



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	The Netherlands
<b>Title:</b>	Bill abolishing 'sole ground construction' adopted by Dutch Senate.
<b>Date:</b>	16 March 2015
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<b>Update of flash report nr:</b>	1272-NL-94
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Senate passes Bill to end 'sole ground construction', bringing national law closer to the wording of Article 4(2) of Directive 2000/78.
<b>Ground of discrimination:</b>	Sexual orientation
<b>Source:</b>	Legislation (Kamerstukken II 2010/11-2013/14, 32 476, nos. 1-11)
<b>Field:</b>	Employment, education, other.
<b>Applicable law:</b>	Article 5(2)(c) General Equal Treatment Act

### **Content**

**Legal development:** The so-called 'sole ground construction' ("enkelefeitconstructie"), which can be found in Article 5(2)(c) of the Dutch General Equal Treatment Act (GETA), aimed at eliminating the possibility that a distinction is exclusively made on the ground of political opinion, race, sex, nationality, hetero-or homosexual orientation or civil status, under the guise of existing justifications which are permitted by law. The sole ground construction has played an important role with regard to the question whether Christian schools may lawfully refuse to hire cohabitating homosexual teachers, and has been hotly contested.

The 'sole ground construction' seemed to be in conformity with Article 4(2) of Directive 2000/78. However, the issue was mentioned by the European Commission in the (now closed) infringement procedure against the Netherlands (no. 2006/2444). In a reaction to this procedure, the Dutch Government announced that the exception would be rephrased in such a way that the wording would reflect that of the Directive more closely. After several Bills and various advices from NGOs, the Council of State and the (former) equality body Equal Treatment Commission (now the Netherlands Institute for Human Rights), a Bill was adopted by the Dutch Lower House in May 2014, finally abolishing the sole ground construction (see flash report No 1272-NL-94). The Dutch Senate has now (March 2015) also passed the Bill, which means that the construction has definitively been abolished.

The adopted Bill corresponds more closely with the wording of the exception in the Directive. The new Article 5(2) GETA reads as follows:

2. Article 5(1) shall not prejudice that:

- a. an organisation the ethos of which is based on religion or belief,
- b. an organisation offering private education, or
- c. an organisation the ethos of which is based on a political conviction,

may, as regards individuals working for them, make a difference of treatment based on religion, belief or political conviction, insofar as these features, by reason of the nature of the specific occupational activities concerned or of the context in which they are carried out, constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.

Such a difference of treatment should not go beyond what is appropriate, having regard to the attitude of good faith and loyalty to the organisation's ethos that may be required of individuals working for them, and should not justify discrimination on another ground mentioned in Article 1, without prejudice to Article 2(1).<sup>1</sup>

The adopted Bill was introduced by several Members of Parliament, as the Government did not show any inclination to take the initiative. Christian political parties and commentators remain adamantly opposed to this amendment. They consider it to be discriminatory on the ground of religion when churches and organisations based on religious convictions cannot select their personnel on the basis of this religion, although the new provision does include an exception for organisation with an ethos based on religion, belief or political conviction.

**Key points of analysis:**

- Senate passes Bill to end 'sole ground construction'.
- Article 5(2)(c) General Equal Treatment Act (GETA) brought in line with Article 4(2) of Directive 2000/78/EC.

**Internet link source:** *Parliamentary documents*: Kamerstukken II 2010/11-2013/14, 32 476, nos. 1-11. All documents related to the Bill may be accessed online at:

[https://zoek.officielebekendmakingen.nl/zoeken/parlementaire\\_documenten](https://zoek.officielebekendmakingen.nl/zoeken/parlementaire_documenten)

(Last accessed 16 March 2015)

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<sup>1</sup> This is an unofficial translation by the author of this flash report. The official Dutch text can be accessed at [https://zoek.officielebekendmakingen.nl/zoeken/parlementaire\\_documenten](https://zoek.officielebekendmakingen.nl/zoeken/parlementaire_documenten).