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CEDAW, the Bible and the State of the Netherlands: the struggle over orthodox women's political participation and their responses

Barbara M. Oomen, Joost Guijt & Matthias Ploeg*

'The more I look at this case, the more I am disconcerted by the fact that the debate between parties has taken on such a dichotomous (black/white) character, as if there are no other solutions than those in which the State either remains wholly passive, or forces the SGP to immediately open its list of candidates to women.'

– Advisory Opinion of the Attorney General to the Dutch Supreme Court, 2009¹

1. Introduction

Should the Dutch State take measures against a political party that bars women from the ballot on Biblical grounds? It was on this issue that the Supreme Court of the Netherlands ruled in April 2010. The ruling was clear and in line with recommendations made by the Committee on the Elimination of Discrimination against Women (the CEDAW Committee) a few months earlier: the Netherlands had to take effective measures in order to ensure that the Reformed Party (*Staatkundig-Gereformeerde Partij, SGP*) would grant women passive voting rights. The human rights NGOs that had instigated the case were granted *ius standi*, even if the reformed women concerned had indicated that they did not agree with the case.²

In the run-up to the court decision, the leadership of the party concerned had requested church leaders throughout the so-called 'Bible Belt' in the Netherlands to pray that the court would allow it to continue to follow its policies in these 'serious times', in which 'the principle of non-discrimination threatens to push aside the freedoms of association and of religion'.³ Similarly, in the homes of the orthodox Protestants, the women, in their sober attire and long skirts, typically with many children around them, would complain that: 'our society has become so tolerant that there is no more tolerance for those with a Biblical vision that is not based on

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1 Advisory Opinion of the Attorney General to the Supreme Court (*Hoge Raad*) 27 November 2009, LJN BK4547, CPG 08/01354, 5.17. 'Naar mate ik mij langer met deze zaak bezig houd, gaat mij steeds meer tegenstaan dat het debat tussen partijen zo'n dichotoom ("zwart/wit") karakter heeft, alsofer geen andere oplossingen denkbaar zijn dan dat de Staat hetzij geheel passief blijft, hetzij de SGP onmiddellijk dwingt haar kandidatenlijsten open te stellen voor vrouwen'.

2 Hoge Raad 9 April 2010, LJN BK4549. For legal discussions of earlier court cases see: T. Loenen, *Geloof in het geding: Juridische grenzen van religieus pluralisme in het perspectief van de mensenrechten*, 2006. H.ten Napel, 'Een Nederlandse Taliban', in N. van Manen, *De multiculturele samenleving en het recht*, 2002, pp. 151-157; R. Kooijman, 'Staat en SGP', 2009 *Openbaar Bestuur*, no. 6/7, pp. 14-18; R. Kooijman et al., 'Gelijke behandeling is een rechtsplicht in SGP-casus. Een reactie op Kortmann & nawoord bij bovenstaande reactie', 2009, *Ars Aequi*, no. 9, p. 626.

3 Letter by the SGP leadership to the church authorities (*de Deputaten bij Hoge Overheid*), 24 December 2009, retrieved via 'SGP roept op tot voorbede rond proces' (SGP calls for prayers for the court case), *Reformatoisch Dagblad*, 19 January 2010. All translations by the authors.

individual self-determination'.⁴ Once the decision had been handed down, tens of thousands of orthodox Protestants signed an internet petition, complaining that 'this decision sacrifices classic freedoms to the "super-right" of non-discrimination'.⁵

This article investigates how the discussions concerning the political participation of reformed women came to be 'framed' as a violation of universal human rights, to be contested by NGOs in the courtroom, and what social effects this engendered within the communities concerned, particularly amongst the women in question. It does this against the theoretical background of increased attention to the role of 'rights talk' in framing – and juridifying – complex moral and social questions, and the role of civil society in determining which issues are brought to the fore within the legal sphere. Whilst this is well-charted ground, there is much less scholarly attention being paid to the social effects of these types of court cases, particularly when they concern deeply-held principles within a religious context.

The empirical data on the basis of which the social effects are discussed were obtained via a combination of qualitative and quantitative methods including a literature review, media analysis, interviews and an online survey. The media analysis was carried out by collecting 142 journal articles and letters to the editor from the leading reformed journals *Het Reformatorisch Dagblad* and *Het Nederlands Dagblad* in the period of 2004-2009, and scoring these articles as to their social effects, ranging from isolation to a dialogical approach. Besides participatory observation, around 40 orthodox reformed Protestants were interviewed extensively, including politicians, representatives from civil society, church leaders and ordinary citizens. The interviews concentrated upon the areas of Middelburg and Katwijk as well as on the national debate.

Based upon these interviews, a survey was developed and released on <www.gelijkheidsonderzoek.nl> in August and September 2009. The survey featured closed, multiple-choice and open questions and was announced in the main newspapers read within the communities concerned: *Het Reformatorisch Dagblad* and *Het Nederlands Dagblad*. This resulted in 5,898 valid responses, which were reduced to those respondents who actually voted for the SGP (N = 5281), and analyzed in SPSS. This sample was generally found to be representative for the population of SGP voters, after checking for age, gender and geographical spread, which was mainly in the Bible Belt. The sample was spread across reformed denominations, although the *Gereformeerde Gemeente*, the largest and most prominent group, was slightly overrepresented. It has to be noted that men were also overrepresented (58.1%), although the results were often not significantly different between men and women ($\alpha = 0.01$), unless stated otherwise. Finally, SGP members were considerably overrepresented, and potential differences will be discussed further on.

This article will start by offering some theoretical points of departure on the politics and the sociology of rights in the context of cultural and religious diversity, and the caveats to be made in looking into the social effects of rights litigation. The next section will briefly introduce the orthodox Protestant women in the Netherlands. Subsequently, this article will trace the genesis of the SGP cases, the subsequent – often contrary – court decisions on the matter, and map out the role of civil society in taking the issue of women's participation to court. Turning back to the orthodox Protestant community, the perceptions of the cases will be discussed, as well as their effects. All this forms the basis for a number of observations on the merits of this particular form of 'rights talk' as a mechanism to bring about social change in a context of religious diversity.

4 Interview, 's-Gravenpolder, 22 July 2009.

5 Cf. <<http://www.zijmaakthetverschil.nu/>>, last accessed on 26 April 2010, when 23,181 people had signed the petition.

2. 'Rights talk' and religious diversity

The cases to be discussed can be considered as an example of 'rights talk' because they are primarily based upon an international human rights treaty, and directed towards its enforcement.⁶ They are also understood as geared not only towards halting a state subsidy to the political party concerned, but also towards addressing the unequal treatment of women within the communities concerned in a wider sense. Whilst the sociology of rights, the empirical study of how human rights has come to acquire meaning in a given social context, has burgeoned over the past decade, there has been a relative lack of attention for the social effects of rights talk in code law countries, and for the relationship with religious pluralism.⁷

First, the rise of rights talk. Scholars like Ignatieff and Banakar have pointed out how human rights have become the world's 'first universal ideology', the moral lingua franca of a globalizing world order.⁸ At the same time, socio-legal scholars have pointed at the tense relationship between 'the epistemology of human rights practices and the social ontologies in which they are necessarily embedded'.⁹ This adds to a much older concern about the inability of individualized, casuistic and adversarial 'rights talk' to capture the nuance of policy debates and provide for the weighing of interests at its core.¹⁰

In noting the rise of rights talk, observers have also pointed to the politics involved in the process. For one thing, Risse, Ropp and Sikkink have described the crucial joining of forces by domestic and international NGOs in bringing about a 'human rights spiral' in simultaneously advocating social change from the local and the international plane.¹¹ As Epp has phrased it: 'human rights are not gifts. They are won through concerted collective action arising from both a vibrant civil society and public subsidy'.¹²

Bob has supplemented these insights by pointing at the inherently political nature of the process by which NGOs translate certain domestic concerns into breaches of fundamental rights, thus allowing them to 'tap organizations, personnel, funding and other strategic resources now available at the international level'.¹³ Rights claims and rights law are politics, and which issues make it to the international arena depends on 'a permissive international context in which state interests do not dominate the agenda; focusing events that increase the claim's saliency; credible information about the issue's gravity; low costs in accepting the norm; correspondence between the norm and existing cultural and political concerns; and supportive national policymakers'.¹⁴

6 The legal argument, as will be discussed below, is of course also grounded in national law, like the rights to equal treatment and the freedom of religion and of association as enshrined in the Dutch Constitution (Arts. 1, 6, 8 respectively), the Civil Code and administrative law on subsidies for political parties.

7 A number of overview works on the sociology of rights are M. Goodale, 'Toward a Critical Anthropology of Human Rights', 2006 *Current Anthropology* 47, no. 3; M. Goodale & S. Merry, *The Practice of Human Rights: Tracking Law between the Global and the Local*, 2007; M. Somers & C. Robert, 'Toward a New Sociology of Rights: A Genealogy of "Buried Bodies" of Citizenship and Human Rights', 2008 *Annual Review of Law and Social Science*, no. 4, pp.385-425. A rare book on 'bringing human rights home' including reference to code law countries is: S. Halliday & P. Schmidt, *Human Rights Brought Home: Socio-legal Perspectives on Human Rights in the National Context*, 2004.

8 M. Ignatieff, *Whose Universal Values? The Crisis in Human Rights, Praemium Erasmianum*, 1999, p. 12; R. Banakar (ed.), *Rights in Context: Law and Justice in Late Modern Society*, 2010, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1553101>; C. Smith, 'The Sequestration of Experience: Rights Talk and Moral Thinking in 'Late Modernity'', 2002 *Sociology* 36, no. 1, pp 43-66.

9 M. Goodale & S. Merry, *The Practice of Human Rights: Tracking Law between the Global and the Local*, 2007.

10 A classic in this field is M. Glendon, *Rights Talk: The Impoverishment of Political Discourse*, 1991.

11 T. Risse et al., *The power of human rights: international norms and domestic change*, 1999.

12 C. Epp, *The Rights Revolution*, 1998, p. 197.

13 C. Bob (ed.), *The International Struggle for New Human Rights*, 2009. Cf. C. Bob, 'Globalization and the Social Construction of Human Rights Campaigns', in A. Brysk (ed.), *Globalization and human rights*, 2002, pp. 133-147.

14 Bob 2009, *supra* note 13, quoting J.W. Busby, 'Bono made Jesse Helms Cry: Jubilee 2000, Debt Relief and Moral Action in International Politics', 2007 *International Studies Quarterly* 51, no. 2, pp. 247-275.

If the question as to which social concerns come to be framed as rights violations is contingent upon a wide number of factors, so are the social effects of these processes. Of course, looking into the social effects of any law is a murky business that will never lead to crystal-clear causal statements on the relationship between legislation and social change.¹⁵ Law can serve as an instrument of social change, but the effects are always contingent upon other factors, and are never self-evident. There are direct and indirect effects to be distinguished, as well as outcomes that are desired and unwanted.¹⁶ This is all the more so where it concerns symbolic, or communicative legislation, geared towards changing the most tenacious of social realities: individuals' attitudes towards everyday life.¹⁷

Whilst this applies to all forms of law enforcement, rights realization via the courts theoretically poses its own set of problems. Whilst the political position of the courts in code law countries – with their emphasis on legislative decision-making and judicial reticence – differs from that in the common law countries where the bulk of research on these issues takes place, this research does offer a number of interesting insights. For one thing, a number of studies that can be traced back to Scheingold and Glendon have argued the paucity of individualized, case-based rights talk as a channel through which to advocate social change.¹⁸ Rosenberg's classic study *The hollow hope* questions the ability of courts to bring about political and social change.¹⁹ In refuting existing theories of the 'dynamic court' view that considers courts to be powerful and vigorous proponents of social change, and the 'constrained court' view he offers a more nuanced position, based on thorough empirical research. In order for a court case to achieve social change, he argues, 'there has to be general and popular support for change but also institutional blockage'.²⁰ He also makes an important cautionary observation on *judicial* decisions in controversial issues. These may spark a backlash because 'while legislative amendments are about preferences, judicial decisions are about principle. It is possible to compromise preferences but principles, by definition, can't be compromised'.²¹

Whilst the fields to be discussed here – international human rights law, the national legal and political debate, the orthodox Protestant community, the individuals concerned – can be conceived as 'mutually constitutive orders', the way in which the one constitutes the other is thus highly indeterminate.²² This is potentially all the more so because of the principled nature of the beliefs on the position of women under discussion. In describing the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in various religious and cultural communities worldwide, Merry emphasized the importance of translating human rights 'into the vernacular' – reframing them in concepts close to people within a given context, whether inspired by religion, tradition or else wisdom.²³ Similarly, Mertus describes how the Danish Institute of Human Rights quickly learnt how to refrain from using the term 'human rights' and how to frame claims in more familiar and locally grounded notions like

15 S. Vago, *Law and Society*, 1981; J. Griffiths, *De sociale werking van het recht: een kennismaking met de rechtssociologie en de rechtsantropologie*, 1996.

16 R. Wilson, 'Human Rights, Culture & Context: An Introduction', in R. Wilson (ed.), *Human Rights, Culture & Context: Anthropological Perspectives*, 1997.

17 G. Rosenberg, *The hollow hope: can courts bring about social change?*, 2008; B. van Klink, 'Effectiviteit van gelijkebehandelingswetgeving: van sociale werking naar symboolwerking', in H. Holtmaat (ed.), *De Toekomst van Gelijkheid: De juridische en maatschappelijke inbedding van de gelijkebehandelingsnorm*, 2000, pp. 215-230.

18 S. Scheingold, *The Politics of Rights: Lawyers, Public Policy and Political Change*, 1974; M. Glendon, *Rights Talk: The Impoverishment of Political Discourse*, 1991.

19 Rosenberg, *supra* note 17.

20 *Ibid.*, p. 30.

21 *Ibid.*, p. 426.

22 S. Merry, 'Anthropology, Law, and Transnational Processes', 1992 *Annual Review of Anthropology* 21, p. 372.

23 S. Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*, 2006.

‘diversity’ and ‘equality’.²⁴ In writing about another code law country, Sweden, Banakar demonstrated how the success of similar equal treatment laws largely depended on their relationship with local legal consciousness.²⁵

In sum, theories on rights implementation point both towards the political nature of agenda setting in the field of human rights, and towards the highly indeterminate character of their implementation, particularly if this takes place by means of judicial decision-making. The social effects of rights-based litigation can, as with the implementation of any law, be direct and indirect, wanted and unwanted. One of the factors that can potentially contribute to the desired social effects is the degree to which the right concerned manages to reverberate with local legal consciousness. To gain a better understanding of this legal consciousness, we now turn to the community concerned.

3. Orthodox reformed women in the Netherlands

Before anything else can be said about reformed women, it is important to review what is meant here by ‘reformed’. Dutch Protestantism has a long history of friction and fracture, resulting in a terminology that is exclusively Dutch.²⁶ It does not suffice to categorize ‘reformed’ merely as a sub-section of Calvinism. In the Netherlands, there are more than 15 important reformed denominations. Of these, the reformed Christians referred to in this paper are situated on the orthodox side of the spectrum. The aforementioned fractures within this group often occurred because the position of the majority was considered to be too liberal. At least four individual denominations of orthodox reformed Christians can be pointed out, with their roots in the Synod of Dordt of 1618.²⁷ The SGP, the reformed party whose policies were under scrutiny in the court cases, was formed in 1918 as an explicit protest against the decision of the main reformed party of that time, the ARP, to support universal suffrage, and the ‘stance on women’ has been a marker of the party’s identity ever since.

Of the around 2.5 million reformed Christians in the Netherlands, just under ten percent can be considered to be orthodox reformed.²⁸ This part of the population mainly lives in a distinct Bible Belt, moving from the south-western tip of the Netherlands towards the central east.

In describing the orthodox reformed identity, it should be stated that the essence of what binds this group together can be found in the Bible. For the orthodox reformed, there is no doubt that the Bible holds the absolute truth. The emphasis is on an existential experience of faith.²⁹ Only the 1637 State Translation of the Bible is read – commissioned by the Dordt Synod, following suit with the English King James. Orthodox reformed Christians also draw from the Three Principles of Unity. They attend church twice each Sunday wearing neat and often dark clothing; girls and women wear skirts and hats. Marriage is an especially important part of life. Families are often large and tight-knit, and many of the women fulfil their roles as housewives.

24 J. Mertus, *Human Rights Matters: Local Politics and National Human Rights Institutions*, 2009.

25 R. Banakar, ‘When do Rights Matter? A Case Study of the Right to Equal Treatment in Sweden’, in S. Halliday & P. Schmidt (eds.), *Human Rights Brought Home: Socio-legal Perspectives on Human Rights in the National Context*, 2004.

26 For instance, there is an important distinction between ‘*gereformeerd*’ and ‘*hervormd*’ denominations, both of which literally mean reformed. The research population is called ‘*bevindelijk gereformeerd*’ (pietistically reformed).

27 These are, freely translated: the Old Reformed Church, the Restored Reformed Church, the Reformed Church, and the Reformed Church in the Netherlands. In addition, some *bevindelijken* (those who see faith as an existential experience) are found in the Christian Reformed Church. The newly-founded PKN (a cooperation of Dutch Protestant Churches) contains the largest group of reformed Christians, but only a small percentage thereof are *bevindelijk* (pietistic).

28 A. Knevel, *Allemaal gereformeerden: in gesprek met tien gereformeerde voormannen*, 2009

29 Or ‘*bevinding*’.

By far the majority of this population group vote for the SGP, the oldest Dutch political party still in existence.

A second concept which is necessary in order to understand the position of the orthodox reformed within Dutch society is that of pillarization. This term is used to describe a manner of structuring society in which several ideologies are placed next to, but apart from, each other. In most of 20th century Dutch society, a Protestant, Catholic, Socialist, – and perhaps a liberal – pillar offered the distinct foundation of political life.³⁰ Each pillar had its own schools, newspapers, and trade unions, and combined this with an unwritten political pact to respect these pillarized identities. The 1960s led to large-scale ‘depillarization’, but one could argue that one remnant is left standing: the orthodox reformed which still have their own newspaper, attend reformed schools (which receive a state subsidy in the Netherlands), vote for the SGP, and structure the major part of their social life around these institutions. Reformed schools, which like all other religious schools receive state funding in the Netherlands, play a major role in socialization into the religious life. Apart from the regular curriculum, they convey a world vision based upon the Bible, and prepare pupils for life in a secularized world. As one parent stated: ‘you hope that through the way in which they’re raised and their spiritual education they’ll grow up to be assertive adults, strong enough in their faith to stick to it once confronted with those who hold different beliefs’.

Lastly, orthodox Protestants firmly believe that they are not only citizens of this world, but primarily of the Land of Promise. The former citizenship is temporal, but the latter is not: life on Earth is only a journey to their eternal home. The reformed argue that they are ‘in this world, but not of this world.’³¹ This notion of partial alienation from society creates a distance between the reformed and mainstream society. This framework results in either active or passive engagement with this society: either to preach to it, or to isolate from it.³² Changes in society often dictate which of these scenarios prevails.

One of the main findings in the research concerned the extent to which, in secularizing Dutch society, reformed Christians feel pushed toward isolation. Next to their own understanding of being alien to this world, this group of people often feel discriminated against, marginalized, misunderstood, and restricted in their freedoms.³³ There is a general sense that the debate on Christianity in society at large has become increasingly discriminatory. To this particular group, the Dutch notion of tolerance has become rather one-sided: they feel that they as a group adhere to this principle, and that the majority expect them to do so. At the same time, it is felt that this majority actively infringe upon their freedom; ‘the intolerance of the tolerant’.

Why this sense of isolation? Orthodox Protestants offer several explanations for this, which dovetail with scholarly observations. As a point of departure, secularization did much to change the political and social climate – in a relatively short amount of time.³⁴ The sphere of influence of religion was pushed out of the public and into the private. The societal majority’s complete lack of knowledge of the Bible and of ‘religious empathy’³⁵ widens the gap. Emancipation is another factor.³⁶ Higher standards for education and accompanying expectations create a context in which women are expected to participate politically and on the labour market. Thirdly, there

30 Famously described by A. Lijphart, *Democracy in Plural Societies: A Comparative Exploration*, 1977.

31 Based on, for instance, John 15:19b, James 4:4.

32 Or a combination of both, see: G. van den Brink & E. van Burg, *Strijdbaar of lijdzaam: de positie van christenen in het publieke domein*, 2006, pp. 330-359.

33 W. van de Donk et al., *Geloven in het Publieke Domein: verkenningen van een dubbele transformatie*, 2006.

34 E. Sengers (ed.), *The Dutch and their gods: secularization and the transformation of religion in the Netherlands since 1950*, 2005.

35 The term was coined by Prof. W. van der Burg.

36 C. Janse, *Bewaar het pand: De spanning tussen assimilatie en persistentie bij de emancipatie van de bevindelijk gereformeerden*, 1985.

is the Dutch integration debate, that erupted vehemently after 9/11 and the killing of the film director Theo van Gogh: within a short period of time assimilation replaced multiculturalism as a central feature in citizenship debates.³⁷ This emphasis on the acceptance of ‘core values’ of Dutch society led to increased pressure on, for instance, the more conservative Muslims and the reformed to speak out in favour of homosexuality. Finally, the emphasis on equal treatment legislation should be seen within the context of globalization: it is the universalization of rights talk that strengthens the position of international human rights treaties, treaty-monitoring bodies and NGOs, and that facilitates the cases as described below. Additionally, the fact that the Dutch Government has turned human rights into the cornerstone of foreign policies also explains the pressure to ‘clean up the weak spots’ within Dutch society.

It is against this background that reformed women in the Netherlands nowadays occupy roles and adopt views that strongly differ from mainstream Dutch society. First and foremost, this position is based upon the Biblical notion that men and women might be of equal value, but are not equal.³⁸ Some reformed men and women apply this view to church matters only, limiting the position of church preachers and elders to men. More recently, Protestantism has seen some ‘emancipation’, as Biblical interpretations by certain denominations have allowed them to discontinue this practice, effectively employing female ministers. Where reformed denominations are concerned, interpretations remain more conservative. A distinction is made, however, between married and unmarried women. The latter, who do not have children, are free to pursue a career in the eyes of part of reformed Christianity.³⁹ In short, reformed Christians employ an equivalence principle rather than an equality principle in gender issues.

For reformed men and women alike, life is structured mostly around the nuclear family. Women spend much more time in this private sphere, as they often forego a career in order to take care of the children. Where politics are concerned, the family perspective is no different. Often, women relinquish their active voting rights, but this does not mean that they – in their own perception – are politically inactive. They see it as their husband’s task to cast a vote for the family as a whole. In essence, men are considered to represent their wives. Even so, the role of the woman is considered to be very important. Women stress their role as both a motivator of and counsel to their husbands.⁴⁰ Those women who do vote themselves, do it because they consider it to be their task as much as a man’s task – but only on a biblical basis.⁴¹

Between reformed men and women, women’s roles diverge most strongly from mainstream society. As such, they have to deal with some specific reactions that do not concern men. One of these concerns clothing. As briefly touched upon before, reformed women often dress for church in long skirts and dark colours. Some find it difficult to confront this fact or are even subjected to name calling.⁴² Jobs and staying at home is another example. Some find it more difficult to relate to friends and acquaintances who do have an occupation.⁴³ Here, a trend of increased alienation becomes visible: most women interviewed feel that there is less and less room for Christian beliefs. One of the main reasons for the increased sense of isolation experienced by orthodox reformed women lies in the court cases concerning the SGP stance on women’s suffrage to be discussed below.

37 T. Spijkerboer, *Zeker weten: Inburgering en de fundamente van het nederlandse politieke bestel*, 2007; B. Vermeulen, *Vrijheid, gelijkheid, burgerschap: Over verschuivende fundamente van het Nederlandse minderhedenrecht en – beleid*, 2007.

38 Interview with J. de Jong, assistant to an SGP MP, 15 June 2009.

39 Interview with Th. Klok, secretary of the SGP in Katwijk, 21 July 2009.

40 Interview with the women’s association ‘*Passage*’, 6 July 2009, interview with reformed women.

41 Interview with B. van der Vlies, SGP MP 15 June 2009.

42 Interview with J. de Jong.

43 Interview with reformed women.

4. From rights to realities: the global-local interplay in taking the biblical perspective to court

When the SGP was founded in 1918, it was mainly as a reaction to the fact that the main reformed party, the ARP (the Anti-Revolutionary Party), had decided to support calls for universal suffrage in exchange for guarantees for state support for religious education. As the founding father Kersten wrote about ‘the woman’ in 1922: ‘Her destiny, her vocation, her passion lies at home. These are the women that we honour after God’s word, as the ones to build houses. And we despise the woman who withdraws from her house, and seeks her life outside in the public sphere’.⁴⁴ The SGP turned the strict division of roles between men and women into the cornerstone of its identity, basing this view on, for instance, 1 Corinthians 14:34 ‘Let your women keep silence in the churches: for it is not permitted unto them to speak; but they are commanded to be under obedience as also saith the law’ (King James Bible).

The exact implications of this stance for women’s political participation would be hotly debated within the party throughout the century. On the one hand, there was a discussion between those who were more principled and the pragmatists, who emphasized the need for as many votes as possible in order to attain the party’s theocratic ideals. In addition, many argued that the Bible did speak out against women holding office in the churches, but that it did not explicitly speak about politics.⁴⁵ It was only in 1984 that the party came with an explicit point of view. The report *In Haar waarde* (‘The woman’s worth’)⁴⁶ emphasized the order of Creation as quoted in 1 Peter 3, which states that wives are subject to their husbands. In 1989 the party’s political programme was amended in order to state: ‘The notion of universal suffrage, based upon a revolutionary emancipatory ideal, conflicts with women’s destiny. This obviously applies to women taking a place in political bodies, both representative and managerial. A woman’s conscience will guide her in deciding whether to vote, taking into account the place given to her by the Lord’.

The explication of this stance was a result of pressures from both within and outside. In the early 1980s a handful of women had become members of the electoral districts in The Hague, Schoonhoven and Groningen, much to the dismay of many male party members. In addition, the adoption of an equality clause as Article 1 of the Dutch Constitution (partly as a result of obligations under treaties like CEDAW) and pending equal treatment legislation led to a feeling that there was a need to explicate the party’s position.

The legal status of the party’s position only became potentially problematic with the adoption of CEDAW, a Convention drawn up with active participation by the Netherlands. In this Convention, Article 7 states that:

‘States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- a. to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(...)

44 As quoted by the *Reformatisch Dagblad*, ‘Positie van vrouwen in SGP’, 21 April 2006, <<http://www.refdag.nl/artikel/1257880/Positie+van+vrouwen+in+SGP.html>>.

45 An in-depth study of the debate can be found in H. Post, *In strijd met de roeping der vrouw: De Staatkundig Gereformeerde Partij en het vrouwenkiesrecht*, 2009.

46 SGP, *In Haar Waarde*, 1984.

c. to participate in non-governmental organizations and associations concerned with the public and political life of the country.’

This tension was explicitly discussed in the parliamentary debates on the ratification of CEDAW, which took place a decade after the Convention had been drawn up.⁴⁷ At this point in time the Government indicated that it did not intend to implement Article 7(c) CEDAW *for the time being*.⁴⁸ While the Constitution and international legislation did allow for the possibility of legislative measures outlawing the SGP’s stance, enacting such legislation was neither deemed to be necessary nor expedient. One of the reasons for this position was the clash between the CEDAW provision and various classic fundamental rights, such as the freedom of association and the freedom of religion.⁴⁹ Nevertheless, the Government refused to comply with the SGP’s request to make a reservation to this particular clause. In later discussions the Government upheld this position, adding that ‘the exclusion of women [by the SGP] should not form an impediment to their participation in political and public life’.⁵⁰

In the early nineties the party line was made even more explicit with a statement that ‘members of the party are men’ but that special members could be both men and women.⁵¹ This was formally included in the statutes in 1996 and, paradoxically enough, it formed the legal basis for a number of court cases instigated with increasing legal sophistication. In 1993, when 20 women from Deventer reported discrimination by the SGP to the police, no further action was taken. The same was true for a certain Mrs Franssen who lost an appeal case concerning the party’s refusal to register her as a member on the ground that she did not endorse the party’s foundations. Here, the District Court of The Hague had ruled that whilst the SGP *did* discriminate, it did not do so in a criminal manner.⁵² The same woman was also turned down by the Equal Treatment Commission, founded in 1993, because this particular issue fell outside its jurisdiction.

One woman with a reformed background who played an important role in challenging the party’s position was Mrs Grabijn-Van Putten. In the 1980s, she had threatened to take the party to court if she would not receive voting rights for a party assembly, declaring the party’s position to be unconstitutional. Although she was sent an invitation, it was accompanied by a note from the SGP board with a request to not use it, together with a warning that she would be ‘thrown out by the hotheads of the Veluwe [a rural, conservative region]’. In the end she decided to enter the ‘lion’s den’ and chose for confrontation. Her motivation was the following: ‘I will cancel my membership of the SGP once they can prove that the Bible forbids party membership for women. Any other arguments are irrelevant to me’. Answering the question of why she simply did not opt for another Christian political party, she explained: ‘The SGP has always been in my blood; it is part of my church, and my life. I will not let them take this from me.’⁵³ In 2001 Mrs Grabijn brought her case to the Equal Treatment Commission, which also declared this case to be outside its jurisdiction.

However, by the time Dutch NGOs were ready to take a next step, Mrs Grabijn no longer wanted to be part of the effort: ‘I lost this round, but the SGP will lose the battle. That much is

47 The Government explanation being that it wanted to enact the relevant new legislation first.

48 *Kamerstukken II* (Parliamentary Papers) 1988-1989, 18 950, no. 9, p. 14.

49 Cf. Parliamentary Debates 11 February 1993, and *Kamerstukken I* (Parliamentary Papers) 1990-1991, 18 950, no. 72a, *Goedkeuring van het Verdrag inzake de uitbanning van alle vormen van discriminatie tegen vrouwen* (Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women).

50 Minister Dales, 11 February 1993, as quoted by Post, *supra* note 45, p. 10.

51 Art. 5 Statutes, Post, *supra* note 45, p. 204.

52 Gerechtshof ’s-Gravenhage 13 December 1995, unpublished, quoted in *Reformatorsch Dagblad*, 1 November 1995.

53 M. van Amerongen, ‘Riet Grabijn-van Putten’, 1997 *De Groene Amsterdammer*, no. 29.

clear to me. However, I will acquiesce in the decision. I am tired, and not made out of iron or steel. Others will take over the baton.’ However, finding someone to take over the baton proved to be difficult. The Dutch human rights NGOs which had, by 2001, decided to confront the state with this issue, actively looked for a ‘militant’ reformed woman, amongst other things by means of an advertisement in the Netherlands’ main feminist periodical. One female reformed student responded, but she withdrew after a discussion with Mrs Grabijn and, subsequently, with the SGP leadership.⁵⁴

What had triggered this round of NGO action was the Government’s refusal to implement the recommendations of the CEDAW Committee on this topic. The Committee, prompted by Dutch NGOs,⁵⁵ had noted with concern in its consideration of the 2nd and 3rd State Party report by the Netherlands that ‘there is a political party represented in the Parliament that excludes women from membership, which is a violation of article 7 of the Convention’, and stressed the need for legislation.⁵⁶ The Dutch Government, on the other hand, restated the position it had held since the late 1980s, which was that – whilst the Government did consider it ‘extremely disappointing’ that the SGP barred women from membership – the Government was free to decide on policies to ensure compliance with CEDAW, and that current legislation did meet the obligations under CEDAW.⁵⁷ In arguing its position, it also pointed to the variety of fundamental rights at stake, the Dutch Civil Code that only allows for parties to be declared unlawful and to be dissolved if they engage in systematic, serious disruption of the democratic process, and the possibility of enforcing anti-discrimination legislation in other ways.

The NGOs that lodged a case against the Dutch State were headed by the Clara Wichmann Test Case Fund, but comprised ten of the country’s most notable human and women’s rights organizations. One of their reasons for taking up the case was to obtain clarity on the exact nature of the Dutch State’s obligations under CEDAW.⁵⁸ In the initial tort case, the NGOs demanded – in the interest of all Dutch women – that the State of the Netherlands took action against the SGP.⁵⁹ The court of first instance agreed with the women, giving more weight to Article 7 CEDAW and the principle of non-discrimination than to the freedom of association or the freedom of religion. One of the measures to be taken, the court added, could be to halt the state subsidy to the party. The state did indeed withhold this subsidy in 2005, a fact that instigated the SGP to change its statutes to allow for women’s membership and to remove those parts that withheld the right to membership to men only. Nevertheless, the party retained its position that the right to stand for political office was reserved for men: ‘If we take in all the information in the Bible, we must conclude that it reserves positions in government to men’.⁶⁰

This initial case led to two appeal cases with vastly different outcomes. The SGP lodged an administrative appeal against the withholding of the state subsidy with the Council of State (*Raad van State*), which, in 2007, ruled in favour of the party.⁶¹ In weighing the fundamental rights at stake, the administrative court argued that the right to political participation, even by a

54 ‘Instituut vordert niet met proces tegen SGP’ (Institute makes no progress in the case against the SGP), *Reformatorisch Dagblad*, 8 November 2002.

55 For instance, NCJM, *Commentary on the second and third periodic report of the Netherlands on the implementation of the convention on the elimination of all forms of discrimination against women*, 2006.

56 CEDAW/C/2001/II/Add.7, 219.

57 CEDAW/C/NLD/4, Consideration of reports submitted by States Parties under article 18 of the Convention on Elimination of All Forms of Discrimination against Women, Fourth Periodic Report of States Parties, 10 February 2005, p. 49.

58 R. Janse & J. Tigchelaar, ‘Het vrouwenrechtcomité: niet bekend en niet geacht?’, in W. van Rossum et al. (eds.), *Rechtspraak van buiten: Negenendertig door de rechtssociologie geïnspireerde annotaties*, 2010.

59 Rechtbank ’s-Gravenhage, 7 September 2005, NJ 2005/474.

60 SGP, *Man en vrouw Schiep Hij hen*, 2009.

61 Afdeling Bestuursrechtspraak van de Raad van State 5 december 2007, LJN BB9493, 200609224/1.

party which holds beliefs that strongly diverge from majority standpoints, is more important than the violation of the principle of non-discrimination. The subsidy decision was therefore overturned. In the same month the Appeal Division of the Civil Court ruled that the Dutch State should take measures against the SGP. In allowing the SGP to continue its discriminatory practices, the court stated, the state had committed a wrong against the women represented by the NGOs. The Civil Court also clearly saw tension between different rights, but argued that – in this case – the right to equality had been violated in its essence, and the freedom of religion only in one of its outer shells.⁶²

Amongst other things, the Appeal Division of the Civil Court explicitly addressed the issue of representation, holding that:

‘It is not relevant that, as the State contends, this procedure takes place “against the wishes of the women primarily concerned by it”. First, it is unclear on what premise the State bases this information and which women it has in mind. The mere fact that the Clara Wichmann Foundation, among others, have not been able to find an SGP woman prepared to side with them in this procedure does not mean that all SGP women are against this procedure or the result that the Clara Wichmann Foundation, among others, seek to obtain. Second, the SGP admits that its position on women has been subject to discussion within the party for many years and that there are women amongst its adherents who do not agree with its position’.⁶³

After the first case, the party leader in Parliament, Van der Vlies, stated that: ‘The women in our party consider this verdict to be threatening. We feel pushed aside. That’s a position to get used to. We have profound beliefs, and want to participate in this society as full and responsible citizens. And now there is the message: your beliefs don’t fit’.⁶⁴

Whilst the administrative and the civil appeals had yielded vastly differing outcomes, the Supreme Court followed the line taken by the Appeal Division of the Civil Court.⁶⁵ It spoke out on the *ius standi* of the NGOs concerned, ruling that the NGOs – in seeking to obtain more general equal treatment for women in the Netherlands – did have a right of standing. It underscored the direct application of Article 7(c) CEDAW in relation to the provision granting citizens passive voting rights in Article 4 of the Dutch Constitution. This meant that, the court ruled, the state should take effective measures in order to ensure that the SGP would grant passive voting rights to women, provided that these measures would infringe as little as possible upon the fundamental rights of the SGP.

While the case was considered to be a great victory for human rights NGOs, particularly because of the general ruling on the applicability of human rights treaties, it was met with dismay by the SGP.⁶⁶ Party leader Van der Vlies indicated that he was ‘deeply disturbed’ by the ruling, and had received many messages from SGP women who were ‘angered’ and ‘concerned’ by it.⁶⁷ The following section will discuss, on the basis of an inquiry into the social effects of the earlier

62 Gerechtshof ’s-Gravenhage, 20 December 2007, *NJ* 2008/133.

63 *Ibid.*, 3.4.

64 ‘Onze vrouwen voelen zich erkend’ (Our women feel recognized), *Trouw*, 10 September 2005.

65 Hoge Raad 9 April 2010, LJN BK4549.

66 This was also the sentiment expressed in editorial opinions published by the main secular newspapers, the *NRC* and *Volkskrant*, in which a number of opinion leaders spoke out against the heightened emphasis on equal treatment in relation to other fundamental rights, and the consequences for the pluriformity of the political landscape.

67 ANP, ‘SGP “diep geraakt” door vonnis Hoge Raad’, *NRC Handelsblad*, 9 april 2010.

court cases in 2009, the degree to which this was indeed a widely held sentiment and what this meant for the effects of the court cases concerned.

5. A view from within: orthodox reformed women's perspectives on the cases

In discussing how orthodox reformed women perceive the increased emphasis on equal treatment legislation, in this case specifically regarding the right to perform public functions, the first question to be answered concerns their direct opinion on this issue. In the sample, 37% of the reformed women indicated that they were in favour of women occupying political positions whereas 63% opposed this, often adding something to the effect that 'there is a distinction between married and unmarried women. A married woman's place is with her family'. Amongst women whose husbands are SGP members, only 30% were in favour and 70% were against, with the women making statements like: 'My husband is a member and he represents us. I must say that I am actually the one who is most involved: he often asks my opinion before a meeting and follows it as well'. Earlier research by the SGP youth organization indicated that young orthodox Protestants generally differ from this opinion, as 70% were in favour of having female Members of Parliament on behalf of the party.⁶⁸ Here, women are active members and can even sit on the board of the SGP youth organization.

Opinions thus differ. 'There is much outside pressure on this topic, but I, as an average "SGP woman", do not perceive that this policy restrains women', one woman stated. Another disagreed: 'In my opinion, women should be able to hold political office within the SGP. Times change, and if we want to survive as a Christian orthodox party we should adapt.' One couple in Arnemuiden stated: 'Not everyone in the church has the same ideas on this subject. (...). They should have never made any explicit rules, and now the fanatics enter the fray. They cook and distil, cook and distil until something very concentrated is left'.⁶⁹ The different viewpoints are often based upon different readings of the Bible: 'In my opinion, the fact that women should be silent only refers to positions within the church, not in politics'. At times, this leads orthodox Protestant women to vote for a different party: 8% of the church-going women in the strongly Reformed Church (*Gereformeerde Gemeente*), the SGP bulwark, vote for the Christian Union Party (*Christen Unie, CU*), out of which the vast majority state that they are in favour of women occupying political positions.

At the institutional level, there are often regional differences concerning this issue, even between electoral commissions within one municipality, as was the case for Arnemuiden and Middelburg in 2006. In Katwijk party members were generally more liberal, as was stated by an alderman from the traditional fishing town: 'We really have a people's church with a more open mindset. After all, women have been in charge here all along, as all the men were out at sea'.⁷⁰

Interestingly enough, the issue is vehemently debated, but is not considered to be of fundamental importance. One woman in the survey stated: 'The position on women's political rights is not a hot issue at all. Although I doubt this position, I still support the SGP completely'. In all the responses, this characterization as a 'mediocre matter' is striking.⁷¹ Party chairman Kolijn added: 'This is an fundamental issue since it is based on the order of creation, but the Bible is not completely clear on this, and that is why it is best to leave it to people's conscience.

68 'SGP-jeugd niet altijd eens met de partijlijn', *Reformatisch Dagblad*, 9 May 2003.

69 Interview with an ordinary couple in Arnemuiden, July 7 2009.

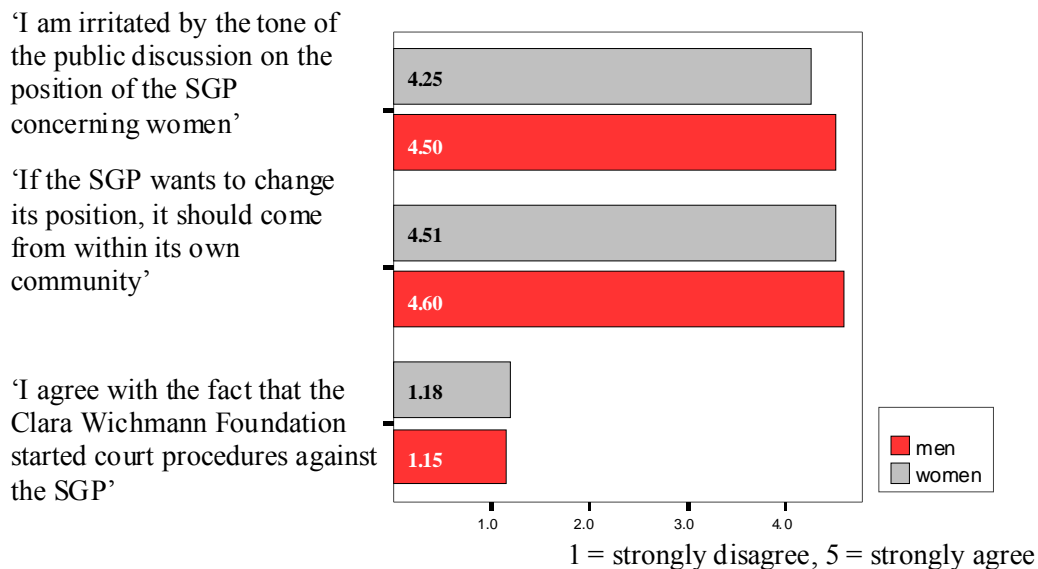
70 Interview with W. van Duijn, an SGP alderman in Katwijk, 6 July 2009.

71 Citation from *Spraakmakende Zaken*, IKON, 22 August 2006, as quoted by Post, *supra* note 45, p. 243.

Although it is an essential issue for our party and can only be changed with a two-thirds majority, it is not one of our foundational principles'. He quoted Calvin, who wrote on this matter: 'In the meantime the faithful reader should note that these are mediocre things'.⁷²

Nevertheless, the discussion on political participation by women is being followed with a great deal of interest by both men and women in the communities concerned. Of the respondents, for instance, 71% had discussed this topic with their family. One very clear result of the survey is that women are irritated by the tone of the discussion:

Reaction to statements concerning women's political participation



One element that stands out in the responses is the contempt for the Clara Wichmann Foundation and the other NGOs involved. Why these women interfere with the reformed community is generally not understood: 'I regret that outsiders who do not vote for our party start interfering with things that are actually not an issue at all for insiders. The reason I vote for a party is that I mostly agree with its convictions'. Women generally feel attacked, and see this issue as an internal matter that needs time. 'A hatching chick should not be disturbed'.⁷³ Many women are frustrated as they feel that they are being portrayed as pitiable women who cannot stand up for themselves: 'SGP women are very happy with their role in society, nobody should pity us for any reason: I love being there for my children all day', and 'Why do people get so worked up about this issue? One can vote for another party, if one does not agree with this position, is that not so? Don't we have the freedom of choice and opinion?' Many respondents indicated that they feel that they are being unjustly attacked. During a group discussion, one woman stated: 'Why do those people who start a case make this into such an issue? I wonder what their motives are, sympathy or antipathy, but I have the feeling that they consider us as enemies'. Her neighbour added: 'It seems as though they want to get rid of us and think that we will perish eventually anyway.'

⁷² Interview with the SGP chairman W. Kolijn, 20 July 2009.

⁷³ Interview with Th. Klok.

One question raised by the intellectuals within this particular community is why certain CEDAW concerns, for instance concerning euthanasia, hardly receive any attention within the domestic context, whilst the recommendations concerning the SGP made it to the front pages of the newspapers and formed the basis for the court cases. ‘At times I feel as though we are a blemish to be removed to set the country’s human rights record straight’, stated the MP Van der Vlies. The *Reformatorisch Dagblad* explained to its readers: ‘It becomes apparent here that it’s mostly progressive people who have an interest in human rights, generally to demand equal treatment for a minority group’.⁷⁴

Next to the attitudes concerning women’s political participation and the tone of the debate, it is important to look into the social effects of the court cases within the communities concerned. An important caveat which must be made, when answering this question, is that it is obviously very difficult to identify separate effects in a broad context of emancipation and secularization and that many of the effects of these cases will only come to light over a long period of time anyway. However, a number of developments can be directly related to the court cases. Firstly, after the first court decision in 2005, the Dutch Government stopped subsidizing the SGP. This led, amongst other things, to the opening up of party membership for women. So far, only 158 women have made use of this possibility, 0.6% of all members.⁷⁵ Party chairman Koliijn explains why so few women have joined the party: ‘After we opened the possibility for women to join the party, a small number of young women joined. The majority of women voting SGP share the common opinion [that women should not be politically active, ed.] when interpreting the scriptures’⁷⁶. One woman who did consider joining justified her choice as follows: ‘When my husband passed away recently I suddenly stopped receiving the bills for party fees. I really regretted that, as I do support the party, and also want to contribute financially.’⁷⁷

A second effect was that the cases did lead to more intensive discussions on the topic. One observer noted: ‘the effect has been that we started thinking more about what our position is based on: the Bible, tradition or culture.’⁷⁸ Party leader Van der Vlies offers the following analysis: ‘Because of the halting of funding, this process has been accelerated, since it is crucial to come to a conclusion quickly. Court cases and verdicts intensified this, but worked counterproductively as well. The discussion became less considered.’⁷⁹

A third effect lies in a shift in individual opinions on this matter, as illustrated in the following tables.

74 ‘VN Comité doet geen bindende uitspraken over SGP’ (UN Committee will not deliver a binding ruling on the SGP), *Reformatorisch Dagblad*, 28 October 2008.

75 G. Vroegindeweij, ‘SGP heeft 0.6% vrouwen als lid’, *Reformatorisch Dagblad*, 20 June 2009.

76 Interview with W. Koliijn.

77 Interview in ’s-Gravenpolder, 22 July 2009.

78 Interview with K. Hamelink, CU party, municipal council of Middelburg, 14 July 2009.

79 Interview with B. van der Vlies.

Has your position on political participation by women changed in the last five years?		Count	Percentage
Yes, women should occupy more political positions		194	10.7%
Yes, women occupy less political positions		116	6.4%
No, I always felt that women should occupy political positions		633	35.0%
No, I always felt that women should not occupy political positions		868	47.9%

If your position has changed over the past five years, what was the main reason for this?	Women should occupy more political positions		Women should occupy less political positions	
	Number	Percentage	Number	Percentage
The public discussion	187	61.7%	116	38.3%
The Christian newspapers	241	77.0%	72	23.0%
The court cases	6	6.3%	90	93.8%
The discussion in the church	188	75.2%	62	24.8%
Discussion with my peers	320	70.2%	136	29.8%
Other reasons	52	51.5%	49	48.5%

The tables show how those women who took a more liberal stance, nearly 11% of respondents, attributed this to a discussion with their peers, and to information from Christian newspapers, and to a lesser extent to the public discussion. Biblical arguments appear to play a crucial role here, as voiced by a teacher from the Wartburg reformed high school: ‘Women in important positions in the Old Testament, Mirjam, Hulda, Queen Esther and Deborah were never held back.’⁸⁰ Different practices in sister communities in the United States were also seen as a valid argument for change. Leading arguments in these discussions are questions concerning whether or not the position towards political activity by women is a cultural or a biblical phenomenon. The fact that discussions that take place close to the people concerned and that are based upon religious and cultural arguments are perceived to have led to the most important changes in attitude seems to tie in with the anxiety towards the external influence mentioned above.

Court cases, on the contrary, seem to have led – in the eyes of the respondents – to adverse effects. Of the women who changed their opinion because of the court cases, 94% actually

80 See: ‘SGP-jongeren: meer ruimte voor vrouw’, *Reformatisch Dagblad*, 18 November 2005.

became more conservative. For these people, who first agreed with political participation by women, the court cases formed a trigger to change their views out of frustration with these ‘external’ attacks. One politician explained: ‘some people become obstinate because of the court cases, and that hinders progress: it creates a backlash’.

This rigidification of the discussion was also apparent in the media analysis. In the period 2004-2008, articles and letters to the editor became increasingly focused on defending one’s own biblically-inspired perspective. Whereas in 2004 the article had an average score of 2 on a scale from -3 (resist) to 3 (open to adaptation), this had shifted to -2 in 2008. One letter to the editor clearly explains the fear of losing one’s ideology: ‘It is necessary to be consistent and clear. It is wrong to be forced into adaptation by the hot breath of the changing times and deliver ourselves into situational ethics. A small hole in the dam will lead to a total breakthrough.’⁸¹ Of course, it could well be that the direct unwanted effects of the court cases measure up – from an NGO perspective – to the degree to which these cases did catalyze debates within the communities that will, in the long run, lead to a change in perceptions and practice.

There is, however, another undesired indirect effect to take into account: the increased sense of alienation described above is often directly attributed, by many respondents, to the court cases concerned. ‘I don’t understand why we have to be picked out. And then all day the radio blurts out every hour how backward we are; we have always been decent hardworking citizens who helped found the Netherlands – why should we be discriminated against in such a manner?’ As party leader Van der Vlies stated: ‘The ultimate question obliquely put to society is whether, within our pluriform society, there will still be room for a minority with “strange” opinions. Our vision of the relationship between men and women, on homosexuality: there is enough room for conflict. But the very essence is whether in these times, in which the principle of non-discrimination rules, there is still room for those who attribute ultimate authority to the Scriptures and who wish to stand by a classic, authentic reading thereof.’⁸²

6. Conclusion

The guiding question in this article was how the discussion concerning political participation by orthodox Protestant women in the Netherlands came to be ‘framed’ as a violation of human rights, and how this affected the communities, and more particularly the women, who are most concerned.

The SGP stance on political participation by women was the reason for the party’s formation, and has been vehemently debated – by insiders and outsiders – ever since. It formed the reason why the party asked the Dutch Government to make a reservation when becoming a party to CEDAW, and whilst the Government refused to comply, it did assure the party that it would not take measures ‘for the time being’. It was only in the 1980s, when a number of women became members of local party districts, that the theoretical issue of reformed women seeking enhanced political participation became acute, and forced the party to explicate its discriminatory stance within its statutes.

Ever since the 1990s, human rights NGOs in the Netherlands have advocated against the SGP stance. Once a number of ‘horizontal’ allegations of discrimination had legally failed, the NGOs turned towards the obligations held by the State of the Netherlands as a party to CEDAW. Here, they were helped by a number of CEDAW recommendations pointing to the state’s

81 *Reformatisch Dagblad*, 13 September 2005.

82 B. van der Vlies, *Vernieuwde Kracht: partijrede*, 25 March 2006.

responsibility under Article 7(c) CEDAW in this matter. In a series of court cases, instigated in 2006 and ruled upon at the highest instance in 2010, the NGOs framed the practices of the SGP as a violation of the right to non-discrimination of all Dutch women.

In essence, the cases concerned four issues: the *ius standi* of the human rights NGOs, the relationship between the fundamental rights and freedoms at stake (the right to equal treatment vs the freedoms of association and religion), the direct applicability of CEDAW and the relationship between the judiciary and the executive in its implementation. In April 2010, the Supreme Court ruled that the NGOs did have standing, that the principle of non-discrimination had been violated here, and that the Dutch State had a legal obligation to come up with effective measures to force the SGP to change its policies.

As such, the case provides an illustration – and to some extent a critique – of some of the recurrent themes in human rights sociology these days: the rise of rights as a moral lingua franca in which complex societal and moral questions are framed, the role of NGOs in mobilizing specific rights within a domestic context and the globalized character of rights implementation – in which NGOs and treaty-monitoring bodies closely work together in rights mobilization.

All this poses questions in terms of the social effects of this invocation of rights as ‘politics by other means’, by outside organizations, within the context of the courtroom. Whilst assessing the social effects of the law is very difficult, and calls for a more longitudinal approach than the research at hand, a number of effects could be attributed – at least partly – to the court cases. On the one hand, there was the opening up of party membership to women, and the intensification of the discussions on the issue. In terms of undesired social effects, 6% of the reformed respondents had become more conservative since the court cases and they directly attributed this to the court cases. In addition, the cases fed into, and strengthened, a general sense of isolation and alienation within the communities concerned.

In advising the Supreme Court on the course of action in the SGP cases, the Attorney General added the rare personal note quoted at the beginning of this article: ‘The more I look at this case, the more I am disconcerted by the fact that the debate between the parties has taken on such a dichotomous (black/white) character, as if there are no other solutions than those in which the state either remains wholly passive, or forces the SGP to immediately open its list of candidates to women.’⁸³ The debate, the Attorney General held, had moved too far away from the main aim of the court cases – putting an end to discrimination against women in political and public life in the Netherlands. Why had the state not opted for a plan of action? The court might conclude that the state had not complied with its treaty obligations, but could not prescribe what course of action the state should take, the Attorney General mused. Behind his words there seemed to be a sense of regret that this case had made it to the courts at all. One reason might have been that the cases had not been initiated from within the community, but by relative outsiders. Of course, the way in which ‘rights talk’ enters the scene impacts upon its outcomes: human rights can be raised by a given community to add legitimacy and force to claims against the state and demands for policy measures. On the contrary, they can also enter the stage via the courts, brought in by actors who come from outside the community. The lessons within this case relate back to the volume’s general theme, and show how the way in which rights talk enters the scene, the actors involved and their legitimacy within the group under discussion is of crucial importance. This is all the more so where the cases do not concern mere preferences, but touch upon deeply held principles.

83 Hoge Raad 27 November 2009, LJN BK4547, CPG 08/01354, 5.17.