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Reconciling Gender Equality, Non-Discrimination, and Diversity in Constitutional Law

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Abstract

Gender equality, as a cornerstone of democratic society, posits that all individuals should be treated fairly and without prejudice. This principle has made significant strides in legal, social, and ethical dimensions; however, gaps remain, necessitating continuous reflection and action. One of those gaps concerns the legal position of gender diverse individuals in constitutional law, in particular their protection under the principle of gender equality and non-discrimination. Gender diverse individuals have a gender identity that does not necessarily align with their sex assigned at birth, such as trans, non-binary, gender fluid, and agender individuals. As the principle of gender equality is based upon a binary understanding of sex and gender, that is, as if society consists of women and men only, it might inadvertently exclude people that do not identify as male or female.

This paper will examine the content of the principle of gender equality and non-discrimination, focusing on its practical application in constitutional law and the implications thereof for gender diverse individuals. To this end, the case-law of the Constitutional Court of Belgium is evaluated within the supranational framework of Europe and international human rights law. Moreover, the paper will explore the need for legislative reform to better accommodate gender diversity. Furthermore, the paper will underscore the pivotal role of the law in shaping attitudes and behaviours, emphasizing the need to foster an inclusive society where every individual, irrespective of gender identity or expression, enjoys equal opportunities and protections. Finally, this paper aims to advance our understanding of the interplay between equality, non-discrimination, and gender diversity in constitutional law.

Keywords: gender equality diversity human rights constitutional law