

## **Summary**

# **An exploratory study on exclusion of former members by religious communities**



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## **Publisher**

Open Universiteit  
Faculteit Rechtswetenschappen  
PO Box 2960  
6401 DL Heerlen  
The Netherlands

## **Date**

October 2023

## **Commissioned by**

Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC)  
Project number 3380

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## Summary

This report constitutes the outcome of a legal and socio-scientific study into the exclusion of former members by religious communities. The report presents the results of a desk study, an empirical study (interviews) and a thematic legal comparison. In general, two aspects are examined in the report: a social science aspect – an analysis of the phenomenon of exclusion by religious communities, and a legal aspect – an exploration of (foreign) measures to prevent or otherwise deal with exclusion. An important goal of the report was to provide insight into exclusion policies of religious communities in general, rather than focusing on specific religious communities. To achieve the objectives of the research, two main questions were formulated, focusing on the forms and measures related to exclusion. The primary questions are as follows:

### **Forms of social exclusion**

*Does social exclusion of former members of religious communities exist? If so, what forms of exclusion exist, and how are they formalised and implemented in practice?*

*What are the consequences of exclusion for both those who exclude and those who are excluded? What needs for support exist from both groups?*

### **Measures against exclusion**

*What (legal) possibilities exist in the Netherlands to deal with exclusion or to prevent exclusion? What measures are taken in other countries to deal with the exclusion of former members or to prevent exclusion?*

These main questions have been elaborated into nine sub-questions, focusing on socio-scientific and legal aspects.

### **Socio-scientific aspects of the research**

Based on the desk study, it has been revealed that social exclusion is a prevalent societal phenomenon. It manifests itself in various facets of societal life and can also occur within religious communities. The interviews with respondents who report experiencing exclusion (perceived exclusion) confirm this perception. The interviews with representatives of religious communities result in a different insight. According to these respondents, formal exclusion is not an issue in their community, but it may have played a role in the past. They also point to other religious communities and provide examples of individuals choosing to leave the community after having perceived an incongruity between their views and those of the community.



Both the desk study and the interviews with respondents who experienced exclusion indicate that exclusion can be gradual. Exclusion does not always occur abruptly but can also take shape in phases. In this research, the grounds for exclusion are differentiated into religious and social grounds. Religious grounds for exclusion include, among other things, declaring that one is no longer religious, experiencing problems with religious rules in the community, and having (unauthorised) contact with people outside the community who hold different religious views. Social grounds can include, inter alia, the disapproval of social behaviour related to sexuality and relationships, such as entering into a relationship with a partner who does not belong to the religious community and is unwilling to become a member, or expressing a non-accepted sexual identity. Views on relationships and sexuality are also influenced by religious beliefs. In the interviews with respondents who experienced exclusion, no other religious or social grounds for exclusion were found apart from what can be inferred from the desk study.

The consequences of exclusion for both the excluded individual and the one carrying out the exclusion have also been examined. Those who are excluded may experience effects on a religious level, manifesting, for instance, in concerns about the afterlife and being prohibited from participating in significant rituals. In addition, consequences may manifest themselves in the area of physical and mental well-being. Social isolation may occur through the loss of contacts, which may cause financial consequences, such as the loss of one's work and/or network. During the exclusion process, excluded individuals question whether they want to remain in their community. In addition, the need may arise to join a new community. In the interviews with respondents who experienced exclusion, no other consequences were mentioned than those on a religious and social level that emerged from the desk research. In addition, the interviews revealed that at the beginning of the exclusion process, there may be a need for support: excluded individuals need a sounding board to organise their thoughts and to express doubts and questions.

Gradations can also be made in the consequences of exclusion: several respondents had reestablished their lives at the time of the interview, while others felt completely disoriented and encountered difficulties in various societal domains, including, among others, employment, financial situation, and social network. Relatively little literature can be found regarding the impact on the community that excludes. In any case, a process of exclusion highlights the value of the community's framework of norms. On the other hand, excluding an individual can take a lot of energy. Interviews with representatives of communities did not reveal any additional information on this topic, it was indicated that exclusion (currently) does not occur in one's circle.

The desk study and interviews considered the specific support needs of the excluded and communities that exclude. Even though little attention has been paid in the literature to the specific support needs of both groups, it appears that for excluded individuals, these are strongly related to the consequences of exclusion. This should

include help with physical and emotional well-being, as well as support with questions about religion. In addition, there may be a need for financial and legal help to cope with the consequences of exclusion – for example, job loss or divorce. There may, furthermore, be a need for support to shape the new social life and cope with the exclusion process. This is confirmed by the interviews with respondents who have experienced exclusion. In the interviews with representatives of communities, no additional information about any need for support emerged.

## Legal aspects of the research

### *Fundamental rights perspective*

For the fundamental rights perspective regarding exclusion by religious communities, several fundamental rights have been analysed, namely the freedom of religion and belief, the freedom of association, the right to respect for private and family life, and freedom of expression.

The freedom of religion and belief is enshrined in Article 6 of the Dutch Constitution and Article 9 of the European Convention on Human Rights (ECHR). The autonomous existence of religious communities is indispensable for pluralism in a democratic society and is a core element of freedom of religion and belief. The state must respect the right to autonomy of religious communities. Freedom of religion and belief, as defined in Article 9 ECHR, protects the freedom to have, profess and change religion or belief and can be exercised either alone or in community with others. The *forum internum* is inviolable and prohibits coercive actions aimed at changing the individual's religious beliefs. Religious communities are independent bearers of freedom of religion and belief; accordingly, they have collective religious freedom. The *forum externum*, the practice of freedom of religion and belief, is subject to legally defined grounds for restriction.

The legal system concerning the organisational freedom of religious communities distinguishes between three legal entities: a church, an association and a foundation. Article 2:2, second paragraph of the Dutch Civil Code, includes the legal-organisational framework on the internal organisation of religious communities. A church is the most common form of legal entity for religious communities and offers a greater degree of organisational freedom compared to the association and the foundation. The term 'church' is not exclusively used in reference to the Catholic Church, and also applies to other religious communities. Religious communities have freedom of organisation and are governed by their own statute. This 'own statute' includes the principle of self-regulation and self-governance and must give way in case of a conflict with the public order as defined in Article 2:20 of the Dutch Civil Code. In addition, the Dutch Equal Treatment Act does not apply to religious communities as set out in Article 3 of this Act.



The right of religious choice is an individual right: it cannot be exercised by others. The individual has the right to have a religious preference, and each individual has the right to act accordingly and, among other things, to join or establish a religious community. The collective religious freedom may not extend beyond the limits of the individual religious freedom. After all, freedom of religion includes the right to change and leave one's religion and the right to dissent. However, Article 9 ECHR does not guarantee the right to dissent within the religious community of which the individual is a member: religious communities do not have to tolerate 'internal pluralism'.

Religious communities are autonomous in determining their internal organisation and legal structure and may specify it in accordance with their religious beliefs. This means the state may not oblige a religious community to admit new members or exclude members. Religious communities may determine such matters at their own discretion. However, in the context of religious membership, the rights of the individual and those of the community are relevant and intertwined. In case of a conflict between the collective and the individual, the individual right of choice to leave one's religion precedes.

The right to freedom of association is enshrined in Article 8 of the Dutch Constitution and Article 11 of the ECHR. Religious communities have the same rights under freedom of association, as provided for in Article 11 ECHR, as other organisations. A religious community has both collective religious freedom (organisational autonomy under Article 9 ECHR) and freedom of association. Without a legal basis, the government is not allowed to interfere in the functioning of a religious community.

A religious community has the freedom to determine the criteria for inclusion and exclusion. At the same time, this freedom is not unlimited: it should not interfere with the individual's freedom to leave the community. The individual's right to change religion is supported by the negative freedom of association, especially the right to withdraw from membership in a community and the right not to belong to a religious community. This also applies to membership in religious communities whose (religious) doctrine regards membership unredeemable.

The right to respect for private life is enshrined in Article 10 of the Dutch Constitution and Article 8 of the ECHR. There are common grounds between the right to respect for private/family life (Article 8 ECHR) and the right to religious freedom (Article 9 ECHR; see above). The Dutch Constitution does not define 'privacy'; it is a normatively open provision. Privacy has many manifestations, which entails that the nature and degree of protection varies. The European Court of Human Rights in Strasbourg (ECtHR) does not provide an exhaustive definition of the concept of private life. The fundamental right to protection of family life constitutes a specification of the right to private life.

Religious conduct that results in conflict or alienation in the family or social context is protected as long as it results from a free and independent decision of the believer. The ECtHR assumes that alienation or conflict is in such a case not attributable to the religion but rather to the believer. In weighing the right to respect for private or family life as set out in Article 8 of the ECHR against Article 9 of the ECHR, the ECtHR has determined that the state must safeguard both rights. A balancing of interests is essential in this regard.

A family life exists in the relationships between parents and minor children and between partners (e.g. spouses). Therefore, they can initiate matters that may infringe on respect for family life within the meaning of Article 8 ECHR. It is generally assumed that there is no family life between parents and adult children and between siblings. Therefore, they cannot invoke respect for family life (Article 8 ECHR).

According to Article 8 ECHR, the state may be required to take measures to protect the rights provided in this provision, including in the sphere of relations between individuals. The ECtHR determines whether there is a positive obligation on the part of the state. As far as can be ascertained, the ECtHR has not pronounced positive obligations in the relationship between parents and minor children and in the relationship between spouses.

The right to freedom of expression is enshrined in Article 7 of the Dutch Constitution and Article 10 of the ECHR. The ECtHR states that religious communities cannot reasonably expect to be immune from all criticism. They must tolerate and accept the denial by others of their religious beliefs and the dissemination by others of doctrines hostile to their belief.

The extent of the freedom of expression in relation to the freedom of religion is to some degree left to the discretion of national authorities: there is no uniform European perspective of morality and religion. The ECtHR offers member states a wide margin of appreciation regarding religious criticism. In the Netherlands, it is not permitted to make insulting remarks about a group of people because of their religion. Making insulting remarks about a religion is allowed, even if this is done in such a way that the followers of that religion are offended in their religious feelings.

#### *Criminal law perspective*

Regarding the criminal law perspective on exclusion by religious communities, an examination was conducted to determine whether, under current legal standards, exclusion is criminally regulated, i.e., whether exclusion falls within the scope of existing criminal offences.

Criminal regulation necessitates a delineation of what is understood by exclusion, and currently, there is no legal definition of exclusion (by religious communities). Moreover, existing criminal legislation does not criminalise the phenomenon of exclusion as such. Nevertheless, an investigation was conducted to ascertain whether



existing law regulates social phenomena that share similarities with exclusion in certain aspects. Such similarities were found in several legal interests protected by criminal law, namely: non-discrimination, personal freedom, physical integrity, and public order.

It was also considered whether there are known situations from socio-scientific research or case law in which exclusion was accompanied by conduct that has been regulated as such under criminal law. This question was affirmatively answered concerning exclusion based on discriminatory grounds, with a coercive aspect, causing harm, or accompanied by incitement. Subsequently, the relevant criminal offenses in this context were identified.

Finally, the conditions for punishability imposed by the relevant criminal offences and how those offences relate to the phenomenon of exclusion were examined. These are the offences in Articles 429quater (occupational discrimination), 284 (coercion), 300 (assault), 131 (incitement), and Articles 137c, 137d and 137e (discriminatory expression offences) of the Dutch Penal Code.

#### *Civil law perspective*

From the civil law perspective concerning the exclusion by religious communities, the extent to which the tort action under Article 6:162 of the Dutch Civil Code is relevant has been examined. If a denomination as a legal entity is successfully sued in civil law based on a tort action, this may lead to an obligation to pay damages. For internal acts, freedom of religion guarantees a certain form of organisational autonomy as provided for in Article 2:2, paragraph 2, of the Dutch Civil Code.

#### *Administrative law perspective*

From the administrative law perspective, the extent to which local governments may maintain contact with religious communities, and under what conditions subsidies may be provided to these communities, was examined. A municipality's contact with a religious organisation should not lead to substantive interference with a religion, the way a religion is practised, or with internal religious matters. Contact with a religious organisation is only allowed for non-religious-based government goals and should not result in an unequal treatment of religious organisations.

In general, a municipally funded activity has a public character, meets certain quality standards, and serves a public/social purpose. This does not include a purpose that is exclusively aimed at religious education.

#### *Thematic legal comparison*

The thematic legal comparison examined the main features of the measures taken to deal with the phenomenon of exclusion of former members by religious communities in Belgium, the United Kingdom, France, Norway and Switzerland. The study of these countries is structured, based on the following subtopics: the relationship between church and state, the subsidisation of religious communities,



regulations, the case law, the provision of support, and, in the case of some countries, where relevant, the subtopic of interreligious dialogue. The thematic legal comparison complements the previous desk and empirical studies.

In Belgium, no specific legislation exists regarding the exclusion of individuals by religious communities. However, there are (general) criminal provisions that may be relevant if particular exclusionary behaviour is accompanied by criminal conduct. Belgium has (criminal) legislation that seeks to protect individuals from inclusion by sectarian communities. The collective religious freedom of a religious community insofar as it concerns exclusionary acts (in this case, the practice of shunning) is emphasised by the Ghent Court of Appeal, which overruled a first-instance judgment. According to the Ghent Court of Appeal, a derogation in light of Article 8 ECHR is possible. This amounts to a positive obligation on the state (Belgium) to take measures to ensure family life between relatives by blood and spouses. The Court does not further explain this consideration. Belgian jurisprudence on the practice of shunning is limited, and the Court of Cassation has not yet considered the case. The government has organised no specific support for former members of religious communities. At the request of the Flemish government, recommendations and advice on ideal and preventive support for individuals who have left religious communities have been prepared.

In the United Kingdom, no specific legislation exists regarding the exclusion of individuals by religious communities. However, there are (general) criminal provisions that may be relevant if particular exclusionary behaviour involves criminal conduct. Case law on the exclusion of former members by religious communities emphasises the collective religious freedom of the religious community. For example, the High Court of England and Wales held that a religious community may exclude members. The announcement that an individual is no longer part of the religious community was not legally classified as defamation. The government does not organise specific support for former members of religious communities. Private organisations provide specific support.

France has legislation and principles relating to religious freedom, secular values, and non-discrimination with regard to religion. The About-Picard law aimed to counter and prevent sectarian movements that violate fundamental rights and freedoms, more specifically the freedom of conscience. In France, no specific legislation exists regarding the exclusion of individuals by religious communities. However, the exercise of undue pressure to prevent a person from practising or renouncing a religion ('un culte') is punishable. There are also (general) criminal provisions that may be relevant if a particular act of exclusion is accompanied by criminal conduct. The government does not provide specific support to excluded individuals. There is, however, specific support for individuals who have been embedded in sectarian movements.



Norway does not have specific legislation regarding the exclusion of individuals by religious communities. There are (general) criminal provisions that may be relevant if particular exclusionary behaviour involves criminal conduct. In Norway, financial support is provided to state-recognised religions. Since 2021, the Norwegian state has withheld state funding to the community of Jehovah's Witnesses, because of violation of the right to free exit, violation of children's rights and violation of the freedom of expression committed by the community. The community of Jehovah's Witnesses is also no longer registered as a religious community. On June 30, 2023, the Norwegian state's decision was upheld. In 2004, the Norges Høyesterett ruled that, in principle, courts are not allowed to interfere in internal religious matters. In 2022, the Norges Høyesterett held that freedom of religion and belief does not give any person an entitlement to become or remain a member of a religious denomination and that the court's power to review internal matters in a religious community is limited. Norway encourages interreligious dialogue. The Norwegian state has taken special measures (for example, by providing subsidies) to promote understanding and cooperation between different religious or philosophical communities in public life. Support for former members of religious communities is organised in different ways in Norway. For example, there is a private organisation that focuses on the support of former members of religious communities.

In Switzerland, no specific legislation exists regarding the exclusion of individuals by religious communities. However, there are (general) criminal provisions that may be relevant if particular exclusionary behaviour is accompanied by criminal conduct. As in Norway, interreligious dialogue between religious communities is encouraged in Switzerland. Interreligious dialogue is a cantonal matter and is established through (constitutional) legislation or encouraged through practical means. In Switzerland, support for former members of religious communities is organised in various ways. Among other things, specific support for former members of religious communities is provided by organisations, co-funded by local authorities.

The measures on exclusion by religious communities in Belgium, the United Kingdom, France, Norway and Switzerland provide possible insights for the Netherlands. For example, in the countries studied, fundamental rights protection and equal treatment are provided for, just like in the Netherlands. In addition, the freedom of religion and the freedom of association allow individuals to leave a religious community, and a religious community has the right to set conditions for membership or to exclude members.

In the countries studied, no specific criminal legislation exists regarding the exclusion of individuals by religious communities. There are (general) criminal provisions that may be relevant if particular exclusionary behaviour is accompanied by criminal conduct. No evidence of a gap in criminal legislation was found in these countries.

The thematic legal comparison shows that possibilities exist in Norway to deny religious communities subsidies through an administrative route when fundamental rights of excluded persons are violated. In Norway, in contrast to the Netherlands, governmental financial support is offered by default when a religion is recognised by the state. In Norway and Switzerland, interreligious dialogue is an important means of government contact with religious communities and religious communities among themselves.

To the extent that support is offered in the countries studied, it is organised in different ways. For example, there are private organisations, some government-funded, that focus on providing support to former members of religious communities. For example, in Belgium, recommendations and advice on ideal and preventive support for individuals who have left religious communities are made.