



## **Reasonable accommodation of religious claims in Europe? Basic tensions and socio-legal debates**

### **Summary of results for Work Package 7 of the RELIGARE project**

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## Introduction: Basic tensions of governance of religious diversity

Liberal-democratic states in Europe are increasingly confronted with claims to **accommodate** a wide variety of religious beliefs and practices. These claims put **pressure** on entrenched institutional arrangements and a prior established balance of conflicting human rights in diverse societal fields. As is well known, basic human rights contain **tensions** or conflicts between ‘freedom’ and ‘equality’ and between ‘collective’ and ‘individual’ autonomy. These tensions are unavoidable. For one, collective freedom of religion includes a fair amount of autonomy for churches and religious organizations, which must be balanced with, and limited by, individuals’ basic human rights, such as freedom of speech/expression and the right to non-discriminatory treatment. What makes matters even more challenging is that the individuals concerned (be they minors, dissenters, women or sexual or ethnic minorities) are particularly vulnerable, even within their own (religious) minority groups.

The principle of liberal-democratic ‘state neutrality’ does not necessarily entail a complete or ‘strict’ separation between political and religious institutions neither in theory nor in practice. In Europe, relationships between religions (organized or otherwise) and the state show a wide variety of institutional arrangements. These can range from one or two established churches, through concordats via various forms of selective cooperation between the state and recognized religions (organized or otherwise) to a presumed ‘strict separation’. Moreover, the differentiation between the political and religious spheres contains not only legal, but also social and cultural dimensions concerning the status of religious activities and convictions in daily life. For this reason, **Work Package 7** of the **RELIGARE** project is devoted to a **socio-legal** investigation on, in particular, the interaction between ‘secular and religious’ values in a context of increasing cultural diversity in Europe. The emerging conflicts may be between religious groups and public authorities, but can also occur within and among different religious groups as well as secular (organized or otherwise) groups. The conflicts of interest in this research result from inherent basic tensions in and between the principles, norms and basic rights of liberal-democratic constitutionalism.

Tensions or conflicts between rights are certainly normative tensions, though not of the kind of ‘normativity’ characteristic for moral philosophy. These **tensions** are **inherent in legal norms** (i.e. norms claiming legal validity in the respective jurisdiction) as contained in international treaties – International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), European Convention on Human Rights (ECHR) – as well as in the constitutions and laws of states. Consequently, judges and legislators are constantly dealing with the basic tensions that exist between human rights and interests by weighing and balancing them in specific laws and in specific cases and contexts. In doing so, they also decide how the state and private parties should deal with increased religious diversity on the ground and prevent possible tensions from escalating into full-blown conflicts. Laws and jurisprudence may entail forms of **reasonable accommodation** – in a broad, not only legal, sense; yet, quite often they also preclude such possibilities.

## Basic Tensions of the Governance Religious Diversity

1. tensions between individual and collective autonomy
2. tensions between collective religious freedoms and other basic human rights
3. tensions between religious freedoms and ‘public order’ and ‘security’

As a starting point for socio-legal research in the RELIGARE project, we tried to spell out *three basic types* of such tensions, all the while anticipating many different examples in different countries. First, we looked at **tensions between individual and collective autonomy**. In terms of religious freedoms, these are tensions between individual or internal religious freedoms (freedom of conscience) and collective or external religious freedoms (religious practices and associational freedoms of religions (organized or otherwise)). Second, we looked at **tensions between collective religious freedoms and other basic human rights**. These include, for example, freedoms of speech/expression and anti-discrimination in contradistinction to freedom of religion and, consequently, the right to make indirect or direct distinctions based on religious beliefs. Finally, we expected – especially in a post 9/11 context whereby authorities increasingly tend to link religion and security – to find different examples of **tensions between religious freedoms and ‘public order’ and ‘security’**. Next, we spelled out the **most relevant tensions in the four different legal domains** covered by the RELIGARE project.

For **family law** (Work Package 3), our premise was that basic tensions could be found in cases where 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 as well as general **civic or state marriage and divorce law**.

For **labour law** (Work Package 4), we expected basic tensions to be located in: 1) the religious interests of employees (**protected by individual religious freedoms**) versus interests of other interested parties (employers, co-workers, customers and the general public); or 2) between practices of religious organizations (**protected by collective religious freedoms**) versus labour law principles of non-discrimination on the basis of religion, gender and sexual orientation.

For **public space** (Work Package 5), we expected to find tensions between **the basic principles of morality** – such as embedded or absolute impartiality in cultural matters – and the **basic principles of liberal-democratic constitutionalism**, on the one hand, versus traditional historical ethno-religious national majority or non-majority culture, on the other hand.

For **state support** (Work Package 6), we expected basic tensions to appear mainly between **principles of equal treatment** and inclusive neutrality of the state versus privileges for entrenched majority religions and disadvantages for old and, in particular, new religious minorities.

## Countries

To identify basic tensions of the governance of religious diversity in Europe and possible forms of reasonable accommodation, we conducted a qualitative study among significant actors in six of the ten countries covered by RELIGARE research: Denmark, United Kingdom, France, the Netherlands, Bulgaria and Turkey. These countries provided a good cross-section of the historical and legal diversity of religion-state relations in Europe. Together, they represent a wide range of systems for governing religious affairs, socio-historical trajectories, relationships to the Council of Europe and the EU and experiences of religious diversity.

**France and Turkey** are representative of the first model of ‘church-state’ relationships: countries where there is, in principle, a strict separation between religious denominations and the state. In such systems, ‘secularism’ is written into the constitution. State policy is required to be conducted by means of secular laws, alone – as based on secular grounds – and is therefore kept strictly separate from religious beliefs. Such states relegate religion, in theory at least, to the private sphere and oppose its legal, administrative and political institutionalization. In practice however, in both countries the state regulates religions from above. Yet the countries also differ. **France** has been a predominantly Catholic country, which finances Catholic schools, though it has fairly well-organized secularist groups guarding their privileged versions of *laïcité de combat* in opposition to old and new religions, particularly Islam. It has a large, long-standing Muslim immigrant population. **Turkey**, still a predominantly Muslim country, has been an authoritarian secularist republic limiting or neglecting religious freedoms to non-Sunni Muslims and other religions. Kemalist secularism is under siege by the AKP government and religious freedoms for others are massively contested.

**The Netherlands** is representative of the second model of ‘selective cooperation’ countries, which combine non-establishment with conditional (limited) legal, administrative and/or political pluralism. Pluralism goes together with the requirement that the state be neutral, i.e. by allowing all religions and denominations to have equal footing. A state may support religions but, should it do so, it should beware of favouring one religion over another. The Netherlands has had come to terms with rapid secularization and with new religious minorities, particularly Islam.

**The UK and Denmark** are representative of the third model of countries with established churches (in the Protestant variety) that accept official institutional links between the state and, respectively, the **Church of England** and the **Folkekirke** (Danish People’s Church). Both countries are faced with the challenge of integrating a growing diversity of religions, particularly Islam, but differ with regard to numbers of Muslims (high in the UK, low in Denmark) and degrees of organization and mobilization.

**Bulgaria** was a country with an established Orthodox church (representing the third model) that went through a period of official state atheism under the Communist regime and whose transition to democracy and recent entry into the EU have shaken up the relationship of politics/society to religion. Bulgaria, moreover, has a 10% Muslim population (the highest of all countries in our sample except for Turkey), dating from the Ottoman era.

## Categories of actors

**Respondents** in the different countries were selected according to three categories:

- 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.

## Methodology

For this socio-legal research, our primary interest was not in how these basic tensions are dealt with in legislation and jurisprudence (as sought out in Work Packages 3 through 6). We were primarily interested in: 1) the **empirical way** our respondents perceived which, if any, tensions in which domains; 2) how our **respondents** argued **finding a reasonable solution** for perceived tensions or conflicts in specific contexts and circumstances; 3) whether these processes were **influenced by institutional and/or deeper, implicit cultural biases**, and if so, how. In addition, we were interested in how our respondents perceived solutions to tensions. For example, could one engage in some sort of reasonable accommodation or not? Were the respondents looking for practical solutions within a specific context, or did they take a more principle-based stand and use a confrontational approach? Did they go to court and, if so, under which circumstances? In short, what, in their views, could law do and not do?

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. We asked the respondents to reflect on these tensions. Our *method of open, structured interviews* 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).

## Expectations

Our main, theoretically guided expectations would produce **soft hypotheses**, to wit:

**Entrenched institutional arrangements** (constitutional law, traditions of legislation and jurisprudence) obviously have a huge impact on actual legislation and case law and delimit possibilities of change in response to new challenges and claims. Path dependency and institutional inertia are effective in all three above models and the countries in our sample. But significant differences are to be expected, generally in all domains, when it comes to people's **openness to pragmatic and reasonable accommodation** of new religious claims. Bluntly speaking, secularist regimes and ideologies are expected to be most inimical towards even modest claims of legal pluralism in family law, towards religious exemptions and accommodations in the workplace – particularly, in public organizations – towards religious symbols in the public sphere and with regard to state funding of religions or FBOs. The general expectation is that both selective cooperation regimes as well as regimes of weak establishment have less 'structural' or inbuilt hindrances in this regard. They are thought to allow for more openness, though not without considerable resistance and time lag. Simultaneously, these **institutional arrangements also help to explain which issues are salient and why** (e.g. religious symbols in the public sphere in secularist regimes or the state funding of newcomers in establishment regimes).

We could expect these entrenched institutional arrangements (or, more generally, the societal, political and **legal opportunity structure**) to have a huge impact on the **framing of problems and on claim-making of religious minorities**. Institutionalized power asymmetries make it extremely difficult to criticize predominant frames, e.g. for Muslims in France to criticize not only *laïcité de combat* but also all alternative varieties of *laïcité (ouverte, plurielle)*

Yet we could also expect that this would *not* be happening *in the same way and to the same degree for all religious minorities*. A **resource mobilization approach** made us expect that **power resources and numbers, organization and mobilization would clearly matter** (also for explaining differences among, for example, Muslims in the UK compared to Denmark). In addition, we could expect *relevant differences between religious traditions* to be crucial for explaining why, for example, both Muslims and Jews organize and mobilize in a similar way compared with other religious groups. Across different countries, they make similar claims, as compared with radically ‘privatized’ and ‘subjectivized’ evangelical denominations (who stay ‘invisible’, making no claims to public authorities except for ‘non-intervention’), such as Pentecostals (or Alevis when compared with Sunni and Shia).

We also could expect **structural power asymmetries**, together with an important *difference between ‘old’, ‘settled’ or ‘established religious minorities’* (for Western Europe that would be Orthodox Christians and Jews) and ‘*new ones*’ to result in a tendency *not to ‘politicize’* issues and to respond, at least at face value, quite often with ‘*no problems*’, ‘*no tensions*’, ‘*no conflicts*’ and ‘*we can sort it out pragmatically*’. This flexibility and adaptation should not be easily dismissed as ‘*submissive*’ or ‘*docile*’; rather, it could have been strategically discerning.

## Results of the interviews by domain

Issues of **family law** were raised by our respondents mainly concerning **marriage and divorce**. First, we address differences and tensions between civil and religious marriages.

**Civil and religious marriages** are more intertwined in countries with state religions or established churches, like the **UK** and **Denmark**, than elsewhere. Religious authorities in these countries can perform a civil marriage and a religious marriage in one and the same ceremony; in other countries, such as **France**, the **Netherlands**, **Turkey** and **Bulgaria**, these acts are separate, with the civil ceremony always preceding the religious one. In the latter group of countries, all our respondents – secular and all religious ones – argued that it is important to civil marriage precedes religious marriage, explicitly stating they will not perform a religious marriage if there is no proof of a civil one. This seems to be less the case among our respondents in the **UK** and **Denmark**. Most religious respondents in these countries stated that they always advise couples to have a civil marriage as well or to make sure that any religious marriage is state-endorsed, but they do not explicitly state that civil should always precede the religious marriage. One **Danish** Muslim respondent who identified as a teacher and public intellectual said that a civil marriage is not important. She stated that in Islam the rules dictate that two witnesses are enough to make a religious marriage a public act. As this understanding deviates from that of **Danish** law, Muslims in **Denmark** have begun to refer to the religious marriage as an act of engagement. But for this respondent, and probably for others involved, a religious ceremony precedes a civil ceremony, if there is a civil marriage at all.

Whether or not respondents felt that the civil should precede the religious, leaders in all countries stressed the **symbolic value of the religious marriage** – aspects of which cannot and should not be replaced by any state ceremony. They pointed to the social importance of explicit recognition of the unity before both God and community. State involvement in the religious realm as such is perceived as highly problematic. When it comes to the religious dimensions of marriage and divorce, civil laws may already present a burden to some groups. To gain more respect for the spiritually symbolic aspects of their practices, some groups – mainly Muslims and Jews and, to a certain extent, also some

Catholics – have demanded more autonomy for their religious communities, thus letting them make arrangements independently. In the **UK**, for example, some Muslim respondents expressed support for the acceptance of certain aspects of sharia law, particularly in the realm of personal law – regulations concerning marriage, divorce and inheritance. **Two objections to this were often heard.** They came, first, from secular and humanistic respondents who felt that the state has a principal responsibility to register and govern matters of marriage and divorce. Second, they were voiced by several respondents, secular and religious, who worried about the weaker position of women and children in most religious family laws.

Second, religious respondents in all countries demanded **less state interference** when it comes to **divorce** as opposed to marriage. In particular, Jewish respondents in the **UK, Denmark and the Netherlands** perceived divorce as a religious matter in which states should not get involved. Jewish respondents in the **UK** welcomed the new 2002 Divorce Law that gave them greater leeway to arrange these matters according to their own religious rules and laws. Similar to Jewish respondents in **the Netherlands**, they explained that the new Divorce Law allows a judge to stop a decree from being made if the wife wants a divorce (*get*) and the husband is refusing to give it. According to the respondents, the new law was very helpful, having cleared up a lot of problems of limping marriages for Jewish people in the **UK** not by ‘replacing’ religious by civil law but by using civil divorce procedures to strengthen the position of women.

Third, **respondents** – religious ones especially, but also some humanistic and secular ones – were **sympathetic to alternative dispute resolution (ADR) mechanisms** of a religious nature. These forms of resolution seemed particularly relevant for the Jewish, Muslim, Catholic and Bahai religious communities in the **UK**, but also in other countries such as **the Netherlands and Denmark** and for other groups such as orthodox Protestants and Lutherans. Most religious respondents demanded acceptance of ADR institutions and asked that the state distance itself from these matters. One **British** respondent provided an argument heard also in other countries, e.g. **the Netherlands**, pointing out that these religious institutions exist anyway. The *Beth Din*, *sharia* courts, and canonical courts are used and used according to the tenets of the religion by those who want to use them; the structures are not compulsory for anyone who is not a member of the religion. On the other hand, some less orthodox respondents and some secular voices in the **UK** and **the Netherlands** argued that alternative dispute resolutions are not acceptable because they often cement the weaker position of vulnerable groups, particularly women and children, in religious communities.

Our respondents did not address issues of *international private law* due to their complexity and people’s own lack of relevant first-hand information.

Issues of [labour law](#) raised by our respondents can be divided into three main topics. First, there are issues related to individual claims by religious employees in private non-religious companies. Second, there are issues related to religious civil servants. Third, there are issues related to faith-based organizations. Overall, we found opportunities for reasonable accommodation for most claims by religious employees in private firms; less or no accommodation for claims by civil servants; and less possibilities than before for faith-based organizations to select personnel on the basis of their religious beliefs across countries.

Especially in **the Netherlands, Bulgaria, the UK and Denmark**, respondents expressed sympathy for reasonable accommodation of claims by **religious employees in private firms**. For instance, in cases in which employees demanded the right to visibly express their religious conviction by wearing headscarves or crosses, conflicts were most often settled by a pragmatic solution. An example of this comes from a former president of the **Dutch** Commission for Equal Treatment, citing a case in which a Muslim woman was not hired at a call centre because she refused to take off her headscarf, which led to difficulties when using the headphones. The discussion between employer and employee focused on the question of whether the fabric of the headscarf was permeable enough to allow her to work alertly as a telephone operator. The former commission president suggested wearing the headphones under the headscarf, which immediately solved the problem. Also, according to religious and non-religious **Danish** and **Bulgarian** respondents, there seems to be increasing sympathy among

employers in accommodating claims of religious employees concerning dress codes and working hours. On the other hand, in **France** and **Turkey**, finding pragmatic solutions to religious demands seems to be more difficult. In these countries, most respondents tend to argue that the workplace should be a neutral environment for all to work in. Forms of reasonable accommodation at the workplace are often refused with the argument that too much flexibility from employers might defeat the purpose of employment altogether. This leads to more tensions and conflicts, although not always to court cases; numerous obstacles often prevent individual religious employees from bringing their case before a judge.

The situation for **religious civil servants** is quite different from employees in the private labour market. Possibilities for reasonable accommodation of this group's claims seem to diminish all over Europe, including **the Netherlands, Bulgaria** and **Denmark**. European states increasingly insist on having a neutral, non-religious public image, which makes it difficult, often impossible, to find a pragmatic solution for civil servants wanting to express their religious convictions or refusing to conduct certain tasks for religious reasons. The case of civil servants in **the Netherlands** refusing to conduct same-sex marriages is illustrative of developments elsewhere in Europe, such as the Ladelle case in **the UK**. Initially, in most of these cases, reasonable accommodation was applied by judges and commissions for equal treatment. Our respondents told us that the indirect distinction that these civil servants claims implied was seen as justifiable by judges and commissions so long as other civil servants could conduct the marriage. Many religious respondents in the different countries felt that this was the right way to deal with these issues. However, **in the Netherlands, the UK** and other countries, judges and commissions have recently changed their view. They now argue that the state should uphold the law at all times – the law on gay marriage included, thus demanding that all civil servants perform all tasks assigned to them. Many of our secular and humanist respondents agreed with this new line of reasoning, finding that providing reasonable accommodation in these cases infringes on the rights of other people and sends the wrong message; they argued that the state should not accept this especially from their own officials. By contrast, religious respondents in **the UK** and **the Netherlands** argued that this was a moral judgment by the state that infringes on the right to conscientious objection, a crucial part of the religious freedom of civil servants.

In addition, we found **that faith-based organizations in Europe are under pressure as employers**. In all countries, though especially in **the Netherlands, the UK** and **Denmark**, our religious respondents identified more tensions and conflicts for faith-based organizations in their role as employers and fewer possibilities for reasonable accommodation. Hiring policy proved to be at the core of the matter: in order to protect their religious identity, these organizations needed to make direct and indirect distinctions when hiring (in terms of prospective employees' religious beliefs, but for some orthodox groups, also their gender and sexual orientation). The right to exercise such a hiring policy was not only questioned, but also reportedly on the decline due to rulings by European courts of law. Secular and most humanist respondents tended to favour this development, arguing that allowing faith-based organizations to make these distinctions on the basis of religious beliefs goes against **principles of non-discrimination** and should therefore not be allowed. Religious respondents tended to see this as highly problematic because it infringes on their associational religious rights and will ultimately end the active and important role faith-based organizations play in service delivery of all kinds in the non-profit sector.

The governance of religious diversity in the **public space** proved to be a source of tension mainly in those countries with a presumed strict separation between religious denominations and the state, i.e. **France** and **Turkey**. To some extent, we found similar issues in **Bulgaria** and **Denmark** concerning the visible religious symbols worn by people. Respondents in **the Netherlands** and, to a lesser extent, **the UK** identified fewer problems and conflicts in this domain.

Most of these **discussions** in the countries where public space is a contested domain **revolve around the symbolic – actual or presumed – value of these religious symbols**. Religious respondents argued that much of what is accredited as a symbol in these discussions may in fact have little

symbolic value to the wearer. They also pointed out that many of the symbols actively communicated by the majority population go unnoticed in the public debate. In the **Danish** context, for example, symbols representing the majority secular culture, such as the cross on the national flag, are hardly perceived as religious, whereas minority symbols are predominantly interpreted as religious even though they may also be signs of fashion, culture, empowerment or protest. In **Turkey**, as in **France**, most respondents mentioned the headscarf as the main religious symbols and point of conflict. The attitudes of different secular groups and the state towards headscarves in public space have caused extensive on-going discussions in these countries, mainly between secularists, liberals and conservatives. Religious respondents mentioned that these issues were not discussed “in a neutral space”; according to them, solutions could therefore not yet be offered on either political or legal levels. Secular respondents in these countries tended to identify the headscarf as a symbol of an emerging political Islam and felt that banning the headscarf from the public space was a legitimate aim to protect public order and the rights and freedoms of others in the public space. In **Bulgaria**, most respondents, except for Muslims, argued that all citizens should accept and observe a publicly valid dress code and should not try to demonstrate religious differences in the public space. These respondents felt that religious symbols belonged to the private space and places of worship. The headscarves worn by Muslims were perceived by them as a religious demonstration, an “ostentation” and thus unacceptable in the “civilized world”.

In **the Netherlands**, **the UK** and, to some extent, also **Denmark**, the discussion on religious symbols worn by Muslim females revolves more around the burqa in the public space. This is most often framed by secular or humanistic respondents as a security issue and less as a conflict concerning religious symbols. Religious respondents claimed, however, that this issue is also about the symbolic value of religious dress because the burqa is hardly present in the public space of most European societies. They therefore had difficulty perceiving this as a security issue.

State support for religions is probably the most **country-specific** domain in this part of the RELIGARE project. Possible tensions depend for the most part on the way in which states finance religions and which religions are supported. In **Turkey**, for instance, respondents mentioned a very complex, intertwined relationship between the **Turkish** state and Sunni Islam, the majority religion in **Turkey**. This relationship has its foundations in the Ottoman state system and continued into the secular **Turkish** Republic. The relationship between Sunni Islam and the current AKP government puts the traditional state-religion relationship under pressure according to secular and religious minority respondents, which also makes it more difficult to find pragmatic solutions for conflicts over state funding. In other countries, such as **Denmark**, we also find intertwined relationships between the national state and the established church. The **Danish** state is obliged to support the *Folkekirke*, an obligation only pertaining to the **Danish** People’s Church, not other religious communities. This practice thus establishes within Danish religious law a rule of discrimination – one that both secular and religious respondents often argue to be in opposition to general human rights. The discussion by **Danish** respondents focused on solving this law’s discriminatory element by including other religions in this system. *Folkekirke* leaders argued for more direct support for other religions in **Denmark** as well. **Very few Danish** respondents, secular or religious, **questioned the Danish system as such**, but argued for specific changes in the system to make the system more inclusive.

In **Bulgaria**, the state’s relationship both to the Eastern Orthodox Church and to Islam was discussed by respondents, primarily focusing on the issue of state interference in religious affairs and less on specific financial support measures. **Bulgaria**, officially characterised by a presumed strict separation of church and state, continues its traditional practice of interfering in the internal religious matters of the Eastern Orthodox Church and Islam. In recent years, this interference provoked serious problems in both religions, as was discussed by several religious respondents. On the other hand, the **Bulgarian** system is also an instrument for granting privileges, especially to the Eastern Orthodox Church. By providing selective resources, it creates or reinforces an unequal treatment of religions. The discussion among **Bulgarian** respondents was, just as in **Denmark**, less on getting rid of state funding and more on how to overcome the inequalities within the system.

In the other countries, especially **France** and, to a lesser extent, **the Netherlands** and **the UK**, all **forms of state funding for religions were rejected** by most respondents, including most religious. Here respondents claimed that religious services should be supported by their own constituencies and not by states or tax money. Only among some Muslim respondents in **the UK** and **the Netherlands** did we find sympathy for short-term state funding for poor religious immigrant communities for building decent houses of worship. In the UK and especially in the Netherlands, the discussion on state funding revolved mainly around the state funding of faith-based organizations (welfare, education, social, media) and less on funding of religious core-organisations as such. Secular and humanistic respondents argued that state funding for faith-based organizations is problematic because it involves that religions are either directly or indirectly subsidised by tax money of non-religious people. According to this group of respondents, faith-based organizations should only be funded by their own constituencies. Religious respondents found these arguments unfair for their communities, believing they would lead to fewer opportunities for faith-based organizations to participate in welfare activities. Religious respondents in these countries also mentioned how forms of reasonable accommodation can often be found so long as it does not become a high-profile case. In Amsterdam, the case of Youth for Christ, a Christian youth organization that was not allowed to implement youth policies in an Amsterdam city district, illustrates how it can become impossible to find pragmatic solutions once the funding of a faith-based organization becomes a high-profile, contested issue in the local media (Youth for Christ operates in many other **Dutch** cities out of the limelight without problems).

A final point discussed by our respondents in this domain was restoration of **religious buildings as cultural heritage** and the maintenance of places of worship. Most respondents, secular and religious, **favoured forms of state support as part of supporting a national heritage** that transcends the religious majority group. Religious respondents said they noticed that the public often wrongly assumes that this support is always provided. In several countries, such as **the UK** and **the Netherlands**, Muslim respondents argued to extend state support for religious buildings as part of the cultural heritage to new religions as well. In so doing, states would be acknowledging these new religions as part of the national community and national heritage, although the financial support would not be directed towards the maintenance of historic buildings.

**Institutional arrangements have an important impact on the governance of religious diversity in Europe. Secularist regimes are for instance most hostile towards even the most modest claims of legal pluralism.**

**Institutional arrangements help explain why which issues are salient. In secularist regimes for instance we find conflicts over religious symbols in the public sphere. In countries with an established Church on the other hand conflicts are about public funding.**

**There is a clear tendency by religious respondents, especially those in a weaker position but not only them, not to ‘politicize’ issues, which is a strategic decision.**

## Conclusions from the socio-legal interviews in Europe

The interviews we conducted in the different countries illustrate how *entrenched institutional arrangements* indeed have a huge *impact* on the **governance of religious diversity** in Europe. This concerns not only actual legislation and case law but, according to our respondents, also **the possibilities groups have to respond to new challenges and express claims**. Secularist regimes, **France** and **Turkey** in our research, are indeed most hostile towards even the most modest claims of legal pluralism in family law, towards religious exemptions and accommodations in the workplace – particularly in public organizations – towards religious symbols in the public sphere and towards state-funding of religions or faith-based organizations. Selective cooperation regimes – the Netherlands and also regimes of weak establishment like **the UK** and **Denmark** – have fewer ‘structural’ hindrances in this regard and allow for more possibilities to find forms of reasonable accommodation when tensions in the governance of religious diversity arise. Yet, it is important to note that in these more open regimes we also encounter domains in which pragmatic solutions are difficult to find. This is due to either the specific nature of these systems or the more general desire of European states to have a more ‘neutral’ appearance, without any visible religious presence, thus leading to fewer opportunities for reasonable accommodation in the fields of labour law, public space and state support concerning civil servants, public institutions or the implementation of state policies by faith-based organizations.

**Institutional arrangements** also help explain *why which issues are salient*. As expected, we did find conflicts over religious symbols in the public sphere, especially in secularist regimes and the state funding of newcomers in establishment regimes. Selective cooperation regimes faced most problems in the domain of labour law and the provision of state support for faith-based organizations (**the Netherlands**). Entrenched institutional arrangements also impact on the framing of problems by both secular and religious groups and the claims made by these groups. For instance, in countries with an established church, like **Denmark**, **respondents attempted to find solutions for problems of the system from within and almost nobody argued for a completely different system**. In these institutional arrangements, newcomers tended to make claims for equal or at least fair opportunities for state funding. By contrast, these same groups in countries with other arrangements completely rejected state funding for religions.

In terms of the groups, we found, as expected, that the **strength of a certain religious, humanistic or secular group in a particular country can also be important**. It is clear that in countries with a small Muslim community, such as **Denmark** and, to some extent, the Netherlands, Islamic groups are less able to participate in the public debate than in places where, especially at the local level, the number is higher, such as in **the UK**. Comparing Muslim respondents in the different countries, we identified striking differences in public visibility and self-confidence as well, for instance illustrated by the fact that among the **UK** Muslim respondents there are several public intellectuals highly visible in the public sphere, which is not or less the case elsewhere.

**Respondents tend to look for solutions within the existing national institutional arrangements and almost nobody, including secular respondents, argues for a completely different system.**

**States should be careful forcing religious groups into legal cases as this obstructs them from their strategic approach not to ‘politicize’ and ‘legalize’ issues.**

**We also found relevant similarities and differences between religious traditions.** Jews and Muslims organize and mobilize to some extent in a similar way and make similar claims in different countries compared with more ‘privatized’ denominations. In addition, we found that structural power asymmetries between ‘old’, ‘settled’ or ‘established religious minorities and ‘new’ ones matter. For instance the most visible conflicts (especially in the domains of family law and labour law) revolve around and are brought forward by old and established religious groups rather than by new religious minorities. In family law, an important issue in different countries is the Jewish *get* whereas claims of recognition of shari’a family and divorce law have been mainly raised in **the UK**. In labour law, Christian civil servants and Christian faith-based organizations are the focal point of conflict for most Western European countries. For the public space, the most heated conflicts dealt with defending the ‘neutral’ public space from new religious groups, although old established groups also played an important role in some of the more visible conflicts in countries like **France** and **Turkey**, when it came to public schools or public institutions. Finally, state support mainly concerned the inclusion new religious groups in systems with state religions or with funding Christian faith-based organizations.

Related to the previous point was **the tendency by religious respondents**, especially those in a weaker position, **not to ‘politicize’ issues**. They were likely to respond to questions with the answers ‘no problems’, ‘no tensions’, ‘no conflicts’ and ‘we can sort it out pragmatically’. Religious respondents, especially, tended to look for pragmatic solutions that require a dialogue with the opposite party; a polarized situation would make it more difficult to accomplish this. Religious groups seem reluctant to go to court over religious conflicts. It makes it more difficult to find reasonable solutions, the outcome is uncertain, and court cases can be a step to further obstacles and other conflicts. **The lack of court cases** in areas of conflict (as identified by other work packages for instance PIL) can be often **seen as a strategic position by religious groups**. States should be careful forcing groups into these legal battles as it makes it often more difficult to find reasonable solutions.

We wish to conclude this summary of the results of our socio-legal interviews with a final observations. The fact that in many European countries **freedom of religion**, and particularly its *external or associational aspect*, also **seems to be under pressure**. Some secular respondents explicitly or implicitly questioned the rationale of this part of their respective constitutions. The argument behind this, according to some of our secular respondents, was that the **freedom of religion puts organized religions in a privileged position**, compared to other non-religious groups. In addition, it provides opportunities to make distinctions that infringe on basic principles of non-discrimination. These secular respondents argued that freedom of religion is already safeguarded by freedom of opinion, freedom of association and freedom of speech/expression – freedom of religion is therefore redundant. Religious as well as some secular respondents, on the other hand, argued that **freedom of religion is among the first of constitutional freedoms, is crucial and cannot be replaced** by or substituted by “one freedom of expression”. One of the former presidents of the **Dutch Commission for Equal Treatment** gave the following statement:

*When I was just appointed chairman of the commission, I went to a meeting of [orthodox Protestants] and they were seriously scared of the possibility that religion would be legally marginalized. 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 [in the Netherlands]. I do not believe [that it can be replaced without problems], because it’s about individuals, it’s about people practising their religion, so the freedom to organize 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.*

Whether or not the constitutional freedom of religion is redundant, this citation shows that, like many other issues discussed by our respondents, the governance of religious diversity in Europe is a much-debated topic in which individuals and groups sometimes take principal positions that can lead to frequent conflicts – legal or otherwise. But sometimes, they also take pragmatic positions, finding solutions within a particular context that resolve some of these tensions at an early stage. To a large extent, the entrenched institutional arrangement, the issue at stake and the strength of the groups involved explain which trajectory is chosen. It is important to note that the chosen trajectory may eventually have an impact on the institutional arrangement itself. In turn, this may fundamentally change the social and legal context in which European societies govern religious diversity.