

It takes two: addressing the legal challenges of dementia in registered partnerships in Belgium

Amber Jans

PhD researcher person and family law

Faculty of Law, Hasselt University

Martelarenlaan 42

3500 Hasselt

Belgium

E-mail: amber.jans@uhasselt.be

Abstract

Dementia presents a growing challenge for legal systems worldwide amidst demographic ageing. This research examines the legal complexities faced by individuals with dementia and their partners within registered partnerships (marriage or legal cohabitation), focusing on the Belgian legal framework.

Grounded in fundamental human rights principles – respect for private and family life (art. 8 ECHR) and the right to equal treatment before the law (art. 12 CRPD) – this research explores how adult protection measures and relational measures interact within Belgian legislation.

Article 12 CRPD emphasizes equality and non-discrimination, specifically in the context of legal capacity. However, applying the CRPD to individuals with dementia raises critical questions. Dementia is a progressive condition requiring evolving support mechanisms tailored to the individual's changing needs. Limiting legal capacity in light of art. 12 CRPD often undermines autonomy and infringes upon the rights to private and family life, presenting significant human rights concerns.

Belgian law employs two parallel mechanisms: adult protection measures, which focus on the individual, and relational measures (e.g. in matrimonial property law) focussing on the relationship itself. These mechanisms often operate simultaneously, affecting the same individuals. This dual approach creates legal and practical tensions, particularly regarding the competing interests of autonomy, protection, and relational continuity.

This research highlights the distinctions between these mechanisms and their implications for the diverse interests involved, considering Belgium's human rights obligations. Persons with dementia always remain integral members of their families, requiring legal systems to address both individual and relational needs holistically.

By shedding light on these complexities, this research advocates for comprehensive support systems that prioritize both individual rights and relational dynamics in the face of dementia within registered partnerships. Ultimately, it contributes to a broader understanding of how legal systems can better balance individual rights and relational dynamics in the context of dementia, promoting equality and non-discrimination.