

Key features of international documents on domestic and gender-based violence

Lately, we have been frequently hearing complaints on the part of the international community that Russia has not adopted a law on domestic violence and that our country has not signed other documents to eliminate violence and discrimination against women. However, Russia has its own proven track record of addressing discrimination against women. Our country is one of the world's leaders in terms of the number of women in leadership positions, and it surpasses the US and EU countries in this indicator.

Russian law does not contain a single norm that would place the rights of one group of citizens above the rights of other citizens, or that would discriminate against anyone on the basis of sex or any other grounds. In Russia, the principle of the equality of all before the law is respected. That is why our country has not adopted a law on domestic violence and has not signed the Istanbul Convention (IC). We do not at all understand why domestic violence should be singled out into a special separate legislative norm; our country has dozen of Criminal Code articles that severely punish violence, regardless of where and by whom it is committed.

On the other hand, European laws on domestic violence as well as the IC's provisions, in our opinion, contain discriminatory and antidemocratic norms. What are these discriminatory and antidemocratic features?

1. The IC proposes overturning the fundamental principle of the presumption of innocence in the specifically the the legislation concerning the family. A flagrant violation of this principle are so-called orders of protection, or "Restraining or protection orders," according to Article 53 of the IC, which may be issued immediately upon report by one of the spouses regardless of any evidence of the other spouse's guilt. This means that the other spouse may be thrown out of his or her own home and denied access to his or her children based on a report by the "victim" without substantiating evidence (Article 52). One side enjoys complete trust by default, and it does not need to provide any evidence to support its words, while the other side is denied by default any trust or opportunity to defend itself. Article 53 alone is enough to recognize the IC as a discriminatory document.

2. The fact that the "offender's" guilt does not need to be proven is exacerbated by including "psychological violence" into the list of offenses. According to recommendation R(2002)5 by the Committee of Ministers of the Council of Europe, psychological violence includes "*jeers, spiteful or humiliating comments... contempt, bullying...*" This document recognizes "*staring*" to be violence as well. Also, the European Court on Human Rights has stated that a woman feeling "*humiliated in her own opinion*" is sufficient to prove an act of violence against her. It must be stressed that these sorts of violence are prosecuted as felony offenses. Because no evidence or witnesses are needed to substantiate the allegations, the intensity of staring or of the humiliation being felt will be assessed solely based on the woman's subjective reports. In fact, any quarrel or argument (which no person has ever fully avoided) becomes grounds for criminal prosecution. Therefore, any person can be declared a criminal. The lack of objective criteria for proving psychological violence opens ample opportunities for the abuse and misuse of norms

related to psychological violence. These are completely totalitarian regulations, and we demand that the extralegal concept of “psychological violence” be removed from all legal norms.

3. Another antidemocratic feature of the laws on domestic and gender-based violence is the high propensity for corruption and the commercialization of services meant to protect women. Article 9 of the Istanbul Convention stipulates that NGOs may provide such services. NGO staff, psychologists rather than judges, will establish that psychological violence has been committed; they will place women in their own crisis centers and educate those whom they arbitrarily recognize as having committed psychological violence. Moreover, they must be supported by the state and receive funding for every intervention into the family. This creates excellent opportunities for abuse. It is evident that such NGOs, having commercial incentives, become a serious threat to the family, as they have the opportunity to recognize a woman as a victim and her husband as an abuser, even if the spouses do not consider themselves as such.

Conclusion. The Istanbul Convention and other international documents on domestic and gender-based violence oblige countries to create a repressive machine that operates under its own separate legislation that is not bound to national laws. It is proposed that this apparatus would be made up of non-state actors (NGOs), which will decide who is the perpetrator and who is the victim, instead of the criminal justice system. The international legislation on domestic and gender-based violence itself is discriminatory, and it violates fundamental principles of international law. We propose that these international documents be revised to remove all antidemocratic and discriminatory norms. Furthermore, we propose that all the dangerous consequences of extensively implementing the concept of psychological violence be examined with due diligence. We propose that the hazards to individual rights and freedoms presented by the use of this concept be assessed, and that it be removed from international and national legislation.