

## **3<sup>RD</sup> QUARTERLY ACTIVITY REPORT 2016**

**by Nils Muižnieks**

**Commissioner for Human Rights**

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### **Chapter 9.**

#### **Observations and reflections**

In recent years, both religious and secular critics of so-called “gender ideology” and “gender theory” have mounted a growing challenge against generally accepted human rights terminology and principles. During my country visits, I have even encountered objections to the very use of the word “gender”, particularly in the context of promoting the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). What should we in the human rights world make of this criticism?

Before turning to the criticism, it is useful to recall that over the years the word “gender” has acquired different meanings depending on the context. The definition contained in the Gender Equality Glossary, recently published by the Council of Europe Gender Equality Commission, represents the mainstream understanding: while the term “sex” refers to the biological characteristics that define humans as female or male, “gender shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”. This definition is also used by the Committee on the Elimination of Discrimination against Women and other UN mechanisms. It is this meaning that enters into play in the use of the expression “gender stereotypes”.

The expression “gender equality” is increasingly replacing “equality between women and men”, be it at the UN, the Council of Europe or the European Union. Gender equality not only requires the elimination of all forms of discrimination on the basis of sex but also the achievement of substantive or de facto equality between women and men. The same meaning of gender prevails in terms such as “gender mainstreaming” or “gender gap”.

As we can see, the word “gender” in its different meanings has for many years permeated international human rights texts and policy discourse. What manner of ills do critics associate with the term “gender”, “gender theory” or “gender ideology”? What could be so dangerous to work for the full achievement of gender equality? What could be so objectionable to examining the broader social context in which men and women interact?

It seems that one core objection has to do with fears for the fate of a traditional society based on a cultural affirmation that gender is strictly and always binary and that men and women play (and should play) very different roles in public life and within the family. The first problem here is that some adherents of this vision of society justify limiting women to the stereotypical role of mothers, giving birth and staying at home to rear children. This vision cannot be reconciled with a human rights based approach that sees women (and men) as autonomous members of society who should be able to choose on an equal basis their own role in society and within the family. One of the five objectives of the Council of Europe Gender Equality Strategy 2014-2017 is to combat gender stereotyping that presents “a serious obstacle to the achievement of real gender equality and feed into gender discrimination”.

Another problem with the traditionalist approach to society is that it is often used to justify sexism, which is the supposition, belief or assertion that one sex is superior to the other. Often, those critics defend, even if implicitly, the idea of the superiority of men over women. Sexist attitudes result in discrimination against members of the supposedly inferior sex, just as racist attitudes do with members of the supposedly inferior “race”. Therefore, all states have international human rights obligations to take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. The European Court of Human Rights (“the Court”) has also stressed that “gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation.”

It seems that another fundamental objection has to do with diverging understandings of what constitutes a family. The jurisprudence of the Court as to what constitutes “private and family life” and deserves protection under Article 8 has evolved considerably in recent years. For many, this is the crux of the matter. The Court has progressively recognised that same-sex partners living in a stable relationship merit legal protection in the form of civil unions or registered partnerships, not necessarily “gay marriage”. Most recently, in *Oliari and Others v. Italy*, the Court concluded that granting such protection is a trend, as 24 of 47 Council of Europe member states have legislated on legal recognition of same-sex couples. Here, it seems that the human rights world and defenders of traditional family models will have to agree to disagree.

Another criticism has to do with recognition of gender diversity. Critics invoking “traditional values” mistakenly reduce the world into men and women alone, ignoring, for example, the existence of “intersex persons” – those who do not fit neatly into male or female categories because of their anatomy (earlier, such persons were sometimes called “hermaphrodites”). As I noted in a recently published Issue Paper, outside Europe recognition of indeterminate or third gender persons is in many places unremarkable.

A particular object of criticism appears to be a growing recognition of the rights of transgender persons – those whose gender self-identification does not match the gender assigned at birth and who occasionally may choose to undergo gender reassignment surgery or hormonal treatment. A human rights based approach insists that such persons should not be pathologised and that states should not make official recognition of the new gender subject to requirements such as divorce and/or sterilisation. As far back as 2002, the Court found that there was a trend towards increased social acceptance of transsexuals and the legal recognition of their post-operative sexual identity.

A particular target of some defenders of traditional values has become the Istanbul Convention, which seems to crystallise in their view all the above-mentioned evils. Some ultraconservative critics try to justify or condone domestic violence (against women and children) by relabeling it private family “quarrels” or just punishment for disobedient children. In this conception, any attempt to prevent domestic violence constitutes external interference violating the sanctity of marriage and the family. To such unacceptable views, there can be only one answer: it is not measures taken to prevent and combat domestic violence that destroy marriages and families, but domestic violence itself.

Other critics try to claim that violence in the family affects men as much as women and that a focus on women victims is in some way misleading or “discriminatory”. This flies in the face of data in every European country suggesting that women are the victims of family violence in the vast majority of cases. Some critics may even acknowledge that violence against women is a problem, but do not want governments challenging traditional gender roles and stereotypes through education and awareness raising, which the Istanbul Convention envisages. However, it is only logical that the above-mentioned general human rights obligation to combat gender stereotypes has become part of the measures required by the Istanbul Convention to prevent gender-based violence against women and domestic violence. The Convention rests on the presumption that violence against women is a manifestation of a broader pattern of inequality in power relations that must be addressed if the issue of violence is to be effectively tackled. This view is based on much scholarly research that critics would like to ignore.

Other critics latch on to the list of non-discrimination grounds of the Convention, which includes sexual orientation and gender identity. Ratifying the Convention, in the eyes of these critics, would represent recognition of unacceptable identities. This ignores the fact that the Istanbul Convention is about combating violence against women and domestic violence and these provisions are listed among other non-discrimination grounds such as race, disability and age, in order to extend additional safeguards to LGBTI victims of gender-based violence, who may face particular difficulties to access justice and receive support.

I am concerned that all this criticism of the word “gender” is having an increasingly harmful effect on the protection of human rights, in particular on women’s and LGBTI persons’ rights in Europe. The human rights world must engage more actively with critics and use evidence and scholarly research to debunk myths, distortions and fears. Secular and religious critics of so-called “gender ideology” or “gender theory” have the right to hold and express their own views, but they should not be allowed to impair individual rights in the name of their beliefs. Nor should they be allowed to stop progress in recognising and addressing gender inequality and ignore the reality of gender diversity or the evolution of European human rights law. In the end, it is not human rights that are transforming people’s understanding of their identities – human rights law is slowly adapting to the reality on the ground and the practical needs of diverse individuals and rainbow families. This does not mean that men, women and traditional families are being displaced; they are only being complemented by a rich tapestry of individual identities and partnerships that have gone unrecognised for a very long time.