

Accept Gender Spectrum or Face Punishment

Bill criminalising conversion therapy unraveled: 'it comes down to conversations'

By Hannah Beijeman

For years the acceptance of 'gender identities' and 'sexual orientations' has been fought for.¹ Now, any final matters which are seen as an 'obstacle'² to achieving the goals 'acceptance of LGBT+ persons'³ and 'promotion of sexual and gender diversity'⁴ need to be done away with... for good. For the initiators of the bill 'Criminalisation of Conversion Acts Act,' the time to involve criminal law, is right now. With this new bill, members of the political parties D66, VVD, GroenLinks-PvdA, SP and Partij voor de Dieren want to *punish 'anyone who, in the exercise of an office, profession or business, or in the context of an organization, performs actions aimed at changing or suppressing the sexual orientation or gender identity of a person who has not yet reached the age of eighteen years' with 'imprisonment of at most one year or a fine of the fourth category (€ 22.500,-)'* (art. 285ba, paragraph 1). Adults are addressed in paragraph 2: *'With the same punishment shall be punished the person who commits the offense described in the first paragraph with respect to an adult person by abuse of preponderance arising from factual circumstances.'* The person who makes this a habit is promised the same fine or a higher maximum term of imprisonment (2 years, paragraph 4).

¹ [Kamerstukken II 2023/24, 36178, nr. 10](#), p. 36 (NV II), [Kamerstukken II 2023/24, 36178, nr. 6](#), p. 11 (MvT).

² [Kamerstukken II 2023/24, 36178, nr. 6](#), p. 11 (MvT).

³ [Kamerstukken II 2023/24, 36178, nr. 6](#), p. 10 (MvT).

⁴ [Kamerstukken II 2023/24, 36178, nr. 10](#), p. 9 (NV II).

Conversion acts?

A precondition for the criminalisation of a certain conduct is that it must be foreseeable which conduct results in punishment (*lex certa* principle). The initiators reject the call in the independent science test⁵ to define and delineate “conversion acts.” On the contrary, in their view ‘limiting it to specific acts’ would make the text even ‘considerably less workable’.⁶ They prefer a description that is as general as possible, because that way ‘a variety of cases that may occur’ can be covered.⁷ According to the initiators it is up to the judge to decide what behaviors to include, based on the legal text.⁸

One is obviously not going to draft a bill without the intention of criminalising certain conduct. What variety of cases is being referred to? In the Explanatory Memorandum, the term SOGIECE (Sexual Orientation and Gender Identity Expression Conversion Efforts) used in international literature is used to describe conversion acts. This includes a broad spectrum of activities such as conversations, therapy and pastoral care, including preaching and prayer. Despite having used the word SOGIECE **54** (!) times to describe conversion acts,⁹ the initiators emphasize that what has been classified under SOGIECE in the literature ‘does not necessarily fall within the scope of this penal provision’¹⁰. On the other hand, they believe this law should send a signal that SOGIECE is not accepted in The Netherlands.¹¹

While ‘electroshock therapy’ is cited as one of the main reasons why ‘conversion acts’ should end right now¹², the initiators could not prove that this practice occurs in The Netherlands.¹³ Besides, of course, both physical and psychological abuse is already illegal, the independent science test pointed out. The initiators explain: ‘The complexity in conversion acts lies in the fact that much of the practice actually consists of *conversations*.’¹⁴

So are you no longer allowed to have conversations about sexual and gender identity? Certainly you may, as long as it is the “right” conversation. ‘Performing and offering conversion acts hinders acceptance of different sexual orientations and

⁵ [Wetenschapstoets initiatiefwetsvoorstel strafbaarstelling conversiehandelingen \(36178\).pdf](#).

⁶ [Kamerstukken II 2023/24, 36178, nr. 10](#), p. 31 (NV II).

⁷ [Kamerstukken II 2023/24, 36178, nr. 10](#), p. 5 (NV II).

⁸ [Kamerstukken II 2023/24, 36178, nr. 10](#), p. 13-14 (NV II).

⁹ [Kamerstukken II 2023/24, 36178, nr. 6](#), (MvT).

¹⁰ [Kamerstukken II 2023/24, 36178, nr. 6](#), p. 18 (MvT).

¹¹ [Kamerstukken II 2023/24, 36178, nr. 10](#), p. 36 (NV II).

¹² [Kamerstukken II 2023/24, 36178, nr. 10](#), p. 13, 40, 49, 50 (NV II).

¹³ [Bureau Beke, Voor de verandering. Een exploratief onderzoek naar pogingen tot het veranderen van seksuele gerichtheid en genderidentiteit in Nederland, 2020](#), p. 72; [Kamerstukken II 2023/24, 36178, nr. 10](#), p. 50 (NV II).

¹⁴ [Kamerstukken II 2023/24, 36178, nr. 10](#), p. 40 (NV II).

gender identities.¹⁵ Sexual and gender identity may be discussed if the conversation can be viewed by the initiators as ‘contributing to acceptance’.¹⁶

Exercise of an office, profession or business or in the context of an organization

Conduct that takes place exclusively in the private sphere - such as conversations between parent and child - are, for the time being, 'in principle' excluded from the criminalisation. 'Protecting the parenting relationship is the only reason for this limitation.'¹⁷ Again, according to the initiators, it is also not ruled out 'that there *can* be criminalisation of parents'.¹⁸ For example, no business contract or treatment agreement needs to be shown. 'The situation can also occur in an informal setting.'¹⁹

What about education? The initiators recognize the freedom of education and are 'of the opinion that schools, certainly on the basis of their direction, can propagate certain views'²⁰. However, these must be the views they believe to be the *right* ones: no views from which it can be concluded that the person concerned is trying to “suppress” someone's sexual or gender identity. 'Regarding the question of whether education falls outside the scope of the proposal, that cannot be stated categorically. After all, if the offense description of a criminal offense is met within education, the mere circumstance that the acts of conversion were committed in the context of education does not preclude prosecution and possible conviction for that offense.'²¹ Despite the fact that the proposed offense definition appears to be limited to ‘the person who, in the exercise of an office, profession or business or in the context of an organization’, it is clear from the foregoing that the initiators would like to criminalise the intended conduct in every setting. For, surely it cannot be that operating within a particular setting or context provides a license to commit “criminal offenses.”

For the medical profession (both physicians and other registered care providers), it applies that *responsible* medical practice cannot lead to criminal liability under article 285ba of the Penal Code because of the applicability of the general grounds for exclusion.²² But, also in this case: it must be *that* medical professional practice that the initiators believe to be the right one. In their view, “responsible” professional practice does not include any treatment of which can be said that the practitioner is trying to “suppress” someone's sexual or gender identity.²³ This applies to minors undergoing “conversion treatment”, because they are not

¹⁵ Kamerstukken II 2023/24, 36178, nr. 6, p. 11 (MvT).

¹⁶ Kamerstukken II 2023/24, 36178, nr. 10, p. 9, 12, 13, 22, 36, 55 (NV II).

¹⁷ Kamerstukken II 2023/24, 36178, nr. 6, p. 34 (MvT).

¹⁸ Kamerstukken II 2023/24, 36178, nr. 10, p. 26 (NV II).

¹⁹ Kamerstukken II 2023/24, 36178, nr. 10, p. 18 (NV II).

²⁰ Kamerstukken II 2023/24, 36178, nr. 10, p. 21 (NV II).

²¹ Kamerstukken II 2023/24, 36178, nr. 10, p. 24 (NV II).

²² Kamerstukken II 2023/24, 36178, nr. 10, p. 7 (NV II).

²³ Kamerstukken II 2023/24, 36178, nr. 10, p. 33-34 (NV II).

considered to be able to decide on this, but also to adults, because with them there is a not insignificant chance that “social pressure” could be detected, as can be seen in the following.

Minors and adults

Although paragraph 1 deals with minors - who are not considered to be able to voluntarily choose to undergo conversion acts either - it does not stop there. ‘With the same punishment is punished the one who’ commits the aforementioned offence 'in respect of an adult person by abuse of authority arising from factual circumstances', according to paragraph 2.

What about an adult who would voluntarily request “conversion acts?” ‘The initiators see problems in establishing voluntariness.’²⁴ In fact, they think that when it comes down to this issue, voluntariness doesn’t exist. ‘Initiators point out regarding this that persons who choose conversion acts do not always do so completely independently and of their own free will. There is often (social) pressure from one's own community that does not accept the person's sexual identity or gender identity.’²⁵ The threshold for the one who performs “conversion acts” towards an adult to fall under this prohibition of paragraph 2 is not high, on the contrary, it will be difficult to stay under it. If the adult or the one assessing the case identifies “pressure” from the environment if it does not (sufficiently) accept the person's sexual or gender identity, it could make the one who performs “conversion acts” towards an adult fall under the scope of this bill, even if that adult is voluntarily involved. For example, according to the initiators, there is already “pressure” if the person in question would undergo “conversion acts” ‘from the viewpoint of conforming to what is expected from one's environment’.²⁶ In practice, only someone who is out of touch with civilisation is immune from such “social pressure.” But, it is not that this bill intends to prohibit *all* social pressure concerning the foregoing. Only pressure that isn’t the right one. Only pressure that is perceived or judged as “not accepting”²⁷ or “repressive”²⁸ of sexual or gender identity should not pass muster.

Harm unknown

The independent science test brings up the fact that it has not been demonstrated exactly what harm conversion acts would cause.²⁹ This while the harm principle is central to criteria for the use of criminal law: criminalisation can only be justified in

²⁴ *Kamerstukken II 2023/24*, 36178, nr. 10, p. 42 (NV II).

²⁵ *Kamerstukken II 2023/24*, 36178, nr. 10, p. 8 (NV II).

²⁶ *Kamerstukken II 2023/24*, 36178, nr. 10, p. 8 (NV II).

²⁷ *Kamerstukken II 2023/24*, 36178, nr. 10, p. 8 (NV II).

²⁸ *Kamerstukken II 2023/24*, 36178, nr. 10, p. 8 (NV II).

²⁹ *Wetenschapstoets van voorgenomen beleid, Wet strafbaarstelling conversiehandelingen (36178)*, p. 3.

the prevention of (proven) harm. The initiators also do not want to adopt the recommendation in the science test to only criminalise acts that would lead to psychological or physical harm. They point out that acts that cause harm are already covered by the provisions laid down in the Penal Code on assault.³⁰

The lack of harm would take away the legal basis to intervene. This, they say, should change as soon as possible. The “advantage” of the present bill, according to the initiators, is ‘that harm (of ‘conversion acts’) does not need to be established in an individual case’.³¹ There is a difference of opinion as to what causes harm. That too, according to the initiators, should change: only *their* views on what could possibly cause harm should still be able to be heard. For example, a great demand for help has arisen for people who have gone through social, legal and medical transition and say they feel deceived because they have found out that they essentially cannot change their gender. After medical transition, they now have to go through life with the health damage that gender reassignment surgery has caused.³² People who want to draw attention to these dangers and consequences and prevent further damage are - following the reasoning of the initiators - attempting to inflict harm, because these statements can be seen as “not accepting” of someone's gender identity. So as such, the initiators are not opposed to harm, as long as it is the right harm: harm that contributes to ‘acceptance’.

Unchangeable sexual and gender identity?

The science test also indicates that gender identity is not unchangeable in a general sense. Other initiative legislation also constantly assumes the fluidity of both sexual and gender identity. According to the initiators, this lies in a difference between unchangeable and unalterable. These things are indeed not unchangeable according to them, but should be seen as *unalterable* in the sense that others should not or cannot try to suppress or change it in the person involved.³³ Of course others are still allowed to apply social pressure, as long as it is the right pressure: pressure that promotes sexual and gender diversity. The same goes for people who encourage each other to change: this is allowed, as long as it is the right change.

³⁰ *Kamerstukken II 2023/24*, 36178, nr. 10, p. 5 (NV II).

³¹ *Kamerstukken II 2023/24*, 36178, nr. 10, p. 19 (NV II).

³² [J. Kuitenbrouwer en R. van der Zee, ‘De transitie heeft mijn leven verwoest’, HP/De Tijd 31/10/2022](#); [E. van Gaalen, ‘Jenny \(22\) heeft spijt van transitie naar jongen: ‘Je kunt ook een jongensachtig meisje zijn’, Algemeen Dagblad 27/09/2020](#); [M. Leonard, ‘Half of trans surgery patients suffer extreme pain, sexual issues years later’ Daily Mail Online 11 januari 2023](#); [E. Potter e.a., ‘Patient reported symptoms and adverse outcomes seen in Canada's first vaginoplasty postoperative care clinic’, Neurourology and Urodynamics \(volume 42, Issue 2\), 11 januari 2023.](#)

³³ *Kamerstukken II 2023/24*, 36178, nr. 10, p. 10, 34 (NV II).

Control

Those values, norms, beliefs, science, views and opinions that people try to pass on to each other that are seen as “impeding” the acceptance of different sexual orientations and gender identities are framed as and captured under the umbrella term “conversion acts”. There is an attempt to deploy criminal law to control and enforce what people convey to each other: it must be able to be regarded as promoting acceptance of sexual and gender diversity.

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