



Sexual Citizenship and Trends for SOGI Rights Recognition in European Civil Law Countries

Ana de Mello Côrtes

University of Coimbra, Faculty of Law, Portugal
University of Bergen, Centre on Law & Social Transformation

Abstract

The concept of citizenship is central in debates on democracy and public policy. From this concept, that of “sexual citizenship” was developed involving rights claims linked to sexual rights. These rights can be recognized by the state or not, and in the recognition processes, several factors - such as stances from human rights courts, legal mobilization, mechanisms for claiming rights, and national and international political landscape - can play a role. In this context, the European Court of human rights has decided repeatedly on Sexual Orientation and Gender Identity (SOGI) rights and has used the number of countries that recognized a right as part of the reasoning for issuing stances pro or against it. This argument illustrates the importance of understanding trends of rights recognition in Europe and beyond. On that account, this study maps out the decisions from the European Court of Human Rights on SOGI rights and the processes of recognition of those rights in European countries with civil law systems over time. By working with civil law countries, which, according to the classic characterization, would have laws as the primary source of law, the paper also addresses how – and why - in some of these countries, constitutional courts have taken the lead in recognizing rights.

Keywords: Constitutional review, European Court of Human Rights, Gender, Legislation, Sexuality