaborates on the Constitution's ban on discrimination, declaring that no one in the Netherlands may be discriminated against. The grounds are specified: religion, belief, political opinion, race, sex, nationality, sexual orientation and marital status.

In concrete terms, the act prohibits the discriminatory treatment of citizens in the workplace (employees). The act does not apply to legal relationships within associations and religious denominations,

nor to private life. The aim of the Equal Treatment Act is to ensure that everyone can participate in society on equal ground. Every individual must be able to function freely in society, without being disadvantaged on account of his or her personal characteristics, insofar as these are not directly related to performance.

### The Commission for Equal Treatment

The Dutch Commission for Equal Treatment is an independent organisation that was established in 1994 to promote and monitor compliance with the equal treatment laws. The commission also gives advice and information about the standards that apply.

Anyone who feels that he or she has been treated unequally can request an opinion from the Dutch Commission for Equal Treatment (CGB). When the CGB receives a petition for an opinion, it investigates whether the equal treatment law has been violated. The CGB can only investigate petitions on the grounds of differentiation described in the equal treatment laws.

When the Dutch Commission for Equal Treatment (CGB) receives a request for an opinion about alleged differentiation, it investigates whether the equal treatment law has been violated. In some respects, the CGB is similar to a court. An important difference is that the CGB searches for information itself. Representation by a lawyer is not obligatory and filing a petition is free of charge.

The CGB does not have to wait for petitions to be filed. It is also entitled to investigate on its own initiative specific situations where systematic or persistent patterns of

discrimination are suspected. The commission's decisions have a high moral authority but are not legally binding. The commission cannot force the party that has been found guilty of discrimination to comply with its decision. Nonetheless, in practice, its decisions are usually accepted and followed. After a decision has been made, the commission often follows up on the case. For example, it may talk to representatives of the branch of industry in which the case occurred in order to build up good communication channels, which in turn may prevent similar cases from occurring in the future.

Many of the cases concerning the basic tensions in labour law described above are eventually dealt with by the CGB. Alex Geert Castermans, former president of the commission and now professor of law at Leiden University explains how the commission and other institutions like courts deal with these matters in the Netherlands. Basically, they have to decide whether it is direct or indirect distinction and whether reasonable accommodation is possible:

*AC: Yes of course, it's a very strict framework. It's like a menu, you begin with a starter, then you move on to the main dish and you finish with a dessert. Is there some kind of distinction? Yes or no. Is there a direct distinction or an indirect distinction made? If it's a case of direct distinction, it's wrong, except for some exemptions like denominational education. If it's a case of indirect distinction, it's possible that you could justify it. It's also about the means of justification: is there a legitimate goal to be reached? Are the means acceptable for reaching that goal or is there a better alternative? That's actually what it's all about. And in the case of direct distinction, you really need to guide people through it, because if it turns out to be a case of direct distinction, the law doesn't actually allow us to do anything regarding compromise between the two parties. So yes, we focus on trying to put the issue in a different perspective: is it really about religion, is it just about the permeability of the fabric [if you can hear through it or not], or maybe it's about the image of the company instead of about religion. So most of the times people do not think in judicial terms. Having said that, you do have to figure out whether it's possible to formulate people's intentions in a different way. Then you're talking about indirect distinction, and you end up with decisions differing from the ones people would make before the case was brought up to the commission. As an employer you could reach a reasonable agreement in a different way, but people just aren't focused on achieving that. I think that judges and mediators sometimes forget that most people are just trying to do their job and are totally blind to the fact that they are perhaps discriminating against others. So when they do, a debate is started and reasonable alternatives are found, but it's a strict framework though. And if people refuse to cooperate, refuse to think about reasonable alternatives because they believe that as employers they should be allowed to do whatever they want, well yes, then that's the end of it. Also because in most cases, there are alternatives. In most cases there are, and if there are reasonable alternatives, you need to conclude that the person in question has made a decision based on indirect distinction, one that could not objectively be justified, because there is an alternative to reach your goals without discriminating against people. For example, when it comes to shaking hands, at Social Services in Rotterdam you want to shake people's hand to make them feel at ease, but is there maybe another way to accomplish that? Yes of course, there are thousands of ways to make people feel at ease, so why do you want that man to shake people's hand if it makes someone feel uncomfortable? That's the end of it. And then the public believes that it's essential to abandon Dutch greeting rituals to make sure that people are treated equally, but of course that's not the case. The question is simply whether in individual cases it's imaginable that people make others feel at ease or show their respect for others in a different way than shaking hands. That's how these cases are being dealt with and in court, because that's the first time you really meet these people, you just try to have a reasonable conversation with them instead of trying to straightjacket them judicially. You just want to figure out what the real issue is and get these people to reconsider things.*

Important observations that Castermans makes regarding the Commission for Equal Treatment are the difference between direct and indirect distinction and the question of

whether reasonable accommodation is possible, and if so, what are the arguments of the people involved to not make use of these possibilities. In practice, however, these matters are not always that straightforward, and we do see a shift in the judgments of the commission in different cases that we will describe later. Flora Lagerwerf (47 years old, former member of the Commission for Equal Treatment, former senator for the ChristenUnie party and judge in Rotterdam) explains the difficulty of direct and indirect distinction as follows:

*FL: Direct distinction and indirect distinction are difficult concepts. In which situations is discrimination objectively justified and in which situations is it not? This is not always clear. There are a lot of people who think that certain things are allowed or aren't allowed, while in reality it's exactly the other way around. Socially, you notice that certain ideas that have been conceptualised already a long time ago, like the separation of church and state and the neutrality of the state, get a whole new meaning, and in my opinion that new meaning isn't always the right one from a legal perspective. I've always discussed these things based on legal arguments and never on ideological or political arguments. I've always based my decisions on judicial arguments and I believe that it's the only way to get a pure debate. I also think that it's good to make an assessment because you notice that two fundamental rights conflict with each other, and in every individual case you decide which fundamental right prevails.*

Matthijs de Blois (58 years old), substitute member of the commission and legal scholar at Utrecht University, acknowledges that there is increasing pressure on religious groups to conform to the norms and values of mainstream society and allow the principle of individual equality, which is at the basis of the distinction between direct and indirect discrimination, to prevail over other constitutional rights. Nevertheless, the principle of equality can also be used by religious groups to claim certain rights as minorities.

*MB: Well look, generally speaking there is a certain pressure from outside on religious minorities to act in a way that is approved by the secular outside world. That pressure is increasing, and the equality principle of course does play a role as a sort of crowbar in that process. [...] It also applies to family issues, education, social services, and all other things of which people say that religious principles collide with what the dominant culture believes. [...] Within the commission, you do not see this kind of reasoning directly. It is of course the case that the commission is confronted with these issues, because people have their own norms and values within their community, and that can lead to people within such a community starting to resist against a group norm based on the equality principle – that is one side of the story. The other side is that people make an appeal to the equality principle because they do not want people interfering in their lives. That is a field with a lot of tensions.*

De Blois explains that states should not be allowed to make use of direct distinction, but individuals or non-state actors should in certain instances be allowed to do so:

*MB: Yes, the government cannot make a distinction on the basis of these grounds, but that doesn't mean that particular non-governmental organisations shouldn't be allowed to do that, either. That is the problem with the principle of equality that it is used without differentiation in different areas. The classical idea of basic rights is that they protect us against the government. The government cannot just hire Christian people for civil servant positions for example, or just hire men, that is clear and not under discussion at all. But with the horizontal application of the equality principle, you also have to look at other organisations, and leave some room for these organisations to decide for themselves, and there are some exceptions included in the General Law for Equal Treatment. So a Christian school can decide to hire exclusively Christian teachers, and I think that is also part of a free society. If they wouldn't be allowed to do that, we would be going too far. If a school says that they also want the*



*janitor to be of the same denomination because the janitor has to deal with the children a lot as well, then why not?*

Patrick van Schie, director of the liberal think tank affiliated with the VVD political party, defends a somewhat similar opinion when expressing the idea that the state should not interfere too much in these issues. He feels it is up to individual citizens to deal with direct and indirect distinction.

*PvS: I feel that Article 1 of our Constitution [dealing with anti-discrimination] is interpreted too broadly. For me, Article 1 is an issue between the state and its citizens. So the state isn't allowed to discriminate, but the article shouldn't apply in the same way to citizens. Citizens should be allowed to make distinctions, they do that on whatever grounds, and I think it's risky if the government interferes in the motivations of these citizens to make distinctions. It is of course not tenable to make justified exceptions to that rule. I am still allowed to make a distinction between someone who is affiliated with a liberal ideology and someone who is not, before I hire someone here. But I'm not allowed to make a distinction between a man and woman when I appoint someone. Well, personally I do not even want to make that distinction but then again, I do not think that the state should interfere in the private relationship between two citizens, in this case an employer and an employee, as far as selection is concerned. The state isn't allowed to make such a distinction.*

The above statement is the most consistent ideological interpretation from a neo-liberal position that would make anti-discrimination law absolutely toothless in employment relationships.

Arjen Plasier of the Dutch Protestant Churches also feels that it is problematic when the state interferes in a relationship between an organisation and an individual citizen, however he acknowledges that there are limits of what states can and should tolerate: discrimination on the basis of race is not acceptable, but religious organisations should be able to refuse someone who does not live according to the norms and values of that particular religious group.

*AP: Are we going to discriminate against these organisations that have a different opinion on a certain topic? Can these organisations not exist anymore? Are we going to apply the principle of discrimination to these organisations and say, 'Yes, you are discriminating against people whom you cannot discriminate against according to public morality'. [...] I also understand that you cannot say, 'In our organisation, people of colour are excluded because that is just our philosophy of life'. Then society rightfully says that you cannot make that distinction. Here we are dealing with a way of life, namely homosexuality, about which people have different opinions. Is an organisation allowed to have a different opinion and use that as their guideline? I believe that it is difficult to imagine that if an organisation has an opinion and the organisation expects its people to share that opinion, that this organisation would hire people who have a different opinion. It is actually quite logical, I think, that we do not force the organisation to do so. So then the question remains: 'Can non-governmental organisations that are based on certain religious beliefs discriminate?' [...] Nobody forces you to join a club that has certain convictions that conflict with your personal convictions. In that sense, nobody is being forced. Such an organisation just wants to preserve its own identity and convictions and wants to base its work on these convictions and contribute to society or to its own group.*

Obviously not everyone agrees with these appeals for extensive rights for religious groups to discriminate against people because of their sexual preference or their sex. In fact, some respondents not only feel that laws should limit the rights of religious minorities to discriminate against others because of their religious beliefs, but they also feel the authorities

should actively target these religious minorities to stimulate changing their belief system. Dick Pels is director of the scientific institute of the Green Left party.

DP: *I think that the government should dare to be paternalistic and spread liberal values.*

In a newspaper article he recently wrote with Ruard Ganzevoort (another of our respondents and professor of pastoral/practical theology at Amsterdam's Vrije Universiteit), they state the following:

DP & RG: *Democracy is a high and self-critical ideal, not a means of power that uses the voice of the people to take away the voice of other groups. In the end, it is about finding a way to live together based on autonomy and morality. Every topic should be discussed, so certainly the church as well. In that sense, it is striking that some authors are supporters of the freedom of religion, education and association, but that they do not even mention the freedom of expression. Indeed, democracy is not the tyranny of the majority. It is characterised by respect for minorities and the guarantee that their voice is being heard. But we should realise that democracy is more than that, it is also about the protection of the rights and freedoms of minorities within minorities, so in the end the protection of the minority of one individual. The right to be different should be radicalised, for also minorities can be tyrants for their own members.*

This essentially means that both people and authorities should criticise religious minorities when they hold or express beliefs that are contrary to mainstream Western ideology.

DP & RG: *Criticism of religions is therefore just as important as having respect for religions. But criticism of religions and freedom of expression should not be used to restrict the rights of others. They should be focused on increasing everyone's freedom. The most effective criticism of religion comes from within, but that often has to be stimulated from the outside. And that critique shouldn't be restricted to religions and spiritualities that are relatively new in our society. Even a respectable institute like the Roman Catholic Church deserves to be fundamentally and sharply criticised. That critique of religious or cultural practices has to be focused on the freedom of individuals to live their lives the way they want to. [...] The government shouldn't only set up clear judicial boundaries, but it should also express a strong moral appeal, also when it comes to the position of women and homosexuals in orthodox Christianity and Islam. Of course the Roman Catholic Church has the formal right to refuse practicing homosexuals holy communion, but morally that collides with the values of our society. Not everything can be judicially forced upon people, also because that leads to polarisation and puts groups in a defensive position. People should focus on dialogue and on supporting the emancipatory groups within different denominations.*

We will now look at the way in which respondents perceive the tensions in different domains of Dutch labour law, and the extent to which different parties are able to find reasonable accommodations when tensions arise (religious schools as employers, faith-based organisations as employers, special rights for religious employees). In theory, the Dutch case should allow for a lot of reasonable solutions in these issues for the following reasons. Firstly, because of the tradition of pillarisation, faith-based organisations (schools, non-profit welfare organisations, media, etc.) have a strong and accepted role in Dutch society and often act as employers. To safeguard their religious identity, it is crucial for them to be able to select employees of the same religious background. Secondly, the Law and the Commission for Equal Treatment also allow for possibilities to find reasonable accommodation when actors have different opinions about certain issues that may jeopardise labour relations. Nonetheless, as we have seen thus far, some respondents in the Netherlands feel that reasonable accommodation is wrong as it provides opportunities for religious groups to discriminate

against some of their own members and to express norms and values that are contrary to those of the liberal Western world. The different domains of Dutch labour law that we address are religious schools as employers, faith-based organisations as employers, and special rights for religious employees, and they all provide ample evidence of tensions.

### **Labour law and religious schools in the Netherlands**

For all religious respondents, religious education is a fundamental part of their collective religious rights in the Netherlands (see above for a brief historical overview of religious education in the Netherlands). Lody van der Kamp, head of the Jewish orthodox high school in Amsterdam, explains why he feels this way.

*LvdK: For me, there are several arguments [for choosing to support the freedom of education as laid down in Article 23 of the Constitution]. First of all, it is especially important in Judaism that enough time is spent on religious education, knowledge of Judaism. You need a couple of hours per day for this. In this school, these classes are focused on gaining knowledge (that's part of our curriculum). Boys start very early in the morning with their religious education and have normal classes from twelve to six. Secondly, there is the philosophical argument regarding contact between boys and girls up until puberty. We don't have to talk about whether this is good for every aspect of the children's development, as that's an argument unto itself. But parents in the Netherlands should have the option to send their children to separate boys' and girls' schools. This also goes for Islamic, Christian-Protestant and Catholic schools. It's part of the achievement of our society. For me, these two arguments are sufficient. And if secular groups or communities think this leads to second-class citizens, then they should prove that. But they cannot prove it, because it doesn't lead and it will never lead to second-class citizens.*

Jan Schippers from the scientific institute of the Reformed Political Party (SGP) provides the following explanation:

*JS: We believe that raising and educating children is the primary responsibility of the parents, so it's only logical that freedom of education should ensure that the education fits with the religious beliefs of the parents. People sometimes believe that these schools are part of the government or part of the state. If the Christian tradition in the Netherlands is opposed to anything, it's to state schools, once again because that neutral ideology is brought into the classrooms. Especially for children in primary education, it can be very confusing if they receive different instructions from the teachers at school who say A and the parents at home who say B, or vice versa. So that doesn't promote healthy, balanced child development, and the general pedagogical rules affirm that. A child cannot handle that at that age.*

Wim Kuiper, president of the Dutch organisation for Protestant schools, explains how the labour issue is central to the Dutch system of religious education. This is why it must be defended from what he perceives as attacks from the secular side.

*WK: See, the heart of the freedom of education really is one's own personnel policy and not the freedom of choice of parents, although that of course is an important aspect as well, nor is it the acceptance policy of the children. The heart really is the policy of selecting personnel, that this is free and that you can ask the question about someone's philosophy of life while you normally of course can't do this as an organisation in society. So there are different sides to this, you can see that society is secularising, so the target group of teachers and school managements as well, they are also secularising, and so for many schools it's a struggle to manage this. Do we still want to ask this question at all, and if so, how do we ask it, how do we give meaning to it and what do we allow in this regard? For example, what do you do as a school with someone who says, 'Yes, I'm an atheist, this is a Christian school and I will conform to that more or less' versus 'Well, I'm an atheist and I will not keep this a secret and I will tell students that I think it's all nonsense, but anyway, if you really deem this all*

*necessary', and you can also say, 'I'm agnostic and I don't know exactly how it works, but I'm open to it and I have respect and comprehension for it'. Well, that last category usually is very welcome.*

Lody van de Kamp identifies the same basic tensions as the Protestant respondents when it comes to the extent to which religious schools can select employees on the basis of religious criteria, but feels that Jewish schools do not have this particular problem in practice.

*LvdK: We as a Jewish school are in a very comfortable position, unlike Protestant education or Reformed education. Generally speaking, the policy in Christian schools is that potential employees have to subscribe to the religious philosophy of the school. Tensions result from this situation. For example, when someone applies for a job at the Van Lodestein College [a reformed Christian school] who completely subscribes to the religious philosophy of the school but is also a homosexual, the school has a problem. At our school, it's not like that. The majority of our teachers aren't Jewish, so we require totally different things of our staff. They must respect the religious philosophy of the school and conform to the school rules, which consist of certain clothing requirements. The women have to wear skirts and long sleeves, just like the girls in the school. The teachers cannot let the students call them by their first name and they are not allowed to talk about religious matters because Judaism is discussed by Jewish teachers, and other religions aren't discussed at all in the school, at least not with respect to content. And if the content of other religions is discussed, it must be according to the school's core goals. What's more, teachers cannot talk about sexual matters and they cannot discuss their private lives. Whether a teacher is married or not, lives together with someone or not, or is a homosexual is none of our business, so it is not discussed when people apply for a job at our school, either. As a consequence of this policy, we have all kinds of teachers at our school.*

Nevertheless, when it comes to Jewish teachers, the orthodox Jewish high school takes a similar position as other religious schools in the Netherlands, and then similar tensions may arise when teachers, for instance because of their sexual preference, may not be accepted by the school. Like the other respondents from religious schools, Lody van der Kamp is very clear that religious schools in the Netherlands must demand this freedom in their hiring policy, and that they feel they get this freedom with the existing legislation on religious education.

*LvdK: Regarding Jewish teachers, we are much stricter. We expect them to identify with the religious viewpoint of the school, in mind and in practice. We can only hire a Jewish teacher if he or she lives his or her life in line with the school's religious identity, so in line with orthodox Judaism. We demand this freedom and we get it. If the government tries to interfere in this, we will not let it happen.*

Secular respondents obviously have quite different opinions about religious education and often express fairly principled standpoints when it comes to religious schools and labour issues. According to Kathalijne Buitenweg (41 years old), former member of the European Parliament for Green Left and president of the Clara Wichmann Foundation (a secular women's interest organisation),

*KB: Schools should not be allowed to discriminate. They should not be allowed to refuse a teacher because he is gay, etc. So there are boundaries that are spelled out in the equal treatment legislation to ensure this. I go by these laws, and for other things we should indeed strictly monitor these schools.*

It is interesting to note that Buitenweg uses the law on equal treatment as an argument to forbid religious schools to make either direct or indirect distinction. Bertjan Kollmer (54 years

old), president of the Dutch Association for Public Education, comes to a similar conclusion in which there is little room for accommodation.

*BK: I personally believe that the government should a priori establish clear norms. The school can decide for itself how to achieve these norms, and then there is the school inspection watching over them, but there are problems, also regarding personnel management. No schools, even strict orthodox schools, should be able to refuse jobs to homosexual teachers. [...] That violates Article 1 of the Constitution, which is about the right of every individual, whether that individual is gay or a racial minority, to develop his or her capacities to the fullest and also to be allowed to teach. In other words, I believe protection against discrimination is a basic right that shouldn't be changed at all. There is no grey area here, I think. It's still about the fact that we have that strange law, written down in Article 23, in which is explicitly stated that you have the right to refuse students and you have the right to refuse teachers as well. This article should be dissolved.*

We find the same kind of discussion when it comes to other faith-based organisations that act as employer. We will highlight some particular statements from people involved in welfare organisations and secular respondents arguing against this.

Remco Oosterhoff, former councillor for the ChristianUnion party in Rotterdam and head of local work of the organisation Youth for Christ, a welfare organisation that has received national attention because of a conflict with Amsterdam authorities about their hiring policy (see page 68 for a description of this conflict), explains why he feels defending the religious identity of the organisation is important.

*RO: So in the end, the question is really how to practice your religion as a Christian in your daily life in society, and it's not the case that it can only be done by joining or working for a Christian organisation. I think that in the end, especially if you look at it from a theological point of view, it doesn't matter whether I work for Youth for Christ and do good things with young people and look after the most vulnerable people in society, or if I work for a regular, secular organisation. It is of course in another setting, but it is based on the same motivations, so I think that there isn't much difference between these two. What I do think is that within a Christian organisation, you have more room to practice your religion with each other, collectively, and that by doing it together you give shape to your identity. I think that in the end that is the strength of an organisation like Youth for Christ [...] The common factor of people working for Youth for Christ is that we are all Christian, but there is a great diversity in different denominations. So it's actually really diverse, and people also have different theological opinions, but we share the will to want to do something good for these young people, which is grounded in our religion, or our identity. And whether you are working for an organisation with people who might have very different views on things, or maybe think, 'Well, this is just my job because I need to make a living, and these youngsters can be annoying once in a while, but I enjoy working with them', this influences the setting in which you work and also influences your work satisfaction in a different way than when you are part of an organisation with people who are all likeminded, who all have the same motivations, which gives you energy as well. [...] I think that in that sense, our identity is an important cornerstone on which the quality of our work is based, and this is mainly expressed in the passion with which our employees do their work.*

Remco Oosterhoff further explains how in the case of his organisation, gender or sexual orientation does not play a role; just the fact that employees are Christian is enough for some groups to question their equal treatment policy.

*RO: Look, they cannot find any problems with our organisation that we fired a homosexual, they cannot find any of these facts to fight us, and that's why they are trying to play the fear card. That's where the difference lies. With regard to reformatory schools, you could argue relatively objectively that something happened, but in our case you can only play the fear*

*card and subsequently in a general sense that you need to be a Christian if you want to work with us, and then you enter a discussion in which people argue that it should be sufficient that people respect religion, but I think that you enter a totally different playing field then. Last week, I read an ad for the Cancer Foundation that said you needed to be a non-smoker if you wanted to apply for the job, and I could give you a lot more similar examples. I have never seen a woman on a men's soccer team, either. I think that every organisation refrains from hiring people because they do not subscribe to a certain vision. Within our organisation it is our [Christian] identity [that shapes our vision], but within public schools for example you also have a certain pedagogical vision, and if you do not subscribe to this vision, and if you do not actively support it, you will not be hired. So when a school says, 'We really believe in the freedom of students and in discovering their own talents so we do not teach the children collectively', and when a candidate then says, 'Yes, but I want to teach them collectively', then this person will not be hired because he doesn't subscribe to the vision of the school. [...] The COC [Dutch interest organisation for gays and lesbians] interfered in that debate as well, arguing that the way we treated homosexuals was outrageous, and a journalist then called all the local COC chapters and asked them whether they had ever received complaints from youngsters, from employees, or volunteers about our organisation, and it appeared that there weren't any complaints.*

Faith-based organisations such as Youth for Christ are worried that they will not be able to continue their work in the future as equal treatment policies and jurisdiction become stricter and stricter, and there will be less room for faith-based organisations to decide what their hiring policy will be.

*RO: Well yes, we are quite anxiously awaiting the advice of the Council of State. [...] People will say, 'Okay, churches are still exempt from these regulations, we will keep our hands off the churches'. But as for denominational education and organisations like ours, they will say, 'We understand that your identity is important for your motivation and for the key norms and values you try to express as a role model, so you can require all youth workers to be Christian, but you cannot require that of someone who does the accounting or works in the ICT department.*

According to Remco Oosterhoff and other Christian respondents, this will have significant effects on the functioning of these faith-based organisations and may cause these organisations to eventually withdraw from welfare issues and other domains in which they act as employers.

### **Religious employees**

We will now discuss the situation of religious employees and the topic of the Sabbath in particular. Overall, we should state that our respondents did not experience many tensions in the workplace. In most cases where such tensions between religious employees and their employer (non-religious or from a different religion) could arise, finding a practical solution seemed to be possible. Of course this may reflect the selection of our respondents, but most of them did not experience these tensions firsthand as board members of an organisation or as religious leaders. Nonetheless, there are other reasons to believe that reasonable accommodation is often possible in the Dutch context. Alex Geert Castermans of the Commission for Equal Treatment explains that the commission always tries to look for practical solutions, in cases in which tensions have become conflicts between employer and employee.

*AC: Sometimes it's about very practical things. I will never forget the case in which the woman who wasn't hired at a call centre because of her headscarf. She refused to take her headscarf off, which led to difficulties when using the headphones. The discussion focused on the question of whether the fabric of the headscarf was permeable enough to allow her to work alertly as a telephone operator. And the employer was extremely offended that he was*

*accused of discriminating against people because he was very conscious about providing people with equal opportunities. He had even built a separate space in the office where people with a handicap or even people who were bedridden could work. And to add insult to injury, an anti-discrimination agency got involved, wanting to investigate how permeable the fabric of the headscarf really was. Then I said to them, why can't you not just put the headphones under your headscarf, which immediately solved the whole problem. Because of all the anger, the people in question weren't able to think creatively for themselves. It's often the case that when you try to discuss these topics, people get really angry and stop listening. People stop being open to a quiet and decent conversation about what it's actually all about. It was at an official session, would you believe that, they had already written each other angry letters and so on, so when we were in session, we first let them blow off some steam and then we asked them if it was an option to just put the headphone under the headscarf. They looked at us with big eyes and you could see them think, 'Hmmm'. They hadn't thought of this themselves. Well, you sometimes get the idea that a lot of cases are of course about religion and about the freedom of one person and the freedom of another person to live their lives the way they want to live them, but often it's also about something else. That's what I will always remember. And then there's the whole shaking hands thing. Certain ideas about shaking hands exist: on the one hand there's the idea that shaking hands is a basic form of greeting in the Netherlands, and on the other there's the wish to live according to a certain religion. What often goes wrong is that people aren't willing to talk and compromise on one side or the other or on both sides. What does it mean for the work environment, and what kind of alternative can you offer as an employer or as an employee? Often, people are so caught up in these issues. Once, we told an employee he was wrong because he wouldn't listen to the problems the employer had to deal with, or at least thought he had to deal with. The employee just didn't want to talk about these things. So we always tried to address this issue by finding out what the conflict was really about, and our goal wasn't to canonise the principle or anything. At least not for me.*

Other respondents provided similar statements that in most cases, tensions or conflicts between a religious employee and a non-religious employer can be solved rather easily. Mustafa Hamurcu, secretary of a large Islamic organisation, explains.

*MH: Well, we had a few complaints[about the refusal of employers to let employees pray]. Look, the employer is the person who decides how you have to do your work. I mean, as a Muslim you really would like to pray, but at the same time Islam isn't a religion that complicates everything. It can make things easier. We would advise these people to try to talk about it with different colleagues, if they have any of course. Try to explain the importance of prayer to them, try to get either written or verbal support, and if the employer really doesn't want you to pray in the workplace, then you just can't, but at least try to talk about it before resigning yourself to the situation. Make an effort, because as a Muslim you need to say your prayers, so at least try to see if there is any possibility to pray and if there isn't, then there just isn't. [...] To give an example of a big company, where thousands of people work, including many Muslims. And there it was more of a personal matter, because there used to be managers who let Muslim employees pray, but then a new manager arrived and he didn't want them praying. We then gave the group of Muslims in that company a written statement about the importance of prayer, and in the end the manager said, 'Okay, you're allowed to pray, if you do this and that'. And that's how a solution was found. So it is possible. I mean, you shouldn't say, 'I have to pray at 1 o'clock and at 3 o'clock'. No, you have to be prepared to do the 1 o'clock prayer at for example two-thirty. I mean, Muslims should also be flexible in these things. Look, that manager said he wasn't against people praying, but there just were people who said they had to pray and then were gone for over 45 minutes. Then I think, well yes, that's not fair. You're there to work, and you can say your prayers in five or ten minutes. If you're gone for 45 minutes, then I, as an Islamic employer, would also say, 'Get out of here'. Yes, then I would express myself in very clear terms, because you just have to take your*

responsibility. You cannot abuse these kinds of arrangements. But stand up for your rights, absolutely.

Peter Schalk (50 years old), president of the orthodox Protestant labour union, had this to say:

*PS: [Complaints from Christian employees] are less common because we still live in a fairly free society, in which there is a lot of room, luckily especially for Christians, to practice their religion. But our members can come to us when there is something wrong on the work floor because they are Christian. It can range from things like [...] do I have to perform this activity in this pharmacy or in this hospital, or do I have to work on Sunday when asked, what should I do?*

Peter Schalk also states that in his organisations, these issues do not often occur and most of the time reasonable accommodation can be found. If not, they will go to the Commission for Equal Treatment or to court, and then also most of the time a reasonable solution is found.

*PS: Yes, there are just a few if you compare it with the 5,000 [complaints we get for non-religious issues], but it's about things like, well, working on Sunday. This can be about a shop, but also about for example a bridge keeper who all of a sudden has to work on Sundays, while he normally didn't have to. We also have cases of people who were fired because they refused [for religious reasons] to get vaccinated, for example against Hepatitis B. An applicant for a nursing job was rejected by the selection committee because she stated early in the job interview that she refused to perform abortions. A civil servant wasn't hired or appointed, because right at the beginning they asked her if she was willing to perform same-sex marriages, and if not, she shouldn't bother applying. A pharmacist's assistant who had to prepare a euthanasia pill, people in nursing homes having trouble with the issue of euthanasia, how to deal with that and so on. Because we do anticipate these things, we try to prepare these people, give them all some sort of training. We hand out little books that deal with topics like these, in which several ways to deal with these kinds of situations are described. [...] Most of the time a solution is found, but sometimes this is not the case, and then you go to the Commission for Equal Treatment. You can do that, we are allowed to take that legal step and we use it if we believe that something truly unjust has happened, but that luckily doesn't happen on a daily basis. And the number of cases has been quite stable over time.*

Piet Hazenbosch, senior policy advisor for the mainstream Christian Trade Union (CNV), provides a similar picture.

*It does happen sometimes [that our members have conflicts with their employer because of religious reasons], and then we try to find a solution. What happened with the abortion laws was that there were nurses who refused to perform abortions or euthanasia. As far as I know, we didn't really have a lot of problems with the gay marriage [civil servants refusing to perform same-sex marriages]. The CNV itself doesn't have an opinion on abortion, but the fact that CNV members have an opinion on it is fine. I mean, why not. We look at our role as a union that says that there are indeed individuals who have problems with this kind of legislation. We take note of the fact that such legislation exists, and then we try to figure out what we have to do to solve the problem of that man or woman in that particular situation. And that works out fine. [...] Take a hospital, for instance. There are work schedules, and if an abortion takes place on Thursday, then the person who objects to performing or assisting in the abortion should not work in the operation room on that particular Thursday. These kinds of arrangements are made. Generally speaking, we try to make people, in this case hospitals, understand why such a person objects to abortion. Most of the times, employers understand. [...] You need to have respect for each other. And we aren't like some people in more libertarian circles who say, 'Of course you can be religious, but leave it at home'. For*



*more than a hundred years, our opinion has been the same: religious people want to do something with their beliefs in their lives. That means that when you say that you are a Christian, a Hindu, a Muslim or a Jew, and you want to do something with that outside of your house, then you should be able to do so. The rest of the world should take that into account.*

Piet Hazenbosch also states that this does not mean that all claims by religious people are always supported. Claims should be reasonable, and sometimes it becomes clear through negotiations and discussions that reasonable accommodation is possible on the individual level, but that does not mean that the same solution can be found on the collective level. So, individual Muslims should be able to take certain days off at work because of an important religious holiday, but that does not mean that this particular holiday will get some sort of official status as a religious holiday.

*PH: The demands should be reasonable. If someone says that he or she can't work for religious reasons, then that is fine and he or she is allowed to say that and act upon it, but then that person should not receive payment for that day. The elastic band stretches, but it can also break. What we arranged already years ago in a lot of collective labour agreements is that Muslims can take a day off from work on certain Islamic holidays. One of our chairmen once said, 'Shouldn't we consider making one or two of the Islamic holidays ours as well?'. He suggested that we trade two Christian holidays for two Islamic holidays. People were really critical about this idea. So you just have to find a solution together through negotiations. And you need to try to respect each other, for better or for worse.*

Secular labour unions get complaints from their members about discrimination because of religious reasons as well. Respondents affiliated with these unions indicate that secular unions will also support their members with these complaints. Most complaints seem to relate to the wearing of a headscarf by Islamic women during their work or internship. It is interesting to see that Anya Wiersma (37 years old), president of the FNV women's union and former councillor for the Socialist Party in Amersfoort, does not provide arguments regarding the religious freedom of these women, but relates this issue to the economic independence of Muslim women as a vulnerable group. It is more important for her that these women can work and earn their own money than whether they can wear a headscarf or not. If some of them will be only work if they are allowed to wear a headscarf, then it should be allowed to ensure their participation in the labour market:

*AW: Being economically independent [is most important for us], because maybe she is married to a man who forces her to wear a headscarf. Most of the time, these women aren't allowed to leave the house, but suppose one of these women is allowed to leave the house to work [but only when she wears a headscarf]. Her work makes her economically independent. [...] [Sometimes,] employers feel that wearing headscarves is problematic. I talked with some of these [Islamic] women [who participated in a project of the women's union]. They were really easygoing ladies. I think that as an employer you should look beyond that headscarf, because they really were very nice ladies with a lot of good qualities. You just have to offer them an internship because they would make really good employees. [...] In practice, it wasn't bad by the way. There were some obstacles, but in the end they all found an internship.*

Albeit for different reasons, most of our respondents felt that religious employees should be supported in possible conflicts with employers because of their religious background. Nevertheless, the discussion changes when it relates to religious civil servants. Because these people are representatives of the state, some of our respondents felt that there should be less space for finding reasonable accommodation for religious civil servants. That said, opinions differ as to when and where reasonable accommodation is legitimate. We will focus on two issues that are currently important in public debate in the Netherlands when it comes to

religious civil servants: officiating at same-sex marriages and the refusal to shake hands with someone of the opposite gender. Interestingly enough, some respondents provide different opinions about these two issues, often with varying arguments and without a clear pattern. Thus, some of the respondents are in favour of granting civil servants the right to refuse to officiate at a same-sex marriage because of religious reasons, but they would not allow a civil servant to refuse to shake hands with someone of the opposite gender, or vice versa.

### **Civil servants who refuse to perform same-sex marriage ceremonies or shake hands with women**

Let us start with the position of the Commission for Equal Treatment on these two issues. In recent years, the commission has changed its position on the civil servant who refuses to perform same-sex marriages. Alex Geert Castermans, the former president of the commission, explains how same-sex marriages and the refusal to shake hands differ in his opinion and why the commission has changed its position recently when it comes to civil servants that refuse to perform same-sex marriage ceremonies:

*AC: We have seen a change in the cases on civil servants who refuse to marry people of the same sex. First, people said that it was a case of indirect distinction, or at least it was about how a civil servant must operate, and the district council saying that the civil servant has to do what the council prescribes. At first we tried to solve the issue, if I remember well, by saying that it was a case of indirect distinction, but actually that's really hard to defend when it comes to marriage. Because someone just says that you have to do something, regardless of your religion. That's of course quite harsh. But we did say that it's about someone working for the government, and should the government allow its employees to refuse certain services to certain people? In the end that's already a very precarious issue, and we decided that the government shouldn't allow its employees to do this. You could also tell these people to make sure the work schedule is adapted to these kinds of situations, but at the same time you give couples the opportunity to choose a civil servant and then you give them an overview of the available civil servants, and for example there are three people to marry people, and Ms. A does these kinds of marriages, B does these kinds of marriages, and C does these, but C isn't available for same-sex couples. That's just weird. It's about the message you send to the public.*

Achmed Baâdoud, (39 years old), district mayor of one of the largest city districts in Amsterdam and member of the Labour Party, comes with a similar position in this debate and explains it like this:

*AB: In our city district New West, our vision is to promote the separation of church and state. That doesn't mean that we do not recognise religious people and that we are a secular city district. On the contrary, we have said that our starting point is the Constitution, in which our basic rights are described. Freedom of religion, freedom of expression and freedom to be who you want to be, that is all dealt with. We can have an endless discussion about these rights, but in the end these rights are the rules of the game. In New West, you are free to believe what you want, but you are also free to not believe at all. If you are one of the civil servants in New West who refuses to marry homosexuals, then you have probably chosen the wrong profession. That freedom also means that if you make a choice to work somewhere, and if you know that there are also homosexual customers, and that it is a neutral services provider, without any selectivity, that still means that you have the freedom to be who you want to be and to live in the way you want to live. Nonetheless, it is not the community that has to take you into consideration. If you want a job, and you know in advance that you will have to deal with all kinds of people with different kinds of religions, or if you want to wear a burka, then you just shouldn't apply for certain positions.*

The Commission for Equal Treatment has changed their position on the issue of the civil servant who refuses to officiate at same-sex marriages. Flora Lagerwerf, a former member of the commission, criticizes the commission for changing its position on this issue.

*FL: In this case it is indirect distinction. In the first case the line of reasoning was that it was indirect distinction that was justifiable. Is the goal legitimate, can it be accomplished and is it necessary. [the goal is to marry people, also people of the same sex, and the means to do that is to hire people who can accomplish that goal, and then the crucial question is whether the means are necessary]. The commission said that it was legitimate, but not necessary, because in the municipality of Leeuwarden there are enough other officials who can marry same sex couples, so then it's okay. Then in 2008, the commission changed its view on the case and said that the city has tried to uphold the law, the law on gay marriage, by setting that demand for the position of being a civil servant, and that's a legitimate goal. Moreover, the commission argued that setting that demand for the position was not only the right way to achieve the goal but was also right in a proportional fashion, because otherwise the city would discriminate against homosexuals. However, the word 'discrimination' is relevant here. Our legislation doesn't speak of discrimination but speaks of distinction or no distinction. And that distinction can be justified, so then you're not discriminating. Discrimination is a moral judgment. The commission expressed its own moral opinion by saying that the behaviour of the civil servant was hardly justifiable. Well, I don't think you should ever do that, your own opinion is not relevant at all.*

Some of the orthodox Protestant respondents plead for reasonable accommodation in these cases and are therefore disappointed in the more recent judgements by the commission. The following statement from Peter Schalk, president of the orthodox Protestant labour union, illustrates this.

*PS: The government has implemented a law [same sex marriage], and that government should just make sure that that law is put into practice. Look for example at the case in Amsterdam, where there are 478 civil servants of whom two have said that they do not want to marry same-sex couples, and look at the fuss that is made about it. That's really a fuss about nothing. So the government isn't discriminating at all, and these two people aren't discriminating either because they do not say anything about these people, they just say that they believe marriage is only meant for a man and a woman, according to Biblical standards. That's all that they are trying to say. So they are not saying anything about these people, they are not discriminating, and besides all that, in practice these people [the homosexuals] aren't being discriminated against at all, because they will just go to the counter and ask whether they can get married and then they will just set a time and a date and the civil servant behind the counter will put that in the schedule. And when one of the civil servants says, 'I'm sorry, but I do not want to consecrate this marriage, these people will not even know that this happened. They are not being discriminated against.*

Interestingly enough, the commission and many of our respondents feel that one should be tolerant of civil servants who refuse to shake hands with someone of the opposite gender because of religious reasons, but formulated a different opinion on civil servants conducting marriages. Matthijs de Blois, substitute member of the Commission for Equal Treatment and legal scholar at Utrecht University, explains.

*MB: Look for example at the shaking hands incident, the commission has looked at such a case as well. That was a case in which a reprographer didn't want to shake hands, and then I thought by myself, how many times in my life have I had to shake hands with a reprographer? What's all the fuss about? Recently, we also had a case in the commission, which has not been resolved yet, but it is an open case, so I can speak about it freely. An intern in a secondary school had to work one morning a week for ten weeks. He had politely said that based on his religious beliefs, he could not shake hands with women, and then I do not get*

*what all the fuss is about. People just irritated by this, while that way of greeting isn't the same across the board in Western countries either. It is about cultural differences.*

Nonetheless, there are exceptions in more extreme cases, when there can be no reasonable accommodation of religious demands according to Castermans.

*AC: In some cases, the demand of the employee goes even further, from not shaking hands with people of the opposite sex to not being in the same room with people of the opposite sex. You cannot ask your employer for that level of accommodation. So that's different from shaking hands, you know, because when a person comes in, it can be awkward for a moment, but after a few times people are used to it. But if we cannot be in the same room with others, that just goes too far. Then you're dealing with the objective justification. We want people to work with people from the other sex; well that's then the indirect distinction. If someone says that he cannot work with people of the opposite sex for religious reasons, then you cannot objectively justify it. Look, and it's different for contact with colleagues than for contact with clients. We once had an office that decided that one of the female employees would take off her burka for female clients and keep it on for male clients, so that's a question of organisation. Can you organise it? Yes, then there's no problem, just do it. [...] Organise it in such a way that the burka can be taken off.*

Castermans and the commission use a similar argumentation when employees in hospitals refuse to assist during abortions or euthanasia. Then, he argues, there is also ground for reasonable accommodation.

*AC: There are people like that, we had several cases like that, cases in which nurses for example had to carry out euthanasia or for example abortions. Yes, you could imagine that in these cases, you look at the way the work is organised to try to find a way to make sure these people can keep doing their job.*

According to Castermans, these cases are different from the civil servant who refuses to perform same-sex marriages. The grounds for deciding when to apply reasonable accommodation and when to decide that a religious claim is unacceptable is apparently not written in stone in the Dutch case, as it is to some extent arbitrary when reasonable accommodation is applied or not. Most secular respondents we spoke to argue that the state should be neutral in a religious sense, and therefore any form of religious signs or behaviour is unwanted. We will come back to this in our discussion of public space. Interestingly enough, however, we see a lot of inconsistency in these cases. In some of them, secular respondents feel reasonable accommodation for the civil servant who refuses to shake hands with the opposite sex should be possible, but not one who refuses to conduct a same-sex marriage, but sometimes it is the other way around. Patrick van Schie, director of the think tank affiliated with the VVD party, also feels that civil servants should have the right to refuse to officiate at a same-sex marriage. Others in the organisation can perform the wedding and the civil servant is not on duty at that time, so he or she does not reflect explicit religious beliefs. But in the case of not shaking hands, Van Schie comes to a different conclusion.

*PvS: I think that this shouldn't be allowed. Not even when people have religious motives for not wanting to shake hands [...] I think that within government's institutions you cannot allow people to make a distinction between men and women. A private organisation that makes that distinction is a different matter. An imam doesn't have to shake hands with women. I believe it's very offensive that he doesn't, but that's his business. And then he has to face the consequences himself. An Islamic shop owner who doesn't want to shake hands with women shouldn't be surprised if he loses some of his Dutch clientele.*

## **Working on the Sabbath**

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An issue that concerns all religious employees whether they work in civil service or not is working on the Sabbath or Friday afternoon. Some religious respondents touched upon this. Peter Schalk, leader of the orthodox reformed Protestant labour union, has some of the most outspoken opinions about tensions in this regard and possible ways to come to a reasonable accommodation. He explains why he feels not working on Sundays is so important for him.

*PS: There are a lot of components [in these Sabbath cases], the social for example is when the municipality of Veenendaal decides to allow shops to be open on Sundays, then a lot of shop owners can still say that they will not open their shops on Sundays, but when a few of these owners will open their shops, the others will do that as well. The people who all of a sudden have to work on Sundays because we believe that we should be able to shop on Sundays can no longer maintain their social contacts. Their family lives will come under pressure, because they already have to work on Saturday as well, and their children, if they have any, will be free on Saturday and Sunday. So there are certain activities in which you cannot participate anymore. You cannot go to church anymore if you have to work in a shop. You cannot have a real social life, etc. The societal side of the matter is that you have responsibility towards others, also when it comes to competition, and you just need certain moments to rest in a society, and I could name a lot of other issues. This of course also goes for the economic side. It's so obvious that people do not spend more money when the shops are open longer, they just spend their money at a different time, so it can never be the case that a company gets richer, except when the company in question outdoes its competition by being open when its competitors are not.*

Liberals feel that this is not a legitimate argument. In the opinion of Patrick van Schie:

*PvS: Yes, my idea is to broaden it [shops being open on Sundays]. I believe that it's none of the government's business when two citizens, a shop owner and a customer, decide to make a deal or not. On the understanding that the deal isn't objectionable. So yes, people need to be able to enjoy their night's rest and if there is for example a supermarket underneath apartments, you could decide to limit the hours when the shopping carts can be used. So that's just for the sake of night's rest, but whatever else happens in quietness, even when it happens at three in the morning, I'm fine with that. It's none of the government's business. [...] One of my friends is reformed and he is annoyed by the fact that shops are open. Yes, that's his problem. There are other people who are irritated by the fact that he goes to church on Sundays, and that's their problem as well. Citizens need to be able to do whatever they want to do as long as they do not harm others, and I think that the state should have nothing to do with that as long as it's legal, at least as long as there is no damage or harm done. [...] You should create the possibility for employees to choose a day on which they do not want to work. Everyone should be allowed to do that. It cannot be the case that people without a religious conviction are always the fall guy and always have to come to work. Then a Jew could choose Saturday, a Christian Sunday and a Muslim Friday. On totally different grounds, I would argue that it's wise to set a maximum for the amount of hours a person is allowed to work, but that's about it.*

In fact, even some religious respondents feel that religious arguments should not be used to justify all businesses being closed on Sundays. Willem Smouter from the Evangelical Alliance explains.

*WS: [It's about] having a day off, so for me a Sunday law is totally interwoven with society. But whether shops are open or not cannot really be seen as an expression of the freedom of religion. I do think it's understandable that churches try to defend [the sanctity of Sunday. [...]] Tension most certainly arises. But I think that you cannot define every tension as a religious tension. You have to be clear about that. So it should not be the case that we are fighting against the Sunday law for the sake of God. You have to be careful with that.*

President of the liberal Jewish community Ron van der Wieken also feels that these things happen in a secular society. It does cause tensions, but to always accommodate the claims would be difficult.

*RW: My wife served on the city council of Amsterdam, and once there was an important meeting on Yom Kippur or another important Jewish holiday, so she protested against it but of course it couldn't be rescheduled, so she didn't attend the meeting. That is unfortunate, and everyone then thinks this is not how it should have been, but to be honest, she didn't lose any sleep over it. I don't think it's a good thing and I'm not trying to justify it, but that's kind of the price you have to pay for being different. The price of being a minority, actually. You cannot expect from the majority to take everything and everyone into consideration, you shouldn't get upset about it. It can of course be annoying, but in general it actually isn't dealt with that badly. It really isn't that bad.*

## Summary of labour law

1. **Associational freedoms for religions and faith-based organisations under ‘secularist’ pressure from two sides:** (a) emphatic individual autonomy, and very recently, also ‘animal rights/welfare’ versus all forms of collective autonomy and collective rights; (b) non-discrimination as the most important or supreme principle, overruling associational autonomy without further ado. This is a more general tendency in many European countries, also backed by EU directives, but it is still remarkable that it has such an ‘ideological impact’ on the Dutch debates.

2. **Status, positions and rights of individual religious employees do not seem to be under pressure in the Netherlands. Few tensions** are identified between individual employers and individual employees. Strong (legal) support for individual religious employees to act according to their religious beliefs, if claims are reasonable. In situations when tensions and conflict arise, **reasonable accommodation is relatively easily established** with or without the help of the Commission for Equal Treatment.

3. However, **status and position of individual religious civil servants** is also **under pressure** in the Netherlands. Secular respondents, but increasingly also the Commission for Equal Treatment, argue that individual civil servants as part of the state apparatus cannot make any direct or indirect distinctions on the basis of their religious beliefs. This also includes refusing certain tasks (officiating at same-sex marriages) or acts (shaking hands with the opposite gender).

4. Reasonable accommodation is applied to some extent **arbitrarily and inconsistently** in the Netherlands when it comes to individual religious civil servants.

5. **The Sabbath is under pressure** in the Netherlands. Religious arguments seem to be less legitimate in this debate in the Netherlands (even according to several religious respondents).

## Public space

For public space, the basic tensions are defined as basic principles of liberal democratic constitutionalism (such as ‘state neutrality’) and fairness (as ‘hands-off’ or as ‘even-handedness’) versus traditional historical ethno-religious ‘national (majority) culture’, and quite often questionable assumptions regarding ‘necessary social cohesion’ and ‘political unity’ (Bader 2010). The disinclination toward or rejection of reasonable accommodation in this domain is often based on (i) intrinsic problems of all forms of pragmatic, administrative accommodation (working out practices by way of talking and negotiating) and (ii) on more or less deeply entrenched cultural majority-bias opposed to public symbolic recognition. Domains that are covered in the realm of public space are (i) religiously-oriented private schools; (ii) dress codes; and (iii) building/maintaining places of worship.

It is striking that at first glance, our respondents do not perceive many tensions in this domain, including our religious respondents. There are several possible reasons for this for which we cannot say anything on the basis of these interviews. It is possible that compared to other European countries, there are fewer conflicts in this domain in the Netherlands. For instance, the country has not experienced a very intense headscarf debate like in France or even in Germany, Belgium or the UK. It is perhaps telling that when our respondents discuss headscarf issues, they almost always refer to examples in Belgium and not in the Netherlands. Second, issues regarding religious schools are framed first as labour issues and less as public space issues. Finally and perhaps most importantly, there is the court case against the orthodox Christian SGP party, which was discussed in every interview. We will deal with this issue in the domain of public funding to faith-based organisations at the end of this report.

Of course there are some respondents who also perceive tensions in other parts of public space. We will briefly discuss the most important ones.

### Dress codes at public schools and in public space

We addressed religious schools in our discussion of labour law, including the arguments why respondents are in favour or against religious schools. We did not however discuss dress codes in schools, which was mentioned several times as a contentious issue that causes tensions to rise, and one for which accommodation is needed. In the end, most secular respondents felt reasonable accommodation in some instances is not possible, and that in these situations the state should enforce strict and general rules that would end collective religious rights or religious exemptions in these issues.

For instance, Rein Zunderdorp (65 years old), director of the Dutch Humanist League, perceives tensions when students come from different religious backgrounds. In those cases, he that feels reasonable accommodation, in the sense that everyone is allowed to wear and express clear religious symbols, is not always possible. When it comes to dress codes in public schools, he argues as follows :

*RZ: So if there is a group of students that have to grow up together, it is never the intention to create a segregated school. A school in which the group of students could split up into Sunnites and Shiites and in which in the end a sort of war could break out in the schoolyard. If you see this happening like in Antwerp, and if it isn't used as a discriminatory fallacy and the principal can prove that there are real problems, then personally I think it would be for the best to ban headscarves in this school. You can have a lot of nice stories about freedom, but if coercion is hard to prove in such a school and there is a huge amount of pressure on girls to wear headscarves, then I think it's reasonable that something is done about the situation. [...] These things happen, and apparently a kind pressure from the community does exist. If a room for prayer is built in a school, then all the Muslims are expected to go there.*

Patrick van Schie of the think tank associated with the VVD party agrees.



*PvS: For girls, I think that a ban on wearing headscarves in schools is a good thing. What they do in the private domain on the streets and what they do when they are grown up is their business. In some cases, I doubt whether it's really their own choice, and in other cases I am actually quite sure it is their own choice. Adolescent girls at least need to experience at school that as girls, it is possible to not cover your head. They have to learn that it is actually more common not to cover your head in the Netherlands. And when they turn eighteen and decide to wear a headscarf, then in the end it's their choice.*

Other respondents provide opposite arguments as to why the state should not intervene and protect diversity in public space. In the words of Ruard Ganzevoort from the Green Left,

*We of course have pluralism, and that's an issue that's especially important as it applies to public space. The debate about headscarves is about public space. That's where my love for pluralism becomes visible. If there is something about the Netherlands I like, it is its pluralism. I even think that maybe we aren't taking pluralism far enough, or actually I am not sure. It's not a goal in itself, but I think that pluralism should be well protected. We shouldn't try to minimise that. And that leads to tensions, but that's how we view the world. I am not sure how you should deal with that pluralism judicially, but I do know that you shouldn't forbid it.*

The dress code debate also plays a role in religious organisations. Yasmine El Kaisha of the Polder Mosque explains.

*YeK: Generally speaking, we also had a lot of discussions about whether you have to wear a headscarf in the prayer room. Well, religiously our view was that a Muslim woman should wear a headscarf and that a non-Muslim women shouldn't have to wear one [when just visiting the mosque]. My personal view is that if you don't want to wear a headscarf, you do not have to. That often led to conflict, but we had welcomed a lot of groups in between prayers and then the prayer room was empty. It was actually really adorable to see that a lot of non-Muslim women were prepared, and had brought some kind of scarf. I always appreciate it when someone's intentions are respectful. At a certain moment in time, we tried to handle it very strategically and we made sure it was planned in between prayer times, and that these people had left before the next prayer started. Then you do not insult the elderly and you do not have to keep discussing whether it was right or not. At a certain point in time, we decided that during the Friday prayer people needed to bring a scarf or at least wear concealing clothes, because it was much busier and because there were men and women attending the Friday prayer, but I have to say that it all worked out smoothly.*

Orthodox reformed Protestants have a similar discussion in their schools. Jan Schippers explains the situation and possible forms of reasonable accommodation.

*JS: Of course a Protestant Christian school has a certain identity and wants to express that identity publicly. This relates primarily to the religious ideas but also to how these ideas are expressed, and when the ways of expressing them are very important, and not because the school makes them up all of sudden. I think that it is a reasonable demand. But once again, you are not going to make people do things that are actually not common practice at all among these groups. But well, there is actually quite a lot of debate about this – for example, certain schools allow girls to wear pants while cycling to school and have set up a room in the school where they can change, while other schools are much stricter and do not want this at all, so you do see different degrees in strictness.*

Other less orthodox groups felt reason to enforce these dress codes for their members. For instance, Ron van der Wieken of the liberal Jewish community sees no need to enforce a code, but he feels that the burka is different from headscarves as it covers the body entirely.

*RvW: We don't prescribe it and none of our men always wear yarmulkes. Women do not cover their heads. We, the men, do cover our heads in the synagogue. But not if we are at work. There is no need for it, and there is no rule that prescribes it either. A lot of orthodox Jews probably do it, so yes I think they should be allowed to. Just like a headscarf should be allowed, absolutely. Everyone should decide for him or herself. A burka is a different story, but we aren't talking about that now.*

Zunderdorp is one of the few respondents we spoke to who feels a ban on the burka is important to safeguard a safe and truly public space.

*RZ: The discussion about the burka can be a very difficult one because people say, 'Does wearing a burka harm the national interest or the public atmosphere?' Do you harm other people by wearing one? The basic idea is always that you do not harm other people. But it does hinder other people to come into contact with someone wearing a burka. You do not have the right to come into contact with everyone you want to, but in public places you have the right to see and assess other people. So visual contact is actually a fairly important part of meeting people in public places. If an unusual person is walking around, that isn't a problem, but if a certain law is in force, this law applies to everyone. The argument that there are just a few women walking around in a burka is for that matter not a strong one. You could also say if there are just a few women wearing a burka, it is easier to put a ban on wearing them because you're not harming a lot of people with that decision then. I think it is a difficult discussion. I could imagine that there are good arguments to forbid burkas in public places, for example in the workspace or in official public spaces. This maybe leads to forbidding the burka on the streets, because Dutch streets are so busy you could define them as an important public space.*

### **Building and maintenance of places of worship**

The building and maintenance of places of worship was not often discussed in our interviews, but again, we cannot automatically see this as a reflection of the lack of tensions on the issue. Other studies have shown how the building of for instance mosques can lead to intense conflicts in neighbourhoods (Rath et al. 2001; Maussen 2009; Nicholls & Vermeulen 2011). The lack of information in our interviews is more likely due to the selection of respondents, of whom very few were involved in the building of places of worship. We did however have some respondents of varying religious beliefs who commented on this point, and these respondents perceived few tensions. For instance, Ron van der Wieken of the liberal Jewish community in Amsterdam recently opened a new synagogue. He feels that it is legitimate for authorities to be involved in the building of new places of worship.

*RvW: The state is allowed to interfere. Because the government has the prerogative to decide where you can build and where you cannot build. And if somebody wants to build a synagogue on Dam Square [Amsterdam's main square], then that's an unsuitable location. So it's not allowed. And then there has to be another location and the government should tell you where that is. They can be friendly, but they cannot help you, I think. That's the responsibility of the religious community itself.*

Along the same lines, Jan Schippers has this to say:

*JS: When old church buildings have a certain historical value, for example for villages and cities, then preserving and renovating these old buildings is also a general societal interest. And then the question is more about what a reasonable contribution would be. In some cases, I think that a 100% funding can be justified, but most of the time it's not. Then you could just find a religious community that will hold its sermons in that building, and people can expect a reasonable amount of money. You shouldn't expect from the government that they will pay for your church, I think that's just inappropriate. And when it comes to new buildings, there are*

*also certain zoning plans. You have to fit within the zoning plan, and besides that as a church you have a certain public character, so there are positive sides and negative sides to it and it's hard to weigh the pros and the cons, but I think that the church in general, and then I speak in the name of the SGP members, is more and more aware of that. That you also evoke certain feelings in other people by going to church. That there are certain expectations you need to take into account.*

Yasmine El Ksaihi, who was involved in setting up the Polder Mosque in Amsterdam West, feels that some practical support from the state can be justified in certain instances.

*YeK: Of course we had discussed earlier what we wanted exactly [from the local authorities in terms of financial support] and what their demands were. For them it was mainly about the societal side because they of course had totally distanced themselves from the religious side. That's also the reason why the Polder Mosque was openly supported by municipalities and by housing corporations, because, apart from the fact that it was more than just talk, we explained our activities to them again and again. I can say we got support from the Alliantie housing corporation, but I actually mean they rented out their building for a reasonable fee; it's not the case that we got anything for free. We did receive a donation at the beginning because we needed to renovate the building and we were running out of time. Then we received a donation of 10,000 euros, but that was basically it. When at a certain point in time we weren't able to pay for everything, they were a little bit more accommodating towards us and gave us a payment extension, but generally speaking we had to keep paying all the time. In hindsight, the rates were still too high for us. Alliantie kept a close eye on us, on what we were doing and to what extent they could influence that or not. That was of course kind of a point of discussion – how far could they go, and what could we do and what couldn't we do.*

Her constituency went further and requested financial support from the state to build and maintain the mosque. El Ksaihi explains.

*YeK: Well, what you noticed at a certain point in time is that at least the older members of the community didn't know anything about the separation between church and state. Then they said at a certain point, 'Just ask for funding', that was the stopgap for every financial issue, and then you explain to them that it doesn't work like that. But then, later on you get the question of why we do not receive money for our activities. Then you try to explain it again, but one way or the other we seem to have rather stubborn supporters who just don't want to understand it, I think, and on the other side we didn't apply for funding for societal themes because rumours were going around that we were already receiving too much funding, and that's why we wanted to safeguard our independence a bit, and then you have to explain again why we could get funding if we wanted it but that we explicitly chose not to apply for it.*

Ron van de Wieken of the liberal Jewish community is a strong opponent of this kind of public funding.

*RvdW: Even in the cases in which the religious community is too poor to build a house of worship, the government shouldn't help. For example, we spent our first 20 years in people's living rooms. Of course that was just a small community. Later on, we stayed in rented spaces that were cheap. Not until the community grew and people were willing to pay was a building for our community constructed – that was in 1966. That cost everyone a lot, but when a community puts enough effort into something, it usually works out. I can imagine that there are communities that are too poor to get things done. Yes, naturally you have a problem then, but I would not argue that the state should interfere.*

## Public funding

The basic tensions discussed in the domain of public funding can be described as: (i) 'strict neutrality' (no state financing and recognition for any religion) versus *relational neutrality* and equality as fairness (public funding for marginalised religious groups); (ii) if any public money is given to religious groups, should the state then use 'equality before the law' or favour the majority religion(s)?; (iii) for religious and religion-related organisations, there is the *autonomy dilemma*: trade-off between autonomy and privileges. Less or no scrutiny and control by the state on the one hand, and money and other privileges (connected to public/political scrutiny and control) and political influence on the other (see Bader 2007: 228f).

Just as with labour law, these items are important topics in the discussions in the Netherlands on the governance of religious diversity and therefore were frequently discussed by nearly all respondents (religious and non-religious). The case of 'Youth for Christ' in Amsterdam is one of the more high-profile current cases in this regard, and almost all respondents referred to this case when discussing public funding. This report will focus on this particular case.

### Youth for Christ in the Baarsjes

The organisation Youth for Christ won the bid in the Amsterdam city district of the Baarsjes to handle all youth work in the district for the coming years. In an open and monitored tender process, Youth for Christ was found to be the best candidate for the job in terms of both quality and price. Religious identity was not a criterion in this tender. After this decision was made public, both Youth for Christ and the city district were heavily criticised. The main argument of those against the decision was that an organisation whose mission is to bring youngsters in contact with Jesus Christ was not able to do neutral youth work. Another argument was that the target group in the Baarsjes, one of the immigrant districts in Amsterdam, were youngsters from an Islamic background. This group would not accept the services of a Christian organisation like Youth for Christ. Another problem was the personnel policy of Youth for Christ; only Christian people could work for the organisation. Because of the public debate on Youth for Christ, the city district and the organisation were forced to renegotiate their contract. An organisation separate from the national Youth for Christ organisation was founded to do youth work in the Baarsjes, and this new organisation was forced to employ youth workers who were already working in the district, some of them from an Islamic background. The discussion on public funding for faith-based organisations continued in the city council of Amsterdam even after this solution was reached. In November 2009, during a meeting on anti-discrimination policy, the entire council of Amsterdam (except for the small Christian Democratic party) passed a vote to ban all religious welfare organisations. This included Youth for Christ and the Salvation Army, the latter of which is in charge of most of the homeless policy in Amsterdam and is completely included in the local system of care. The organisations would be prohibited to receive any further state subsidy if they were to select personnel on the basis of their religious beliefs. Ultimately, the mayor and councilmen decided not to implement this vote as it would be unconstitutional. Faith-based organisations have the right to select personnel on the basis of their religion in order to protect the identity of the organisations, and this cannot be a reason for the state to ban them automatically from state subsidies to implement certain policies.

Remco Oosterhoff of Youth for Christ and former councillor for the ChristenUnie party in Rotterdam explains why his organisation feels entitled to ask for state subsidies to implement certain youth policies.

*RO: In practice that changes a lot. In the end, we as an organisation do work that fits the goals of the local government, and the government believes that every young person under 23 needs to go school nowadays, young people need to treat each other well, and they cannot do*

*illegal things that will land them in prison, and so on. We organise activities for young people that contribute to these goals, and based on that I believe that as a societal organisation part of civil society, because that's what we are, you should be able to get some funding from the government, if the things you are doing actually contribute to the goals of the government. That's my first point. My second point is that it would be good if the government would just look at the quality. There are several providers of youth work, the one organises it in this way and the other has these results, and as a government I would choose the one that has the highest success rate. Providing young people with high-quality work is also very important, and from that perspective, I believe the government should fund activities. I put emphasis on the word activities on purpose because I also think that it's not the government's task to support our organisation in general, because we also organise activities that shouldn't be financed by the government at all.*

He then explains which activities should not be supported by the state and why.

*RO: Well, as soon as we are in this part of the organisation and we organise a camp for Christian youngsters from different denominations in the Netherlands, and the aim of that camp is to pray, sing songs and build upon our religion, then it would be very weird if the government would provide us with funding for that camp. So we are attached to the famous separation of church and state as well, and that is also a bridge to your second question. [...] At the local level, governments react to this principle in totally different ways, and that's also caused by different motivations, so I think it's difficult to generalise. If you for example look at Rotterdam, Rotterdam is a pragmatic city, and there you see that the government realises we do a much better job with Antilleans in the Millinxbuurt than any other organisation, so they consequently say, 'Very well, we'll provide you with funding'. In a city like Amsterdam, where the government culture is dominated by leftist politics, they react in a totally different way. Moreover, different political parties do not have a clear, shared opinion about our organisation. Nationally of course they do, we all know Mr Pechtold's [of the D66 democratic party] opinion about our organisation, but locally there is a lot of variance. In one city, the PvdA [Labour Party] is really enthusiastic about our work, while the PvdA in another city is our biggest opponent. The same goes for D66, but they are the most consistent of all parties. The attitude of GroenLinks [Green] and SP [Socialists] is extremely variable as well. The VVD [Freedom and Democracy] approaches these kinds of cases in the most political fashion. A lot of their politicians say that they do not agree with our views, but if a Christian organisation wants to do good work, then be my guest. And I get a strong impression that some people are guided by their personal opinions and the fact that they haven't come to terms with their past yet. [...] These people often tell you that they were raised in a very orthodox reformed way, and that when they turned eighteen they turned away from religion in all forms. This actually mostly goes for people over 40 years old, so it especially applies to people who lived in the 1960s and have experienced all kinds of things, and I just see such a strong aversion towards religion, and that of course in the end also plays a role in decision making and other things.*

Remco Oosterhoff provides other reasons why he feels it is important to not only use one's religious beliefs when working with youngsters, but also why it is important to work collectively as Christians in a Christian organisation to achieve these goals.

*RO: No, it is possible, but the conversation often already stems from the fear of certain prejudices, that we tell these young people that they first have to read the Bible before they can come in and so on. It's actually like I explained to you already before: we carry out government policies and we contribute to government goals, which saves the government some energy as well, because in general we work for very reasonable prices, we deliver high-quality work, and the role of our identity in all this is in the end of course also not exclusive. We practice our Christianity and give the youngster a good drive and passion, and just like I said before, that's the strength of our work, there are of course also youth workers who do*

*their work based on their humanist philosophy of life and their ultimate belief in the human being instead of in God, and they believe that you need to try to get the best out of these youngsters for that reason, and they can pass on their work from the same motivations and passion or at least the same kind of motivations and passion. This also goes for a city councilman who is convinced of the rightness of socialism, and who participates faithfully in the marches on the first of May, and it also applies to the international level, where you also see certain politicians who seem to be actuated by an almost religious motivation to do politics. In the end, it's of course the case that every human being and every organisation, especially a political party, an organisation like the Humanistic Union or the Montessori form of education, acts upon a certain conviction, maybe even a philosophy of life, and a certain view on humans and society. I believe that as a government you shouldn't interfere in these things, and you shouldn't argue that Islam and Christianity are so restricting and difficult, and as a consequence of that say we do not want anything to do with these religions, while at the same time the government does want to support Montessori education and the Humanistic Union. Then as a government, you are being selective. I am very much against that way of approaching things.*

Remco Oosterhoff acknowledges that there is a trade-off here. The state will acquire some sort of organisational influence when there is a subsidy relationship. The case in the Baarsjes is an example of this, as a new organisational form had to be constructed to continue the relationship. He explains how this tension is perceived by the members of Youth for Christ, and how it led to internal discussions.

*RO: Yes, we of course discussed that internally when the Baarsjes was interfering so much, but that's more a discussion about being surprised that especially local politicians and leaders are trying to mess with the operational process of our organisation and ignore all kinds of constitutional principles, and that's why the separation of church and state was wrongly explained at a certain moment in time. In my opinion, a government has certain policies and goals, and consequently it will try to carry out some of these policies and goals itself while outsourcing others. You do that through funding, and different organisations can apply for this funding, or organisations will offer the government a deal, and they say, 'Let's do it in this way, it will cost this much, do you think it's worth that amount?'. 'Well', the government then says, 'it's actually quite expensive, so could you make it any cheaper or could you provide more services?', or the government just says, 'We'll accept your offer', so the government just decides whether they want to outsource it to the organisation in question or not. But at a certain point in time, you start to notice that the government is forming an opinion about certain employees or that they interfere in the way you do your work with the youngster pedagogically, and they tell you what you can and what you can't do, and then the government is crossing a line, I think, because that is none of the government's business.*

In the media, we find similar situations in which faith-based organisations are supported financially by the state, with the danger that the state will also want to have a stake in the content of the organisations. Leo Feijen, head of the Catholic Broadcasting Organisation (RKK) explains why he does not perceive this as a conflict.

*LF: But the government doesn't support it at all, what the government does is create the space for religion to express itself, and I think that is a positive development. The government doesn't interfere but merely facilitates. Religions can organise themselves, and they do that in such a way that the money they receive from the government isn't used for decorating churches, but for showing society how the Catholic tradition or the Protestant tradition can contribute to the civilisation of the society, because that is actually what they do. And I think that in a time in which religion plays such an important role in the clash of civilisations, I even believe that it is a positive development that religions are facilitated to give their perspective on society, because otherwise the society will become even more*

*incomprehensible. And in that sense, this is also a real contribution to the democratic forming of opinion, and I would like to add something to that. That we would like to show that religion is also part of society in a secular form, because volunteers are working for private organisations but sometimes also for religious organisations that contribute to the advancement of society, and that seven out of ten of these volunteers active in the Netherlands work from a clerical or Christian point of view. And in that sense, it's important to show that religions can contribute to the advancement of society. And that they contribute in a way that is not financeable, because you cannot finance volunteer work, and without that volunteer work a lot less would happen in the Netherlands. And I think that it's a good thing, we often try to show that as well.*

Secular respondents do not agree with these arguments. Faith-based organisations, whether they do social work, provide care, make television or radio shows or educate children, should not get any financial support from the state. Religious communities should pay for these activities themselves if they want to provide them. Rene Cuperus from the scientific institute of the Labour Party states the following:

*RC: I am against religious welfare organisations receiving money from the government to carry out the government's tasks. The problem isn't the quality of the work of Youth for Christ. The problem is that the other organisations perform worse. The social workers of the government should do a better job than Youth for Christ. Moreover, Youth for Christ shouldn't be needed. If necessary, you need to be quite frank about that. As a secular state, I wouldn't accept the totalitarian claims of religions that they want to operate in all domains of life. As exceptions, maybe really important domains like death. But that's actually the only exception, I think. If you make hospitals an exception, it's already going too far. So the doctor doesn't have the task to find out what kind of religion you practice.*

*FV: But is the doctor allowed, if he is religious himself, to express his religious identity in general institutions? If he gets a certain form of inspiration out of his religion?*

*RC: Everyone has his own source of inspiration. One person reads Dickens, the other does something else.*

*FV: But it's not the case that you have to hide Dickens from other people in society?*

*RC: That's not relevant, because I couldn't care less about what inspires him. Only in those rare cases like euthanasia does it play a role. Only in cases of enormous moral dilemmas is it relevant, but in every other case it's not important at all.*

*FV: And if it's not relevant at all, does this then mean that people can show their sources of inspiration? Or do you believe that they shouldn't be allowed to do that?*

*RC: As a doctor?*

*FV: Yes, as a doctor for example, or as a social worker. On the one side, you argue that the quality of the general/public institutions should be that high, that there aren't any other institutions that do a better job. So that the whole problem concerning religious social organisations or hospitals is resolved, because every institution is public and general. The point religious groups then raise is that there won't be any place left where they can carry out their way of life. If they want to help people based on their Christianity, then this should be possible in these general institutions. There are a lot of Christian people who work in these general hospitals or social organisations. But then the discussion is about whether they can carry out their religion or not?*

*RC: That also goes for socialists or other people. There is no hierarchy to different philosophies of life. I am arguing that expressing one's philosophy of life in professional jobs is not important and even irrational, except for some emergency situations. And the rest is just not relevant.*

*FV: So then it doesn't have to lead to tensions ever?*

*RC: No.*

*FV: What if people do want to express their religion? What do you then say? Do you say something like, 'No, don't do it, because it's just not relevant'. Or do you say something like, 'It's irrelevant, so it doesn't matter'.*

RC: *What is the relevance of my baker showing me his religion?*

FV: *I am not sure if it's about relevance, it's maybe more about what really happens in practice. So when this baker tells you, 'I believe'. Then you could tell him that you don't care about his religion and that you're happy for him, but you could also tell him that you don't want him to tell you that he is religious. If it concerns your baker it's of course not that important, but when it concerns your doctor or nurse it can be a problem. It's of course about the fact that religious people say that's all well and good, but in the end in such a general institution, a secular ideology is continuously imposed on us.*

RC: *No, it's a professional ideology. That's something different.*

But not only secular respondents feel that a financial relationship between faith based organisations and the state is undesirable. Piet Hazenbosch of the Christian Democratic Labour Union (CNV) provides several arguments to cut these financial ties.

PH: *I still believe that. The mess, to call it that, was created when the government started to provide organisations with funding. If you divide the society in pillars and if every pillar organises its own things, then nothing is wrong. So the funding of political parties messes things up. Political parties do not pay for their own affairs anymore, but the government does. Then you start thinking about principles of justice and under what conditions. You see that happening with the case of the SGP [Reformed party]. For me, the mess doesn't revolve around the question of whether the SGP can be forced to accept female members, but it revolves around the fact that the government provides political parties with funding. And that's of course what is happening in civil society as well: the government's influence has increased in the last 30 or 40 years. The organisation within a pillar doesn't pay anymore, because the pillars are dissolved, so the government pays. For example, a couple of months ago I attended a meeting organised by several Christian organisations, and that meeting was initiated as a result of the problems in Amsterdam regarding Youth for Christ. Youth for Christ received government funding to organise social-cultural work in the city district of the Baarsjes under the authority of the municipality of Amsterdam. Consequently, people started to object to this, because Youth for Christ was apparently trying to evangelise. The director of Youth for Christ said, 'No, we are just going about our business, we just make it clear that we are a Christian organisation'. As a result of that, we had that meeting with a number of Christian organisations, and what I noticed was that I was representing the only organisation that didn't receive government funding. Our members pay a contribution fee, and we do get a sort of funding for activities. But for the work we do here and for our unions, we do not receive a penny from the government. So we aren't bothered by the mess, while other organisations are and in the 1990s, we saw that Christian schools were pressured to distance themselves from their identity and become part of a bigger schooling community, because the government preferred to deal with less than 400 MBO schools [vocational high schools]. As it comes to the discussion about Youth for Christ, you see that Youth for Christ isn't capable of starting such a project without government funding. It is of course much more complex than I am putting it now, but the mess is caused by the fact that different domains get mixed up with each other, domains that used to be separated from each other.*

FV: *But then you are actually arguing that the government should stop funding all religious organisations?*



*PH: Well, I do not advocate the ending of government funding for religious organisations. I believe that every organisation in civil society needs to be able to provide for itself regardless of whether the organisation is religious or not.*

One of the main reasons that some Christian respondents feel faith-based organisations should not get financial support from the state is the fact that the state may gain influence in the internal functioning of the organisation, for instance by influencing the hiring policy of the organisation, consequently putting its religious identity in jeopardy. Examples above indeed illustrate that this is a real danger in the Dutch context. There are also examples in which a financial relationship between faith-based organisations and the state can lead to other forms of state influence. The famous SGP case is one of the best recent examples of this. Political parties in the Netherlands receive financial support for their organisation, for instance for the establishment of a scientific institute. Several women's organisations went to court because the SGP, the orthodox Protestant political party in the Netherlands, also received state subsidies, whereas certain positions in the party organisation are not open to women. The issue of financial support was used by the women's organisations to bring an end to these internal rules of the political party.

### **The SGP case**

We will begin by providing some brief background information on the context in which the different respondents made claims in this case. Next, we will focus on two respondents affiliated with the main parties in the conflict, the SGP and the Clara Wichmann Institute. We will end the presentation of the case with some important views of respondents not directly related to the stakeholders, and we will try to explain the consequences of the SGP case for Dutch politics and the manner and way in which religion can be used as a leading principle for politics.

### **Background information**

The Reformed Political Party (SGP) is a political party that has been represented in parliament since 1922, based on the absolute authority of God's ordinances as expressed in the Bible. According to its program of principles, the SGP is opposed to women's passive suffrage because this is contrary to God's word. Because of this, women are not included on the party's official list of candidates. Some interest groups, represented by the Clara Wichmann Institute, turned against the SGP's 'view' on women. In 2003, they started a legal procedure against the Dutch state, based on the argument that by tolerating the SGP's view on women, the state was acting contrary to certain important international treaties and the Constitution. They then demanded that the state should be forced to impose measures on the party, in order to cease this unlawful situation.

### **Core of the SGP conflict**

The SGP conflict is essentially a clash between the freedom of religion and the right to equal treatment. Originally, the question of whether the Dutch government was allowed to financially support a political party that discriminates also played a role, but in 2007, the Council of State stipulated that the granting of subsidies to political parties by the state could not be nullified. Since then, the conflict has focused on whether the state is obliged under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to prohibit unequal treatment of women by political parties. Here, it is important to make a distinction between religious political parties and religious organisations. Political parties represent the interests of their supporters in the political realm, while religious organisations provide services for civil society. Not only do political parties have a more 'public' character, but they are also more crucial to the functioning of democracy compared to religious organisations. Discriminating and excluding certain population groups should therefore be

prohibited with regard to religious political parties, but allowed when done by religious organisations. Since the SGP did not allow women on the candidate list, and thus excluded this group from the democratic process, the state would be forced to take action against the SGP. On the other hand, political parties are protected by freedom of association, so that they can operate independently and a pluralistic system is guaranteed, which is another crucial element in the functioning of democracy. Any person feeling excluded by a certain party is free to create his own party or to become a member of another existing party. In this case, however, the High Court ruled that the right to equal treatment outweighs the freedom of religion.

### **Rulings of the Court of The Hague, the Council of State, the Appellate Court and the Supreme Court**

Initially, the Court of The Hague decided in 2005 that the SGP was discriminating against women. By granting subsidies to the party, the state supported this discrimination; therefore, the state had to suspend the subsidy. As a result of this ruling, the state withdrew part of the grant for the SGP in 2006. However, on 5 December 2007, the Council of State overturned this ruling.

Both the Dutch state and the SGP appealed the 2005 ruling. In 2007, the Appellate Court followed the Council of State and overturned the decision of the Court of The Hague prohibiting the state from granting subsidies to the SGP, because such a decision requires a contemplation of interests to an extent that coincides with considerations of a political nature, which cannot be required from the Court. Furthermore, the question was addressed of whether the state was bound by the CEDAW to prohibit political parties from treating women unequally. Regarding this question, the Court first considered that the SGP's 'view' on women did not touch the freedom of religion at its core. SGP members are not prevented from professing their faith when forced to include women on the candidate list. The core content of the right to religious freedom is the protection of personal beliefs and the actions closely linked to that. Subsequently, the Court considered the interest of maintaining the prohibition against the interests of the SGP with the other fundamental rights. The Court considers it of great importance that the SGP's view on women results in the impossibility for women to make themselves eligible for their own party's candidate list, and that they are thus hindered in the exercise of one of the most fundamental rights the Netherlands, as a democratic society, grants to its citizens. The democratic rule of law is fundamentally undermined if its representative bodies, if only partially, have been established in such a way that an essential fundamental right, here the prohibition of discrimination against women, is violated.

Eventually, the state, the SGP and the interest groups filed a petition for review of the case by the Supreme Court. The Supreme Court reached a final decision in 2010, stating that the SGP was indeed discriminating against women, and that the state was obliged to change this. The main argument used was that the exercise of eligibility affects the democratic functioning of the state at its core. It is therefore unacceptable that a political group, in compiling the candidate list, acts in breach with a fundamental right that guarantees the electoral right of all citizens, even if this action is based on a philosophical conception. The prohibition of discrimination, laid down in Article 7 of the CEDAW, weighs heavier than the other fundamental rights at stake. While a political party cannot be denied its religious beliefs, and a democratic legal order demands tolerance of attitudes entrenched in religion or belief, the Court ruled that the way the SGP brings its belief into practice cannot be accepted. The main position of the Supreme Court is that this constitutes a violation of Article 7 of the CEDAW. Furthermore, the Council of State felt that the state was wrong in the position that it may choose not to take action against the SGP, for not allowing women on the candidate list. Nonetheless, this does not say that the Supreme Court is in a position to order the state to impose specific measures on the SGP, to eliminate the discrimination with regard to the passive suffrage of its female members.

In other words, the Supreme Court believes that the state should take action against the SPG in order to ensure that the party does not discriminate anymore. The discriminatory

conduct of the party endangers the functioning of democracy. That said, it is not for the Supreme Court to determine which measures must be taken. It is thus possible that the subsidising of the party can continue, but that other means should be taken to ensure that the SGP gives women the same rights as men.

### **Key figures in the SGP case**

Jan Schippers, director of the scientific institute of the SGP, provides some insights into the standpoint of the SGP and the way in which this issue has been discussed. His comments show once again how developments in society as a whole have an impact on the internal developments of this group, also because women within the SGP increasingly have a higher educational level, in itself a consequence of certain social developments.

*JS: The 'women standpoint' of the SGP only refers to the principles of the party (party principles), by virtue of the faith in God and the Bible. He gave men and women different tasks on earth, and from that the party derives that it's a men's job to work in public bodies if he's chosen to do so, and it's not a job for women. So it's not the case that a woman is less suitable or that other discriminatory reasons play a role. It's only the Biblical principle that men and women have different missions in life.*

He further states that

*JS: No political party should be forbidden to have a certain standpoint based on its own principles. Moreover, SGP councillors or SGP representatives have never treated women who represent other parties in public bodies in a negative way, and they have never said that they would not support a motion just because a female member of parliament had submitted that specific motion. So generally speaking, it is accepted that it's just a standpoint of the SGP itself, and it's not a standpoint that the SGP wants to oppose on other parties as well.*

In relation to the UN treaty that led to the court case, Schippers has this to say:

*JS: When the UN women's charter was signed by parliament sometime in the 1990s, the SGP was of course discussed as well. I haven't been able to find out exactly what was said back then, but it was said that the SGP was part of the Dutch political system, and that as an individual party it would not be harmed by the provisions of the UN women's charter. And now, 20 years later, the verdict of the Supreme Court is completely ignoring this.*

According to Jan Schippers, the discussion is primarily theological within the SGP.

*JS: It is mainly a theological discussion. When you bring in certain pragmatic or political considerations, which is what people did in the 1990s, the party should seriously consider what is politics, how far does it reach, and what role does politics play in society? But many members of the SGP feel that these questions are not relevant. People are purely focusing on the interpretation of Bible texts and Bible paragraphs. [And in the Bible, it is stated that offices are not open for women, while they are open for men] As regards to political offices, there are queens mentioned in the Bible. If you consider this fact, it might be that one should not relate the political and the religious function.*

But this does not mean that people can always be persuaded by theological arguments. Jan Schippers explains that those against change can be best characterised as traditional or conservative.

*JS: Many conservative members of the SGP say they want to think about this issue, but in reality the outcome is predetermined. That has everything to do with the interpretation of the Bible. These people see it as too big of a risk to interpret the Bible in a liberal way, so in a non-orthodox way. If you would interpret certain texts in a less orthodox way, the whole issue*

would change already. So then it's necessary to also take up an orthodox view on various other issues. So that's the theory of the inclined plane, or the domino effect.

In the end, for Jan Schippers, the SGP case is all about the right to freedom of association, the right of people to have an organisation with a conservative, even deeply opposing view on social issues from mainstream society. Associations should have the right to interpret religious text in an orthodox manner and organise the structure of their organisations according to these orthodox principles. He explains:

*JS: The final decision of the Supreme Court is an infringement on the right to freedom of association and religion in favour of the right to equal treatment. I find it strange that these older basic rights, formulated to protect citizens against the state, are seen as less important than this newer set of basic rights – all the more because this is a conflict that is based on different views. The SGP's position is indeed incomprehensible for people who view society as a group of individuals, in which there is no difference between men and women. I'd hoped that the Supreme Court would be able to stand above the parties, but unfortunately this was not the case.*

Kathalijne Buitenweg, president of the organisation that initiated the court case against the SGP and former member of the European Parliament for the Green Left, indicates that the formal mentioning of the different roles of men and women in the principles of the party are relatively recent.

*KB: That rule didn't exist before the 1980s. It's good to know that the SGP never had such a restrictive rule, and of course also because of the emancipation wave in the 1970s, a lot of women within the SGP wanted to become active party members, and that's when they implemented the rule. There was a lot of protest against that rule back then. We have taken up that lawsuit and the case is actually directed towards the government. It's a case against the government, not against the SGP, so in the sense that we argued that the government should interfere based on the UN women's charter, which stated that men and women need to have equal rights and that they both should be allowed to vote and be eligible for election. [...] The Supreme Court has judged that the SGP can discriminate, that they can express their discrimination openly, because that's part of the freedom of opinion and the freedom of association, but as long as the law applies they cannot act upon these religious standpoints. And our demand was never that the party should implement a quota system or that there had to be women on the election list of the SGP. This was said sometimes in parliament, but it doesn't have to be the case at all. If there aren't any women, then you shouldn't put women on the list, or if the majority of the people do not want women to be eligible for election, then they shouldn't be, but now a lot more is restricted than a simple minority. An extra barrier is raised, and it's that extra barrier we are fighting against.*

The additional barrier is the main point of contention, and Buitenweg explains why.

*KB: Yes, because it's not in their statutes but in their party principles, and you have to be supportive of the party principles before you can become a party member. So you can only really become active within the SGP if you say in advance that you are not going to try to change the party in a democratic way, to try to introduce amendments to change the party. That is quite typical, I have to say, for a party to do, because it's normal that you have an open debate within a party and once again, if the women in the end decide to not be there or if they do not have the support of the majority, then they will not become eligible for election, but there is a group within the party that has agreed upon the party principles that tries to fight any developments in advance, and that's just not right. Of course you could start another party. We had a really fun discussion with the state that also argued that you could not speak of discrimination because they could do something else. How does this apply to a*

*hypothetical situation in which a black person is removed from a pizzeria because of the colour of his skin? Could you then also argue that this person can eat somewhere else? Yes, in that way you can never speak of discrimination. I think that a political party is something special, namely because of the fact that they make the laws, by which everyone has to abide, so everyone should be able to give his opinion about the laws, and everyone has different views so you can have your own party but you should not be allowed to exclude people in advance.*

Matthijs de Blois, substitute member of the Commission for Equal Treatment and legal scholar at Utrecht University, finds it striking that the Supreme Court pays so much attention to the function of the political system in its verdict.

*MB: The Supreme Court puts a lot of emphasis on the equality principle, and it has its own specific opinion about democracy, which is very much focused on the individual eligibility for election. [...] The Supreme Court totally focuses on the eligibility for election, so every citizen should get the possibility to be elected for representative bodies. That's what it boils down to.*

*FV: Is that always the issue that it boils down to in the end, to the question of whether society believes the individual is the starting point, which leads then to a dominant position of the equality principle, or whether it believes that groups or communities should have their own rights as well?*

*MB: Yes, I think that the dominance [of putting the individual central] is very visible in our current society. A very strong dominant position for such an individual liberal point of view, in which a distinction is being made between the government and the individual, and whatever is in between these two are considered to be coincidental structures. While, if you would take up another point of view, you would argue that these structures are very crucial and that between the government and the individual, there is a whole field of important structures and organisations. [...] As long as people can freely enter and exit groups, then that shouldn't be a problem. But that of course does lead to some tension. I think that is a trend though, that individual way of looking at society, a way to get rid of that what we call civil society. That trend is also visible in the judiciary, I think. The Supreme Court is, I think, also inclined to think in those terms if you look at its verdict.*

### **The social and political consequences of the verdict**

The other respondents whom we asked about the SGP case used similar arguments. Those against the decision of the Supreme Court – not only religious but also secular people – felt that this should be seen as part of the freedom of association. The state should not infringe on this right by intervening in their internal affairs. The opponents of the SGP do not feel that there should be women on the list or even that the majority of the party's members cannot decide to keep women off the list, but that the SGP cannot a priori force members to exclude individuals from certain positions of a political party on the basis of their gender. Alex Geert Castermans, former president of the Commission for Equal Treatment, formulates this as follows:

*AC: And to be honest, I think that the judge in this case, and the court, and the Supreme Court have made a lot of effort, they have studied the convention and they have taken the case very seriously, and it appeared that there just was a problem, a problem of conflicting basic rights, but it's stated in the UN convention that as regards to political positions women and men should be treated equally, and it's stated that for this specific situation equal treatment is more important than freedom of religion. So for one specific aspect of our societal life, the UN states that women and men should be treated equally, regardless of religion or other aspects. So to start crying blue murder, that convention exists for a reason, I think. So you need to take it seriously, we have signed the treaty, so it's valid, and it's worked out in detail. [...] For me, it's now about whether you can make an appeal to the Bible in a public debate*

or not. Of course you can do that, because it can even be enriching. I look at the Bible as an interesting book, from which you can get inspiration.

FV: Except when it comes to excluding people?

AC: Yes, indeed.

FV: That's where the boundary should be drawn?

AC: Yes, we just have a rule, and that's why I am a legal scholar who says that you cannot refuse women from participating in politics.

FV: But in a normal association, that is allowed?

AC: Of course.

FV: Do you find it important that this remains the case? Because you could argue, as some people do, that discrimination in associations should also be banned.

AC: But look. An association, everyone in this country can associate. Sometimes these associations have very practical purposes. But an association should be allowed to decide with whom they want to associate with. That is a vital thing, period. Only when it relates to essential services can the state demand access for all, but otherwise the state should not intervene.

Nonetheless, Castermans does acknowledge the possible far-reaching consequences of the decision by the Supreme Court: it may ultimately lead to the removal of freedom of religion from the Constitution.

AC: When I was recently appointed to the chairmanship of the commission, I went to a meeting of the SGP in Veenendaal, and people at that meeting were seriously scared of the fact that religion would be judicially marginalised. They feared that it would be taken out of the Constitution, or at least that the concept of freedom of religion would become meaningless, and at that point in time I thought that this development would never take place. I thought, 'What are we talking about, it's in the Constitution, it's in the General Law on Equal Treatment, it's in European legislation, why are you so scared that all this legal protection of religion will disappear?'. And indeed I am surprised that the idea of getting rid of the law on freedom of religion is winning so much ground so fast. I do not believe it, because it's about individuals, it's about people practicing their religion, so the right to organisation or the freedom of opinion isn't enough. Most of the time it isn't even about opinion, it's not about meeting other people, it's about being the person you want to be, and I understand that it doesn't work here.

Other secular respondents have stated that this can indeed be a consequence of the development we are witnessing, but they do not see this as a danger for religious political parties. They feel that religious freedom is being safeguarded by other freedoms (expression, association). Patrick van Schie, director of the think tank associated with the VVD party, has this to say:

PvS: In the Netherlands we have the freedom of opinion, the freedom of association and the freedom of assembly and demonstration, and with these rights you have actually already covered all the rights that are protected by the freedom of religion. So there are two possibilities. It could be the case that it's a relic of old times because people were more involved in religion back then. Opponents sometimes say, 'Yes, but that's the oldest basic right'. And they are right about that, but it could become redundant because other laws cover the right for freedom of religion. If it was just about cleaning up the Constitution technically, then we are not in a hurry and we could postpone it. But I'm afraid, and I have certain clues for that, that it's more than that and that people with religious convictions are trying to claim certain privileges based on their religion. [...] For me, a church is just an association like any other association, and it should of course have the same freedoms as other organisations but nothing more than that. That actually also goes for the freedom of opinion. For me, this

*freedom should be broadly defined but there shouldn't be exceptions for religious motives or other motives. Every citizen has to be treated equally .*

Religious leaders strongly oppose this idea, and some also state their opinion that all types of freedom we have in a democratic society find their origin in the freedom of religion. By removing this freedom from the Constitution, we are in danger of also losing the other freedoms. Lody van de Kamp, the head of the orthodox Jewish high school in Amsterdam, goes even further and sees the freedom of religion as one of the main elements of our society that we should be proud of and defend at all times. In his words,

*LK: There are four things in the Netherlands we should be proud of. We have a parliamentary democracy, we have a constitutional state, we have freedom of opinion and we have freedom of religion. These things are not exchangeable for me. And if I have freedom of religion, then I also have the right (just like when I was young and had the freedom not to go to school on Saturdays) to be free from work on Saturdays. And the fact that our society has changed and has become more secular doesn't devalue any fundamental right laid down in our Constitution.*

A Protestant respondent who is not affiliated with the SGP had this to say about the issue:

*WS: Yes, for sure. While it's actually just about the right to freedom of association. I don't think that you should give the SGP the right to determine who they put on their election list based on some sort of religious exception, but just because that's just what the right for freedom of assembly and association is in essence all about. So I think that the SGP should have the right to do that, but not because you cannot forbid discrimination, because it is discrimination, but discrimination on the grounds of freedom of religion, and that's an inherent freedom.*

Secular respondents provide counterarguments. In the words of Rene Cuperus from the scientific institute of the Labour Party,

*RC: The question is which things that are punishable in the public domain are allowed in the private or semi-private domain of a religious community. The Bible or the Koran are of course very complicated texts as well, because seen through present-day eyes some parts of these books are in conflict with human rights. And are you allowed to make an appeal to these parts of the Bible or the Koran? So you can never say that you make an appeal to a holy book and that you do everything that it prescribes. Of course criminal law operates as a filter. These are of course the conflict situations we always talk about. But I find that verdict of the Supreme Court quite interesting. This isn't a religious organisation, but a political organisation making an appeal to religious sources, and putting these sources in to practice in the public domain.*

Frank van Mil from the scientific institute of the D66 party argues as follows:

*FM: Yes, because actually the SGP case is very simple. The state has to make sure that female members of the SGP are eligible for election, and then every SGP voter can decide for him or herself if he or she wants to vote for a woman or not, and that's that. And the latter is none of the state's business. The state cannot interfere in that personal decision, whether you say that women are stupid or whether you say that women are too superior to be involved in politics. That's none of the state's business, but the state should make sure that they are eligible for election though. And if a majority of SGP voters decide to vote for a woman, then they probable have to have a thorough discussion internally about the biblical roots of women's discrimination. So it's actually not a very complicated matter, I think.*

## **Going to court as a way to overcome the basic tensions**

Many respondents questioned whether it was a good thing that the Clara Wichmann Foundation went to court. Rene Cuperus from the scientific institute of the Labour Party argues as follows:

*RC: The judicial way of thinking detracts attention from this kind of historical and sociological thinking. This is a good thing for the blind, unprejudiced constitutional state. But the problem arises when a big group of people in society start perceiving it as unjust, if a policy of 'what's good for the goose is good for the gander' isn't perceived as equal. There is a great discrepancy between how people feel about immigration and the judicial laws that are the same for everyone. People believe that newcomers haven't yet earned these rights. That Polish people or Slovenians do not just have the right to receive Dutch social benefits or housing benefits. That takes at least twenty years. So there is a great discrepancy between the implementation of judicial rules and what people in society deem as fair. I believe that's the basis of the whole debate. I think that's the underlying reason for this.*

Frank van Mil from the scientific institute of the D66 party feels that it is a sign of weakness to go to court.

*FM: Yes, because most of the progressives haven't had to defend themselves for over 50 years why they think that they are right, because it was so undisputed. Even the VVD was a progressive party twenty years ago. Well, a whole generation of progressives has been brought up with that being the mainstream idea, and these people do not have any connection with the view on humans and on the world on which the progressive thought is based. And if it's being disputed, or discussed or refuted by someone, the only argument these people can come up with is indignation or just it's not legal, it's not possible, but no one can see that it's bad.*

*[...] The Clara Wichmann Foundation has had very little faith in the women of the SGP. I feel that is very maternalistic of them.*

Former president of the Commission for Equal Treatment Castermans provides a more nuanced argumentation.

*AC: The court is being confronted with a summons, so that court needs to give its verdict, a court cannot refuse to do that, so what does Clara Wichmann do? Yes, indeed I'm not the type of lawyer who wants to solve every problem in court, I even say 'rather not'. I had to deal with cases, I can tell you this, in which I intervened before they came to court, to try to solve the problem in another way.*

*FV: Because what is the disadvantage of settling things judicially?*

*AC: Well yes, it's not good for anybody to settle things judicially, because it forces you to define things and frame things and sometimes it's just better to leave it up to the people. If they are prepared to talk about the issue in question, then they will be able to reach a much better arrangement than the one that judicially would be made. It's not always the case that it's better to go to court. And people who are forced to do something because a court or another judicial institution is making them do it are often not pleased to do it. If they had reached an arrangement themselves, they would be much more pleased to carry it out, so for that matter it's not always desirable to go to court.*

Kathalijne Buitenweg, president of the organisation that went to court, explains why they decided to do this.

*KB: Well, there are of course other organisations that practice all kinds of lobby activities. These women have lobbied within their own circle as well of course, and there have often been debates about it, but we are of course trying to get to the ultimate remedy to enforce it on them judicially, and this is something as well. I mean, not long ago there was a lawsuit in*



*the United Kingdom, and everyone thought it was a logical one: it was against the British National Party that excluded black people from membership, and it was logical that a lawsuit was set up. And the interesting thing is that when it comes to women, everyone all of a sudden says, 'Let's just talk about it', or 'It's just a matter of culture', or 'Let's just wait to see what happens', or that's only the case with women. So that even makes me more determined to go to court.*

*FV: But then in the end you are just trying to force the state to take certain measures?*

*KB: Yes, I believe that, apart from the fact that you can of course win the lawsuit, it's a big advantage of a lawsuit that a real standard is set, so it's not a matter of just discussing it and discussing it again next time and seeing what happens then. No, it's a fixed arrangement that logically stems from the constitutional state and the democracy we live in.*

On the other hand, Jan Schippers from the SGP explains what happens when courts start intervening in the internal discussions of the party.

*JS: People refuse to reconsider their standpoint anymore when the judge starts to intervene, this is just a human reaction when there is external pressure. In this context, anyone within the party arguing for a different position in relation to the 'women standpoint' is seen as someone representing the secular standpoint, and then he will be seen as a traitor in his own circles. Then it becomes really hard to take up and defend a different standpoint than the standpoint supported by the majority of the party, because there are external pressures from institutes and organisations that aren't well disposed towards the party.*

Buitenweg is not convinced by this argument.

*KB: It's quite interesting that they used to say the same thing about membership, and that is enforced upon them as well. That was of course a disgrace, and then the same argument was, 'Gosh, now we do have female members'. So I believe that the discussion would be a bit more open than it is now, that could be true, but in the end it happened because there was a lawsuit. But undoubtedly it has become more emotionally charged because of that.*

In the SGP case, we find a lot of similarities with issues discussed in the other domains. It seems to be a clear clash between the collective autonomy of the SGP; practices of religious organisations and associations that are protected by collective religious freedoms to make direct and indirect distinctions on the basis of religious argumentation (the *collective religious freedom cluster*) versus principles of non-discrimination on the basis of religion, gender, sexual orientation and possibly race (the *individual freedom cluster*), in which indirect and direct distinction is by definition forbidden on the basis of individual equal treatment. In the conclusion, we will come back to these similarities, but we will also address some of the differences

## Summary of public funding

1. Public funding for religious-based organisations (religious welfare organisations, religious broadcasting organisations, religious political parties) is **under pressure** in the Netherlands.
2. The two main arguments for arguments for stopping public funding for faith-based organisations are: (1) faith-based organisations make direct and indirect distinctions in terms of labour policy (for instance, only Christians can work for a Christian welfare organisation, or certain people are excluded from working in the organisations because of gender or sexual preference as this is not in line with the religious beliefs of the organisation), and the state should in no way support these distinctions. In fact, the right to make these distinctions is under pressure (see chapter on labour law), and by supporting these organisations the state is legitimising these distinctions. The fact that religious organisations make a claim for expressing and implementing these distinctions because of religious freedom is not accepted by opponents. (2) Organisations play a crucial role in society, welfare organisations by providing care to those who are in need and political organisations for the functioning of the political system in a democratic society. Individuals should not be excluded in any way from this care or from this political system, and therefore these organisations cannot make any distinctions, as this will exclude individuals from basic rights. The fact that religious groups and the affiliated individuals may as a result of this pressure also be excluded does not seem to be of specific importance to the opponents of public funding for faith-based organisations.

## Conclusions

### (1) Some general characteristics of changing Dutch governance of religious diversity (based on the Introduction)

Traditionally, the Dutch legal context provided ample collective associational freedom for religious groups to organise their lives and that of their members according to their own religious beliefs (in the realm of family, work, education, health care and media). The weakening of the pillarised Dutch system since the 1960s and increasing secularism has put **this associational freedom under pressure**.

The interviews in this study, in line with the existing literature, indicate an emerging framework in the Netherlands consisting of elements of individual liberalism, anti-discrimination legislation, visions on human rights and equal treatment that is used and proclaimed to make decisions in religious conflicts in the workplace, public space, and in the financial support of faith-based organisations. This obviously leaves less room for reasonable accommodation when conflicts arise and leads to more heated conflicts between religious groups and secular models.

To briefly summarise the tensions/conflicts and possibility for reasonable accommodation, we identified in the different domains:

Short summaries of possibility for **reasonable accommodation** in the different domains:

\* **Family law**: not much seems to have changed in practices regarding *family and divorce law* (not even in ‘dramatised public discourse’ (sharia in the Netherlands, polygamy, talaq, etc.), and this is striking compared with the dramatisation of these issues in e.g. the UK, and of ‘burka’, hijab and handshaking in the Netherlands). With regard to practices, only orthodox Christians (civil servants refusing to conduct same-sex marriage ceremonies) are targeted with legislative initiatives related to ‘marriage and divorce’, but only as representatives of the ‘neutral’ state.

\* **Labour law**: more or less a continuation of **reasonable accommodation** on the **individual level** – certainly in a comparative international perspective. However, **faith-based organisations** as employers are **under pressure**. We identified several tensions and conflicts and fewer possibilities for reasonable accommodation, although the position of faith-based schools in the Netherlands is still strong. Hiring policy is at the core of these faith-based organisations, and in order to protect their religious identity, these organisations need to make direct and indirect distinctions when hiring people (make religious distinctions, but for some orthodox groups also distinctions on gender and sexual preference). This right is not only questioned, but it is also increasingly diminished.

Inconsistency/ambiguity by respondents, but also by the Commission for Equal Treatment, in treating issues of individual religious **civil servants** and finding forms of reasonable treatment for conflict regarding them (civil servants refusing to conduct same-sex marriage ceremonies and civil servants refusing to shake hands with a person of the opposite gender, civil servants wearing the hijab, etc.). We identify this as ambiguity **regarding ‘religious symbols’ in ‘public employment’**. Respondents tend to look at conflicts regarding religious people and religious symbols in public employment differently (so for instance finding reasonable accommodation for the refusal to shake hands, but not for the refusal to conduct a same-sex marriage,

or the other way around).

\* **Public space:** Many examples of **reasonable accommodation in the public space**. For instance regarding wearing hijab in schools, which is remarkable considering different developments in nearby countries like Belgium, Germany and France.

\* **State Funding of Religions:** regarding collective associational freedom for religious groups, we find that **state funding for faith-based organisations is under strong pressure** in the Netherlands. Using similar arguments as in the domain of Labour Law, many respondents (secular and otherwise) would like to end state funding to faith-based organisations.

In our interviews, we have thus identified conflicts over collective associational freedoms of religious groups. So individual religious employees still receive support to express their religious beliefs in the workplace, in public space or in the family domain. But religious organisations, and through them religious groups in general, are under pressure to change their opinions and behaviour that clashes with the values of mainstream Dutch society, in which equal treatment on the individual level is increasingly seen as more important than the right for religious groups to live their lives according to their own norms and values.

The interviews indicate that among many secular voices, a decreasing willingness for difference on the moral dimension between secular and religious groups is tolerated. Although nobody, at least of the respondents we talked to, argues for a complete removal of moral difference in Dutch society on issues like homosexuality, abortion, the position of women, etc, secular respondents argue for a 'paternalistic' state spreading liberal or libertarian values. As two of our respondents, Ganzevoort and Pels, recently argued in a newspaper article,

*The most effective critique on religion comes from within, but that often has to be stimulated from the outside. And that critique shouldn't be restricted to religions and spiritualities that are relatively new in our society [...] The government shouldn't only set up clear judicial boundaries, but also express a strong moral appeal, also when it comes to the position of women and homosexuals in orthodox Christianity and Islam. Certainly, the Roman Catholic church has the formal right to refuse the holy communion to practicing homosexuals, but morally that collides with the values of our society. Not everything can be judicially forced upon people, also because that leads to polarisation and puts groups in a defensive position. People should focus on dialogue and on supporting the emancipatory groups within different denominations.*

For now, this pressure by the state on religious groups in the Netherlands is especially strong for faith-based organisations and individual orthodox religious civil servants.

**(2) 'Freedom of religion' in general and, more in particular associational freedoms for religions and faith-based organisations under 'secularist' pressure from two sides:**

(a) Emphatic individual autonomy and, very recently, also 'animal rights/welfare' versus all forms of collective autonomy and collective rights; (b) non-discrimination as the most important or supreme principle overruling associational autonomy. This is a more general tendency in many European countries, also backed by EU directives, but it is still remarkable that it has such an 'ideological impact' on Dutch debates, and increasingly also decisions (**mention: symbolic legislation or legislative initiatives**)

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**on male circumcision, on ritual slaughtering, on the ‘burka’, on civil servants who refuse to conduct same-sex marriages.** One might wonder whether ‘secularist’ defenders are aware of the far-reaching consequences of these policies. According to some secularist respondents, religious freedoms are safeguarded by the rights of association and of expression and could therefore be dropped. Or in the words of Patrick van Schie, director of the think tank affiliated with the VVD party,

*PvS: In the Netherlands we have the freedom of opinion, the freedom of association and the freedom of assembly and demonstration, and with these rights you have actually already covered all the rights that are protected by the freedom of religion. [...] I’m afraid [...] that people with religious convictions are trying to claim certain privileges based on their religion. [...] For me, a church is just an association like any other association, and it should of course have the same freedoms as other organisations, but nothing more than that. That actually also goes for the freedom of opinion. For me, this freedom should be broadly defined but there shouldn’t be exceptions for religious motives or other motives. Every citizen has to be treated equally.*

Other respondents, primarily religious ones but not only, argue that freedom of religion is among the first freedoms and cannot be replaced by or substituted by ‘one freedom of expression’. The former president of the Dutch Commission for Equal Treatment states it like this:

*AC: When I was just appointed chairman of the commission, I went to a meeting of the SGP (orthodox Protestants) in Veenendaal, and people at that meeting were seriously scared of the possibility that religion would be legally marginalised. They feared that it would be taken out of the Constitution, or at least that the concept of freedom of religion would become meaningless, and at that point in time I thought that this development would never take place. I thought, ‘What are we talking about, it’s in the Constitution, it’s in the General Law on Equal Treatment, it’s in European legislation, why are you so scared that all this legal protection of religion will disappear?’. And indeed I am surprised that the idea of getting rid of the law on freedom of religion is winning so much ground so fast. I do not believe it, because it’s about individuals, it’s about people practicing their religion, so the right to organise or the freedom of opinion isn’t enough. Most of the time, it isn’t even about opinion, it’s not about meeting other people, it’s about being the person you want to be, and I understand that it doesn’t work here.*

(3) Not only in our opinion, but also according to some of our respondents, **leading principles and institutional arrangements of the ‘Dutch’ way of governance of religious diversity are under pressure:**

(i) Strict neutrality versus relational neutrality and even-handedness. We see this for instance in the domain of labour law in public employment, where teachers and civil servants are expected by a number of respondents to act ‘neutral’, which means non-religious, and there seems to be little or no room for accommodating difference in that regard. And the same is obviously the case with regard to public space more generally.

(ii) ‘Strict separation’ versus selective cooperation, particularly also in ‘politics’ and with regard to faith-based organisations in education, health care, welfare. For

instance, faith-based welfare organisations have an increasingly difficult time in the Netherlands to get funding for welfare activities because politicians want to maintain a strict separation of church and state, although the faith-based organisations argue that in these cases there is no violation of separation of church and state, which is not even mentioned in the Dutch Constitution as such (see Introduction).

(iii) Instead of making existing institutional arrangements (selective cooperation) of governance of religious diversity in the Netherlands more fair, open, and flexible, we are told (in public discourse and by some of our secularist respondents) that we should ‘go French’ or ‘American’. This means either a complete individualistic version of expressing one’s religion in private (neglecting or suppressing external freedoms of religion and their inevitable collective dimension and their civic or political importance), or a strictly separate relationship between politics and organised religions.

Again, these developments make it increasingly difficult to come up with different types of reasonable accommodation for conflicts in religiously diverse contexts, especially when it concerns faith-based organisations. Yet it seems that dominant political rhetoric (and its reflection in opinions by many of our secular respondents) is different from actual local practice. With regard to the latter, we find also in the answers and examples of the respondents that there is much old-style accommodation still going on.

**(4)** Another striking thing about the Dutch context is that we talk in this report more about the ‘old’ **Christian religions** and their faith-based organisations than the ‘new’, **particularly in regard to the Islamic groups**. Partly this is due to our selection of respondents, with which we have tried to select as many different religious denominations in the different domains, but there is more to it than that. The most important reason is that some high-profile cases in the domains we focused on (SGP, Youth for Christ, reformed schools) are cases in which Christian organisations have come under strong pressure to change. These Christian organisations are historically strong in these domains (especially compared to more recently arrived groups), and they have a lot of resources to defend themselves against this pressure, so their voice is heard more. The focus on Christian groups indicates that the conflict in the Netherlands is really about collective associational rights for religious groups, of which the Christian groups still profit most. Obviously the debate also focuses on Islam and immigration, but this seems to be less related to the criticism of collective associational rights for religious groups. It is striking that the few Islamic respondents we spoke to perceive relatively few tensions in the domains we covered in this study. This does not mean that Islamophobia and discrimination against Muslims does not exist in the Netherlands – on the contrary. It may have to do with a much stronger assimilatory pressure on these ‘new others’, and the fewer resources on their side to effectively oppose this. It may also indicate that these associational freedoms are less important for new religious groups in the Netherlands than for the older established groups. A decrease or serious limitation of their collective, associational rights would not only mean that they would have to change their established and hitherto recognised ways of life, but also give up established power positions in society. Compared to the Christian groups, Muslims have fewer religious schools, broadcasting organisations, faith-based welfare organisations, or political parties. When it comes to individual religious conflicts such as those discussed in the domain of labour law (for instance, the position of religious civil servants), we see that old and new religious groups are equally under pressure, and they sometimes form

alliances to defend their rights. In other domains not covered by this report, we see Jewish and Islamic orthodox groups under pressure – e.g. the attempted prohibition of ritual slaughtering and male circumcision – and we see the emergence of inter-religious networks to lobby against changing the legislation.

## ANNEX I. List of Respondents

Bisschop de Korte	Bishop of Groningen
Arjan Plaisier	Scriba, secretary of the Protestant Churches in the Netherlands (de Protestantse Kerk in Nederland (PKN))
Leo Fijen	Head of the Catholic Broadcasting Association (RKK)
Ruben Vis	Secretary of the <i>Nederlands-Israëlitisch Kerkgenootschap</i> (Orthodox Jewish)
Lody v.d. Kamp	Head of Orthodox Jewish High School in Amsterdam, local politician for the Christian Democrats in Amsterdam and former Rabbi.
Ron v.d. Wieken	President of the Liberal Jewish Community in Amsterdam
Dharmachari Varamitra	President of the largest Buddhist organisations in the Netherlands (Boeddhistische Unie NL) and chief Buddhist preacher at the Ministry for Justice and Dutch prisons
Flora Lagerwerf	Former member of the Commission for Equal Treatment, former Senator for the ChristenUnie and judge in Rotterdam
Remco Oosterhoff	Former councillor for the ChristenUnie in Rotterdam and head of local work of the organisation Youth for Christ
Peter Schalk	Director (Raad van Bestuur) of the Reformatorische Maatschappelijke Unie (Orthodox Protestant Labour Union)
Jan Schippers	Director of Guido de Brès-Stichting, Scientific Institute, affiliated with the political party SGP (Orthodox Protestant Political Party)
Wim Kuiper	Director Besturenraad, Centrum voor Christelijk Onderwijs (Largest Umbrella organisation for Christian Schools in the Netherlands)
Piet Hazenbosch	Bestuursadviseur van CNV Vakcentrale (Senior policy advisor for the Christian Trade Union)
Willem Smouter	Preacher and president of the Evangelical Alliance ( <i>Evangelische Alliantie</i> )
Yassin el Forkani	Imam in Amsterdam
Yasmine el Ksaihi	Former president of Polder Mosque in Amsterdam (Poldermoskee)
Mustafa Hamurcu	Secretary of Millî Görüş North-Netherlands (Islam: Millî Görüş)



Dick Pels	Director of Bureau de Helling, a Dutch research foundation affiliated with the green political party GroenLinks
Kathalijne Buitenweg	President of Clara Wichmann Stichting, former member of European Parliament for Green Left
Ruard Ganzevoort	Professor of pastoral/practical theology, Vrije Universiteit Amsterdam and member of the board of De Linker Wang, platform for faith and politics, which is affiliated with the Green Left Party
Frank van Mil	Director of the Mr. Hans van Mierlo Stichting (Foundation), a Dutch liberal think tank affiliated with the political party D66
Patrick van Schie	Director of the Prof. mr. B.M. Teldersstichting (Telders Foundation), a liberal Dutch think tank, affiliated with the political party VVD
Achmed Baâdoud	District Mayor of City District Amsterdam Nieuw-West (Labour Party)
Rene Cuperus	Member of Wiardi Beckman Stichting, research foundation, affiliated with the Labour Party (PvdA)
Rein Zunderdorp	President of Humanistisch Verbond
Bert-Jan Kollmer	Director of Association for Public Education (Vereniging Openbaar Onderwijs (VOO))
M. De Blois	Substitute member of the Commission for Equal Treatment and legal scholar at Utrecht University
A.G. Castermans	Former president of the Commission for Equal Treatment and professor of law at Leiden University
Anya Wiersma	President of Women's Union of FNV (Socialist Labour Union). Former councillor for Socialist Party in Amersfoort

**ANNEX II. Basic Tensions of Governance of Religious Diversity.  
Item-list for the socio-legal research: RELIGARE WP7 by Veit Bader**

**General Tensions/conflicts between Basic Rights**

The focus on basic tensions or conflicts between basic rights may be easily misunderstood. Tensions or conflicts between rights are, indeed, normative tensions but not of the kind of ‘normativity’ characteristic for moral philosophy. Quite to the contrary, these are tensions inherent in empirical norms (i.e. norms claiming legal validity) both in International Covenants of Civic and Political Rights or the ECHR as well as in (Constitutional) Law of Member States, whether we call these constitutions ‘liberal democratic’ or ‘constitutional democracy’ or not. In this ‘socio-legal’ part of RELIGARE, we are interested in the *empirical way* in which Courts and Equal Treatment Commissions practically deal with them, how they argue for – often widely diverging – balancing and weighing in judging cases in specific contexts and circumstances – and whether and, if so how these processes are influenced by deeper, implicit cultural biases. In addition, we are interested in how our respondents (preferably also judges and chairpersons of Commissions amongst them) perceive these tensions and deal with them. Last but not least, we are also interested in conflicts that do not end up before courts (‘non-cases’) and in divergent non-jurisprudential practices and resolutions of (potential) conflicts. We present the items (in all thematic work packages WP3 – 6) in the following order: (i) (*empirical*) practices (of case law and conflicts or good practices that do not appear in case law); (ii) (*normative*) what, if anything, should be changed?

**1. Tension between individual and collective autonomy.** In terms of religious freedoms: tensions between individual or internal religious freedom (freedom of conscience) and collective or external religious freedoms (religious practices and associational freedoms of (organized) religions).

**2. Tensions between collective religious freedoms and other basic human rights** (ICCPR Art. 9,2: “protection of the rights and freedoms of others”), such as: *freedoms of speech/expression and anti-discrimination* (both with regard to ‘religious speech’ and ‘secularist speech’); protection of *essential basic rights of individuals and religious minorities* (particularly minors, dissenters, women, ethnic and gender minorities (vulnerable minorities)) within religious minorities and within religious majorities and their organizations.

**3. Tensions between religious freedoms and ‘public order’ and ‘security’** (ICCPR Art. 9,2: “public safety, public order, health or morals”), **particularly in an age in which security-issues get ever more prominent.**

**4. Tensions between (formal) equal treatment** (of religions and non-religions) **before and in the law and more substantive equal treatment (if any)** (commonly phrased in terms of ‘negative freedoms of religion’ versus ‘positive freedoms’)

### Family Law (WP 3)

1. **Basic Tensions** in cases in which rules and practices of (minority or majority) *religious family and divorce laws and customs* are at odds with basic principles of international family and divorce law and general civic or state marriage and divorce law: *equality between the sexes and favor divortii* (marriage, divorce, custody (and inheritance, excluded in WP 3) [It has already been decided in the RELIGARE project proposal that we do not research cases of conflicts with rules and practices of modern criminal law such as wife beating, child beating, genital mutilation, honour killing]. Because of the increasing importance which the ‘legal regulation of intimate relations’ has recently gained with issues of same-sex marriage and adoption, we include issues of polygamy and same-sex marriage and the respective challenges and defenses of the ‘norm’ of monogamy and nuclear family.
2. **Domains: (i) International Private Law (IPL); (ii) domestic religious law(s) versus state law; (iii) Alternative Dispute Resolution (ADR)** (e.g. Islamic Arbitration Tribunals)

### Labour Law (WP4)

1. **Basic Tensions:** religious interests of employees versus interests of other interested parties (employer, co-workers, customers, general public) and other liberal values such as secularism, non-discrimination (sex and gender equality) (the *individual religious freedom cluster*). Collective autonomy (practices of majority or minority religious organizations and associations that are protected by collective religious freedoms) versus labour law principles of non-discrimination on the basis of religion, gender, sexual orientation (and possibly race) (the *collective religious freedom cluster*).
2. **Domains: (i) ‘non-religious’ or not ‘faith-based’ workplaces (including private, semi-private and public employers) (ii) (organized) religions (including the whole variety of religious core-organizations as employers, not only ‘churches’) (iii) ‘Faith-based’ organizations as employers (including not only ‘religion’-based ‘ethos’ employers but all non-religious ‘ethos’ employers)**
3. Relevant **items** with regard to legal/legitimate *exemptions from general labour law rules and standards*: (i) the (non) employment status of church staff (ranging from ministers of cult to lay cleaning and gardening staff) and the role of law and jurisprudence in developments; (ii) church staff and labour union advocacy; (iii) perceptions regarding conflicts and accommodations for religious beliefs and practices in the workplace and the role of law and jurisprudence in developments; (iv) religious employees and labour union advocacy.

The proposed focus on accommodation/non-accommodation of religious-based claims of individual employees in ‘non-religious’ workplaces is on prevailing issues of dress code, prayer-facilities, time schedules etc. as well as on issues of equal access and inclusion in the labour market through judicial treatment in the employment and unemployment contexts [e.g. participation and traditional issues of ‘Diversity’-HRM (Human Resource ‘Management’ or, preferably, Mobilization’) such as selection, promotion.

## Public Space (WP5)

1. **Basic Tension:** Basic principles of liberal democratic constitutionalism (such as ‘**state neutrality**’ (as ‘strict’ or ‘formal’ versus ‘benevolent’ or ‘relational neutrality’); as ‘neutrality by subtraction’ or ‘by addition’) **and fairness** (as ‘hands-off’ or as ‘even-handedness’) **versus traditional historical ethno-religious ‘national (majority) culture’** (and quite often highly questionable assumptions regarding ‘necessary *social cohesion*’ and ‘*political unity*’)
2. **Domains:** (i) **religiously oriented private schools;** (ii) **dress codes;** (iii) **building/maintaining places of worship**
3. **Items:** (i) **the contribution of religiously oriented private schools to plurality in education;** (ii) **individual freedom and respect of community prescriptions in the choice of dress codes;** (iii) **autonomy of religious communities vs. general interests in building/maintaining places of worship**

A clear **common focus** or problematique for WP5 could be the following:

The reluctance to or rejection of reasonable accommodation is based on (i) intrinsic problems of all forms of *pragmatic*, administrative accommodation (working out practices by way of talking and negotiating) and (ii) on more or less deeply entrenched cultural majority-bias opposed to public *symbolic recognition*. Both reasons work out very differently in countries and ‘national jurisdictions’. The core conflict is how ‘neutrality and fairness’ are interpreted and how much weight is given to legitimate claims to protect/develop ‘national culture’. The core normative issue is – given all this (legitimate) variety – to defend and implement accommodation that is minimally required in countries characterized by wide and deep religious diversity.

## Public Funding (WP6).

**1. Basic Tensions:** (i) ‘**strict neutrality**’ = **no financing and recognition** (obviously only in an imaginable world, not in any existing regime of religious governance) versus **relational neutrality and equality as fairness:** (ii) if any public money, then ‘**equality before the law**’ instead of privileging the entrenched majority religion(s) and/or ‘**substantive equality**’ minimally requires to take history into account (e.g. in cases of very recent ‘disestablishments’ or the many hidden forms of financing churches via ‘cultural heritage’). (iii) For religious and religion related organizations: **(a) autonomy dilemma: trade-off between autonomy and privileges.** Less or no scrutiny and control by the state, on the one hand, and money and other privileges (connected to public/political scrutiny and control) and political influence, on the other; **(b) organization and mobilization dilemma** (see Bader (2007), p. 228f). (iv) Basic tensions for liberal-democratic states (p. 229-31).

**2. Domains:** (i) **religious core organizations;** (ii) **FBO’s (such as religious schools, media)**

### 3. Items

1. Should there be a public funding of religions and FBO’s? Why?
2. Do you feel that all religions and FBO’s are entitled to public funding?

3. What kind of public funding for religions and FBO's is available in your country? What type of funding can it be compared to? Which would be the best way for the State to finance religions and FBO's? (Suggested Typology for (organized) religions): (i) subventions to the sustained religions (ii) subventions granted according to precise projects (iii) tax deduction granted to religious institutions (iv) church tax according to the religious affiliation (iv) possibility to grant a part of the income tax to religious denominations

4. Is there a control over the use of the public support? Is there a demand of transparency / accountability? If so, how do religious bodies deal with it?

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