

NEWS REPORT

Date: 26 May 2014
Expert: Rikki Holtmaat
Title: LGBT-friendly measures adopted by Parliament
Country: The Netherlands
Context
Issue at stake: Series of LGBT-friendly measures adopted by Dutch Parliament
Ground of discrimination: Sexual orientation
Source: Legislation
Field: Employment, education, other.

Content

Legislative developments: Before the September 2012 elections, a number of political parties reached consensus on a series of measures in the field of LGBT-empowerment. The accord contained plans on five concrete fields: lessons on LGBT-sexuality in schools of secondary education, the position of civil servants who refuse to marry same sex couples, the 'sole ground construction' in the General Equal Treatment Act (GETA), the legal position of lesbian co-mothers, and gender registration. Lessons on LGBT-sexuality in high schools are now an obligatory part of the curriculum; the remaining measures have been voted into law or are expected to be finalised in the near future.

New marriage registrars required to marry same-sex couples

Since the introduction of gay marriage in 2001, the issue whether marriage registrars are obliged to marry same-sex couples has been the subject of heated public debate, as several civil servants raised conscientious objections on the ground of their religious belief. In 2011, a motion was adopted in which the Government was requested to propose legislation rendering it impossible to employ marriage registrars who are unwilling to celebrate the marriage of same-sex couples.¹ The then Government however refused to carry out this motion. After much debate, several Bills and advice of the Council of State, a Bill making it impossible to appoint new civil servants who refuse to marry same-sex couples has been voted into law by the Dutch Lower House (June 2013) and has recently been adopted by the Senate (4 June 2014).

Sole ground construction

The 'sole ground construction' ("enkelefeitconstructie") can be found in Article 5(2)(c) GETA and is equivalent to the clause in Article 4(2) of Directive 2000/78. It 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 exceptions which are permitted by law. This construction

¹ Kamerstukken II 2011/12, motion Van Gent, 27017, no. 77

has played an important role with regard to the question whether a Christian school may lawfully refuse to hire cohabitating homosexual teachers. The 'sole ground' that a person is homosexual, may *per se* not lead to a refusal to hire or to a dismissal. However, this may be different if additional circumstances are taken into account, which effectively led to Christian schools refusing to hire / dismissing cohabitating homosexual teachers.

Such 'additional circumstances' had to be connected with behaviour or circumstances that are related with the religious ethos of the organization. Therefore, this 'sole ground construction' seemed to be in conformity with the Directive. However, as a reaction to the European Commission's (closed) infringement procedure against the Netherlands (no. 2006/2444), where this issue was mentioned by the Commission, the Government asked for an advice of the Council of State and announced that the exception would be rephrased in such a way that the wording would reflect the wording 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, a Bill has recently been adopted by the Dutch Lower House (May 2014), finally abolishing the sole ground construction. This Bill has been introduced by several Members of Parliament, as the Government did not show any initiative. The current proposal corresponds closely with the wording of the exception in the Directive. Christian political parties and commentators remain adamantly opposed to this amendment. They consider it to be discriminatory on the ground of religion. Dutch Senate is expected to pass the Bill in the autumn of 2014.

The legal position of lesbian co-mothers

In December 2013, a Bill was adopted by the Dutch Senate that strengthens the legal position of co-mothers. In the past, lesbian co-parents experienced great problems when wishing to have the co-mother recognised as a legal parent. To obtain this recognition, a costly and lengthy procedure had to be followed. The adoption of this Bill simplifies this considerably, as the legal definition of 'mother' is changed in such a way that the co-mother no longer needs to follow such a procedure.

With the adoption of the Bill, co-mothers will enjoy the same rights as those that are already enjoyed by non-biological fathers (i.e. men whose partner has become pregnant with donor sperm). The Bill provides that a co-mother automatically becomes a legal parent when the sperm donor is anonymous. If the sperm donor is known, the co-mother can legally recognise her child by using a relatively simple and inexpensive procedure that can already be completed before the birth of the child. The law has entered into force on 1 April 2014.

Gender registration

After years of lobbying by LGBT-organizations, such as COC Nederland and Transgender Netwerk Nederland (TNN), and following advice from the Council of Europe, a Bill amending gender registration was adopted by Senate in December

2013 (the Bill has however not entered into force yet, as of May 2014), and the date of entry is not known in advance. The Bill includes some important changes, which will make it easier for transgender persons to change the registered sex designation in their identity documents and in the official population database.

Contrary to the old legal requirements in the Dutch Civil Code, a transgender individual no longer needs to have undergone medical treatment, and the condition of infertility that applied to both men and women has been abolished. In the new system, an officially recognized expert is required to officially establish the conviction of the transgender person. This renders it possible to change the official registration without a judge being involved. In general, the legislative changes make it less difficult for transgender persons to ensure that the records included in the municipal database correspond with their 'true' sex, which also means that gender designation on other documents, such as diplomas, can be changed.

Internet link source:

Parliamentary documents:

- *Kamerstukken II* 2012/13, 33344, 1-8; *Kamerstukken I* 2013/14, 33344, A-E (Bill Marriage Registrars)
- *Kamerstukken II* 2010/11-2013/14, 32476, nos. 1-11 (Sole Ground Construction)
- Law Gazette 2013, 481 (Lesbian co-mothers).
- Law Gazette 2014, 1 (Gender Registration).

These documents may be found at <https://zoek.officielebekendmakingen.nl/zoeken/>

Other documents:

- The Rainbow Europe Map may be retrieved at: http://www.ilga-europe.org/home/news/for_media/media_releases/rainbow_europe_2014