

The Right to Personal Autonomy Regarding Sex, Gender and Sexual Orientation



THE RIGHT TO PERSONAL
AUTONOMY REGARDING SEX,
GENDER AND SEXUAL
ORIENTATION

THE CASE OF BELGIUM

PIETER CANNOOT

BOOM JURIDISCH ANTWERPEN
ANTWERPEN
2022

eloven

Published, sold and distributed by Eleven

P.O. Box 85576
2508 CG The Hague
The Netherlands
Tel.: +31 70 33 070 33
Fax: +31 70 33 070 30
email: sales@elevenpub.nl
www.elevenpub.com

Sold and distributed in USA and Canada

Independent Publishers Group
814 N. Franklin Street
Chicago, IL 60610, USA
Order Placement: +1 800 888 4741
Fax: +1 312 337 5985
orders@ipgbook.com
www.ipgbook.com

Eleven is an imprint of Boom uitgevers Den Haag.

Boom juridisch Antwerpen
ISBN 978-94-6451-103-1
ISBN 978-94-6451-205-2 (e-book)
D/2022/15251/03



ISBN 978-94-6236-297-0
ISBN 978-90-5189-963-4 (e-book)

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This book is based on a doctoral dissertation that was publicly defended at Ghent University on 30 September 2019. The author was supervised by prof. dr. Toon Moonen & prof. dr. Eva Brems (Ghent University).

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'Cogito ergo sum'
René Descartes



FOREWORD

As I write this foreword, a few weeks have passed since the Belgian Pride. Every year, when this colourful parade streams its way through the city of Brussels, I notice the same questions resurfacing. Do we really still need to campaign for equality for LGBTIQ+ people? What form should Pride take, what are its origins, how is it perceived? Invariably, we also discuss the legal status of those who are LGBTIQ+. Formally speaking, the LGBTIQ+ community enjoys quasi-equal status in today's Belgium – and that is often used as an argument to question the relevance of this festival that is held every year in celebration of people who are LGBTIQ+.

This book offers a significant contribution to the current debate about LGBTIQ+ rights. It explores the legal status of LGBTIQ+ people, and points out remaining gaps and ambivalences. The author asks whether a legal framework built on personal autonomy (concerning sexual identity) would improve the rights of the LGBTIQ+ community, and offers important perspectives through analysis of the current rights of trans and non-binary people. He also poses the question: would enshrining these rights in the constitution give people greater certainty?

Perhaps the most valuable argument this book puts forward is its analysis that LGBTIQ+ rights are important not only to a minority but to society as a whole. They bring into focus the wider societal struggle against pigeonholing people based on caricature, and against heteronormative stereotyping. In other words, the struggle for LGBTIQ+ rights in no way compromises any other struggle – for women's rights, for example, as is sometimes suggested – but on the contrary makes a wholly positive social contribution. A legal framework based on personal autonomy starts from the individual rather than focusing on any particular minority, and that is why it benefits everyone.

This is also why personal autonomy over one's sexual identity is the starting point for this research. For many people, most likely for everyone, being able to express your sexual identity in your own way and thus having full self-determination over that identity, is of great importance. It is crucial that this freedom be protected by law, and above all that it is not restricted by law. Because it is a wonderful freedom, entirely befitting our liberal, democratic system.

That freedom is worth defending. We see in many places that these freedoms are under pressure or even on the verge of being reversed, even in some European countries. Autocratic regimes tend to limit the rights of LGBTIQ+ people, as if expressing who you are somehow presents a threat to society. Moreover, we can see that it's not just LGBTIQ+ rights that are being undermined in these places, but also women's rights, reproductive rights and the rights of other minorities such as refugees.

FOREWORD

Luckily, our country has been at the forefront of LGBTIQ+ rights for a number of years, and advocates strengthening these rights at a European level. Perhaps the best example of this is that Belgium was the second country to make marriage legally possible to all. Other LGBTIQ+ rights are also fairly well anchored in this country.

That does of course not mean there is no more progress to be made. Our pioneering position is not a given, any more than the legal protection of LGBTIQ+ people is a given. I have already mentioned resistance against it, and that resistance is growing. This is exactly why it is so essential we keep renewing these rights, and keep taking the steps we must take to ensure they are strengthened.

The changes to laws for trans individuals, which are being worked on at present and which are described in this book, are obvious examples of how rights can be protected. But also, and this idea is also introduced in this book, the possibility to fundamentally anchor the right to personal autonomy in the constitution. By definition, this would give LGBTIQ+ people greater protection. It is moreover one of the criteria of ILGA Europe's *rainbow index*, which describes and ranks the legal protection of LGBTIQ+ people per country.

In other words, this book raises some very pertinent questions, all with a political as well as an ethical dimension. A person's gender or sexual identity is one of the most intimate aspects of their personality. The question of whether, and to what extent, a government should interfere is a tricky one. That is precisely why these scientific recommendations and questions are so valuable. In that sense, this book fits in a tradition of scientists who have long campaigned to place the rights and lives of LGBTIQ+ people on the agenda.

As a politician and former researcher myself, I believe strongly in the interaction between policy and science. It seems logical to me – and an important ambition – that we should work from as scientific a basis as possible when making policy decisions. In an ideal world, civil society would also be involved. This is how you create a valuable dialogue between politics, scientific knowledge and experience. This exchange of ideas and observations is particularly valuable when a legal framework also has an ethical dimension.

Of course, next to the legal framework we also have to make sure that LGBTIQ+ people feel safe, valued and respected in society, and that is perhaps a bigger challenge than our legislative work. But I do think that a legal framework, articulating that we want to live in a society that is inclusive and free from heteronormative stereotyping, is an essential basis for making that ambition a reality. That is, in the end, why the recommendations and suggestions in this book are invaluable.

I wish you every reading pleasure.

Prof. dr. Petra De Sutter
Belgian Deputy Prime Minister

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