

Politicians and Epidemics in the Bible Belt

Geurt Henk Spruyt*

1. Introduction

'I refuse to give an injection to God's creatures.' This statement was made by Jan Kluit in an interview with the Dutch daily newspaper, *Trouw*.¹ Kluit and his wife, Bastiana, gave an interview about their decision to refuse vaccinations for their own children. They objected to vaccination because it interfered with divine providence. The immediate occasion for the interview was the measles epidemic sweeping the Netherlands, or more precisely, the Bible belt.² Outbreaks of diseases such as measles also take place in other parts of the world,³ but the Netherlands is an interesting country in this respect because its vaccination coverage is high. Due to a concentration of people objecting to vaccination on religious grounds in the Bible belt, several epidemics of polio and measles had occurred there in the past.⁴ This article focuses on how and in what way Dutch Members of Parliament reacted to parents who refused to have their children vaccinated. One horn of the dilemma at issue here is the right to freedom of religion and the right of parents to raise their children according to their faith or convictions; the other is the right to physical and emotional integrity of children. First, I describe Dutch government policy before the Second World War (Section 2). Secondly, I examine the period after the Second World War (Section 3) describing different outbreaks of polio and measles, starting from the polio outbreak in 1971 in Staphorst and ending with the measles epidemics in 2013. Next, I analyse the rationales behind the response of Dutch politicians (Section 4). This article finishes with some conclusions (Section 5).

2. The vaccination policy before the Second World War

The practice of refusing vaccinations has a long-standing history within the Netherlands. In the 18th and 19th centuries, diseases like cholera, typhus and smallpox affected many people. Thousands of people died as a result of these epidemics or were disabled for life. The Scottish doctor, Edward Jenner, showed in 1796 that smallpox could be resisted with the injection of cowpox. Shortly after Jenner's discovery, the Dutch government and many municipal authorities took steps to promote smallpox vaccinations. However, the smallpox vaccination was quite dangerous and, due to technical deficiencies and negligence of hygiene,

* Geurt Henk Spruyt (t.g.h.spruyt@students.uu.nl) is a Legal Research Master's student at Utrecht University (the Netherlands). This paper is an adapted version of a research project entitled 'Freedom of religion and the bodily integrity of children: The refusal of parents to vaccinate children on religious or ideological grounds', which was completed at Utrecht University School of Law on 21 July 2015 under the supervision of Dr. Jet Tigchelaar. The author would like to thank Dr. Merel Jonker, Rozemarijn van Spaendonck LL.M., Dr. Wibo van Rossum and Dr. Jet Tigchelaar for their valuable comments on an earlier version of this article.

1 'Ik zet geen spuit in een schepsel van God', *Trouw*, 15 June 2013.

2 The Bible belt, within the Netherlands, is an area stretching from the south-western province of Zeeland in a north-easterly direction over South-Holland, Utrecht and western Gelderland ending at the top of the province of Overijssel. It is easily recognizable, because in most villages there is a high(er) rate of voters supporting the SGP (Reformed Political Party). Most, if not all, orthodox Protestants vote for this party. According to the official government documents, a total number of 2,543 children was smitten with the measles epidemic. Rijksinstituut voor Volksgezondheid en Milieu (RIVM), 'Overzicht mazelen-epidemie Nederland, mei 2013-februari 2014', <http://www.rivm.nl/Onderwerpen/M/Mazelen/Mazelenepidemie_2013_2014> (last visited 7 June 2016).

3 For example, in Australia and the United States of America: 'Measles Outbreak Traced to Disneyland is Declared Over', *NBC News*, 17 April 2015; 'Verplichte mazelenprik? Niet voor peuter Serenity', *NRC Handelsblad*, 2 July 2015; 'Geen vaccinatie? Geen kinderbijslag', *NRC Handelsblad*, 13 April 2015.

4 H. Ruijs, *Acceptance of Vaccination among Orthodox Protestants in The Netherlands*, diss. Radboud University Nijmegen (2012).

did not offer total protection.⁵ In 1823 Edward Jenner died, and this led to a flood of commemorative texts which praised him as the very picture of the Enlightenment. This caused irritation on the part of the 'Réveil', a circle of people advocating a Christian revival and opposing the thinking of the Enlightenment, who combined orthodox Protestant faith with care for the poor and the elderly people.⁶ One of them was Willem Bilderdijk, a poet with wide knowledge and a leader of the 'Réveil'. Bilderdijk's view was that the Enlightenment had a disastrous effect on church and society. Vaccinations were part of 'perverted scientific practices' and he regarded the smallpox vaccination as 'animal poison'.⁷ Abraham Capadose and Isaäc da Costa, Bilderdijk's intellectual inheritors, considered vaccination as a challenge to God.⁸ In their view, vaccination was an example of people confronting divine providence instead of submitting themselves to God's will.⁹ Furthermore, they were convinced that the disappearance of smallpox would encourage other diseases. Inspired by both Da Costa's and Capadose's writings, many orthodox Protestants refused to be vaccinated. During the 19th century, several smallpox epidemics occurred and affected people in places where the orthodox Protestant faith was dominant.¹⁰

The reluctance of orthodox Protestants to vaccinate themselves and their children, did not go unobserved. Therefore, the Dutch Parliament passed a Law in 1872, by 42 votes to 14, which required vaccination for school-age children and teaching staff, as well as prisoners and soldiers.¹¹ Liberal and Catholic representatives supported this Law, but the representatives of the Protestant Anti-Revolutionary Party were opposed to it. According to the supporters of the Law, mandatory vaccination was needed for several reasons. First, mandatory vaccination aims to secure the national public health, especially with regard to the health of individuals. Secondly, it turned out that some pressure from the government's side worked: people were more willing to be vaccinated. Thirdly, in the 19th century carelessness with regard to vaccination was a problem. The state had to take responsibility to protect people. Finally, orthodox Protestants were seen to be willing to listen to and obey the government. In sum, a government's obligation could have some positive effect on the low vaccination take-up among orthodox Protestants.¹² The Anti-Revolutionary Party representatives were not opposed to vaccination, but they respected the objections based on religion made by the orthodox Protestants. They also stressed the importance of the concept of self-determination, for orthodox Protestant parents and their children. The Anti-Revolutionary Party underscored the need of financial means, education and information to stimulate the take-up of vaccination.

Mandatory vaccination could be circumvented by the statement of a physician, who declared that vaccination would constitute a danger to someone's health. In practice, 500 statements were provided each year mainly to people objecting to vaccination on religious grounds.¹³ In sum, from 1872 until 1928, vaccination was mandatory for school-age children and teaching staff, but the possibility existed to circumvent this requirement. This possibility was used but mostly for spurious reasons. During this period, several Amendments were handed in by parliamentarians to replace mandatory vaccination with a voluntary vaccination policy combined with a programme to stimulate the take-up of vaccination.¹⁴ In 1928, the Dutch government suspended the vaccination requirement because many people contracted meningitis after vaccination.¹⁵ In 1939, the mandatory vaccination law was definitively repealed. Vaccination was no longer compulsory, although it was strongly encouraged by the Dutch government.

5 P.F. Maas, *Parlement en polio* (1988), p. 37.

6 For more information about this renewal movement: E. Kluit, *Het Reveil in Nederland* (1936); B. de Gaay Fortman, *Figuren uit het Reveil. Opstellen van Mr. B. de Gaay Fortman (1884-1961)* (1980).

7 J. Douma et al., *Polio – een gesprek hervat* (1994), p. 38; Maas, *supra* note 5, p. 37.

8 Later on, Bilderdijk changed his mind, after the death of his son from smallpox.

9 Maas, *supra* note 5, p. 38.

10 R. Kramer, *Het vaccinatie-probleem* (1916), pp. 80, 81, 196-197.

11 *Handelingen II 1870-1871*, Appendixes 1900-4 to 1900-8.

12 Maas, *supra* note 5, pp. 38-45.

13 *Ibid.*, *supra* note 5, p. 48.

14 *Ibid.*, *supra* note 5, p. 47-48.

15 *Handelingen II 1926-1927*, pp. 1926-1928.

3. Government policy after the National Immunization Programme

As part of the policy to stimulate the take-up of vaccinations on a voluntary basis, the government started a National Immunization Programme in 1957. From the age of two months, every child was offered a set of vaccinations. This programme had a positive effect, mainly against polio. Between 1924 and 1956 there were 14,063 cases of polio and 1,157 of them ended in death.¹⁶ In 1956, there were still 2,206 patients suffering from polio, of whom 1,784 showed paralysis symptoms. Due to the National Immunization Programme, in which a vaccine against polio was also included, polio outbreaks decreased in a short space of time. However, several polio outbreaks took place, in small villages with a highly orthodox Protestant population: in Waardenburg and Kerkwijk, (1961, thirteen infected people), in Kesteren and Stavenisse (1962/63, fifteen infected people), in Ermelo-Uddel-Elspeet (1966, ten infected people), in Rijssen and Hoeksewaard (1969, eight infected people).¹⁷ A polio epidemic which occurred in Staphorst in 1971, surprised experts 'mainly for its magnitude and intensity'.¹⁸

3.1. Polio outbreak of 1971 in Staphorst

Staphorst is often characterized as a closed and traditional community.¹⁹ Most people living in this village are members of a very orthodox congregation within the Dutch Reformed Church.²⁰ Nowadays, this congregation is part of the Restored Reformed Church.²¹ The polio epidemic in 1971 lasted for a month. 39 people were smitten by polio and 28 of them had paralysis symptoms. As a consequence of the epidemic, five people died and seven people became physically disabled.²² The magnitude and intensity of the polio epidemic combined with the traditional and orthodox Protestant way of living, attracted a lot of media attention. Photographers, for example, took pictures of the funeral of a child.

Although the polio outbreak occurred during an election campaign, politicians were not willing to comment on it. Several politicians, however, submitted written questions to the State Secretary of Public Health, Dr R.J.H. Krusinga. Some of these written questions expressed anxiety about the spread of polio to other areas within the country with a low vaccination rate, such as other villages in the Bible belt. In response to these questions, Dr Krusinga ensured that effective measures were taken: unvaccinated people could receive vaccinations, high-risk medical interventions were discouraged and people living in areas with a low vaccination coverage got the chance to renew their vaccinations.²³ The closure of schools was not considered necessary to overcome the epidemic. To achieve a high vaccination coverage within the Netherlands, different vaccines were combined with each other.²⁴ According to Dr Krusinga, nothing more could be done to prevent the outbreak of polio. In addition, the State Secretary promised that he would ask the Health Council of the Netherlands to carry out a research on the usefulness and desirability of mandatory vaccination, as was done in other countries.²⁵ These written questions concerned the position of non-vaccinated children. H.G. Abma, a representative of the Reformed Political Party, however asked

16 J. Douma & W.H. Velema, *Polio: afwachten of afweren?* (1979), p. 13.

17 *Ibid.*, p. 13.

18 Maas, *supra* note 5, p. 60.

19 For example, in 2013 a documentary film was made about Hilligje Kok, an orthodox Protestant woman from Staphorst. This film, made by Emile van Rouveroy, had as its title: *Houdt God van vrouwen?* (*Does God love women?*). The documentary film got a lot of media attention.

20 The Dutch Reformed Church (*Nederlandse Hervormde Kerk, NHK*) was a Reformed Christian denomination in the Netherlands. It developed during the Protestant Reformation and was founded in the 1570s. It lasted until 2004, the year it merged with the Reformed Churches in the Netherlands and the Evangelical Lutheran Church in the Kingdom of the Netherlands to form the Protestant Church in the Netherlands. At the time of the merger, the Church had two million members.

21 The Restored Reformed Church (*Hersteld Hervormde Kerk, HHK*) is a Reformed Christian denomination in the Netherlands. It was founded in 2004, from congregations which had formed the orthodox-reformed wing of the former Dutch Reformed Church. They objected to the merger into the Protestant Church in the Netherlands, considering the denomination to be too pluralistic.

22 Health Council of the Netherlands 1974: *Gezondheidsraad, Advies inzake het invoeren van een vaccinatieplicht en het effect daarvan op de inentingsgraad van de bevolking* (1974), p. 3.

23 *Handelingen II 1970-1971*, Appendix 1935 (962), Van Dijk; *Handelingen II 1970-1971*, Appendix 1935 (962), Response Krusinga to Van Dijk.

24 *Handelingen I 1970-1971*, Appendix 13 (6), Questions by Van Wijk; *Handelingen I 1970-1971*, Appendix 13 (6), Response Krusinga to Van Wijk.

25 *Handelingen II 1970-1971*, Appendix 2085 (1036), Lamberts; *Handelingen II 1970-1971*, Appendix 2085 (1036), Response Krusinga to Lamberts.

about the 'obtrusive publicity', especially for the inhabitants of Staphorst.²⁶ The State Secretary emphasized the importance of press freedom. The government, therefore, was not authorized to give instructions; the media had their own responsibility in such matters.²⁷

This polio epidemic caused much public debate and media attention. According to P.F. Maas (professor of parliamentary history) Staphorst was subjected to 'ruthless, sensational publicity'.²⁸ The media were, on occasion, aggressive towards the inhabitants of Staphorst. In their research on social reactions to the polio outbreak, Van Hasselt and Van Vliet spoke about the 'media's major role in stigmatising refusers of vaccination'.²⁹ Nonetheless, a fundamental debate in Parliament, about the desirability of a vaccination obligation or the relationship between freedom of religion and the rights of children to physical integrity, did not take place.

A few years later, in 1974, the Health Council of the Netherlands published its report about the usefulness and desirability of mandatory vaccination.³⁰ The authors made a distinction between a 'relative' duty of vaccination and an 'absolute' one.³¹ The Health Council did not favour an absolute duty of vaccination; it would have 'far-reaching repercussions' in the field of tension between the right to health care on the one hand, and basic personal rights on the other hand. A relative duty takes into account personal objections to vaccinations based on religious or medical grounds.³² In addition, the Health Council of the Netherlands underscored the high vaccination rate within the Netherlands on a voluntary basis. The Council expressed its serious concerns that mandatory vaccination would be demotivating for general practitioners as well as patients. A doctor might have to act in a way contrary to the medical or religious objections of the patient,³³ while mandatory vaccination also removes the patient's personal responsibility. An absolute vaccination duty either completely takes over the 'individual responsibility of an individual patient (or the parents) or this individual responsibility will markedly decline'.³⁴ In the Health Council's view, prevention of epidemics was only possible on a voluntary basis. The Health Council derived these insights from 'community psychology' and 'community mental health'.³⁵ However, the Health Council qualified these findings in two important regards. First, mandatory vaccination could be a possibility if the high vaccination rate within the Netherlands were to decline suddenly. Secondly, with regard to special groups of people, especially those employed in public health care, mandatory vaccination could not be ruled out.³⁶

3.2. Polio outbreak of 1978

In 1978 a polio epidemic occurred in Elspeet and Uddel, two small villages in the Veluwe with many orthodox Protestant residents. This polio outbreak had 101 victims, one of whom died and 74 of whom had paralysis symptoms. Again, there was a lot of media attention and people from outside Uddel and Elspeet demonstrated on a Sunday morning in front of several churches, with signs stating 'Herod in Elspeet' and 'Let the little children come to me'. The government took action by offering the possibility of vaccination in areas with a low vaccination coverage, but the response was low. In contrast to the polio outbreak of 1971, the epidemic lasted for six months, and extended to other parts of the Netherlands, including places with a high vaccination rate. The most likely explanation for this expansion was the foundation of several orthodox Protestant secondary schools during the 1970s, with a large regional catchment area. As a consequence, the

26 *Handelingen II 1970-1971*, Appendix 2109 (1048), Questions by Abma.

27 *Handelingen II 1970-1971*, Appendix 2109 (1048), Response Krusinga to Abma.

28 Maas, *supra* note 5, p. 61.

29 L.H. van Hasselt & J.A. van Vliet, 'Sociale reacties op een epidemie: polio in Staphorst, 1971', (2008) *Tijdschrift voor infectieziekten*, no. 3, pp. 68-72, p. 71.

30 Health Council of the Netherlands 1974, *supra* note 22.

31 *Ibid.*, p. 10.

32 *Ibid.*, p. 10.

33 *Ibid.*, p. 11.

34 *Ibid.*, p. 12.

35 *Ibid.*, p. 13.

36 *Ibid.*, p. 15.

spread of an epidemic among the students was made easier, due to the low vaccination rate.³⁷ Experts were surprised by the wide extent of this outbreak along the Bible belt.³⁸

As in 1971, Members of Parliament asked written questions. The responsible State Secretary, E. Veder-Smit (Liberal Party), was asked whether she saw a need to change the vaccination programme and the choice of vaccines used.³⁹ The State Secretary favoured the Salk vaccine, because of its capacity to immunize other, unvaccinated people.⁴⁰ The State Secretary also gave an overview of measures which had been taken.⁴¹ Besides measures to increase vaccination coverage, she had contacted several representatives of religious denominations opposing vaccination. Interestingly, the State Secretary had even published two open letters. One was aimed at young people below the age of 27, urging them to be vaccinated. The other letter was addressed to all church councils of denominations opposing vaccination, asking the responsible spiritual leaders within these churches to reconsider their point of view with regard to vaccination. However, she opposed mandatory vaccination, using arguments presented in the report of the Health Council of the Netherlands from 1974, but also providing new arguments.⁴² After the Second World War, the government was reluctant to force people to be vaccinated. For example, there were legal exemptions for army personnel. In addition, the legal rights involved with this issue were complex.⁴³ On the one hand, Article 3 of the European Convention on Human Rights (ECHR) guarantees that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'. On the other hand, Article 9 of the ECHR ensures the right to freedom of thought, conscience and religion. Different conflicting rights are at stake with regard to mandatory vaccination. In addition, the State Secretary gave consideration to the position of minors. Mostly, it is parents who decide against having their children vaccinated. The position of minors with regard to vaccination and the issue of ensuring mandatory vaccination are both complex, therefore the State Secretary asked the Health Council of the Netherlands to reconsider the 1974 advice. It could be that new arguments were emerging in favour of mandatory vaccination.

Furthermore, she had asked two professors to do research on the 'theological and ethical' aspects of vaccination. These two professors were W.H. Velema, professor of ethics at the University of the Christian Reformed Congregations in Apeldoorn, and J. Douma, professor of ethics at the University of the Reformed Churches in the Netherlands (Liberated), based in Kampen. A year later, they published their book entitled '*Polio: afwachten of afweren?*' (*Polio: to wait or to ward off?*).⁴⁴ Both authors favoured the use of vaccination, mainly for two reasons. First, in the Scriptures, the people of Israel were allowed and even obliged to take measures against, for example, leprosy. Secondly, both authors viewed taking preventive measures as being compatible with the Christian faith.⁴⁵ Their book helped many orthodox Protestant parents to formulate arguments in favour of vaccination. However, both authors were not linked to pietistic denominations and therefore their message reached many, but not all, orthodox Protestant parents.

The Dutch Parliament agreed with and appreciated E. Veder-Smit's policy. The largest parties within Parliament, the Christian-Democrats and the Socialists, did not ask any questions. In general, Parliament was, as in 1971 unwilling to conduct a basic discussion on this issue (I will discuss this extensively in Section 4). In 1982, four years later, the Health Council of the Netherlands issued the report requested by the State Secretary. Again, the Health Council stressed the importance of providing information, with a special focus on orthodox Protestants between 12 and 18 years old. However, the group of people objecting to vaccination

37 *Kamerstukken II 1977-1978*, 15152 no 1, p. 16.

38 Maas, *supra* note 5, p. 104. Cf. J. Veenman & L.G. Jansma, 'The 1978 Dutch polio epidemic: a sociological study on the motives for accepting or refusing vaccination', (1980) 16 *The Netherlands' Journal of Sociology*, pp. 21-48, p. 21.

39 *Handelingen II 1977-1978*, Appendix 2 (1314), p. 2623.

40 *Ibid.*, p. 2623. Amongst anti-polio vaccines, a distinction can be made between the Sabin vaccine and the Salk vaccine. The Salk vaccine consists of an injected dose of inactivated (dead) poliovirus, but the Sabin vaccine is an oral vaccine using attenuated poliovirus. These vaccines are equally effective, but the Salk vaccine can be combined with other vaccines.

41 *Handelingen II 1977-1978*, Appendix 2 (1499), p. 2981-2983.

42 *Kamerstukken II 1977-1978*, 15152 no 1. In this letter, Veder-Smit also gave an overview of contamination with polio, the epidemiology and the circulation of polio viruses in several European countries. Furthermore, she sent information about the vaccination programme, the different vaccines, the progress of the polio epidemic and the measures adopted in order to restrict polio.

43 *Ibid.*, p. 21.

44 J. Douma & W.H. Velema, *Polio: afwachten of afweren?* (1979).

45 *Ibid.*, pp. 74-80.

were to be treated respectfully with regard to their position.⁴⁶ For practical reasons, the Health Council rejected the possibility of temporarily removing a minor from the custody of his parents who were exercising legal authority over him, or of giving the Child Care and Protection Board temporary control.⁴⁷

The Health Council opposed mandatory vaccination, repeating the arguments in its 1974 advice, such as the disruptive effect on the relationship between the doctor and his patient and the high vaccination coverage within the Netherlands.⁴⁸ Furthermore, being unvaccinated only had consequences during an epidemic and was not life threatening.⁴⁹ Unlike in the 1974 report, the Health Council paid more attention to the position of older children, from fourteen years and upwards. It suggested that this category could make decisions with regard to medical treatment independently, and this included the decision whether or not to be vaccinated. Doctors are, in this situation, allowed to vaccinate minors of fourteen years and upwards. This advice was put into practice, fifteen years later, in 1994. However, the Council was divided: a minority of two members, J.E. Doek and H.M. Terborgh-Dupuis, favoured the idea of making vaccination mandatory because refusing vaccination on behalf of a child could encroach on children's rights. The decision of their parents could have major implications for their health.⁵⁰ In these circumstances, the right of children to psychical integrity is more important than the right of parents to take decisions.

3.3. Changes after the polio outbreak of 1992-1993

The last polio outbreak in the Netherlands occurred in 1992-1993: 68 people were smitten by polio and two of them died.⁵¹ The number of patients was lower than in 1979, when polio affected 101 people.⁵² Member of Parliament D.J.D. Dees (Liberals) asked responsible State Secretary Simons, written questions. The subject was the chaos during the polio outbreak in several places in the Bible belt. According to State Secretary Simons, there were some problems at the beginning of the epidemic, but in general the relevant authorities had responded adequately. Members of Parliament specialized in public health asked several questions, but these questions were of a highly procedural nature. They mainly asked when they could expect a clear position from the government with regard to a vaccination obligation. State Secretary Simons was opposed to mandatory vaccination and regarded being vaccinated as a persons's own responsibility.⁵³ However, he asked for an advice from the National Council for Public Health.⁵⁴ Again a book was published: *'Polio: een gesprek hervat'* (*Polio: a conversation renewed*), with contributions made by Douma and Maas.⁵⁵ A. Moerkerken, a pastor of the Reformed Congregations denomination, provided a contribution, clarifying why he opposed vaccination. In his view the use of vaccination conflicted with the concept of divine providence.⁵⁶

The restraint of politicians from drawing attention to this epidemic contrasted with the attention paid by the media. As research carried out by Joke Graeves, doctor of an Area Health Authority (*Gemeentelijke Gezondheidsdienst*) showed, families of polio patients were subjected to obtrusive publicity.⁵⁷ Photographers, journalists and camera teams surrounded the first polio patient's house. Families of polio patients were questioned and met bluntness and a lack of understanding. This research shows that the media attention was stigmatising for (the families of) polio patients.⁵⁸ The phenomenon of 'polio tourism' arose, with tourists visiting the places where polio patients lived.

46 Health Council of the Netherlands 1982: Gezondheidsraad, *Advies inzake Poliomyelitis* (1982), pp. 26-29.

47 *Ibid.*, p. 32.

48 *Ibid.*, p. 33.

49 *Ibid.*, p. 34.

50 *Ibid.*, pp. 41-43.

51 *Kamerstukken II 1992-1993*, 23407, no. 1-2.

52 Some sources, like Douma et al, *supra* note 7, speak about 71 patients.

53 Letter to the House of Representatives, *Kamerstukken II 1992-1993*, 22954, no. 1.

54 *Kamerstukken II 1992-1993*, 22894, no. 2 and 3.

55 Douma et al., *supra* note 7.

56 *Ibid.*, pp. 35-50.

57 J. van Klinken, 'Geschrokken door botheid – Vervelende ervaringen van zeven "polioge-zinnen" verbijsteren GGD-arts', *Reformatisch Dagblad*, 17 February 1995. Available via: <<http://www.digibron.nl/search/detail/012de53a113e4b735e97db79/geschrokken-van-de-botheid>> (last visited 29 January 2016).

58 *Ibid.*

In 1993, the National Council for Public Health published further advice on the desirability of mandatory vaccination. The responsible commission was enlarged with two extra members, not previously affiliated to the National Council for Public Health, J. Douma and G. van den Berg. G. van den Berg was director of a patient's interest group and a member of the Reformed Congregations, a denomination traditionally opposed to vaccination.⁵⁹ The Council followed the line of earlier advices and opposed mandatory vaccination. Although it could have positive effects on the vaccination coverage, the measures needed for mandatory vaccination would lead to disproportionate effects.⁶⁰ Mandatory vaccination was considered too far-reaching with respect to codified human rights, especially the right to freedom of religion. Practical arguments were decisive for opposing mandatory vaccination, for example the enforceability of an obligation and its possible counterproductive effects. As in 1982, the Council advised that older children should be able to receive vaccination independently. In contrast to the 1982 advice, the Council proposed an independent right to take decisions from children from twelve years old, instead of fourteen years.

A possibility to implement the Council's advice was the government's introduction of a Medical Treatment Contract Act (*Wet op de geneeskundige behandelingsovereenkomst*). This Act is laid down in Book 7, Title 7, Section 5 of the Civil Code and seeks to enhance and to clarify patients' rights, but also to acknowledge a care provider's professional responsibility and the limits of his tasks and responsibilities.⁶¹ In addition to creating rights for patients, the MTCA strengthened the legal position of minors. Until the coming into force of the MTCA, the legal position of minors was characterized as 'twofold dependence': first, minors are dependent, in their position as children, on their parents because they are subject to parental autonomy while, secondly, in their position as patients, they are dependent on medical health personnel.⁶² With regard to essential decisions, medical health personnel are also dependent on the permission of minors' legal representatives. In an important respect, the government, through the MTCA changed this situation by strengthening the position of older children above the age of twelve.

The MTCA contains several provisions on the position of minors. In general, minors do have a limited capacity to enter into legal acts. The MTCA introduced important exceptions, depending on the age of the minor. The MTCA introduced three age categories: children under the age of 12 years, patients aged between 12 and 15 years and minors aged sixteen or older. Minors in this last category have the legal capacity to enter into a medical treatment agreement and are allowed to perform the legal acts directly related to that agreement.⁶³ Furthermore, they have an independent right to start legal proceedings. Minors of 16 and 17 years of age have the legal capacity to act in and out of court as far as it concerns matters related to the medical treatment agreement. As an argument, the legislator put forward the view that 16- and 17-year-olds have sufficient understanding of their interests with regard to medical affairs.⁶⁴

For minors under 12 years, parental autonomy prevails. Article 7:465 of the Civil Code states that the care provider with respect to these minors 'fulfils the obligations of the patients (...) in respect of either the parents who exercise parental responsibility (authority) over the patient or the patient's legal guardian'. If parents keep on refusing their consent, the possibility exists for a judge to give his substitute consent.⁶⁵ In these cases, the judge has to take into consideration the child's health risks in the absence of medical

59 Douma et al., supra note 7, p. 29.

60 National Council for Public Health 1993: Nationale Raad voor Volksgezondheid, *Vaste prik? Advies over het beleid inzake poliovaccinatie* (1993).

61 H.J.J. Leenen et al., *Handboek gezondheidsrecht* (2014), p. 92. These rights are, for instance, the right to information: the care provider informs the patient clearly about the planned examination and treatment (Art. 7:448 Civil Code). Secondly, 'the consent of the patient is required for actions to be performed in the implementation of the medical treatment agreement' (Art. 7:450 Civil Code). The care provider has a duty of secrecy, which means that persons other than the patient himself are not provided with information about the patient without his consent (Article 7:457 Civil Code). This duty of confidentiality is closely connected to the patient's right to privacy. Actions performed by the care provider in the framework of the medical treatment agreement must not be observed (watched) by any individual other than the patient. An exemption is made when the patient gives permission (Art. 7:459 Civil Code). In addition to these rights, the patient has also certain duties. He must inform the care provider as best as he can and he must cooperate with the care provider in the way that the care provider reasonably requires for the implementation of the medical treatment agreement (Art. 7:452 Civil Code).

62 H.E.G.M. Hermans, *Gezondheidsrecht en minderjarigen* (1990), p. 29.

63 Art. 7:447(1) Civil Code, Medical Treatment Contract Act.

64 Explanatory Memorandum, *Kamerstukken II 1989-1990*, 21561, no. 3, p. 19; Memorandum of Reply, *Kamerstukken II 1989-1990*, 21561, pp. 27-28.

65 Art. 1:264 Civil Code.

treatment, but also the parents' motivations for withholding permission. Another option is to suspend the parents' exercise of authority. The legal position of minors under 12 years is best characterized as dependent on their parents, although the care provider has the duty to provide information to this group in a way understandable for them in light of their comprehension.⁶⁶ However, two exemptions apply to these provisions. Article 7:466 decrees that in emergency situations, if there is no time to obtain the consent of the adults or mentors, medical actions may be performed where 'immediate performance of the action is clearly necessary to prevent serious harm to the patient'.⁶⁷ With regard to actions without a far-reaching nature, the consent is presumed to have been given (Article 7:466(2) Civil Code).

The position of patients between 12 and 15 years differs from the first and third categories. A minor of 12 to 15 years needs the consent of his parents exercising parental responsibility over him or from his legal guardian.⁶⁸ There are two exemptions to the main rule: 'The actions may be performed without the consent of the parents or the legal guardian if the treatment is clearly necessary in order to avoid serious harm to the patient or if the patient, after careful consideration, still wants the actions to be performed after the required consent has been refused.'⁶⁹ This system could be characterized as 'twofold consent', because the care provider needs the consent of the parents as well as the permission of the minor himself.⁷⁰ However, the exemptions are far-reaching: the first exemption applies if 'the actions may be performed without the consent of the parents or the legal guardian if the treatment is clearly necessary in order to avoid serious harm to the patient'. This exemption applies, for example, in the case of a venereal disease. Thus, this first exemption applies only in very special circumstances. It is even possible to make a child protection order when parents keep on refusing their consent.⁷¹ The second exemption applies 'if the patient, after careful consideration, still wants the actions to be performed after the required consent has been refused'. This leads to the situation that the care provider and the minor are able to ignore the parents' refusal. Consequently, the parents cannot stop a treatment, which is regarded as necessary, until the minor reaches the age of 16.⁷² However, the care provider must share the minor's point of view that a medical treatment is needed for the wellbeing of the patient. The MTCA was discussed shortly after the polio epidemics of 1992-1993. According to the Dutch government, both exemptions could be applied to (polio) vaccination.⁷³ Thus, this Article gives care providers the possibility to vaccinate minors without the consent of their parents or legal guardians. In this way, 'serious harm' could also be interpreted as the prevention of serious diseases.⁷⁴

The Christian parties opposed this provision because it would erode parental authority. They differed in their interpretation from the State Secretary of Health. One representative of a small Christian party, M. Leerling, expressed his anxiety about a 'juridification' of the relationship between parents and their children.⁷⁵ B.J. van der Vlies, representing the Reformed Political Party, doubted whether vaccination as such could be regarded as a medical treatment. According to him, parents exercise authority over their children. It might be that they have conscientious objections against vaccination and therefore refuse to have their children vaccinated. The government does not have the right to distort the relationship between parents and their children.⁷⁶ State Secretary for Public Health Simons, answered: 'In the specific situation of polio, this disease could cause harm to the patient. In addition, to avoid this harm is simple. A vaccination does not have a very drastic nature; it is a simple medical treatment to avoid polio.'⁷⁷ Later on, Minister of Justice Kosto repeated this argument, answering questions from Senator Holdijk representing the Reformed

66 Art. 7:448(1) Civil Code, Medical Treatment Contract Act.

67 Art. 7:466 Civil Code, Medical Treatment Contract Act.

68 Art. 7:450(2) Civil Code, Medical Treatment Contract Act.

69 Art. 7:450(2) Civil Code, Medical Treatment Contract Act.

70 B. Sluijters & M.C.I.H. Biesart, *De geneeskundige behandelingsovereenkomst* (2005), p. 41.

71 Further Memorandum of Reply, *Kamerstukken II 1989-1990*, 21561, 11, p. 34.

72 Sluijters & Biesart, *supra* note 70, p. 45.

73 *Kamerstukken II 1992-1993*, 21561, 15, p. 28; *Kamerstukken I 1993-1994*, 21561, 286c, p. 2.

74 Cf. Sluijters & Biesart, *supra* note 70, p. 44.

75 *Handelingen II 1993-1994*, 51-3912.

76 *Handelingen II 1993-1994*, 51-3917.

77 *Handelingen II 1993-1994*, 52-4002.

Political Party, on this issue. ‘Vaccination is clearly necessary in order to avoid serious harm to the patient. (...) In my view, polio-vaccination fulfils the criterion of Article 7:450 paragraph two.’⁷⁸

3.4. Measles outbreaks in 1999-2000 and 2013

The issue of vaccination was revisited during a debate about ratification of the Treaty of the Rights of the Child, in 1994. The Social-Liberals (in Dutch: D66) pleaded for mandatory vaccination. In their view, the United Nations Convention on the Rights of the Child supported a legal duty. However, the Dutch government took a different view: ‘This Treaty does not require mandatory vaccination. (...) When the Treaty speaks about traditional customary practices, in particular female circumcision is meant. (...) Female circumcision is not comparable to conscientious objections of orthodox Protestant parents with regard to vaccination.’⁷⁹ During this debate representatives of Christian parties asked about the ramifications for parents who refused to have their children vaccinated. According to Minister of Justice Kosto, Article 24 of this Treaty left room for parents to refuse vaccinations for their children, especially when they had not reached the age of 12.⁸⁰ This answer was however not discussed extensively.

In 1999-2000 and in 2013 two outbreaks of measles occurred. Between 1999 and 2000, 3,300 children got measles, and three of them died.⁸¹ Member of Parliament van Vliet (D66; Social-Liberals) asked Minister of Health Borst written questions.⁸² One of the questions was whether the Minister favoured mandatory vaccination. The Minister, however, was opposed to an obligatory vaccination mainly for practical reasons. In her view, mandatory vaccination was difficult to enforce. In addition, it could have a counterproductive effect resulting in a lower vaccination rate compared with the current situation. Ultimately, with regard to urgent matters, a replacement of parental authority would be possible.⁸³ A decade later, the measles epidemic led to 2,016 victims in the Netherlands, and a 17-year-old female died.⁸⁴ During these two epidemics, parliamentarians got technical information from the government about the epidemics of measles, but there was no fundamental debate on vaccination. Parliamentarians received information about the measures taken, such as a new round of vaccinations especially for orthodox Protestant children.⁸⁵ In 2013, however, the Prime Minister, Mark Rutte, called on pastors to stimulate the uptake of vaccination.⁸⁶ This appeal did not result in many new vaccinations. On the contrary, reformed pastors criticized Mr Rutte for being too intrusive in matters of faith. They regarded his appeal as interfering with the separation between church and state.⁸⁷ The measles epidemic of 2013 showed that the acceptance of vaccination increased among orthodox Protestants. There were 2,016 victims in 2013, while in 1999-2000 measles had affected 3,300 young people. Medical authorities gave parents the possibility of reconsidering their decision and made it possible for parents to have their children vaccinated, even at home. 75 young people were vaccinated for the first time, after the call from authorities responsible for vaccinations.⁸⁸ In my own view, the media drew attention to vaccination refusers, but were mostly respectful. They informed their readers about the development of the epidemics and interviewed refusing parents with dignity.⁸⁹

78 *Kamerstukken I* 1993-1994, 21561, 286c, p. 2. Cf. I. Jansen, ‘De Wet omtrent de overeenkomst inzake geneeskundige behandeling’, (1995) 44 *Ars Aequi*, pp. 264-273, p. 271.

79 *Handelingen II* 1993-1994, 84-5707.

80 *Handelingen II* 1993-1994, 84-5703.

81 *Trouw*, 6 July 2013; *Trouw*, 5 July 2013.

82 *Handelingen II* 1999-2000, Appendix 624, p. 1381-1382.

83 *Ibid.*, p. 1382.

84 This young woman had a congenital scoliosis in her back as a consequence of which she had problems with breathing and was confined to an electric wheelchair. According to Govert Kamerik, the director of the school which this young woman attended, she was ‘seriously concerned with issues of faith, just as a consequence of her handicap. (...) It was her choice to refuse vaccinations, despite her poor health’, *de Volkskrant*, 29 October 2013.

85 Letter from the Minister of Public Health, *Kamerstukken II*, 2012-2013, 32793, no. 95.

86 *Trouw*, 5 July 2013.

87 *Ibid.*

88 *Nederlands Dagblad*, 6 July 2013.

89 Examples: *Trouw*, 15 June 2013; *Algemeen Dagblad*, 29 June 2013; *de Volkskrant*, 1 July 2013; <http://www.powned.tv/nieuws/binnenland/2013/07/predikant_moet_vaccinaties_aan.html> (last visited 1 February 2016).

4. Discussion

A question remains: why were politicians so reluctant to make vaccination mandatory? Politicians' restraint on commenting on polio- and measles-epidemics contrasts with the sometimes heated public debate and obtrusive publicity concerning this issue.⁹⁰ On the basis of parliamentary history, there might be three reasons for the reluctance of politicians. First, due to the high vaccination coverage within the Netherlands, epidemics like polio or measles were not urgent problems. The epidemics mostly swept through parts of the Bible belt. A small group of 5 per cent of the Dutch population remained unvaccinated, on the basis of religious or anthroposophist grounds. The large majority however, of 95 per cent, has been vaccinated. This high vaccination coverage has been achieved voluntarily. This argument has been used several times, mostly by the Dutch Health Council. In 1974, 1982 and 1993, the Council underscored the high vaccination rate achieved on a voluntary basis.⁹¹ Politicians adopted this argument, like State Secretary Veder-Smit in 1978 and Minister of Health Borst in 2000.⁹² In addition, the number of outbreaks among orthodox Protestants remained low, with long periods between the different epidemics. Usually, there were intervals of nearly ten years between the various outbreaks which mostly took place in small villages. The rarity of the outbreaks of polio and measles did not encourage government intervention. Epidemics broke out but blew over quickly. Before a fundamental debate could be entered into, there was already no need for such a debate.

Secondly, there was a gap between the values of most Members of Parliament on the one hand, and orthodox Protestants in the Bible belt on the other hand.⁹³ As a response to the rapid secularization of the Netherlands in the 1960s and 1970s, orthodox Protestants formed their own support groups ('pillars'), founding their own primary schools, secondary schools and other organizations. As a consequence, contacts with other, non-orthodox Protestants were rarely an issue.⁹⁴ Contacts between most Members of Parliament and orthodox Protestants were reduced to a minimum. In addition, orthodox Protestants were not a part of the electorate of social-democrats, liberals and even Christian democrats. Therefore, it could be that the willingness to intervene in orthodox Protestant ways of life remained low. Furthermore, in a democracy minorities must be left some room for their own subculture, within the limits of the democratic state under the rule of law.⁹⁵

In the end, politicians were not willing to make vaccination mandatory, because it generated complicated debates on human rights, their scope, the restrictions on these rights and their interdependent importance. This argument was used by Secretary of State Veder-Smit in 1978. She put emphasis on the complexity of the different legal rights involved and favoured a holding-back by the government from a compulsory obligation to vaccinate.⁹⁶ In her letter, she recalls Article 3 ECHR, which guarantees that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment', while Article 9 ECHR ensures the right to freedom of thought, religion and conscience.⁹⁷ Different conflicting human rights are at stake with regard to mandatory vaccination. In 1993, Minister of Health Simons declared that, on the basis of international treaties, 'the government is not forced to make vaccination mandatory'.⁹⁸ The government's point of view was consistent with an earlier advice. In 1974, the Health Council of the Netherlands opposed an absolute duty to vaccination, because it would have 'far-reaching repercussions' in the field of tension between the right to health care on the one hand, and basic personal rights on the other hand. A relative duty takes into account personal objections to vaccinations based on religious or medical grounds.⁹⁹ In 1993, the National Council for Public Health considered mandatory vaccination a too far-reaching measure with respect to codified human rights, especially the right to freedom of religion.

90 Cf. Maas, *supra* note 5, pp. 135-145; Van Klinken *supra* note 57.

91 Health Council of the Netherlands 1974, *supra* note 22, p. 7; Health Council of the Netherlands 1982, *supra* note 46, p. 33; *Kamerstukken II* 1993-1994, 22894, no. 4, p. 5.

92 *Handelingen II* 1977-1978, 15152 no 1, p. 20; *Kamerstukken II* 1999-2000, Memorandum, p. 1381-1382.

93 Cf. Maas, *supra* note 5, p. 137, p. 141 and p. 145.

94 Maas, *supra* note 5, pp. 103-104; *Handelingen II* 1977-1978, 15152 no 1, p. 15.

95 Cf. Maas, *supra* note 5, p. 9.

96 *Handelingen II* 1977-1978, 15152 no 1, p. 21.

97 *Ibid.*

98 *Kamerstukken II* 1993-1994, 22894, no. 4, p. 6.

99 Health Council of the Netherlands 1974, *supra* note 22, p. 10.

Interestingly, so far as mandatory vaccination was concerned, medical-practical arguments were decisive. As an answer to written questions by Parliamentarians, and maybe with the heated public debate and obtrusive publicity in the back of their minds, responsible State Secretaries or Ministers promised a report, carried out by the Health Council of the Netherlands. The Health Council of the Netherlands, later on the National Council for Public Health, composed of health care experts, used mainly medical-practical arguments in its reports. Practical arguments were decisive for opposing mandatory vaccination: it would be demotivating for general practitioners as well as patients and it could have negative implications for the relationship between the doctor and his patient, the doctor acting in a way contrary to the medical or religious objections of the patient himself.¹⁰⁰ Furthermore, an absolute vaccination duty either completely takes over the 'individual responsibility of an individual patient (or the parents) or this individual responsibility will markedly decline.'¹⁰¹ Finally, prevention of epidemics was only possible on a voluntary basis.¹⁰² Improvement of low vaccination rates in certain areas could be achieved only on the basis of a patient's individual freedom and individual responsibility.¹⁰³ Mandatory vaccination could have counterproductive effects and it is difficult to enforce.¹⁰⁴ In 1872, the Health Council of the Netherlands used other practical arguments, stating that mandatory vaccination would have a disruptive effect on the relationship between the minor and his parent(s) and being unvaccinated only had consequences during an epidemic. As such, not being vaccinated is not life-threatening for unvaccinated people themselves or for vaccinated people.¹⁰⁵

These arguments were adopted by politicians, especially the responsible State Secretary or Minister. Mrs Veder-Smit opposed mandatory vaccination because it would be demotivating for general practitioners as well as patients; it would negatively influence the relationship between doctor and patient,¹⁰⁶ and public health care prevention was only possible on a voluntary basis.¹⁰⁷ Mr Simons declared: 'Due to practical problems, I am opposed to mandatory vaccination'.¹⁰⁸ These practical problems consisted of problems with regard to the enforceability of mandatory vaccination and its possible counterproductive effects. Mrs Borst was opposed to a vaccination obligation, repeating State Secretary Simons' arguments: mandatory vaccination was difficult to enforce and could have a counterproductive effect resulting in a lower vaccination rate compared with the current situation.¹⁰⁹

In addition, the government and its advisory bodies 'abstracted' this issue 'from its religious dimension'. This concept, developed by Wahedi, means that 'religious dimensions of authentically religious practices, conflicting with generally accepted norms, are neutralised and as much as possible presented in secular and non-religious terms'.¹¹⁰ The way of reacting by the Dutch government and its advisory bodies, to parents who refused to have their children vaccinated, confirms this concept. The government and advisory bodies regarded practical arguments against mandatory vaccination as decisive. Politicians and government advisors admitted that a refusal to vaccinate could be part of someone's religious views, and as such this practice must be protected by the freedom of religion. It can be argued that the practice of parents who refuse to have their children vaccinated conflicts with children's right to physical integrity. However, in the government's view, violating the physical integrity of children is not sufficiently decisive to make vaccination mandatory. On the other hand, the fact that refusing vaccinations is regarded as part of a religious, orthodox Protestant point of view, was also not finally decisive for the government in tolerating this practice. As such, the absence of a fundamental debate on these conflicting human rights in Parliament, is noteworthy.¹¹¹

100 Ibid., p. 11; Health Council of the Netherlands 1982, supra note 46, p. 33.

101 Health Council of the Netherlands 1974, supra note 22, p. 12.

102 Health Council of the Netherlands 1982, supra note 46, p. 33.

103 Health Council of the Netherlands 1974, supra note 22, p. 13.

104 Health Council of the Netherlands 1982, supra note 46, p. 33; National Council for Public Health 1993, supra note 60, *Kamerstukken II* 1993-1994, 22894, no. 4, p. 2; 5.

105 Health Council of the Netherlands 1982, supra note 46, p. 34; National Council for Public Health 1993, supra note 60, *Kamerstukken II* 1993-1994, 22894, no. 4, p. 5-6.

106 *Handelingen II* 1977-1978, 15152 no 1, p. 20; cf. Health Council of the Netherlands 1974, supra note 22, p. 11.

107 *Handelingen II* 1977-1978, 15152 no 1, p. 20; cf. Health Council of the Netherlands 1974, supra note 22, p. 13.

108 National Council for Public Health 1993, supra note 60, *Kamerstukken II* 1993-1994, 22894, no. 4, p. 10.

109 *Handelingen II* 1999-2000, Appendix 624, p. 1382.

110 S. Wahedi, 'Marginaliseren van godsdienstvrijheid door abstraheren van de religieuze dimensie', (2014) 9 *Religie & Samenleving*, no. 2, pp. 128-147, p. 134.

111 Cf. Maas, supra note 5, pp. 136-139.

By using practical arguments, governments and advisory bodies tried to find a way out of the insolvable dilemma between freedom of religion and parental autonomy on the one hand, and the right to physical integrity of children on the other hand. The government regarded practical arguments as decisive in order to allow orthodox Protestant parents to refuse vaccinations for their children. In this way, the response of the Dutch government during recent times to parents refusing to have their children vaccinated, not only marginalized its religious dimension but also concealed fundamental questions arising from this practice.

I would like to make one concluding remark with regard to the response of the Dutch government to parents who refused to have their children vaccinated. Today, religious freedom is often regarded as being interpreted in a narrow way. The freedom of religion finds itself more restricted than it used to be in the past.¹¹² Sometimes, the freedom of religion itself is questioned, although this questioning has been done by few legal scholars.¹¹³ With regard to the Netherlands, religious points of view and traditions were subject to a heated debate during the recent past and sometimes subjected to new legal restrictions.¹¹⁴ Interesting examples are the ban on registrars refusing to solemnize marriages between same-sex couples, a law forbidding the wearing of burqas and certain types of headscarves in the public sphere and a judicial decision obliging the Dutch Reformed Political Party to accept women as members of its party. These examples demonstrate that religious rights and freedoms have been restricted. With respect to orthodox Protestant communities in the Netherlands, one of the problems of implementing equal treatment legislation is not having any support within these communities.¹¹⁵ The most important explanation for these restrictions is the process of secularization of Western European societies in general, and Dutch society in particular.¹¹⁶

The restrictions mentioned above are mainly the results of the increasing importance of the principle of equality.¹¹⁷ Politicians' reluctance to intervene with regard to parents who refuse to have their children vaccinated, although seemingly surprising at first, could simply be a result of evolving concepts of the meaning and importance of different human rights. This development can be described as a restructuring of the importance and scope of different human rights. At the beginning of the 1970s, human rights were mainly regarded as negative rights against the government. In the recent years, concepts like positive state obligations and the horizontal effect of human rights have evolved.¹¹⁸ In addition, children's rights have increased in importance.¹¹⁹ Children are able to rely on human rights laid down in general treaties of human rights or laid down in the Dutch Constitution. In addition, children can also rely on human rights codified in the United Nations Convention on the Rights of the Child (UNCRC).¹²⁰ It could be, when concepts of human rights are as developed and determined as now, that the politicians way of reacting to epidemics differs from how they did in the 1970s and at the beginning of the 1990s.

Remarkable within this debate is that religious practices and ideas have only been restricted on the basis of non-discrimination. Although certain religious practices have been restricted, these restrictions are not based on ensuring someone's right to emotional and physical integrity. In other words, until now the

112 R. Torfs, 'The internal crisis of religious freedom', (2011) 4 *International Journal for Religious Freedom*, no. 2, pp. 17-27; R. Trigg, 'Religious freedom in a secular society', (2012) 5 *International Journal for Religious Freedom*, no. 1, pp. 45-57.

113 P. de Beer, 'De paradox van de godsdienstvrijheid', in: H.M.A.E. van Ooijen et al. (eds.), *Godsdienstvrijheid: afschaffen of beschermen?* (2008), pp. 5-9. R.J.B. Schutgens, 'Waarom de godsdienst- en de uitingsvrijheid moeten samensmelten', (2012) 3 *Tijdschrift voor Constitutioneel Recht*, no. 1, pp. 96-99.

114 Cf. H. Post, *Godsdienstvrijheid aan banden – Een essay over het probleem van de godsdienst in het publieke domein* (2011).

115 B. Oomen, 'Between Rights Talk and Bible Speak: The Implementation of Equal Treatment Legislation in Orthodox Reformed Communities in the Netherlands', (2011) 33 *Human Rights Quarterly*, no. 1., <http://doi.org/10.1353/hrq.2011.0009>, pp. 175-200, 199.

116 Torfs, supra note 112, p. 25, Trigg, supra note 112.

117 Cf. H. Post, *Gelijkheid als nieuwe religie. Een studie over het spanningsveld tussen godsdienstvrijheid en gelijkheid* (2010); R. Trigg, *Equality, Freedom and Religion* (2013).

118 R. Torfs, 'Contractual religious freedom', in A. van de Beek et al., *Freedom of Religion* (2010), pp. 141-154, p. 142.

119 M.R. Bruning, 'Zorg om het kind. Bescherming van minderjarigen en het gezondheidsrecht', (2013) 37 *Tijdschrift voor Gezondheidsrecht*, no. 2, pp. 115-135; cf. A. Nieuwenhuis, 'De grondrechtelijke positie van de jongensbesnijdenis', (2014) 5 *Tijdschrift voor Religie, Recht en Beleid*, no. 1, pp. 18-33, p. 19.

120 In this respect, different Articles are important: Art. 19 CRC guarantees that all 'States Parties shall take all appropriate measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment (...), while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.' Art. 24 CRC also codifies the right of a child to the 'enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.' Interesting in this respect, is Art. 24(3) CRC stating that 'States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.'

religious practices of circumcision and refusal to vaccinate, have not been doubted in a serious way. It must be admitted that some opinion makers have made proposals to forbid circumcision and to make vaccination mandatory.¹²¹ Nevertheless, it is striking that until the present day, religious rights and freedoms have not been restricted on the basis of (children's) right to physical and emotional integrity. Exemptions apply to female circumcision or to parents refusing blood transfusion to their children in an emergency. Within the Netherlands, politicians are reluctant to restrict religious rights for the reason of protecting physical integrity. With regard to vaccination, this restraint is based on a long tradition. The process of secularization and, as a consequence, new perspectives on the meaning and importance of different human rights, have not altered the Dutch government's response to parents refusing to have their children vaccinated.

5. Conclusions

After the start of the National Immunization Programme, several epidemics of measles and polio occurred in parts of the Dutch Bible belt. This article analyses how and in what way Dutch politicians responded to parents refusing to have their children vaccinated. Members of Parliament mainly addressed written questions to the responsible State Secretary or Minister of Public Health. These questions were mostly of a highly technical or procedural nature. Parliamentarians were not willing to debate the need for mandatory vaccination. Another 'customary practice' is the request of the government for advice from an advisory body with regard to matters of health after an epidemic. All these reports were opposed to the idea of mandatory vaccination mainly using practical arguments. However, these reports also favoured the idea of strengthening the position of minors in public health care. The last report of the National Council for Public Health (1993) resulted in legislation codifying the rights of minors with regard to public health.

In addition, this article analyses the rationales behind this response. First, due to the high vaccination coverage within the Netherlands, epidemics like polio or measles were not urgent problems. The number of outbreaks among orthodox Protestants therefore remained low with long periods between the different epidemics. The rarity of the outbreaks of polio and measles did not encourage an intervention by the government. Before a fundamental debate could be entered into, there was already no need for such a debate. Secondly, there existed a gap between the values of most Members of Parliament on the one hand, and orthodox Protestants on the other hand. Therefore, it could be that the willingness to intervene in orthodox Protestant ways of life remained low. Thirdly, because different human rights are involved, the issue of mandatory vaccination is complex. Mandatory vaccination infringes constitutional rights to the freedom of thought, conscience and religion and encroaches on parental autonomy. However, children have a right to physical integrity. To find a way out of this unsolvable dilemma, government and government advisory bodies mainly used practical arguments against mandatory vaccination. ■

¹²¹ For example: H. Vuijsje, 'Besnijden, het weigeren van vaccinatie, dat gebeurt niet om het geloof', *NRC Handelsblad* 8 September 2012; R. Pierik, 'Dan toch maar een vaccinatieplicht?' (2013) 88 *Nederlands Juristenblad*, no. 40, pp. 2798-2807.