

CRITIKAL COMMENTS

For Council of Europe Convention on preventing and combating violence against women and domestic violence

Article 1 – Purposes of the Convention

1 The purposes of this Convention are to:

b contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including women empowering;

Possibly opposing and because of that, not clear ontological (conforming factual reality) precises of the main aims of the Convention:

a) (The first of the primary aims declared in the Convention to eliminate all forms of discrimination against woman, ontologically predicts substantial difference between man and woman's identities and roles in the society (man is naturally treated as a superior being compared to woman); that fact may cause women discrimination, and it is sought to be affected by compensating methods against discrimination;

b) Another primary aim declared in the Convention is to promote **substantive** (material, suitable norm of reality) man and woman's equality;

Artificial, socially constructed, promotion of man and woman's substantial equality may be understood as man and woman's social genders (social identity and roles) assimilation. This principally opposes man and woman's natural biological and substantial differences, and also their sexual identity.

Confusion about understanding of the Convention main aims can be caused because in the Convention, the main family missions are not named: mission to ensure children and parents' well-being (self-realization, biological and social identity). Exactly, those missions define family members' roles and functions, and having them in mind, it is possible to understand how socially-gendered discrimination may be possible in the family.

Man and woman's equality as the aim is possible not from substantial (biological), but social point of view. In the nature, as Nature Philosophy proves, total difference of objects is dominating. There are no absolutely identical objects. Two objects are different because they exist and stay in different places

It would be more correct to talk about man and woman's social equality, i.e. the balance of their social positions and roles which may be achieved by methods reducing discrimination. From the social point of view, man and woman's equality cannot mean their substantial uniformity because their natural difference has not been overcome. Equality can mean only man and woman's non-discriminational relation when inequality is compensated in ultimate extent, when man and woman are satisfied with their positions in their own relations and relations with the society.

Exactly, that idea is formulated in the first main aim of the Convention).

The Convention lacks the definition of man and woman's natural substantial gender relation with social gender, showing how it is possible to compensate man and woman's biological (substantial) inequality.

The Convention lacks the definition of man and woman's equality principle as a tool to create, support man and woman's social positions balance.

From the political point of view, equality means not formation of substantial relation, but the demand of practical mind for social equality to compensate natural difference, harmonize man and woman's social positions without violation of their biological identity (the differences of sexes and because of that, differences of their social roles)

Formation of social gender and relation with natural gender is a complicated process, which has not been analyzed scientifically. It only proves that man and woman's substantial equality postulated in the Convention, is a political aim formulated unclear.

Quote: (Although the formation of gender identity is not completely understood, many factors have been suggested as influencing its development. In particular, the extent to which it is determined by socialization (environmental factors) versus innate (biological) factors is an ongoing debate in psychology, known as "nature versus nurture". Both factors are thought to play a role. Biological factors that influence gender identity include pre- and post-natal hormone levels. While genetic makeup also influences gender identity, it does not inflexibly determine it. Social factors which may influence gender identity include ideas regarding gender roles conveyed by family, authority figures, mass media, and other influential people in a child's life. When children are raised by individuals who adhere to stringent(griezta) gender roles they are more likely to behave in the same way, matching their gender identity with the corresponding stereotypical gender patterns. Language also plays a role: children, while learning a language, learn to separate masculine and feminine characteristics and unconsciously adjust their own behavior to these predetermined roles).[23] https://en.wikipedia.org/wiki/Gender_identity

Article 3 – Definitions“

„violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

„gender-based violence“

There is a notion of gender-based violence. The Convention has nor the norm neither standard to define what social gender-based norm is, and which criterias are possible to identify violence, or norm violation. The Convention says nothing about the coincidence or difference of man and woman's social gender based identity. That is why question of the criterias to measure the violence against woman because of her gender identity, still remains not answered.

c “gender” shall mean the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men;

There is no definition of the level and way, by which naturally stated man and woman's functions determine socially constructed roles; also, there is no definition if and how man and woman's social roles are different.

For instance, woman's function (positive traditional stereotype) is to carry a child in her womb or feed him with her milk when he is born; moreover, woman's natural function is take care about child's diet.

Man's function (positive traditional stereotype) is to protect maintaining woman and take care about material resources.

d "gender-based violence against women" shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;

The article makes a logical sum-up mistake idem per idem: violence that is directed against a woman because she is a woman.

It is possible to interpret that there is not going to happen any violence against woman if she is treated not as a woman but as somebody else. Perhaps, it has in mind special social function of woman, for instance, male or any non-female social position.

Obviously, the Convention lacks the definition of woman and man's non-stereotyped social being and roles standard.)

Quote: In social psychology, a stereotype is any thought widely adopted about specific types of individuals or certain ways of behaving intended to represent the entire group of those individuals or behaviors as a whole. These thoughts or beliefs may or may not accurately reflect reality.[2][3] However, this is only a fundamental psychological definition of a stereotype. Within psychology and spanning across other disciplines, there are different conceptualizations and theories of stereotyping that provide their own expanded definition. Some of these definitions share commonalities, though each one may also harbor unique aspects that may contradict the others.
<https://en.wikipedia.org/wiki/Stereotype>

Article 4 – Fundamental rights, equality and non-discrimination

2 Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by: embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realization of this principle;

As it was mentioned, the Convention does not explain the meaning of man and woman's equality principles. It may seem that it means substantial equality, requirement to unify man and woman's social roles but not harmonize their social positions.

3 The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

The article does not explain the relation between sexually-based and socially-gender discriminations. It remains unclear if man and woman's social roles depend on their sexual nature, or not. Next article shows that they do not depend on that, and this one proves that they do because it separates sexual and gender forms of personal identity.

The Convention says about banning to discriminate on the basis of sexual orientation, but it does not say anything how to consider violence (psychological attack) in a single-sex families from the point of view of partners or children living in such families.

The Convention does not define socially-gendered identity of transsexuals, violence against them and criterias of discrimination.

Article 6 – Gender-sensitive policies

Parties shall undertake to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women

The article claims that it is necessarily to implement gender (sexual social equality) prospect and at the same time, it emphasizes man and woman's equality which may be interpreted as substantial uniformity of both sexes to increase woman's opportunities. But this is impossible as it was said.

Article 12 – General obligations

1 Parties shall take the necessary measures to promote changes in the social and cultural patterns of behavior of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.

The article is progressive in the way it forbids woman's worse and weaker position but it gives no comments on why and how stereotyped man and woman's roles create woman's worse social position. If traditionally woman's role is to maintain her baby and other family members, and man's task is to provide them safety and material care, why it is considered as a bad stereotype leading toward one or another sex discrimination? Stereotypes of womanhood or manhood not always mean discriminational relationship, indeed. They can also mean compensation for positions inequality when man accepts such duties, which woman cannot and does not want to accept according to her opportunities, and vice versa. It looks like harmony and equality of social roles, indeed. And this is a common distribution of social roles.

Saying otherwise, the Convention does not define non-stereotyped standards of masculinity and femininity. Having no definition, there are no clear criterias on where stereotyped standards of masculinity and femininity disagree with requirements of man and woman's social equality.

5 Parties shall ensure that culture, custom, religion, tradition or so-called "honour" shall not be considered as justification for any acts of violence covered by the scope of this Convention.

The definition „so-called honour“ is not revealed and not correct at all. The meaning of personal honour or dignity is supported by his/ her convictions, religion, upbringing and understanding of his/ her social role. This article neglects universal personal right of having personal dignity according to personal understanding and worldview.

Article 14 – Education

1 Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.

The article mentions nothing about the meaning of personal integrity. Having no definition of it and no explanations on how it is related with man and woman's social roles, there is no clear idea on what school programmes content has to be like, and what innovative and nonstereotyped standards children must be taught.

Article 33 – Psychological violence

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing (silpninantis) a person's psychological integrity through coercion or threats is criminalized.

The article has no comments about the relation between psychological integrity and man or woman's sexual, and social identity, as well as roles. Without these comments, the standard of psychological violence legally can be used hardly or wrong.

Article 42 – Unacceptable justifications for crimes, including crimes committed in the name of so-called "honour"

1 Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification for such acts.

The article neglects having personal convictions about man and woman's roles, which are based upon their convictions, upbringing, understanding of honour and dignity, especially if they are supported by man's respect towards woman's special role in the family, and woman's respect towards man as a guarantee of family safety.

Article 72 – Amendments

1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by her or him to the member States of the Council of Europe, any signatory, any Party, the European Union, any State invited to sign this Convention in accordance with the provisions of Article 75, and any State invited to accede to this Convention in accordance with the provisions of Article 76.

The Convention, progressive enough according to its intentions, could be added. In another case, big misunderstandings about its promotion may be possible. Lithuania could initiate these amendments)

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