A Universal Human Rights Mechanism for the Protection or Revision of the Institution of Family in an Era of Economic Change

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Abstract

The paper examines the activities of the Human Rights Committee (HRC), created on the basis of the International Covenant on Civil and Political Rights (ICCPR), in relation to the protection of family, which, according to the ICCPR, is understood as a "natural and fundamental group unit of society." The comprehensive analysis of the relevant provisions of general comments and concluding observations on the States parties' reports to the ICCPR adopted by the HRC, and the comparative analysis of the activities of the Committee on Economic, Social, and Cultural Rights (CESCR), which monitors the implementation of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) by the States parties, including the provision on the protection of family, reveals that the HRC deviates from the relevant ICCPR guidelines on family and goes beyond its competence. It is expressed in the attempt of the HRC to equate same-sex couples with the international legal status of the family and impose such a distorted understanding on those countries that adhere to traditional values, which include family based on marriage between a man and a woman, one of the main goals of which is the reproduction of generations.

Keywords

The International Covenants on Human Rights · The Human Rights Committee (HRC) · Protection and assistance of family · Marriage · Same-sex couples

JEL Codes

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1 Introduction

The current stage of global politics and the international legal order may be briefly described with the title of the 18th Annual Meeting of the Valdai Discussion Club held in October 2021—"Global Shake-Up" (Valdai Discussion Club, 2021).

The occurring shake-up primarily affects the foundations of the international legal order established after World War II, the core of which is the universal United Nations (UN) system for maintaining peace and international security on a collective basis. Consequently, in the current circumstances, observing what is happening in inter-state relations, first of all among the permanent members of the UN Security Council, which have primary responsibility for peace at the global level, it is apparent that humanity has entered an era of tremendous change, which will certainly affect the international legal order, including the UN.

In this situation, all key elements of the established order will face (or are already facing) the test of their durability and indispensability in the face of new challenges, as well as the flexibility to reform in a progressive direction.

This fully applies to the established system of international protection of human rights, whose normative and conceptual foundation is provided by the UN Charter, according to which the UN promotes and member countries individually and collectively encourage "universal respect for and observance of human rights and fundamental freedoms" to create "conditions of stability and well-being which are necessary for peaceful and friendly relations among nations" (United Nations, 1945).

The institutional core of the international human rights protection system is represented by the main UN bodies, which were reformed in the early twenty-first century. The

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normative basis of this system is represented by international human rights instruments, including the Universal Declaration of Human Rights (UDHR) and nine international human rights treaties.[1] with optional protocols, based on which ten human rights treaty bodies (HRTBs) operate.[2]

The importance of HRTBs is precisely outlined in the Report of the UN High Commissioner for Human Rights, which presents them as mechanisms for "translating universal norms into social justice and individual well-being" (Pillay, 2012).

Despite this appreciation of the role of HRTBs' system in the UN, in 2014, an inter-state process was launched to improve the effectiveness of the system, primarily and predominantly by finding internal reserves of its capacity, "bearing in mind that these activities should fall under the provisions of the respective treaties, thus not creating new obligations for States parties" (Paragraph 9).

In this context, we have analyzed the mandates of the Human Rights Committee (HRC), which monitors the implementation of the ICCPR (the Covenant) by the States parties (now 173) concerning the right to found a family (Article 23), whose protection has become an important issue at a time of heightened efforts at all levels of human rights work relating to "sexual orientation" and "gender identity." This analysis is a multi-dimensional one, including in the context of what UNGA Resolution 68/268, quoted above, stated in Paragraph 9, that HRTBs, within their respective mandates, should "not create new obligations for States parties," i.e., not engage in activities which, in our case, are not within the mandate of the HRC.

[1]The International Convention on the Elimination of All Forms of Racial Discrimination, 1965; the International Covenant on Civil and Political Rights, 1966; the International Covenant on Economic, Social and Cultural Rights, 1966; the Convention on the Elimination of All Forms of Discrimination Against Women, 1979; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; the Convention on the Rights of the Child, 1989; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990; the International Convention for the Protection of All Persons from Enforced Disappearance, 2006; the Convention on the Rights of Persons with Disabilities, 2006.

[2]The Committee on the Elimination of Racial Discrimination (CERD); the Committee on Economic, Social and Cultural Rights (CESCR); the Human Rights Committee (HRC); the Committee on the Elimination of Discrimination against Women (CEDAW); the Committee against Torture (CAT); the Committee on the Rights of the Child (CRC); the Committee on Migrant Workers (CMW); the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT); the Committee on the Rights of Persons with Disabilities (CRPD); the Committee on Enforced Disappearances (CED).

2 Materials and Method

This research is based on a combination of general scientific methods and approaches, as well as special scientific methods of systemic and logical study. In other words, the authors applied the methods of deduction, induction, and dialectical analysis. Additionally, systemic, structural, historical-legal, and comparative methods have been used to investigate the subject and reach the following results.

3 Results

At the beginning of the analysis, let us clarify some general points about the normative international human rights fundamentals. Based on the relevant provisions of the UN Charter, the UDHR was adopted in 1948, which enshrined the so-called "list" of fundamental human rights and freedoms in the form of civil (individual), political, economic, social, and cultural rights (Abashidze et al., 2021) that were later enshrined in the two 1966 International Covenants on Human Rights—the ICESCR (UN General Assembly, 1966, p. 9) and the ICCPR (UN General Assembly, 1966, p 23). These Covenants, which, together with the UDHR, form the International Bill of Human Rights, have formed the basis of several binding international treaties covering a wide range of human rights issues. These international treaties enshrine fundamental norms that have inspired more than a hundred human rights conventions and declarations.

Among HRTBs, there are nine classified by the Office of the UN High Commissioner for Human Rights (OHCHR) as "the core," which, together with their optional protocols, form the basis of HRTBs, including the HRC, which is responsible for overseeing the implementation of the ICCPR, including article 23 concerning the family institution.

Among the six constituent parts of the ICCPR, Part III forms "the core" of the Covenant: it enshrines substantive individual rights. Part IV establishes the HRC, defines its supervisory functions, and regulates technical and procedural matters.

The HRC consists of 18 experts. In carrying out its functions, the HRC has the following duties: examining reports from States parties; preparing general comments; receiving individual communications (complaints) under the Optional Protocol.

Turning to the focused analysis, two circumstances need to be highlighted: the provisions on the family, which were enshrined in the UDHR (Article 16), the ICCPR (Article 23), and the ICESCR (Article 10). It should be considered that the relevant committees—the HRC and the CESCR—on the one

hand, should remember that their activities must be, as stated in Paragraph 9 of UNGA Resolution 68/268, consistent with the provisions of the Covenants (implying that their activities should be distinct) and, on the other hand, these committees should seek to respect and protect as adequately as possible the common core elements of the family as reflected as "natural" in the Covenants. This includes the need for HRTBs to develop "an aligned consultation process," as stated in Paragraph 14 of UNGA resolution 68/268, or "to accelerating the harmonization" of the TB system, as stated in Paragraph 38 of the Resolution.

A comprehensive comparative analysis of these and related issues is envisaged in this study. However, it is necessary to highlight that the activities of another committee, the CESCR, which has international scrutiny under the ICESCR, including under Article 10 of this Covenant, will only be addressed comparatively by borrowing from relevant material already published as a separate academic article (Abashidze, 2021). It should also be stressed that the aforementioned academic article also facilitates our task of examining the relevant General Comments already adopted by the HRC concerning aspects of the family under Article 23 of the ICCPR.

We begin the study by outlining the provisions of Article 23 of the ICCPR. It consists of four paragraphs.

Under paragraph 1, "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State." The main elements of the family are fixed in paragraphs 2–3. The construction of paragraph 2 indicates that marriage is between a man and a woman and that the family is based on marriage, which is recognized as a human right. This understanding is also confirmed by the recent trend in some countries to add and clarify at the constitutional or legislative level that marriage is a union between a man and a woman.

Paragraph 3 enshrines that marriage shall be free and based on full consent. Paragraph 4 imposes an obligation on the country to ensure equality between spouses.

As we have noted, against the background of the key provisions outlined in Article 23 of the ICCPR, there is no formally agreed definition of "family" there, nor of the Covenant as a whole. Nevertheless, as already noted, the four paragraphs in this article specify the key components of the family as a natural unit.

Additionally, it is necessary to mention Article 17 of the Covenant, which prohibits arbitrary interference with "family life," and Article 24, which protects the rights of the child as "a family member," over which the HRC exercises international control.

In analyzing the relevant General Comments of the HRC explaining particular provisions of Article 23 of the ICCPR, we will attempt to set them out in a concentrated way, drawing on material we have already published (Abashidze, 2021).

In its General Comment No. 19, adopted in 1990 (UN Human Rights Committee, 1990), the HRC notes what we consider to be an important conceptual fact: the concept of family may differ in certain respects from country to country and within a single country, making it difficult to arrive at a coherent definition of the family. However, the HRC warns that when national law defines the family, the country concerned must protect it. In those States parties in which there are such family categories as "unmarried couples, their children" or "single parents and their children," countries must inform in their periodic reports whether and to what extent they are recognized and protected. To clarify, "married couples" here refer to a man and a woman.

It should also be noted that the HRC in this document focuses on clarifying those provisions that relate to the protection of the family by the country. This is because the State party is obliged to adopt relevant measures (Article 23, ICCPR).

The HRC underlined the importance of reporting on restrictions on the exercise of the right to marriage.

The HRC has specified that the age for marriage for men and women must be such that their consent is considered "free," "full," and "personal."

The Committee considers that the right to freedom of conscience and religion requires that both kinds of marriage must be provided for in national law.

In our view, an extremely important clarification by the HRC is that the right to found a family "implies the possibility to procreate," which is possible by nature for men and women, and, conversely, which "same-sex couples" are not able to do.

The Committee considers that equality of rights and obligations between spouses extends to matters such as "choice of residence," "housekeeping," "education and upbringing of children," and "disposition of property."

As one may note, in 1990, when General Comment 19 on the clarification of Article 23 of the ICCPR was adopted, there were no issues, much fewer concerns, for the HRC regarding "sexual orientation" or "gender identity" in the context of implementing Article 23 of the ICCPR on the family.

Having this in mind, we next seek to examine the HRC's position over the period (2016–2019) as reflected in the concluding observations on the periodic reports of the State party to the ICCPR. In this regard, we note that the concluding observations from this period almost invariably include a section on discrimination on the grounds of sexual orientation and gender identity. Regarding the content of these sections, let us begin by analyzing the provisions of the Concluding Observations (COBs) on the fourth periodic report of the Czech Republic. The Committee expressed

concern that the Registered Partnership Act prohibits persons in a registered partnership from adopting children. Additionally, the Committee expressed indignation at the fact that this provision is still retained in the Act, despite a Constitutional Court ruling that the provision is unconstitutional. Thus, it transpired that the Committee was unwilling to await the outcome of the deliberative process at the time of the "same-sex marriage bill" and did not catch the ultimate objective of that process: the conversion of same-sex couples from a "registered" status to a "same-sex marriage."

Another circumstance that the HRC deplores in relation to this country is the requirement in current law that transgender persons must undergo compulsory sterilization as a precondition for legal recognition of their gender. The HRC cites the 2018 decision of the European Committee of Social Rights in the case of Transgender Europe and ILGA-Europe v. the Czech Republic (European Committee of Social Rights, 2015) as grounds for repealing this provision of the law. The reference of the HRC, which is a body at the universal level, to the decision of a regional body (which is the European Committee of Social Rights), which belongs to non-core bodies (what is the CESCR at the universal level), and the position of this regional non-core human rights body as "justification" for the "concerns" of the HRC, in our view, is an example of the Committee's rejection of such principles as universal jurisdiction, the priority of international commitments made on the basis of the UN Charter (Article 103) and the commitments made by a UN member State under other international treaties and the hierarchy of sources of international law. In this context, the HRC could also consider the legal position of another regional body—the European Court of Human Rights, which stipulates that the interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 should be made in systemic unity with the other international treaty obligations of the State (Harris et al., 2018).

Unfortunately, the HRC does not limit its "concern" to this: it is also "concerned" about the requirement of the national law of a country to have a psychiatric diagnosis as a precondition for the legal recognition of gender.

The prescriptive nature of the HRC's "recommendations" in Paragraph 13, addressed to the Czech government, is also noteworthy: "should review" relevant legislation to fully ensure "equal treatment of same-sex couples," including by "considering recognizing their right to joint adoption of children"; "eliminate abusive requirements" for legal gender recognition, including mandatory sterilization and psychiatric diagnosis, and "provide for and implement... the gender recognition procedure... on the basis of self-identification by the applicant" (UN Human Rights Committee, 2019a).

In the absence of the second periodic report, the HRC in the COBs on Nigeria expressed concern that the Criminal Code criminalized same-sex relationships between consenting adults, and the Same-Sex Marriage (Prohibition) Act provided for 14 years imprisonment for persons who enter into same-sex unions and a ten-year prison sentence for all persons who support groups advocating for LGBTI rights, hold meetings, and form such groups.

The directive language style is also in the "recommendations" addressed to the sovereign state: "The State party should decriminalize... same-sex relationships... and ensure that arrest, prosecution and punishment... are prohibited"; "It should consider repealing the Same Sex Marriage (Prohibition) Act and reviewing all other relevant legislation. Pending such revisions, those measures should not be employed" (UN Human Rights Committee, 2019b).

In the COBs on Vietnam's third periodic report, in which the relevant section is even more ambiguous ("Sexual orientation, gender identity, intersex status..."), the HRC "welcomes" the State party's efforts to improve the situation of LGBTI persons, including by repealing the ban on "same-sex marriage" and providing legal recognition of gender. However, the HRC found grounds for "concern" about the "absence of legal recognition and protection for same-sex couples" (UN Human Rights Committee, 2019c).

The COBs on Sudan's fifth periodic report are notable. Based on the two positions expressed by the HRC, which indicate a logical inconsistency: under "Polygamy," the HRC assesses the practice as "incompatible" with the principle of equality between men and women in terms of the right to marry, as it "violated the dignity of women," and yet under "Non-discrimination" the HRC is "concerned" about the existence of "entrenched" discriminatory provisions in legislation... in the area of family and personal status, and concerning sexual orientation. It appears that the HRC sees the former as an affront to the dignity of women and the latter as not; indeed, in the latter case, the HRC requires the State party to "guarantee" same-sex consensual sexual activity the "protection" and "repeal" relevant articles in the Criminal Code (UN Human Rights Committee, 2018a).

In the COBs on the report of Bulgaria, the HRC expresses "concern" that "same-sex couples cannot enter into any form of legally recognized union or adopt children...". The Committee is also "concerned" about obstacles to legal recognition of gender reassignment, including "reports" that the basis for such reassignment to be recognized by the courts is only the completion of hormonal therapy. As "recommendations," the HRC demands the elimination of de jure and de facto discrimination against persons on the basis of their sexual orientation and gender identity "in marriage and family arrangements" (UN Human Rights Committee, 2018b).

In the COBs of Lithuania's fourth periodic report, the HRC is "concerned" about many circumstances regarding:

- "The persistence of stereotypical attitudes, prejudice, hostility, and discrimination" against LGBTI persons;
- "That certain legal instruments, such as the Law on the Protection of Minors against the Detrimental Effect of Public Information, may be applied, including by the Office of the Inspector of Journalist Ethics, to restrict media and other content in a manner that unduly restrict freedom of expression" against LGBTI persons;
- "Various legislative initiatives" that would restrict the enjoyment of LGBTI rights;
- "The lack of clarity in legislation and procedures concerning the change of civil status with respect to gender identity, in particular, the absence of legislation enabling gender reassignment procedures and change of civil status without undergoing gender reassignment surgery."

As a "recommendation," the Lithuanian government is instructed to change legislation to recognize the equality of same-sex couples (UN Human Rights Committee, 2018c).

The HRC has often used the phrase as a call for a State party to act "in accordance with the rights guaranteed under the Covenant," but in practice understood by the Committee rather than by States parties.

In the COBs on Liberia's initial report, the HRC is "concerned" about the "criminalization of consensual same-sex conduct between consenting adults" and "attempts to increase penalties and prohibit same-sex marriage"; "reports of harassment and reprisals against defenders and associations" advocating for LGBTI "rights" and "interests."

Particular attention should be paid to the reasoning behind the State party's recommendations: "While acknowledging the diversity of morality and cultures internationally, the Committee recalls that State laws and practices must always conform to the principles of universality of human rights and non-discrimination." As a "universal" right, the HRC presents the following: the State party should "as a matter of priority, decriminalize consensual same-sex sexual conduct between consenting adults." This "justification" results in its "recommendations" and in effect dictates to the State party: to "remove any barriers" to the enjoyment of the rights of LGBTI persons; to "guarantee in practice the security" and "rights" and "interests" of LGBTI persons, human rights defenders, and organizations to "freedom of expression." Moreover, the HRC calls on the State party to facilitate victims' access to justice "by strengthening trust" between LGBTI persons and "State authorities" (UN Human Rights Committee, 2018d).

In the COBs on the fifth report of Mauritius, the HRC expressed its "concern" that LGBTI persons "are not authorized to officially enter marriage or civil partnerships and are denied other rights relating to personal status." The HRC called to prevent and protect LGBTI from all forms of discrimination and made the appropriate amendments to the legislation. The State party is also charged with training police, judges, and prosecutors and with conducting awareness-raising campaigns for the general public on the rights of LGBTI. As we can see, the HRC equates "civil partnership" with "marriage," and based on the failure to allow "formal" same-sex unions in that country, the Committee qualifies "discrimination" on the basis of sexual orientation and gender identity and calls on the State party to take the necessary measures to eradicate discrimination against LGBTI persons "concerning marriage" (UN Human Rights Committee, 2017a). In this case, the allegations are unfounded from the perspective of international human rights law and attempts to substitute concepts.

The Committee notes the satisfaction of the Committee with the jurisprudence of the Constitutional Court in relation to the seventh periodic report of Colombia, which guarantees the rights of same-sex couples to "enter into civil marriage and to adopt children" and reinforces the fight against the practice of discrimination against such persons. However, the Committee is "concerned" at "reports" that LGBTI persons "have been the target of acts of violence, including murder, and police misconduct because of their sexual orientation." Thus, there is the following "recommendation": the State party "should adopt stronger measures to prevent members of the security forces from committing acts of discrimination" (UN Human Rights Committee, 2016a).

The HRC in the COBs for Slovenia's third periodic report expressed "concern" about the amendments to the legislation (namely, granting, on an equal basis, the rights of same-sex couples to inherit, access reproductive treatments, and adopt children) were rejected.

In the HRC's view, the people's refusal by referendum to accept the proposed amendments to Slovenia—Marriage and Family Relations Act is unconstitutional. Based on this, the Committee's recommendation is as follows: "the State party should ensure" that all LGBTI persons "are guaranteed equal rights under the Covenant and the Constitution" (UN Human Rights Committee, 2016b).

It appears that the HRC does not recognize the right of the people (i.e., the source of power) to change by referendum not only the relevant provision of existing law (in our case, Slovenia—Marriage and Family Relations Act) but also the Constitution itself, which is entirely inherent in the nature of the power of the people (democracy).

In the COBs for Australia's sixth periodic report, the HRC clearly disregarded the recommended length limits in the COBs, focusing excessively on issues related to sexual orientation and intersex status. The Committee has primarily expressed its dissatisfaction with the procedure for prescribing second-stage hormone therapy to young people diagnosed with gender dysphoria, which requires permission

from the family court. The Committee sees the delay and costs in this procedure of obtaining court permission to do so. Another concern of the HRC is that, in most states, transgender persons are required to consent to appropriate surgical or medical intervention and be unmarried to change the legal gender record on key documents. In this regard, the HRC "recommends" that the State party expedite access to second-stage hormone therapy for persons with gender dysphoria, including "by removing the need for court authorization" with the consent of the child's parents and medical team and provided that treatment is provided in accordance with medical protocols and standards of care. This position by the HRC is surprising because it requires the removal of judicial safeguards, which are considered to be the most effective of other legal remedies. Another recommendation of the HRC is for the State party to take the steps necessary "to remove surgery and marital status requirements for a sex change on birth, death and marriage certificates. . .". Again, we are dealing with a position of the HRC which is at odds with the understanding of "gender" of the LGBTI advocates themselves, as will be discussed in more detail later. In this case, the logic of the HRC is that the person concerned can legally change in terms of gender without changing gender itself through surgery. If this approach is used in practice, then, for example, many forms of the Olympics could disappear because men who pay lip service to be women could compete for Olympic medals against women. Unfortunately, this process has already been noticed in the sports life of the USA.

The HRC pointed out the main reason for its "concern" about the "explicit ban on same-sex marriage in the Marriage Act 1961," which, in the Committee's view, "results in discriminatory treatment of same-sex couples, including in matters relating to divorce of couples who married overseas." Again, the Committee ignored the "postal survey" organized by the State party as a legitimate means of gaining public opinion on the "legalization of same-sex marriage." On the contrary, the Committee considers that "resort to public opinion polls to facilitate upholding rights under the Covenant in general, and equality and non-discrimination of minority groups in particular, is not an acceptable decision-making method and that such an approach risks further marginalizing and stigmatizing members of minority groups."

The HRC recommended that the State party revise its laws to ensure that all its laws and policies afford equal protection for same-sex couples (UN Human Rights Committee, 2017b). In this context, one wonders what the qualifications of the HRC would be if the issue of the democratization and legitimacy of the postal vote in the last US presidential election were on its agenda.

Our analysis of the relevant COBs clearly demonstrates the increasing activism of the HRC in relation to LGBTI issues and its desire to "expand" the scope of article 23 of the ICCPR. The HRC has used various techniques to "justify" this position, including reference to the documents of a regional body such as the European Committee of Social Rights. Logically, the HRC should have looked first to the relevant work of its "sister body," the CESCR, which also deals with the family based on Article 10 of the ICESCR. With regard to the latter, as noted above, we will summarize some of the conclusions derived from the analysis of the CESCR in its consideration of the reports of States parties to the ICESCR. The analysis of the recommendations made over the last four years (2017–2020) in its concluding observations on the reports of 22 States parties (representing all geographical regions and subregions of the world) clearly shows what aspects are key for the CESCR in protecting the family. These include gender equality, family members, family planning, family life, family dependents, marriage, religious marriage, civil marriage, early marriage, marriage age, divorce, spouses, matrimonial property, inheritance, unmarried couples, separation, protection of family and child benefits and mothers' welfare, maternity and pregnancy, paid leave, abortion, children, best interests principle, children born out of wedlock, foster children, child education and upbringing, children with disabilities, children of migrants, forced labor or exploitation of children, child custody, alimony, parental rights and responsibilities, child visitation, victims of domestic violence, etc. (Abashidze, 2021).

If one compares the activities of the HRC and the CESCR, up until the first decade of the twenty-first century, these committees did not touch the obligation of States parties to take measures to equate same-sex couples with the institution of the family. More recently, the HRC has been active in this regard, while the CESCR has distinguished itself only once in relation to Slovakia. In Paragraphs 14 and 15 of the concluding observations on Slovakia's periodic report, the CESCR began to speak in the same terms of "partnership," "civil union," "same-sex marriage," and "same-sex unions." In this context, the Committee has also raised concerns about "discrimination based on . . . sexual orientation." In other words, the CESCR has created a "construct" of different unions: married and unmarried, while using them separately: "same-sex union," "same-sex marriage," and "registered partnership." Based on such a "construction" and in the absence of any legal basis, and outside its competence, the CESCR recommended Slovakia to make legislation for the registration of same-sex partnerships or civil unions (UN Human Rights Committee, 2019d).

This position taken by the CESCR in relation to Slovakia is fundamentally different from its previous practice; this case rather points to the "external" influence of its "sister," the HRC, and the latter (the HRC) is unfortunately not reciprocated by its "sister," the CESCR: it prefers to focus on the European Committee on Social Rights.

Against this background, the origins of the human rights aspects of "gender identity" need to be clarified.

At a doctrinal level, it is argued that the concept of "gender identity" was first introduced into scholarship by the psychoanalyst Robert Stoller, speaking at the International Congress of Psychoanalysts in Stockholm in 1963. His concept was based on the separation of biological and cultural. He proposed a distinction between sex, gender, and the core of the generic essence:

- He referred "sex" to biology, which required analysis of the chromosomes of the external and internal genital organs, the sex glands, the ratio of hormones, and internal sex characteristics;
- "Gender" implied certain psychological and cultural aspects;
- "Generic essence" came from an understanding of belonging to one sex and not to another: "core generic essence" meant the conviction that one had correctly identified one's sex (Badenter, 1995).

International documents and the approaches of UN specialized agencies, such as WHO and UNESCO, do not provide an explicit answer with regard to the concepts of "gender" and "gender-based." For instance, Paragraph 2 of the Annex to the Beijing Platform for Action adopted during the Fourth World Conference on Women in 1995, which states that the word "gender" is used and understood in its customary accepted meaning, has no theoretical and even less practical significance for the simple reason that there is no explanation of these concepts in their customary accepted meaning.

According to the WHO Director-General's Statement on Gender Policy, the terms "gender" and "gender-based" are used to describe those characteristics of women and men that are "socially acquired," and sex is "biologically predetermined" (Matytsin, 2021).

Within UNESCO, the preferred term is "gender," a framework that encompasses the roles and responsibilities of men and women that are defined in families, society, and culture.

In the Statute of the International Criminal Court (ICC), according to Paragraph 7, the term "gender" in the context of society refers to both genders, male and female (International Criminal Court, 1998).

The position of the UN International Law Commission (ILC), which deals with the progressive development and the codification of international law at the UN under the auspices of the UNGA, on the one hand, recommended that the UNGA should not be guided by the ICC Statute's outdated understanding of "gender" and, on the other, is itself guided on this issue by the 2004 ICRC Guidelines, according to which "gender" refers to culturally determined expectations of male and female behavior based on the roles and attitudes assigned to them based on gender (Curtet et al., 2004).

One may see, with this attitude to "gender" and "gender-based" aspects, it is difficult to understand the so-called essential foundations and dimensions of "gender identity" in a human rights context.

In 2010, the Committee on the Elimination of Discrimination against Women (CEDAW), which oversees the international implementation by States parties of the 1979 International Convention on the Elimination of Discrimination against Women, issued General Recommendation 28, which in Paragraph 5 refers "gender" to "socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences" (UN Committee on the Elimination of Discrimination against Women, 2010).

"Gender identity" can be described as "a person's deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, "gender expression") such as dress, speech, and mannerisms" (Council of Europe, 2011).

Against this background, a reasonable question arises: "What is common between the international legal framework protecting the family based on marriage between a man and a woman and the attempt to grant same-sex registered couples the legal status of a family?" The answer is unequivocal—there is little in common. For this reason, the position of the HRC in promoting the equation of the two antipodes—the biological and psychological products of families and same-sex registered couples—is unconvincing and unwarranted.

The question of the perspective of the situation and its negative impact on the international cooperation of countries in the field of human rights protection should also be answered. In this case, we can agree with the opinion of the President of Russia: "Any attempts to force one's values on others ... can only further complicate a dramatic situation. We have a different viewpoint, dealing with "reverse discrimination" against the majority in the interests of a minority and the demand to give up the traditional notions of mother, father, family, and gender" (Valdai Discussion Club, 2021).

Going back to the core issue—the work of the HRC, one can see that the Committee avoids touching on the key provisions of the ICCPR, which sets out those foundations that characterize the family as a natural entity. To "overcome" these natural barriers, a discussion is sparked about the need for a comprehensive (overarching) anti-discrimination law (or legislation) in the State. This ignores the fact that all fundamental instruments, from the UN Charter and UDHR to the conventions on certain categories or issues, list "sex" among discriminatory grounds and all relevant provisions ending with "in other circumstances," the general discourse of prohibiting all forms of discrimination is applied. On this basis, new rights of groups of people are "generalized" and then "justified," with all the legal

consequences that follow, including, for example, claims to those rights that the family has based on marriage between a man and a woman, such as the right to adoption. This is precisely what the UN States parties, which adopted Resolution 68/268, were warned against, that the work of the HRTBs "should fall under the provisions of the respective treaties" to "not creating new obligations for States parties."

In this context, it should be noted that even the European Court of Human Rights has been more cautious than the HRC in "unreasonably" extending the provisions on the right to marry and found a family in Article 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms. As the individual cases confirm (K. M. v. UK, No. 30309/96, HUDOC (1997), DA; McMichael v. UK, A 308 (1995), 20 EMRR 205), "if a couple who is not married starts a family, the various rights they have will be protected by Article 8 of the Convention, not by Article 12" (UN Human Rights Committee, 2017b). As we can see, the ECHR relies on various articles of the Convention, even in cases of unmarried couples, without trying to equate their legal status.

4 Conclusion

We will focus on one academic event held four years ago, where this contradiction between the trends observed at the national level (in the case of the Russian Federation), the regional level (in the case of the Council of Europe), and the UN was clearly identified. We refer to the international conference "Constitution in the Age of Global Change and the Tasks of Constitutional Review," which preceded the VIII St. Petersburg International Legal Forum. In his speech at the Forum, the Chairman of the Constitutional Court of the Russian Federation (the CC of the RF), Valery Zorkin, noted that the current era of major changes brings with it new and very serious challenges to constitutionally protected values. He, therefore, called for a balance of values to be struck to reconcile the changes to come with the legal traditions, which the public cannot abandon in favor of the new trends. The President of the Constitutional Court reminded his colleagues from the ECHR that the interaction between the European legal order and the constitutional one cannot take place in conditions of subordination. Therefore, only a dialogue between the different legal systems is the basis of their proper balance. It is on the respect of the European Court for the national constitutional identity of the Contracting States to the Convention that the effectiveness of its rules in the domestic legal order largely depends. He went on to clarify that the limits of a lawful compromise with the ECHR are delineated by the Russian Constitution.

Addressing the question of the relationship between majority and minority rights from the perspective of constitutional justice, he emphasized that derogations from public interests in favor of individual and private interests must always be compensated in one way or another and, conversely, any reduction in the scope of a fundamental individual right is secured by strengthening another, related right.

Speaking at the same conference, Thomas Markert, secretary of the European Commission for Democracy through Law (Venice Committee), said that the ECHR should not dictate to national constitutional courts but that all national courts should respect the decisions of the ECHR. He pointed out, "There are no direct contradictions between the texts of the national constitution and international conventions," the question is the interpretation of these acts. This was the circumstance to which Professor A. Kh. Abashidze drew attention in his speech. In particular, he noted that international human rights mechanisms often try to go beyond the relevant convention prescriptions, but the limits of such an escape are uncontrollable. This moves many issues out of the realm of law and into the realm of politics (Constitutional Court of the Russian Federation, 2018).

We should underline the importance of the amendments to the Russian Constitution adopted on July 1, 2020, including Article 79: "Decisions of international bodies, taken on the basis of provisions of international treaties of the Russian Federation in their interpretation that contradicts the Constitution of the Russian Federation shall not be executed in the Russian Federation" (Russian Federation, 1993).

If the HRC ignores this and continues along the same lines, we can also expect it to revise its own General Comment No. 19 of 1990, which acknowledges that the concept of family may differ in certain aspects from country to country. Instead, the HRC will establish "new rights" for same-sex registered couples and "new obligations" for the Contracting States to equate their legal status with that of the family.

In this case, no one can predict the reactions of those States parties to the ICCPR who try to maintain a firm pillar of statehood—moral, ethical, and value-based. To confirm this point, we can mention the withdrawal of the Russian Federation from the Council of Europe.

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