



NEWS REPORT

Date: 16 November 2011
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Title: Civil servants no longer allowed to refuse to marry same sex couples
Country: The Netherlands

Context

Issue at stake: Parliament accepts motion to prohibit local governments to employ civil servants who do not want to marry same sex couples
Ground of discrimination: Sexual orientation
Source: Parliamentary motion
Field: Civil law
Legislative provisions: New legislation to be adopted

Content

Since the introduction of the right of same sex couples to register their partnership (1998) and to conclude a marriage contract under Dutch Civil Law (2001), there have been debates about the issue whether civil servants may be imposed with the task to register marriage of same sex couples. As a matter of fact, several civil servants had raised conscientious objections on the ground of their Christian belief. The Minister of Interior, in 2005, made a statement that according to him there was no provision in Dutch law that could oblige to register same sex marriages.¹ In 2002 and 2005, the Equal Treatment Commission (ETC) held that local governments should look for 'practical solutions' in their organisation. The ETC allowed local governments to continue to employ civil servants with conscientious objections against same-sex marriages; but at the same time they had to guarantee that same-sex marriages could be concluded by registrars not

¹ Minister Remkens, 11 March 2005, Tweede Kamer 2004-2005, Aanghangsel van de Handelingen, nr 1142.

showing such objections.² In 2008, the ETC came with the opposite conclusion,³ and held that a municipality had the legitimate aim to combat discrimination and to prevent civil servants from discriminating against homosexual couples. A refusal to marry same sex couples was deemed to be discriminatory.

At the same time the ETC published an opinion, in which it recommended the Government not to allow individual registrars to refuse to register same-sex marriages.⁴ The government took no action on the basis of this opinion. A few years later, several local governments, especially with a left wing or liberal majority in their local councils, adopted policies to oblige all marriage registrars to conclude all kinds of marriages, without any distinction on any ground. Other local governments allowed their civil servants to raise conscientious objections against same sex marriages. The Government, in reaction to all this, stated that every local government should guarantee that they employ enough civil servants who are willing to conclude same sex marriages.

The issue attracted media attention and aroused vehement protests from LGTB organisations each time a civil servant expressed his/her wish not to marry a same sex couple and each time a local government refused to hire such a civil servant or to dismiss him/ her for that reason. Parliament asked the government several times to react to the ETC's opinion. On 9 November 2011, the Government announced that it asked the Council of State to give advice in this matter and that no new legislation would be proposed before this advice would be published.⁵ The Green-Left Party then proposed a motion in Parliament in which it the Government was requested to propose new legislation in which it will become impossible for local governments to employ marriage registrars who are not willing to marry same sex couples from 1 January 2012 onwards.⁶ This motion was accepted by a majority of Parliament on 15 November 2011.

² ETC Opinions 2002-25 and 2005-26.

³ ETC Opinion 2008-40.

⁴ ETC Opinion 2008-4.

⁵ Tweede Kamer 2011-2012: Vragen van het lid Dijkstra (D66) aan de minister van Onderwijs, Cultuur en Wetenschap over het bericht dat de minister weigerambtenaren de mogelijkheid wil blijven geven huwelijken tussen personen van gelijk geslacht te weigeren (ingezonden 12 oktober 2011). Antwoord van minister Van Bijsterveldt-Vliegenthart (Onderwijs, Cultuur en Wetenschap) (ontvangen 9 november 2011).

⁶ Motie van Gent c.s., Tweede Kamer 2010-2011, 27017, nr 77.



Internet link source and additional information:

A lot information on this issue is assembled on the website of the COC, the main LGTB-ngo in The Netherlands: www.coc.nl (search term: weigerambtenaar) Last accessed on 16 November 2011.