



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

NEWS REPORT

Country:	The Netherlands
Title:	Debate in Parliament on bill on statutory protection for transgender- and intersex persons and court decision on registration as a person whose sex cannot be established
Date:	27 June 2018
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<u>Context</u>	
Issue at stake:	Proposal to explicitly include protection against discrimination on the ground of sex characteristics, gender identity and gender expression into the General Equal Treatment Act and court decision on registration of an intersex condition
Ground of discrimination:	Sex, transgender, intersex condition
Source:	Legislation and court decision
Field:	Other
Applicable law:	General Equal Treatment Act (GETA)

Content

Policy development: On 16 January 2017 three members of Parliament submitted a bill to Parliament in order to change the GETA so as to explicitly include a prohibition on discrimination on the ground of sex characteristics, gender identity and gender expression. The MP's mentioned that they recognize that discrimination on these grounds is at present already covered by the general prohibition on sex discrimination, but they wish to make it more explicit that the law applies to the entire spectrum of variations that are covered by this ground, not only to discrimination because of being a man or a woman. In that way it can be made sure, so the MP's stated, that discrimination because of being transgender, having an intersex condition or not fitting into the man-woman dichotomy, is prohibited. Also they aim to strengthen the position in society of this group of people and to make them more visible.

The bill was debated for the first time in the House of Parliament on 5 June 2018. Most political parties were positive, but some took a critical stance. The MP's will now answer the questions put to them by the House, after which the debate will continue.

Court decision: In the meantime, the District Court Roermond ruled on 28 May 2018 that a claimant, who has an intersex condition, has the right to change the description 'female' in her birth certificate into 'sex could not be established'. At the birth of the claimant, the sex could not be established. The parents then decided to register the child as a boy. During his adolescence the child decided that he wanted to be a woman and he had surgery

to change his gender characteristics. However the gender 'female' did not fit him/her either. Therefore, the request was made to the court to allow for a third category: neither man nor woman.

The court ruled that, in view of legal and social developments, the time has come to accept such a third category. Not accepting this is an infringement on the private life of the person concerned, the right to self-determination and the right to personal autonomy. However, it was not possible for the court to introduce a third category (neither man, nor woman), as for this the law will have to be changed. It is possible though to register in the birth certificate that the sex of the claimant could not be established.

Key points of analysis: The court judgment is actually more important than the bill to change the GETA. The inclusion into the GETA of the prohibition on discrimination on the ground of sex characteristics, gender identity and gender expression mainly has a symbolic meaning, as also at present this type of discrimination is forbidden. The court judgment may lead in the future to a change of the Civil Code (the part on family law) in order to introduce a third category, apart from male and female. The category that was used in the judgment – the sex could not be established – is meant as a temporary 'solution' for newborn children whose sex identity is not clear yet.

Internet link source:

https://www.eerstekamer.nl/wetsvoorstel/34650_initiatiefvoorstel_bergkamp (bill)

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBLIM:2018:4931>
(court decision).