



HUMAN RIGHTS

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Aslan Kh. ABASHIDZE

Peoples' Friendship University of Russia (RUDN-University)
6, ul. Miklukho-Maklaya, Moscow, Russian Federation, 117198
abashidze.rudn@gmail.com
ORCID: 0000-0003-0012-8795

Olga K. GONCHARENKO

Office of the High Commissioner for Human Rights in the Russian Federation
19-2, Smolenskii Boulevard, Moscow, Russian Federation, 119121
goncharenko_ok@bk.ru
ORCID: 0000-0002-0420-6917

“GENDER” IN INTERNATIONAL HUMAN RIGHTS LAW: THEORY AND PRACTICE

INTRODUCTION. *The institute for the protection of women both at international and national levels taking into account the ongoing discussions on the term “gender” is considered in the article. The authors examine the distinction between concepts “sex”, “gender” and “gender identity”, enshrined in international legal acts and documents, the States’ positions and approaches to their use, including on the example of the implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, better known as the Istanbul Convention.*

MATERIALS AND METHODS. *During the research the authors used different international legal documents, including international treaties, recommendations of the United Nations treaty bodies, reports of the special rapporteurs and international experts, outcome documents of international conferences, as well as doctrinal sources and national legislation of foreign countries. The study was carried out based on general scientific and special scientific methods. The methods of legal modeling and forecasting were widely used in the analysis in order to define prospects for possible future studies and development of international human rights law on*

the protection of women from violence and domestic violence.

RESEARCH RESULTS. *Demonstrating different approaches to understanding the term “gender” in protecting women from violence and domestic violence, implemented by international organizations and States, the authors examined factors that influence the position of national authorities of a number of countries when considering the possibility of accession or ratification of the core international legal acts in this area on the example of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.*

DISCUSSION AND CONCLUSION. *The authors came into conclusion that the problems of violence against women and domestic violence should be viewed through the lens of gender equality concept, which does not entail the elimination of biological differences between two sexes and does not encourage women and men to change their social roles. The article stresses the need for an internationally agreed definition of the term “gender” in order to strengthen the legal and institutional mechanisms for a more efficient practical implementation of measures to combat violence against women and domestic violence.*

KEYWORDS: *Gender, gender equality, gender identity, Istanbul Convention, violence against women, domestic violence*

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Аслан Хусейнович АБАШИДЗЕ

Российский университет дружбы народов (РУДН)
Миклухо-Маклая ул., д. 6, Москва, 117198, Российская Федерация
abashidze.rudn@gmail.com
ORCID: 0000-0003-0012-8795

Ольга Константиновна ГОНЧАРЕНКО

Аппарат Уполномоченного по правам человека в Российской Федерации
Смоленский бульвар, д. 19-2, Москва, 119121, Российская Федерация
goncharenko_ok@bk.ru
ORCID: 0000-0002-0420-6917

«ГЕНДЕР» В МЕЖДУНАРОДНОМ ПРАВЕ ПРАВ ЧЕЛОВЕКА: ТЕОРИЯ И ПРАКТИКА

ВВЕДЕНИЕ. В статье рассматривается институт защиты прав женщин на международном и национальном уровнях с учетом происходящих дискуссий вокруг термина «гендер». Авторы изучают дифференциацию понятий «пол» (*sex*), «гендер» (*gender*) и «гендерная идентичность» (*gender identity*), закрепленных в международно-правовых актах и документах, позиции государств и подходы к использованию этих понятий, в том числе на примере имплементации Конвенции Совета Европы о предотвращении и борьбе с насилием в отношении женщин и домашним насилием или так называемой Стамбульской конвенции.

МАТЕРИАЛЫ И МЕТОДЫ. При проведении исследования использовались различные докумен-

ты международно-правового характера, включая международные договоры, рекомендации договорных органов по правам человека системы ООН, доклады специальных докладчиков и международных экспертов, итоговые документы международных конференций, а также доктринальные источники и национальное законодательство зарубежных государств. Исследование выполнено с использованием общенаучных и специальных научных методов. В процессе анализа широко применялись методы правового моделирования и прогнозирования с целью определения перспектив возможных будущих исследований и развития международного права прав человека по вопросам защиты женщин от насилия и домашнего насилия.

РЕЗУЛЬТАТЫ ИССЛЕДОВАНИЯ. Демонстрируя различные подходы к трактовке понятия «гендер» в деле защиты женщин от насилия и домашнего насилия, применимые международными организациями и государствами, авторы изучили факторы, влияющие на позицию национальных органов власти ряда стран при рассмотрении вопроса о присоединении и ратификации основных международно-правовых актов в этой области на примере Конвенции Совета Европы о противодействии и борьбе с насилием в отношении женщин и домашним насилием.

ОБСУЖДЕНИЯ И ВЫВОДЫ. Авторы пришли к выводу, что проблемы насилия в отношении женщин и домашнего насилия необходимо рассматривать через призму концепции гендерного равенства, которая не влечет устранения биологических различий между двумя полами и не побуждает женщин и мужчин менять свои социальные роли. В статье подчеркивается необходимость выработки согласованного на междуна-

родно-договорном уровне определения понятия «гендер» с целью укрепления правовых и институциональных механизмов для более эффективного осуществления на практике противодействия насилию в отношении женщин и домашнему насилию.

КЛЮЧЕВЫЕ СЛОВА: гендер, гендерное равенство, гендерная идентичность, Стамбульская конвенция, насилие в отношении женщин, домашнее насилие

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Авторы заявляют об отсутствии конфликта интересов.

1. Introduction

Paragraph 3 of Article 1 and paragraph (c) of Article 55 of the Charter of the United Nations which contain the provisions on state cooperation in promotion and protection of human rights as an objective and a principle of the United Nations (hereafter the UN) activities also establish the prohibition of discrimination on four grounds: “race”, “sex”, “language” and “religion”¹.

“Sex” as grounds for discrimination is also included in acts that form the International Bill of Human Rights, namely in Article 2 of the Universal Declaration of Human Rights (hereafter the UDHR), paragraph 2 of Article 2 of the International Covenant on Economic, Social and Cultural Rights (hereafter the ICESCR) and paragraph 1 of Article 2 of the International Covenant on Civil and Political Rights (hereafter ICCPR).

By adopting a special international treaty – the Convention on the Elimination of All Forms of Discrimination against Women, in 1979, UN member states defined “discrimination against women” in Article 1 of the Convention for functional purposes:

it is defined as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”².

It would appear that by doing so, the legislative process of normative and conceptual understanding of the issues arising from the sex distinction has been consolidated.

However, at the doctrinal level in the early 1970s, issues based on the concept of “social sex” were raised [Shishlova 2013:148; Voronina 2019:7], which subsequently led to a differentiation between the concepts of “sex” and “gender” at the positive international human rights law level and practices in the field of human rights.

It should be noted that the so-called “gender” aspects were previously addressed in other areas as a socio-philosophical, socio-cultural, discursive and psycholinguistic phenomenon [Volova, Mazaeva 2016:6], denoting a social construct that character-

¹ The UN Charter. URL: <https://www.un.org/en/about-us/un-charter/full-text> (accessed 21.01.2022).

² Convention on the Elimination of All Forms of Discrimination against Women. 1979. URL: <https://www.ohchr.org/sites/default/files/cedaw.pdf> (accessed 21.01.2022).

izes the features of behavior, the result of human socialization in society³. Unlike “sex” as a physiological phenomenon determined by biological factors, “gender” is determined not only by biological belonging, but also by socio-cultural, status and family aspects, psychological features of a person, their social role [Diadyun 2011:28; Neronov, Neronova 2021:133].

As a result of the efforts of, first and foremost, feminist groups, the concept of gender mainstreaming emerged, that is, a comprehensive approach to gender that considers cultural, social, political and economic differences between men and women in all spheres of life [Bustelo 2017:84; Engeli, Mazur 2018:111; Kurebwa 2021:870]. International human rights organizations have widely relied on this concept, defining various Action Plans⁴ based on it.

The use of the term “gender” has led to the emergence of the concepts of “gender equality” and “gender-based violence”, which are reflected in documents adopted by international organizations.

For example, Goal No. 5 of the 2030 Agenda for Sustainable Development calls for “achieving gender equality and the empowerment of all women and girls” through the elimination of all forms of discrimination against women and girls; the elimination of violence against women and girls in the public and private spheres, including trafficking, sexual and other forms of exploitation; the elimination of all harmful practices, including forced marriage and female genital mutilation⁵.

The Committee on the Elimination of Discrimination against Women (CEDAW), which monitors member states’ compliance with the Convention on the Elimination of All Forms of Discrimination against Women, has also been prominent in this regard, particularly in defining the term “gender”.

CEDAW General Recommendation No. 19 defines “gender-based violence” as “a form of discrimination that prevents women from enjoying their rights and freedoms on an equal basis with men”⁶. It also clarifies that “discrimination against women”, which is defined in Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, includes “gender-based violence”, or “violence which is directed against a woman because she is a woman or that affects women disproportionately”⁷.

In the subsequent General Recommendation No. 35, which updated General Recommendation No. 19, CEDAW elaborates on the concept of “gender-based violence against women” in order to refer to the gender-specific causes and consequences of such violence. CEDAW considers that “gender-based violence against women is one of the primary social, political and economic means through which stereotypical roles for women and their subordination to men are perpetuated” and that such violence is “a critical obstacle to achieving substantive equality between women and men as well as to women’s enjoyment of human rights and fundamental freedoms enshrined in the Convention on the Elimination of All Forms of Discrimination against Women”⁸.

At the regional level, at the level of the Council of Europe, the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) specifies “being a woman” as the main reason for “gender-based violence against women”⁹. Acts that “disproportionately affect women” are also considered as such¹⁰.

It would seem that the phrase “gender-based violence” should focus on the fact that women are victims of violence precisely because of their gender. However, due to the lack of an agreed concept of the

³ Latest Dictionary of Philosophy. (In Russ.). URL: http://www.libedu.ru/red__gricanov/p/10/noveishii_filosofskii_slovar.html (accessed 21.01.2022).

⁴ UNDP Gender Equality Strategy 2018-2021. URL: <https://www.undp.org/publications/undp-gender-equality-strategy-2018-2021> (accessed 21.01.2022); Council of Europe Gender Equality Strategy 2018-2023. URL: <https://www.coe.int/en/web/genderequality/gender-equality-strategy> (accessed 21.01.2022).

⁵ UN: Transforming our world: the 2030 Agenda for Sustainable Development. URL: <https://www.un.org/sustainabledevelopment/development-agenda/> (accessed 21.01.2022).

⁶ OHCHR: General recommendation No. 19: Violence against women. URL: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf (accessed 21.01.2022).

⁷ Ibidem.

⁸ OHCHR: General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. URL: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf (accessed 21.01.2022).

⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence. 2011. URL: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c> (accessed 21.01.2022).

¹⁰ Ibidem.

base term “gender”, its diverse interpretation in different contexts, as well as confusion with the term “gender identity”, states face difficulties in acceding or ratifying international treaties, including the Istanbul Convention, aimed at protecting women's rights, which complicates the implementation of efforts at the national level, including due to the possible contradiction with traditional family values [Sękowska-Kozłowska 2020:259].

The misunderstanding of the concept of “gender” and attempts by a number of Western states to use this term to blur the historically established institution of the family as a union between a man and a woman were noted by the President of the Russian Federation Vladimir Putin on October 21, 2021, at the plenary session of the XVIII meeting of the Valdai Discussion Club: “Some people in Western countries believe that aggressive erasure of whole pages of their own history, ‘reverse discrimination’ of the majority in favor of minorities or the requirement to abandon the usual understanding of such basic terms as mother, father, family, or even the difference between the sexes, are, in their view, the milestones of the movement towards social renovation”¹¹. To contrast this, based, among other things, on recent amendments to the Constitution of the Russian Federation, the President of the Russian Federation states the firm position of Russian society: “To rely on our spiritual values, on the historical tradition, on the culture of our multinational people”¹².

Leaders of other European states, such as Armenia, Bulgaria, Hungary, Poland, Turkey and others, adhere to the same position.

Therefore, an international legal definition of the concept of “gender” in order to clearly distinguish it from the concept of “sex” is relevant.

2. Definition of the term “gender” in international documents

It should be stated from the outset that at the level of international law two documents contain provisions related to the concept of “gender”:

1. The Annex to the Beijing Platform for Action, adopted during the Fourth World Conference on Women in 1995. Paragraph 2 of this Annex states: “The word ‘gender’ has been used and understood in its customary accepted meaning in various other United Nations forums and conferences”, and also states that there is no indication “that the Platform for Action used any new meaning or connotation of the term other than the one previously used”¹³.

2. In the Rome Statute of the International Criminal Court (hereafter the ICC), paragraph 7 explains that “For the purpose of this Statute, it is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above”¹⁴.

These provisions have subsequently been subject to some re-evaluation, and in some cases even criticism, by international organizations, experts and academics [Oosterveld 2005:55].

In particular, in 2019, the UN International Law Commission (hereafter the ILC) drew attention to the “outdated and non-transparent” definition of “gender” in the Rome Statute of the ICC. In a recommendation to the Draft Articles on the Prevention and Punishment of Crimes Against Humanity, the ILC suggested that the UN General Assembly should not adhere to the definition of “gender” under the ICC Statute on the grounds that “since its adoption, there have been several developments in international human rights law and international criminal law reflecting the modern understanding of the term”¹⁵.

To support their position, the ILC has cited a number of documents from certain so-called “soft law” sources that contain provisions relating to the concept of “gender”:

1. The 2004 Guidance of the International Committee of the Red Cross, in which “The term ‘gender’ refers to the culturally expected behaviour of men and women based on roles, attitudes and values ascribed to them on the basis of their sex, whereas

¹¹ Vladimir Putin participated in the plenary session of the XVIII meeting of the Valdai International Discussion Club. – *Kremlin.ru*. October 21, 2021. (In Russ.). URL: http://www.kremlin.ru/events/president/transcripts/comminity_meetings/66975 (accessed 23.01.2022).

¹² Ibidem.

¹³ UN: Report of the Fourth World Conference on Women. URL: <https://undocs.org/ru/A/CONF.177/20/Rev.1> (accessed 23.01.2022).

¹⁴ Rome Statute of the International Criminal Court. 1998. URL: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (accessed 23.01.2022).

¹⁵ UN: Report of the International Law Commission, 71st session (April 29-June 7 and July 8-August 9, 2019). URL: https://digitallibrary.un.org/record/3827355/files/A_74_10-EN.pdf (accessed 23.01.2022).

the term ‘sex’ refers to biological and physical characteristics”¹⁶;

2. 2010 CEDAW General Recommendation No. 28, paragraph 5 of which states in this regard: “The term ‘gender’ refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences”¹⁷;

3. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, in which “gender” and “gender identity” refer to “social characteristics and capabilities associated with masculinity and femininity, an evolving social and ideological construct that justifies inequality”¹⁸;

4. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, which states in paragraph 2 that “gender identity refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other gender expressions, including dress, speech and mannerisms”¹⁹.

The concept of “gender” is also widely used in various international documents, in particular, the WHO Director-General’s Statement on Gender Policy, which cites this concept to describe those characteristics of women and men that are socially acquired, while “sex” is used to describe biologically predetermined characteristics²⁰. UNESCO in

its Report “Gender Mainstreaming Implementation Framework” describes the term “gender” to refer to “the roles and responsibilities of men and women that are created in our families, our societies and our cultures”²¹.

To conclude this section, we note the Istanbul Convention, which refers to “gender” as “socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men”²².

3. “Gender” and “gender identity”

The term “gender” is often further defined by the term “gender identity”, which, according to experts, leads to negative consequences of many kinds²³.

In this context, the so-called Yogyakarta Principles, which define “gender identity” as “a person’s deeply felt internal and individual awareness of gender identity, which may or may not correspond with the sex from birth, including the personal sense of the body (which, if freely chosen, may involve changes in appearance or physiological functions through medical, surgical or other means) and other manifestations of gender identity”²⁴, should be considered.

Although this document was developed at an informal level by a group of specialists, it is referenced in official UN documents. In particular, the UN Committee on Economic, Social and Cultural Rights, which exercises international supervision over states parties’ compliance with their obligations under the International Covenant on Economic, Social and Cultural Rights, relies on the definitions contained in the Yogyakarta Principles in its General Comment

¹⁶ ICRC: Addressing the Needs of Women Affected by Armed Conflict: an ICRC Guidance Document. 2004. P.7. URL: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0840_women_guidance.pdf (accessed 21.01.2022).

¹⁷ CEDAW: General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. URL: <https://www.refworld.org/docid/4d467ea72.html> (accessed 21.01.2022).

¹⁸ OHCHR: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings. June 6, 2017. URL: https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_23_AEV.docx (accessed 21.01.2022).

¹⁹ UN: Note by the Secretariat “Protection against violence and discrimination based on sexual orientation and gender identity”. July 12, 2018. URL: <https://undocs.org/en/A/73/152> (accessed 22.01.2022).

²⁰ World Health Organization: Integrating gender perspectives in the work of WHO: WHO gender policy. 2002. URL: <https://apps.who.int/iris/bitstream/handle/10665/67649/a78322.pdf?sequence=1&isAllowed=y> (accessed 21.01.2022).

²¹ UNESCO: Gender Mainstreaming Implementation Framework (GMIF). 2003. URL: <https://unesdoc.unesco.org/ark:/48223/pf0000131854> (accessed 22.01.2022).

²² Council of Europe Convention on preventing and combating violence against women and domestic violence. 2011. URL: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c> (accessed 21.01.2022).

²³ Analytical report “The Use of the Term ‘Gender’ in Russian Legislation”. 2012. (In Russ.). URL: <https://www.familypolicy.ru/rep/rf-12-029.pdf> (accessed 21.01.2022).

²⁴ Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. 2006. URL: <https://yogyakartaprinciples.org/principles-en/> (accessed 21.01.2022).

No. 20 (paragraph 32)²⁵. Although this practice is strongly disapproved by a number of states²⁶, references to the Yogyakarta Principles continue to be found in other documents of human rights bodies, in particular the reports of the UN Special Rapporteurs²⁷ and the UN High Commissioner for Human Rights²⁸, as well as in the guidelines of the Office of the UN High Commissioner for Refugees²⁹.

While in this case we are talking about international instruments of a non-binding nature, the use of the term “gender identity” in binding international legal instruments sometimes leads not only to a lack of consensus among states, but also to the refusal to accede or ratify them. An example of this is the Istanbul Convention. Although its provisions do not contain the concept of “gender identity” as such, the term is mentioned in the context of the provisions of the Convention concerning non-discrimination in order to prohibit States parties to the Convention from denying assistance to such persons in cases of violence. The relevant provision of the Convention states: “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, colour, 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”³⁰.

Although the Explanatory Report to the Istanbul Convention³¹, as well as the conclusions of the

European Commission for Democracy through Law (Venice Commission) regarding the compliance of the Istanbul Convention with the Armenian Constitution explain in detail that it is not aimed at destroying family values and legalizing same-sex marriage, but rather at protecting women and girls from all forms of violence³², the Istanbul Convention remains an object of constant criticism by a number of states precisely for its use of gender terminology and concepts, and the Republic of Turkey, the first signatory, has even denounced the document [Cerami 2021:2; Goncharenko 2021:47].

In view of this situation, the ideological confrontation of states over the boundaries of private and family life and the distribution of social roles in society comes to the forefront, which ultimately prevents the effective protection of women against violence or domestic violence, that is, the main objectives that the Istanbul Convention and other international legal documents in this area pursue.

4. “Gender” in national legislation

The negative attitude toward this concept at the level of the national legislation of states has been entirely predetermined by external influences of a political nature. To confirm this, we cite the following fact: on July 27, 2018 the Constitutional Court of Bulgaria took into consideration the opinion of the President of Bulgaria that the Istanbul Convention uses the concept of “gender”, contributing to “burdening” it with additional meanings beyond its usual

²⁵ OHCHR: General Comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights). URL: <https://www.refworld.org/docid/4a60961f2.html> (accessed 21.01.2022).

²⁶ UN: Summary record of the 28th GA UN meeting. October 26, 2009. URL: http://orinam.net/377/wp-content/uploads/2013/12/UN_GenAssembly_Protection_HumanRights_2009.pdf (accessed 21.01.2022).

²⁷ UN: Note by the Secretary-General “Report of the United Nations Special Rapporteur on the right to education” July 23, 2010. URL: https://digitallibrary.un.org/record/688657/files/A_65_162-EN.pdf (accessed 21.01.2022).

²⁸ UN: Report of the United Nations High Commissioner for Human Rights “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity” November 17, 2011. URL: https://digitallibrary.un.org/record/719193/files/A_HRC_19_41-EN.pdf (accessed 21.01.2022).

²⁹ UNHCR: Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity. November 21, 2008. URL: <https://www.refworld.org/docid/48abd5660.html> (accessed 21.01.2022).

³⁰ Council of Europe Convention on preventing and combating violence against women and domestic violence. 2011. URL: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c> (accessed 21.01.2022).

³¹ Council of Europe: Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence. May 11, 2011. URL: https://rm.coe.int/ic-and-explanatory-report/16808d24c6_a (accessed: 21.01.2022).

³² Venice Commission: Opinion on the constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) No. 961/ 2019. Adopted by the Venice Commission at its 120th Plenary Session. October 11-12, 2019. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)018-e) (accessed 21.01.2022).

scope and beyond the fundamental values of the Bulgarian Constitution. In particular, the introduced social aspects of the term “gender” do not correspond to the division between men and women, as affirmed by the Constitution of the country. The Constitutional Court ruled that the Istanbul Convention, by depriving society of the ability to distinguish between men and women, makes combating violence against women a formal and unenforceable obligation, and does not comply with the Bulgarian Constitution³³.

In another similar example, in May 2020, the Christian Democratic People’s Party of Hungary together with the Hungarian Civic Union, which has a majority in the Hungarian Parliament, supported the refusal of Hungary to ratify the Istanbul Convention because it “encourages destructive gender ideologies”³⁴. The reason is that existing Hungarian law defines “gender” as “biological sex based on primary sex characteristics and chromosomes”, according to Article 33 of the General Bill T/9934 adopted on May 19, 2020.

To cite another fact, the Polish Minister of Justice, commenting on the gender ideology introduced by the Istanbul Convention, labeled it as one that “questions the concepts of family, marriage, and religion”. He pointed out that the Convention provides for the formation of the concept of socio-cultural gender, as opposed to a biological one. According to him, this is related to the requirement to reform the education of children in schools so that they consider their biological sex as an anachronism³⁵. For the record, in Polish law, the definition of “gender” is identical to the concept of “sex”; the Law of Poland on non-discrimination of 2010 does not include gender identity or gender expression as possible grounds for discrimination³⁶.

There is a case for more specific action in this regard: on August 29, 2013, the Government of Ar-

menia approved a bill on amendments to the Law “On ensuring equal rights and opportunities for men and women”, from which, according to the bill, the term “gender” was removed. Previously, the national law gave the following definition of the term “gender”: “acquired, socially established behavior of persons of different sexes, the social status of the relationship between a man and a woman, which is expressed in all spheres of social life”³⁷. It is worth mentioning that when acceding to the Istanbul Convention, the Armenian Ministry of Justice requested the opinion of the Venice Commission of the Council of Europe, inter alia, for its compliance with the Armenian Constitution in terms of correlation between the so-called “gender component” of the Convention and the concept of family.

The definition of the term “gender” is reflected both in judicial practice and in the documents issued by state authorities. For example, District Judge Hutton in his December 1993 “Dobre v Amtrak” case referred to Title VII of the Civil Rights Act of 1964, writing: “The term ‘sex’ in Title VII refers to an individual’s distinguishing biological or anatomical characteristics, whereas the term ‘gender’ refers to an individual’s sexual identity”³⁸.

The New Zealand Government Statistics Agency (Stats NZ), in its April 21, 2021 Statistical Standards, defines the terms “gender” and “gender identity”. According to this document, gender is “a person’s social and personal identity as male, female, or another gender or genders that may be non-binary. Gender may include gender identity and/or gender expression. A person’s current gender may differ from the sex recorded at their birth and may differ from what is indicated on their current legal documents. A person’s gender may change over time. Some people may not identify with any gender”³⁹.

³³ Here is the whole decision of the Constitutional Court on the Istanbul Convention. – *24Chasa*. July 27, 2018. (In Bulgarian). URL: www.24chasa.bg/mnenia/article/6983990 (accessed 21.01.2022).

³⁴ KDNP Submits Proposal against Ratification of Istanbul Convention. – *Hungary Today*. May 4, 2020. URL: <https://hungarytoday.hu/kdnp-hungary-istanbul-convention/> (accessed 21.01.2022).

³⁵ How the Convention against Domestic Violence became an apple of discord in Poland. – *TASS*. July 28, 2020. (In Russ.). URL: <https://tass.ru/mezhdunarodnaya-panorama/9066913> (accessed 22.01.2022).

³⁶ Dynarski V. Implementation of Gender Recast Directive Poland. URL: https://www.ilga-europe.org/sites/default/files/Attachments/annex_3_-_poland_-_implementation_of_gender_recast_directive_-_february_2011.pdf (accessed 21.01.2022).

³⁷ Armenia does not recognize “gender” as “acquired” and “social” - the controversial law will be changed. – *Regnum*. August 7, 2013. (In Russ.). URL: <https://regnum.ru/news/society/1692676.html> (accessed 22.01.2022).

³⁸ United States District Court, E.D. Pennsylvania: *Dobre v. National RR Passenger Corp. (AMTRAK)*. December 1, 1993. URL: <https://law.justia.com/cases/federal/district-courts/FSupp/850/284/2132056/> (accessed 22.01.2022).

³⁹ New Zealand. Statistical standard for gender, sex, and variations of sex characteristics. April 21, 2021. URL: <https://www.stats.govt.nz/methods/statistical-standard-for-gender-sex-and-variations-of-sex-characteristics> (accessed 22.01.2022).

5. Conclusion

As a result of the Catholic Church's active opposition to the results of the 1994 UN International Conference on Population and Development and the 1995 World Conference on Women [Case 2019:639], after which sexual health and reproductive rights began to be recognized at the UN level, an opposite so-called "anti-gender movement" emerged in society, denying the difference between "gender" and "biological sex" and viewing attempts to differentiate between these concepts as actions aimed at undermining traditional family values [Kováts 2016:175].

The Committee of Representatives of the Orthodox Churches to the European Union, of which the Moscow Patriarchate is a member, has a similar approach to that of the Catholic Church. In particular, in its statement of July 10, 2018, on the Istanbul Convention, the Committee "endorses and supports the intentions of the Council of Europe to adopt a document aimed at combating domestic violence", but "expresses concern related to the interpretation of some of the legal novelties set out in the Convention". The Committee called on countries that have already signed and ratified the Convention "to interpret its provisions, especially the term 'gender' and other terms related to it, in the understanding of the 'two sexes' created by God – male and female"⁴⁰.

As for Russian society, this issue has been the subject of debate [Alisievich 2017:233], as in many other states [Fellegi 2019:113; Allwood 2016:385], preventing them from joining international legal instruments aimed at protecting women from violence, including the Istanbul Convention.

The authors of this article conclude that the problem lies not in the provisions of the international legal instruments themselves and the national legislation of states, but in their differences in terms of values. Many countries fear that the use of the term "gender" will inevitably lead to changes in traditional "gender roles", the need to legalize same-sex unions, and the promotion of the rights of people of non-traditional sexual orientation [Vassileva 2018:2].

These concerns are well-founded. At the same time, it should be noted that the term "gender" is an essential part of the definition of violence against women. That is, actions that result in physical, sexual, psychological, economic violence or suffering are directed against a woman because she is a woman

[Heise, Ellsberg, Gottmoeller 2002:6]. In one academic study on gender stereotypes in Croatian society that prevent the state from joining the Istanbul Convention, its author describes in some detail the difference between the concepts of "sex" and "gender", explaining that social roles are not always allocated based on the biological difference between women and men, but often on traditional notions of "female and male responsibilities", which support the legitimacy of male violence [Bosak, Vajda 2019:77]. In this context, the Istanbul Convention calls for a gender-sensitive understanding of violence against women and establishes a link between achieving gender equality and eliminating violence against women, precisely in order to highlight the complex nature of the problem, as well as to show the consequences of traditional perceptions of women's and men's roles. The concept of gender equality used in the Convention does not eliminate biological differences between the two sexes, nor does it call for women and men to change their social roles.

However, if states wish to promote a policy of equality between women and men, and to protect women from all forms of violence, national ideological struggles over the boundaries of private and family life as well as the distribution of social roles in society should not hinder the achievement of these goals.

The lack of an internationally agreed definition of "gender" leads to a misunderstanding and, therefore, prevents the implementation in practice of combating violence against women and domestic violence, and also serves as an obstacle for states that intend to accede to the Istanbul Convention.

In order to fill this gap, it would be possible to expand the framework of the Istanbul Convention for a reservation by introducing a special provision on gender identity; to use the practice of state declarations when acceding to the Istanbul Convention which interpret the concept of "gender".

Taking into account the results of the analysis of the legislation of foreign states, and the ambiguous attitude of society towards the gender concept in a number of countries around the world, the authors concluded that further improvement of legislation in this area can be facilitated by developments in international human rights law, as well as broad discussions with the participation of public authorities, civil society, academia and religious communities at the national and international levels.

⁴⁰ The Committee of Representatives of the Orthodox Churches to the EU issued a statement on certain legal novelties of the Istanbul Convention. – *Official Website of the Moscow Patriarchate*. June 13, 2018. (In Russ.). URL: <http://www.patriarchia.ru/db/text/5235723.html> (accessed 22.01.2022).

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About the Authors

Aslan Kh. Abashidze,

Doctor of Juridical Sciences, Professor, Head of the International Law Department, Institute of Law, Peoples' Friendship University of Russia (RUDN-University)

6, ul. Miklukho-Maklaya, Moscow, Russian Federation, 117198

Информация об авторах

Аслан Хусейнович Абашидзе,

доктор юридических наук, профессор, заведующий кафедрой международного права Юридического института, Российский университет дружбы народов (РУДН)

171198, Российская Федерация, ул. Миклухо-Маклая, д. 6

abashidze.rudn@gmail.com
ORCID: 0000-0003-0012-8795

abashidze.rudn@gmail.com
ORCID: 0000-0003-0012-8795

Olga K. Goncharenko,

Head of International Multilateral Cooperation Division,
Office of the High Commissioner for Human Rights in the
Russian Federation

19-2, Smolenskii Boulevard, Moscow, Russian Federation,
119121

goncharenko_ok@bk.ru
ORCID: 0000-0002-0420-6917

Ольга Константиновна Гончаренко,

начальник отдела сотрудничества с международными
организациями, Аппарат Уполномоченного по правам
человека в Российской Федерации

119121, Российская Федерация, Москва, Смоленский
бульвар, д. 19-2

goncharenko_ok@bk.ru
ORCID: 0000-0002-0420-6917