

Gender Identity: from the Yogyakarta Principles (2006) to the Istanbul Convention and beyond

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INTRODUCTION

The text of the Istanbul Convention has prompted intensive public debates in Bulgaria. These were largely based on the wrong translation into Bulgarian of the text of the Convention. Acknowledgment that the translation was wrong was made by Bridget T. O'Loughlin, an official representative of the Council of Europe in charge of monitoring the implementation of the Convention¹. This did not prevent the wrong translation being brought to the National Assembly for consideration in the Committees and to public discussion². As such, the text of the Convention was also referred to the Constitutional Court with questions about compliance with the Bulgarian Constitution.³

This analysis will be based on the original English⁴ and French texts of the Convention.

Supporters of ratification of the Convention highlight as main argument the main theme and purpose of the Convention - Protection and Prevention of Violence against Women and Girls.

The rational opponents of the ratification point to the problem of the existence of unclear definitions in the text of the Convention. One of them is gender identity.

Active Bulgarian bloggers published their own analysis of the case law of the European Court of Human Rights (ECHR)⁵ and the practice of the Bulgarian judiciary in relation to gender identity.⁶

This analysis

- Will try to shed light on the international legal framework regarding the concept of gender identity, its definitions, the chronology of emergence as a concept and the perception as a legal category in political declarations, programs, and reports of key global organizations such as the United Nations, the Council of Europe, the European Union, and their subdivisions.
- Will try to explain the importance of the formal recognition of gender identity for an anti-discrimination ground
- Will pay attention to the political agenda in which gender identity is an essential element.

The analysis seeks to ensure the exhaustiveness of the international documents on which it is based but does not claim to have achieved that objective. There may also be additional key documents related to the topic that remain outside the scope of the analysis.

¹ [http://clubz.bg/62976-gender e samo za socialnite roli na myja i jenata](http://clubz.bg/62976-gender-e-samo-za-socialnite-rol-i-na-myja-i-jenata)

² <http://www.parliament.bg/bg/bills/ID/77944>

³ Конституционен съд, дело 3/2018, <http://www.constcourt.bg/bg/Cases/Details/541>

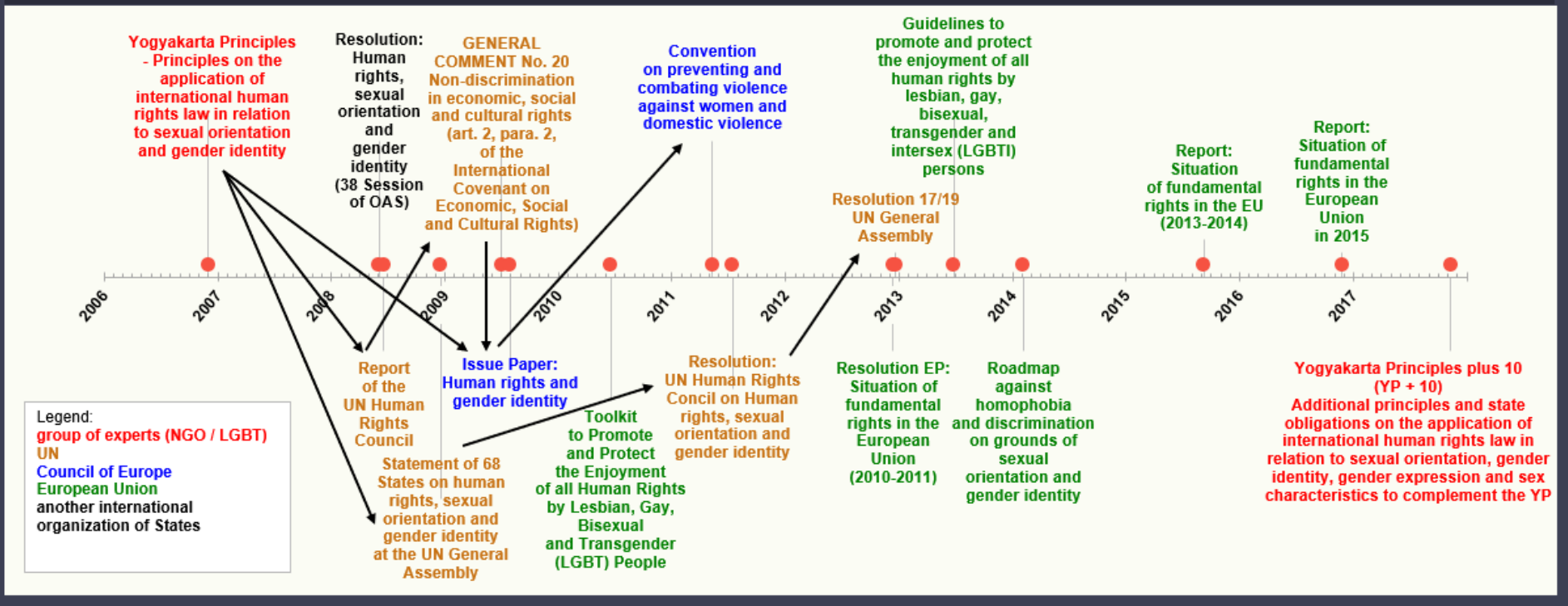
⁴ <https://rm.coe.int/168046031c>

⁵ Малко правни аспекти на Gender identity и Third gender (Трети пол), Любомир Авджийски <https://avdjiiski.wordpress.com/2018/01/27/какво-казва-съдебната-практика-относ/>

⁶ Как докато гонехме конвенцията влакът май е потеглил, Радостин Марчев, <https://rado76.wordpress.com/2018/02/01/istanbul-3/>

Analysis

Historical and legal development of the concept of gender identity



PART 1. HISTORICAL AND LEGAL DEVELOPMENT OF THE CONCEPT OF GENDER IDENTITY

2006 – first legal definition of “gender identity”

Gender identity has been mentioned for years in key documents of key international organizations, such as the European Parliament resolution on homophobia in Europe (18.01.2006)⁷ or in the address of the UN Commissioner for Human Rights to the participants of the International LGBT Human Rights Conference in Montreal (26.07.2006)⁸.

According to the research, gender identity was first given a legal definition in November 2006, as a result of the work of an international group of experts. The group was convened by the International Service for Human Rights, the non-governmental organization for human rights protection⁹ and actively supported by LGBT organizations such as the Canadian ARC International Inc.¹⁰ The group was chaired by the renowned human rights expert Michael O'Flaherty, who has been Director of the European Union Agency for Fundamental Rights (FRA) since 2015¹¹. The group of experts included a Bulgarian representative - Dimitrina Petrova, as Executive Director of Equal Rights Trust. Dimitrina Petrova is a deputy at the VII Grand National Assembly of Bulgaria, one of the authors of the Bulgarian Constitution (1991), a lawyer practicing international human rights lawsuits, a university lecturer, an adviser to a Bulgarian president and numerous international organizations.¹²

The group of experts drew up a document titled "The Principles of Yogyakarta. Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity" (hereinafter referred to as **PY-2006**)¹³. The Principles were published in early 2007.

This, as we shall see below, a founding document, was publicly presented on 26 March 2007 in Geneva, during an informal event during the Fourth Official Session of the UN Human Rights Council¹⁴.

In the introduction of **PY-2006**, following definitions are given of the two key concepts - sexual orientation and gender identity.

⁷ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0018+0+DOC+XML+V0//EN>

⁸ Presentation of the Office of the United Nations High Commissioner for human rights Ms. Louise Arbour to the International conference on LGBT (lesbian, gays, bisexual and transgender) human rights, Montreal, <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=6108&LangID=E>

⁹ <http://www.ishr.ch/what-we-do>

¹⁰ <http://arc-international.net/about/background/>

¹¹ <http://fra.europa.eu/en/about-fra/structure/director>

¹² <http://www.equalrightstrust.org/about-us/founding-director>

¹³ Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity, <http://www.refworld.org/docid/48244e602.html>

¹⁴ Bulletin of informal meetings held in parallel to the 4th session of the Human Rights Council <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session4/OOD/bim26032007.doc>

English	Bulgarian ¹⁵
Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.	Сексуалната ориентация способността на всеки човек на дълбоко емоционално, психологическо и сексуално привличане към, и интимни отношения с лица от различен пол (gender) или от същия пол (gender), или от повече от един пол (gender)
Gender identity is understood to refer 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 expressions of gender, including dress, speech and mannerisms.	Полова идентичност означава дълбоко почувстваното вътрешно и индивидуално усещане на всяко лице за пол (gender), което може да съответства или да не съответства на биологичния му пол (sex), определен при раждането му, включително личното чувство за тялото (което може да включва, на основата на свободен избор, изменение на външния вид или функциите на тялото посредством медицински, хирургически или други средства), както и други форми на изразяване на пола (gender), включително облекло, реч и маниери“

These definitions will be discussed in the second part of this analysis.

The authors of the YP-2006 finalize the introduction (page 7) with the words: „The Yogyakarta Principles affirm **binding international legal standards** with which **all States must comply**. They promise a **different future** where all people born free and equal in dignity and rights can fulfil **that precious birthright**“.

2007 - The European Union is taking over the relay

The European Union Agency for Fundamental Rights (FRA) was established by EU Directive of 15.02.2007. One of the Agency's first tasks assigned to it by the European Parliament in June 2007 is to draw up a report on “Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States”. The final report was published in 2009.¹⁶ It refers to the **PY-2006**, citing the definitions of sexual orientation and gender identity, and notes that „While these Principles have no legal status, **they are an indication of the consensus of the legal community**. “ (footnote 55 on page 36).

On 05.11.2007 **PY-2006** were presented at a public event accompanying the session of the United Nations General Assembly in New York. Argentina, Brazil, and Uruguay sponsored the event. Several NGOs in the field of human and LGBT rights organized the discussion.¹⁷

¹⁵ Translation into Bulgarian taken from the Handbook on European Law on Discrimination, 2010. https://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA_CASE_LAW_HANDBOOK_BG.pdf

¹⁶ Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States http://fra.europa.eu/sites/default/files/fra_uploads/192-FRA_hdgso_report_Part%201_en.pdf

¹⁷UN: Support Global Gay Rights Charter, <https://www.hrw.org/news/2007/11/04/un-support-global-gay-rights-charter>

2008 – first cases of gender identity use at the highest official international scene

On 03.06.2008 the Organization of American States adopted a resolution titled „Human rights, sexual orientation and gender identity“¹⁸.

The UN Human Rights Council discussed PY-2006 in its report of 18.06.2008.¹⁹

On 2 July 2008, the Council of Ministers of the Council of Europe decided to draw up a recommendation on measures to combat discrimination based on sexual orientation or gender identity.²⁰

On 18.12.2008, at the UN General Assembly, 68 countries (among them all 27 EU Member States, including Bulgaria) speak on their own behalf an official „Statement on Human Rights, Sexual Orientation and Gender Identity“²¹. The key message in this statement is that the principle of non-discrimination must be applied without regard to sexual orientation and gender identity.

2009 – non-binding complementarity of the anti-discrimination grounds. Gender identity link with the Istanbul Convention

Half a year later, on 2 July 2009, the Committee on Economic, Cultural and Social Rights (CESCR) of the UN Economic and Social Council published the "General Comment 20"²². In essence, it is a broad interpretation of Art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights (entered into force in 1976), which lists the anti-discrimination grounds. Although "General Comment 20" is a non-binding legal document, it is drawn up by an organization that is tasked with monitoring the implementation of the International Covenant. **In "General Comment 20", for the first time, the list of non-discriminatory ground is supplemented, albeit non-binding, with the "gender identity" attribute.** The ground is explained laconically (point 32 on page 10) in one sentence:

“In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.”

The sentence **ends with a reference to the full definitions in the original text of PY-2006**. Thus, "General Comment 20" is identified in this analysis as **the first official document that openly and fully refers to PY-2006**.

A few weeks later, on 29 July 2009, the Commissioner for Human Rights of the Council of Europe - the second key international organization in this analysis - published the Issue paper „Human rights and gender identity“²³. In the introduction, the definition of gender identity from PY-2006 is cited. The Commissioner explicitly refers to General Comment 20 of CESCR (page 4) and to the inclusion of

¹⁸ Human rights, sexual orientation and gender identity

<http://www.oas.org/consejo/GENERAL%20ASSEMBLY/Documents/ag04269e06.doc>

¹⁹ Report of the Human Rights Council on its 8th session, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/152/83/PDF/G0815283.pdf>. If this link doesn't function, please make a direct search using the document name in the official UN document system here:

<https://documents.un.org/prod/ods.nsf/xpSearchResultsM.xsp>

²⁰Ad hoc terms of reference for the Steering Committee for Human Rights (CDDH) with a view to preparing a recommendation on discrimination based on sexual orientation and gender identity

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d30df

²¹ Statement on Human Rights, Sexual Orientation and Gender Identity,

<http://www.refworld.org/docid/49997ae312.html>

²² General comment No. 20, <http://www.refworld.org/docid/4a60961f2.html>

²³Issue Paper Human rights and gender identity <https://rm.coe.int/1680695d3c>

gender identity as a non-discriminatory ground. The Commissioner's first recommendation (page 18) to the member states of the Council of Europe is to "Implement international human rights standards without discrimination and **prohibit explicitly discrimination on the ground of gender identity in national non-discrimination legislation. The Yogyakarta Principles [...] should be used to provide guidance for national implementation in this field**". The Commissioner acknowledges at the same time elsewhere in the text of the document (page 6) that „**While not adopted as an international standard, the principles are already cited** by UN bodies, national courts, and **many governments have made them a guiding tool** for defining their policies in the matter. **The Commissioner for Human Rights has endorsed the Yogyakarta Principles** and considers them as an important tool for identifying the obligations of states to respect, protect and fulfill the human rights of all persons, regardless of their gender identity.“

On 06.04.2009 the first meeting of CAHVIO²⁴ took place. CAHVIO is the Council of Europe Ad Hoc Committee, composed in December 2008 by representatives of the Member States and tasked with drafting the text of the Convention on Preventing and Combating Violence Against Women and Domestic Violence (known as the Istanbul Convention).²⁵

On 08.09.2009 the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA²⁶) makes a formal request to CAHVIO, the Convention to prevent and combat violence against lesbian, bisexual and transgender women.²⁷ **The verbatim definition of gender identity and sexual orientation of PY-2006** (pages 6-7) is quoted, however, without stating that these definitions were formulated by a group of experts. Instead, the already cited document "Human Rights and Gender Identity" is cited as the source, and as author, the Council of Europe Commissioner for Human Rights.

2010 - first practical steps of applying the Yogyakarta principles at EU level

On 31.03.2010, the Committee of Ministers of the Council of Europe recommends that Member States adopt measures to combat discrimination based on sexual orientation or gender identity.²⁸ In the introduction to the Explanatory Memorandum ²⁹ it is emphasized that „The European Court of Human Rights [...] has already recognised that Article 14 [of the European Convention on Human Rights] covers sexual orientation and the explanatory report to Protocol No. 12 indicates that this instrument would provide protection against discrimination based on sexual orientation.“ Concerning gender identity, the text continues with two contingencies: „**While this was not expressly stated with regard to gender identity, it may reasonably be considered that it would also be covered by both Article 14 and Protocol No. 12.**“ None of both documents defines gender identity.

On 17.06.2010 the EU Working Party on Human Rights informs the EU's Political and Security Committee on a " Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People". The document builds on the definitions used in the Issue

²⁴ <https://www.coe.int/en/web/istanbul-convention/cahvio>

²⁵ CAHVIO, Report of the 1st meeting, <https://rm.coe.int/16805938a2>

²⁶ International Lesbian, Gay, Bisexual, Trans and Intersex Association, <http://ilga.org/>

²⁷ The need to ensure that the Convention on violence against women addresses effectively the obligation of member states to prevent and combat violence against lesbian, bisexual and transgender women
<https://rm.coe.int/1680594272>

²⁸ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity,
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a +

²⁹ Explanatory Memorandum to Recommendation CM/Rec(2010)5,
<https://wcd.coe.int/ViewDoc.jsp?p=&id=1570957&Site=CM&direct=true>

Paper "Human Rights and Gender Identity" of the Council of Europe's Commissioner for Human Rights (2009), with the following clarification (page 22):

„Although **the definition of gender identity** in the document **is not a legally binding one**, it provides a valuable commitment to the protection of human rights of transgender persons“.³⁰

At the same time, the European Union Agency for Fundamental Rights (FRA) issued in 2010 a "Handbook on European non-discrimination law". It has literally embraced the definition of gender identity of PY-2006. In footnote 171 on page 92 one can read

„This widely accepted definition is taken from the 'Yogyakarta Principles [...]. The Principles were adopted by an **independent** body of experts in International Human Rights Law“.³¹

In the report of the 5th meeting of CAHVIO (29.06.-07.07.2010) it has been recorded (page 4) that „Some delegations expressed a reservation with regard to specific paragraphs or terminology, which will be reflected in footnotes included in the revised draft convention. **The Russian Federation expressed its reservation to including in Article 3 (4) a reference to "gender identity" and "sexual orientation" as a ground for discrimination.**“³² This is the earliest report from a CAHVIO meeting, which mentions gender identity.

The 9th session of the UN Human Rights Council Working Group took place from 1-12 November 2010. This Working Group is responsible for the universal periodic review of the progress in the implementation of human rights in the member states. The Group has published an opinion of the International LGBTI Association (ILGA), with author Aksinia Gencheva. By the beginning of 2009. Aksinia Gencheva is the Executive Director of the Bulgarian Gay Organization "Gemini" and at the time the report has been presented she is responsible for policy and communications of "Bilitis Resource Center Foundation"³³. ILGA, for its part, is an organization with consultative status with the United Nations Economic and Social Council (ECOSOC).

In this opinion one can read (page 1): „The ground "sexual orientation" is included in 7 national laws as a prohibited discrimination ground. However, transsexual and transgender persons are not protected from discrimination based on gender, gender identity or gender expression, as the Bulgarian legislation does not differentiate "sex" from "gender". While the Act Against Discrimination explicitly includes and defines the heterosexual, bisexual and homosexual orientations as the legal norm of "sexual orientation", transsexuality is still considered as medical condition of libido dysfunction and is treated as disease by the medical authorities.“³⁴

ILGA's positions on gender identity and the situation in Bulgaria are highlighted in the summary report on Bulgaria prepared by the Secretariat of the High Commissioner for Human Rights.³⁵

³⁰Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People <http://data.consilium.europa.eu/doc/document/ST-11179-2010-INIT/en/pdf>

³¹ http://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_EN.pdf

³²CAHVIO, Report of the 5th meeting, <https://rm.coe.int/1680593ce1>

³³ <http://www.bilitis.org/>

³⁴ BULGARIA: The Status of Lesbian, Gay, Bisexual and Transgender Rights Submission to the United Nations Human Rights Council for its Universal Periodic Review of Bulgaria (9th Session) http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/BG/LGBT_LesbianGayBisexualTranssexualAssociation.pdf

³⁵ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human rights Council resolution 5/1. Bulgaria. http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/BG/A.HRC.WG.6.9.BGR.3-Bulgaria_eng.pdf

2011 - preparing for recognition of gender identity at the highest international level

On May 11, 2011, the Istanbul Convention is opened for signature. The concept of gender identity is mentioned only in one place in the text - in art. 4, para. 3, listing all the grounds where the Convention should be implemented without discrimination.³⁶

A brief explanation (but not a definition!) of the meaning of gender identity is given in point 53 of the Explanatory report to the Istanbul Convention.³⁷ It focuses on each of the anti-discrimination grounds listed in Art. 4, para. 3 of the Istanbul Convention. For gender identity it states:

English	Bulgarian
Certain groups of individuals may also experience discrimination on the basis of their gender identity, which in simple terms means that the gender they identify with is not in conformity with the sex assigned to them at birth. This includes categories of individuals such as transgender or transsexual persons, crossdressers, transvestites and other groups of persons that do not correspond to what society has established as belonging to "male" or "female" categories.	Някои групи от хора също могат да бъдат дискриминирани въз основа на тяхната полова идентичност, което с прости думи означава, че социалният пол (gender), с който се идентифицират, не е в съответствие с биологичния пол, приписан им при раждането. Това включва категории лица като трансджендър или транссексуални лица, крос-дресъри, травестити и други групи лица, които не съответстват на това, което обществото е определило като принадлежащо към "мъжка" или "женска" категории. (превод на автора)

On 14 July 2011, the Human Rights Council of the United Nations adopted Resolution 17/19 on Human Rights, Sexual Orientation and Gender Identity³⁸. The resolution was adopted by a modest majority of 23 "for", 19 "against" and 3 "abstentions" votes. The document does not provide an explanation for the meaning of gender identity. In essence, **this is the first resolution of an UN organisation that mentions the concept of gender identity.**

As a result of this resolution, the UN Commissioner for Human Rights released a report on 17.11.2011 „Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.“³⁹ In this report, footnote 7 (page 5) specifies with respect to PY-2006 that „The Principles, **which are non-binding**, were developed by human rights experts. **Several United Nations entities have used these definitions** to describe sexual orientation and gender identity; see for example UNHCR, Guidance Note on Refugee Claims [...] and UNAIDS.“

2012 – recognition at the highest level of the concept of gender identity

2012 can be characterized as the year of international recognition of the concept of gender identity.

³⁶ Council of Europe Convention on preventing and combating violence against women and domestic violence <https://rm.coe.int/168046031c>

³⁷ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, <https://rm.coe.int/16800d383a>

³⁸ 17/19 Human rights, sexual orientation and gender identity <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf>

³⁹ Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/170/75/PDF/G1117075.pdf>

On 12.12.2012, the European Parliament adopted a resolution on the situation of fundamental human rights in the EU (2010-2011).⁴⁰ There is an entire section of the topic „sexual orientation and gender identity“ (points 90-103). The resolution was adopted with 308 votes in favour, 229 against and 48 abstentions.⁴¹

A week later, on 20.12.2012, the UN General Assembly (the most important governing body of the organization) voted resolution 17/19, where Art. 6 (b) calls on the States:

„To ensure the effective protection of **the right to life of all persons** under their jurisdiction, to investigate promptly and thoroughly **all killings**, including those targeted at specific groups of persons, such as [...] killings of persons [...] **because of their sexual orientation or gender identity** [...].“⁴²

There are no explanations or references to the meaning of "gender identity" in this document.

Analysis of documents after 2013 has not been made. I will only quote point 45 on page 8 of the National Report of Bulgaria to the Second Universal Review of the Status of Human Rights at the 22nd session of the UN Human Rights Committee (7 May 2015):

„The authorities have continued its consistent policies aimed at preventing and eliminating any form of discrimination, including against the LGBT persons. **All Bulgarian citizens are given the opportunity to freely state their sexual orientation and gender identity.**“⁴³

Let's go back to the current Bulgarian context. Bulgaria signed the Istanbul Convention on 21.04.2016. In the process of preparing for ratification, on 01.11.2017, Justice Minister Tsetska Tsacheva responded formally to a parliamentary question. She announced that among the legislative changes being prepared is the introduction in the Law for protection against discrimination of a new anti-discrimination ground "gender identity"⁴⁴.

Key international legal documents related to the anti-discrimination grounds

The following is an illustration of key international legal documents that contain anti-discrimination grounds. In green are those ratified by Bulgaria.




⁴⁰ European Parliament resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010 - 2011) <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0500&language=EN>

⁴¹ <http://www.europarl.europa.eu/oeil/popups/sda.do?id=22238&l=en>

⁴² Resolution adopted by the General Assembly on 20 December 2012 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/168

⁴³ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* Bulgaria <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/024/42/PDF/G1502442.pdf?OpenElement>

⁴⁴ Concerning the Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention (Bulgarian only) http://parliament.bg/bg/topical_nature/28533

Legend:	 recognized	 indirectly recognized in Bulgaria	 will be indirectly recognized / will be explicitly introduced upon ratification of the Istanbul Convention
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Ground of discrimination (English)	ORGANISATION (COUNTRY)						Ground of discrimination (Bulgarian)
	OOH-1976 ^{45, 46} 	UN HRC-2009 ⁴⁷ 	CE - ECHR ⁴⁸ 	EC - CFREU ⁴⁹ 	Council of Europe ⁵⁰ 	Bulgaria ⁵¹ 	
Race	✓	✓	✓	✓	✓	✓	раса
Colour	✓	✓	✓	✓	✓	✓	цвет на кожата
Sex	✓	✓	✓	✓	✓	✓	(биологичен) пол
Language	✓	✓	✓	✓	✓	✓	език
Religion	✓	✓	✓	✓	✓	✓	религия или вяра
Political or other opinion	✓	✓	✓	✓	✓	✓	убеждения, политическа принадлежност
National or social origin	✓	✓	✓	✓	✓	✓	народност, произход
Property	✓	✓	✓	✓	✓	✓	имуществено състояние
Birth	✓	✓	✓	✓	✓	✓	рождение
Association with a national minority	✓		✓	✓	✓	✓	етническа принадлежност
Gender					✓	↓	социален пол
Sexual orientation		✓		✓	✓	✓	сексуална ориентация
Gender identity		✓			✓	↓	полова идентичност
Age		✓		✓	✓	✓	възраст
State of health		✓			✓	↓	здравословно състояние
Disability		✓		✓	✓	✓	увреждане
Marital status		✓			✓	✓	семеино положение
Family status		✓				✓	семеино положение
Migrant or refugee status		✓ ⁵²			✓	↓	статут на мигрант или бежанец
or other status	✓	✓	✓		✓	✓	друг статут
Nationality		✓				✓	гражданство
Economic and social situation		✓				✓	лично или обществено положение
-				✓		✓	човешки геном
-						✓	образование

⁴⁵ International Covenant on Economic, Social and Cultural Rights (03.01.1976), Art. 2, 2, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

⁴⁶ International Covenant on Civil and Political Rights (23.03.1976), Art. 26, <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

⁴⁷ General comment No. 20:, Non-discrimination in economic, social and cultural rights (02.07.2009) (art. 2, para. 2, of the ICESCR), 32. Sexual orientation and gender identity <http://www.refworld.org/docid/4a60961f2.html>

⁴⁸ European Convention on Human Rights (04.11.2000), Art. 14, http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁴⁹ Charter of fundamental rights of the European Union (18.12.2000), Art. 21, http://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁵⁰ Council of Europe Convention on preventing and combating violence against women and domestic violence (01.08.2014), <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

⁵¹ Law for protection against discrimination (01.01.2004, Art. 4 supplemented and in force since 01.05.2005), Art. 4 (1), Only in Bulgarian: <https://www.lex.bg/laws/ldoc/2135472223>

⁵² place of residence

PART 2. GENDER IDENTITY AS A POLITICAL AGENDA

The second part of this analysis is a selective review of the Yogyakarta Principles (**PY-2006**), extended and supplemented with the Yogyakarta Principles plus 10 (**PY-2017**)⁵³. In total, there are 38 principles - 29 formulated in 2006 and 9 formulated in 2017. The follow-up in 2017 is again the work of a group of human rights experts convened by the International Service for Human Rights and ARC International.

The PY-2017 formulated in its introduction (page 6) two new concepts as anti-discriminatory grounds that apply retroactively to all Yogyakarta principles from 2006:

- **Gender expression:** each person’s presentation of the person’s gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech,
- behavioural patterns, names and personal references, and noting further that gender expression may or may not conform to a person’s gender identity
- **Sex characteristics:** each person’s physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty

The comments of the author of the analysis will be noted from here on in a highlighted font.

From the definitions of the terms "sexual orientation" and "gender identity" in the introduction to PY-2006 it becomes clear that for the authors gender not only complements sex (as an understanding of a social role), it not only subordinates it (in other words – has priority over it), but it even replace it (substitutes it).

Английски	Български ⁵⁴
Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.	Сексуалната ориентация способността на всеки човек на дълбоко емоционално, психологическо и сексуално привличане към, и интимни отношения с лица от различен пол (gender) или от същия пол (gender), или от повече от един пол (gender)
Gender identity is understood to refer 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 expressions of gender, including dress, speech and mannerisms.	Полова идентичност означава дълбоко почувстваното вътрешно и индивидуално усещане на всяко лице за пол (gender), което може да съответства или да не съответства на биологичния му пол (sex), определен при раждането му, включително личното чувство за тялото (което може да включва, на основата на свободен избор, изменение на външния вид или функциите на тялото посредством медицински, хирургически или други средства), както и други форми на изразяване на пола (gender), включително облекло, реч и маниери“

⁵³ The Yogyakarta Principles plus 10. Additional Principals and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles. http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

⁵⁴ Translation into Bulgarian of "Handbook on European non-discrimination law" (FRA, 2010) https://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA_CASE_LAW_HANDBOOK_BG.pdf

Principle 1 of Yogyakarta: The right to the universal enjoyment of human rights

Principle 1 of Yogyakarta begins so: „All human beings are born free and equal in dignity and rights.“ [This is the first sentence of Art. 1 of the Universal Declaration of Human Rights \(1948\)](#). The principle goes on: „Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.“ [Here it can be reminded that Art. 16 of the Universal Declaration of Human Rights defines the right to marry and to found a family for men and women of full age.](#)⁵⁵

Principle 2 of Yogyakarta: The right to equality and non-discrimination

Principle 2 of Yogyakarta postulates that „Everyone is entitled to enjoy all human rights **without discrimination on the basis of sexual orientation or gender identity**“.

[For the first time, gender identity rises to the rank of anti-discrimination ground, which must be reflected in the laws of the states.](#)

States are given inter alia the obligation to

- Take all appropriate action, including programmes of education and training, with a view to **achieving the elimination of prejudicial or discriminatory attitudes or behaviours** which are **related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression**.

In addition, in 2017, countries are given inter alia the obligation to

- Ensure that **all individuals can participate in sport in line with the gender with which they identify**, subject only to reasonable, proportionate and non-arbitrary requirements
- Ensure that all individuals can participate in sport without discrimination on the grounds of sexual orientation, gender identity, gender expression or sex characteristics.

Principle 3 of Yogyakarta: The right to recognition before the law

Principle 3 of Yogyakarta postulates in the beginning that „Everyone has the right to recognition everywhere as a person before the law.“ [This sentence corresponds to Art. 6 of the Universal Declaration of Human Rights](#). Principle 3 of Yogyakarta goes on: „Persons of diverse sexual orientations and gender identities shall enjoy legal capacity **in all aspects of life**. Each person’s **self-defined** sexual orientation and **gender identity is integral to their personality and is one of the most basic aspects of self-determination**, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, **as a requirement for legal recognition of their gender identity**. No status, such as **marriage or parenthood**, may be invoked as such **to prevent the legal recognition of a person’s gender identity**. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity. “

States are given inter alia the obligation to

- Take all necessary legislative, administrative and other measures **to fully respect and legally recognise each person’s self-defined gender identity**.
- Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby **all State-issued identity papers** which indicate a person’s gender/sex — including birth certificates, passports, electoral records and other documents — **reflect the person’s profound self-defined gender identity**.

⁵⁵ Universal Declaration of Human Rights, <http://www.un.org/en/universal-declaration-human-rights/>

[From what has been said so far, we can imagine that the third principle of Yogyakarta requires in the case of a married father of three children who declares to be a woman to be unconditionally recognized as a woman and this to be reflected in all his identity documents. The third Yogyakarta principle, coupled with the definition of gender identity, **introduces the principle of self-determination as a superior principle, having priority over any objective, measurable and fact-based reality. With other words, it is enough for one person to identify himself for something to be recognized as BEING this thing**, and to take advantage of all the legal consequences of this recognition.](#)

Principle 6 of Yogyakarta: The right to privacy

Principle 6 of Yogyakarta postulates inter alia that „**The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one’s sexual orientation or gender identity ...**”

[In other words, this means that everyone will have the right under no circumstances to declare the own \(biological\) sex.](#)

In addition, in 2017, following obligations are imposed on the States:

- Ensure that requirements for individuals to provide information on their sex or gender are relevant, reasonable and necessary as required by the law for a legitimate purpose in the circumstances where it is sought, and that such requirements respect all persons’ right to self-determination of gender;
- Ensure that changes of the name or gender marker, as long as the latter exists, is not disclosed without the prior, free, and informed consent of the person concerned, unless ordered by a court.

[Supplements from 2017 nevertheless provide for a declaration of \(biological\) sex and gender under strictly defined legal conditions.](#)

Principle 12 of Yogyakarta: The right to work

Principle 6 of Yogyakarta postulates that „Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.“

States are given inter alia the obligation to

- Eliminate any discrimination on the basis of sexual orientation or gender identity to ensure equal employment and advancement opportunities in all areas of public service, including all levels of government service and employment in public functions, including serving in the police and military, and provide appropriate training and awareness-raising programmes to counter discriminatory attitudes.

[Here we can imagine cases of hiring a transgender man \(a biological woman who identifies herself as a man\) or a transgender woman \(a biological man who identifies himself as a woman\) as a teacher in a kindergarten or elementary school, a psychologist, speaker in television, child physician, and so on, and the consequences of the application of an anti-discrimination ground "gender identity".](#)

Principle 13 of Yogyakarta: The right to social security and to other social protection measures

Principle 6 of Yogyakarta postulates that „Everyone has the right to social security and other social protection measures, without discrimination on the basis of sexual orientation or gender identity. “

States are given inter alia the obligation to

- Take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to social security [...], **health insurance or care or benefits (including for body modifications related to gender identity), [...]**“
- Ensure that **children are not subject to any form of discriminatory treatment** within the social security system or in the provision of social or welfare benefits **on the basis of their sexual orientation or gender identity**, or that of any member of their family.“

[According to Principle 13, the cost of gender reassignment surgery, hormonal therapies, and so on, should be borne by health insurance systems, that is to say, by the whole society or by all health insured persons.](#)

Principle 16 of Yogyakarta: The right to education

Principle 16 of Yogyakarta postulates that „Everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity.“

States are given inter alia the obligation to

- Take all necessary legislative, administrative and other measures to ensure equal access to education, and **equal treatment of students, staff and teachers** within the education system, **without discrimination on the basis of sexual orientation or gender identity.**
- Ensure that education is directed to the **development of each student’s personality**, talents, and mental and physical abilities **to their fullest potential**, and responds to the needs of students **of all sexual orientations and gender identities**
- Ensure that education is directed to the development of **respect for human rights**, and of respect for each child’s parents and family members, cultural identity, language and values, in a spirit of understanding, peace, tolerance and equality, **taking into account and respecting diverse sexual orientations and gender identities**
- Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment
- Ensure that students subjected to such exclusion or violence are not marginalised or segregated for reasons of protection, and that their best interests are identified and respected in a participatory manner.
- Take all necessary legislative, administrative and other measures **to ensure that discipline in educational institutions** is administered in a manner consistent with human dignity, **without discrimination or penalty on the basis of a student’s sexual orientation or gender identity, or the expression thereof.**

In addition, in 2017, following obligations are inter alia imposed on the States:

- Ensure inclusion of comprehensive, **affirmative** and accurate **material on** sexual, biological, physical and psychological diversity, and **the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics, in curricula, taking into consideration the evolving capacity of the child**
- Ensure inclusion of comprehensive, **affirmative** and accurate **material on** sexual, biological, physical and psychological diversity, and **the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics, in teacher training and continuing professional development programmes.**

Principle 17 of Yogyakarta: The right to the highest attainable standard of health

Principle 17 postulates that „Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right.“

States are given inter alia the obligation to

- Ensure that **all sexual and reproductive health, education, prevention, care and treatment programmes and services respect the diversity of** sexual orientations and **gender identities**, and are equally available to all without discrimination.“

Principle 18 of Yogyakarta: Protection from medical abuses

Principle 18 postulates that „No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. **Notwithstanding any classifications to the contrary, a person’s sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.**“

States are given inter alia the obligation to

- Take all necessary legislative, administrative and other measures to ensure full protection against harmful medical practices based on sexual orientation or gender identity, including on the basis of stereotypes, whether derived from culture **or otherwise**, regarding conduct, physical appearance or perceived gender norms
- Take all necessary legislative, administrative and other measures to ensure that **no child’s body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration**
- Ensure that **any medical or psychological treatment or counselling does not, explicitly or implicitly, treat** sexual orientation and **gender identity as medical conditions to be treated, cured or suppressed.**

[At the time of the formulation of Principle 18 to date in the medical field, conditions associated with gender identity other than the biological sex are identified as a medical condition and have their codification according to the international ICD system.⁵⁶ As a consequence of Principle 18, it is requested that gender-related conditions are no longer qualified as diseases, which is expected to be done in the new edition of the ICD system⁵⁷.](#)

[Principle 18 excludes forever the possibility of conducting any research and medical practices aimed at supporting the development of a gender identity that corresponds to a person’s sex, including at his earliest childhood.](#)

In addition, in 2017, following obligations are inter alia imposed on the States:

- Ensure that **gender affirming healthcare** is provided by the public health system or, if not so provided, that the costs are covered or reimbursable under private and public health insurance schemes.

⁵⁶ ICD-10 Version:2016 <http://apps.who.int/classifications/icd10/browse/2016/en#/F64> (see “Gender identity disorders”)

⁵⁷ ICD-11 Beta Draft, <https://icd.who.int/dev11/l-m/en> (see “Gender incongruence”)

- Ensure inclusion of **affirmative material on** sexual, biological, physical and psychological diversity and the human rights of people of diverse sexual orientations, **gender identities, gender expressions and sex characteristics in medical curricula and continuing professional development programmes.**

Principle 19 of Yogyakarta: The right to freedom of opinion and expression

Principle 19 postulates that „Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.“

States are given inter alia the obligation to

- Take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, while respecting the rights and freedoms of others, without discrimination on the basis of sexual orientation or gender identity, including the receipt and imparting of information and ideas concerning sexual orientation and gender identity, as well as related advocacy for legal rights, publication of materials, broadcasting, organisation of or participation in conferences, and dissemination of and access to safer sex information.
- Ensure that the outputs and the organisation of media that is State-regulated is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that the personnel recruitment and promotion policies of such organisations are non-discriminatory on the basis of sexual orientation or gender identity
- **Ensure that notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities.**
- **Ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities**

Principle 21 of Yogyakarta: The right to freedom of thought, conscience and religion

Principle 21 postulates that „Everyone has the right to freedom of thought, conscience and religion, regardless of sexual orientation or gender identity. These rights may not be invoked by the State to justify laws, policies or practices which deny equal protection of the law, or discriminate, on the basis of sexual orientation or gender identity.“

States are given the obligation to

- Take all necessary legislative, administrative and other measures to ensure **the right of persons, regardless of** sexual orientation or **gender identity, to hold and practise religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs and to be free from coercion or the imposition of beliefs**
- **Ensure that the expression, practice and promotion of different opinions, convictions and beliefs with regard to issues of sexual orientation or gender identity is not undertaken in a manner incompatible with human rights.**

[Principle 21 means, among other things, ensuring equal participation of people with diverse sexual orientation and gender identity in state and privately organized religious communities, including in their governing structures.](#)

Principle 24 of Yogyakarta: The right to found a family

Principle 21 postulates that „Everyone has the right to found a family, regardless of sexual orientation or gender identity. **Families exist in diverse forms.** No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members..“

States are given inter alia the obligation to

- Take all necessary legislative, administrative and other measures to ensure the right to found a family, including **through access to adoption or assisted procreation** (including donor insemination), **without discrimination on the basis of sexual orientation or gender identity.**
- Ensure that **laws and policies recognise the diversity of family forms**, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment, and immigration
- Take all necessary legislative, administrative and other measures to ensure that in **all actions or decisions concerning children**, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration, and that the sexual orientation or gender identity of the child or of any family member or other person may not be considered incompatible with such best interests.**
- In all actions or decisions concerning children, ensure that **a child who is capable of forming personal views can exercise the right to express those views freely, and that such views are given due weight in accordance with the age and maturity of the child.**
- Take all necessary legislative, administrative and other measures to ensure that in States that recognise same-sex marriages or registered partnerships, **any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners.**

In addition, in 2017, following obligations are inter alia imposed on the States:

- **Protect children from** discrimination, violence or **other harm due to the sexual orientation, gender identity, gender expression or sex characteristics of their parents, guardians, or other family members**
- Issue **birth certificates for children upon birth that reflect the self-defined gender identity of the parents**
- Enable **access to methods to preserve fertility**, such as the preservation of gametes and tissues for any person without discrimination on grounds of sexual orientation, gender identity, gender expression, or sex characteristics, including before hormonal treatment or surgeries

Principle 25 of Yogyakarta: The right to participate in public life

Principle 25 postulates that „Every citizen has the right to take part in the conduct of public affairs, including the right to stand for elected office, to participate in the formulation of policies affecting their welfare, and to have equal access to all levels of public service and employment in public functions, including serving in the police and military, without discrimination on the basis of sexual orientation or gender identity.“

States are given inter alia the obligation to

- Take all appropriate measures to **eliminate stereotypes and prejudices regarding sexual orientation and gender identity that prevent or restrict participation in public life.**

In addition, in 2017, following obligations are inter alia imposed on the States:

- Develop and implement **affirmative action programmes to promote public and political participation** for persons marginalised on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

Principle 26 of Yogyakarta: The right to participate in cultural life

Principle 26 postulates that „Everyone has the right to participate freely in cultural life, regardless of sexual orientation or gender identity, and to express, through cultural participation, the diversity of sexual orientation and gender identity.“

States are given inter alia the obligation to

- Foster dialogue between, and mutual respect among, proponents of the various cultural groups present within the State, including among groups that hold different views on matters of sexual orientation and gender identity, consistently with respect for the human rights referred to in these Principles.

Principle 27 of Yogyakarta: The right to promote human rights

Principle 27 postulates that „Everyone has the right, individually and in association with others, to promote the protection and realisation of human rights at the national and international levels, without discrimination on the basis of sexual orientation or gender identity. This includes activities directed towards the promotion and protection of the rights of persons of diverse sexual orientations and gender identities, as well as the right to develop and discuss new human rights norms and to advocate their acceptance.“

States are given inter alia the obligation to

- Take all necessary legislative, administrative and other measures to ensure a **favourable environment for activities directed towards the promotion, protection and realisation of human rights, including rights relevant to sexual orientation and gender identity.**

Principle 29 of Yogyakarta: Accountability

The last Principle of Yogyakarta (2006) postulates that „Everyone whose human rights, including rights addressed in these Principles, are violated is entitled to have those directly or indirectly responsible for the violation, whether they are government officials or not, held accountable for their actions in a manner that is proportionate to the seriousness of the violation. There should be no impunity for perpetrators of human rights violations related to sexual orientation or gender identity.“

States are given inter alia the obligation to

- Establish **independent and effective institutions and procedures to monitor the formulation and enforcement of laws and policies to ensure the elimination of discrimination on the basis of sexual orientation or gender identity**

Principle 30 of Yogyakarta (2017): The right to State protection

Principle 30 postulates that „Everyone, regardless of sexual orientation, gender identity, gender expression or sex characteristics, has the right to State protection from violence, discrimination **and other harm**, whether by government officials or by any individual or group.“

States are given inter alia the obligation to

- Exercise due diligence to prevent, investigate, prosecute, punish and provide remedies for discrimination, violence **and other harm**, whether committed by State or non-State actors;
- **Identify the nature and extent of attitudes, beliefs, customs and practices** that perpetuate violence, discrimination **and other harm on grounds of sexual orientation, gender identity, gender expression and sex characteristics**, and report on the measures undertaken, and their effectiveness, **in eradicating such harm**
- Develop, implement and support **education and public information programmes** to promote human rights and **to eliminate prejudices on grounds of sexual orientation, gender identity, gender expression and sex characteristics**

Principle 31 of Yogyakarta (2017): The right to legal recognition

Principle 31 postulates that „Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain **identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them.**“

States are given inter alia the obligation to

- Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, and thereby **end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licences, and as part of their legal personality.**
- Ensure access to a quick, transparent and accessible mechanism to **change names**, including to gender-neutral names, **based on the self-determination of the person.**
- While sex or gender continues to be registered:
 - o Ensure a quick, transparent, and accessible **mechanism that legally recognises and affirms each person’s self-defined gender identity**
 - o Make available a **multiplicity of gender marker options**
 - o Ensure that **no eligibility criteria**, such as medical or psychological interventions, a psycho-medical diagnosis, **minimum or maximum age**, economic status, health, marital or parental status, or any other third party opinion, **shall be a prerequisite to change one’s name, legal sex or gender.**

Principle 32 of Yogyakarta (2017): The right to bodily and mental integrity

Principle 32 postulates that „Everyone has the right to bodily and mental integrity, autonomy and self-determination irrespective of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to be free from torture and cruel, inhuman and degrading treatment or punishment on the basis of sexual orientation, gender identity, gender expression and sex characteristics. No one shall be subjected to invasive or irreversible medical procedures that modify sex characteristics without their free, prior and informed consent, unless necessary to avoid serious, urgent and irreparable harm to the concerned person.“

Principle 33 of Yogyakarta (2017): The right to freedom from criminalisation and sanction on the basis of sexual orientation, gender identity, gender expression or sex characteristics

Principle 33 postulates that „Everyone has the right to be free from criminalisation and any form of sanction arising directly or indirectly from that person’s actual **or perceived** sexual orientation, gender identity, gender expression or sex characteristics.“

States are given inter alia the obligation to

- Ensure that legal provisions, including in customary, religious and indigenous laws, whether explicit provisions, or the application of general punitive provisions such as acts against nature, morality, public decency, vagrancy, sodomy and propaganda laws, do not criminalise sexual orientation, gender identity and expression, or establish any form of sanction relating to them

Principle 34 of Yogyakarta (2017): The right to protection from poverty

Principle 34 postulates that „Everyone has the right to protection from all forms of poverty and social exclusion associated with sexual orientation, gender identity, gender expression and sex characteristics. Poverty is incompatible with respect for the equal rights and dignity of all persons, and can be compounded by discrimination on the grounds of sexual orientation, gender identity, gender expression and sex characteristics.“

States are given inter alia the obligation to

- Take all necessary legislative, administrative, budgetary and other measures, including economic policies, to **ensure the progressive reduction and elimination of all forms of poverty associated with or exacerbated by sexual orientation, gender identity, gender expression or sex characteristics.**
- Promote social and economic inclusion of persons marginalised on the basis of sexual orientation, gender identity, gender expression and sex characteristics.
- Ensure the participation and inclusion of those experiencing poverty on grounds of sexual orientation, gender identity, gender expression and sex characteristics in the adoption and implementation of legislative, administrative, budgetary and other measures to combat poverty.

Principle 35 of Yogyakarta (2017): The right to sanitation

Principle 35 postulates that „Everyone has the right to equitable, adequate, safe and secure sanitation and hygiene, in circumstances that are consistent with human dignity, without discrimination, including on the basis of sexual orientation, gender identity, gender expression or sex characteristics.“

States are given inter alia the obligation to

- Ensure that there are **adequate public sanitation facilities which can be accessed safely and with dignity by all persons regardless of their sexual orientation, gender identity, gender expression or sex characteristics**
- Ensure that **all schools and other institutional settings** provide safe access to sanitation facilities to staff, students and visitors without discrimination on grounds of sexual orientation, gender identity, gender expression or sex characteristics.

- Ensure that both **public and private employers** provide safe access to sanitation without discrimination on grounds of sexual orientation, gender identity, gender expression or sex characteristics
- Ensure that **entities offering services to the public** provide adequate sanitation without discrimination, including on grounds of sexual orientation, gender identity, gender expression or sex characteristics.

Principle 38 of Yogyakarta (2017): The right to practise, protect, preserve and revive cultural diversity

Principle 38 postulates that „Everyone, individually or in association with others, where consistent with the provisions of international human rights law, has the right to practise, protect, preserve and revive cultures, traditions, languages, rituals and festivals, and protect cultural sites of significance, associated with sexual orientation, gender identity, gender expression and sex characteristics. Everyone, individually or in association with others, has the right to manifest cultural diversity through artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used, without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics. Everyone, individually or in association with others, has the right to seek, receive, provide and utilise resources for these purposes without discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics.”

States are given the obligation to:

- Ensure the right to practice, protect, preserve and revive the diversity of cultural
- expressions of persons of all sexual orientations, gender identities, gender expressions
- and sex characteristics on the basis of the equal dignity of and respect for all.

[This principle ends the selective review and punctual analysis of the Yogyakarta Principles \(2006\) and the Yogyakarta Principles plus 10 \(2017\). In this form, they provide an opportunity to learn about the key points of the political agenda these principles represent.](#)

[It would be interesting to follow in detail the influence that each formulated principle in PY-2006 has had over the last 12 years on international politics, policy initiatives and documents, national and regional laws and judicial practices.](#)

[The selective review of the PY-2006 and PY-2017 will hopefully benefit politicians, professionals and publics to get acquainted with the fundamental philosophy of the concept of gender identity. The public and political debate in favour of or against the Istanbul Convention is indissolubly linked - to the wishes of the architects of the text of the Convention - with a public and political debate on the term and concept of gender identity.](#)

CONCLUSIONS

1. Since 2006 there is a **clear and detailed concept in international law** regarding the term “gender identity” - The Principles of Yogyakarta 2006.
2. **The Yogyakarta principles** have influenced the policy of key international organizations to which Bulgaria is member. They **are a sort of manifesto or a political program that has been running over the last 12 years to achieve the vision of a new, radically different society.**
3. The Istanbul Convention from 2011 is **the final stage of the process of legalizing the concept of gender identity**, although it has not been defined in the context of either the Istanbul Convention text or its Explanatory Report.
4. States that have ratified the Convention **undertake to introduce gender identity** as an antidiscrimination ground in their specific laws (if they have not done so). Thus, it will be transformed from a non-binding rule into a mandatory rule of law, valid not only within the framework of the Istanbul Convention but also with respect to all other laws.
5. States which have ratified the Istanbul Convention as members of the United Nations, the Council of Europe and the European Union and participants in the work of their subdivisions by virtue of the ratification act implicitly recognize also the validity of all (until now) non-binding legal documents relating to the concept of gender identity.
6. The Bulgarian public and political debate **lacks** - with only partial exceptions⁵⁸ - **a clear account of the above facts.**
7. Bulgarian society is not aware of the consequences of introducing gender identity as an antidiscrimination ground in the Law for protection against discrimination.

⁵⁸ See for example this article (Bulgarian only) https://m.offnews.bg/news/Politika_8/Dzhambazki-pritesnen-za-pensionnata-ni-sistema-zaradi-dzhendar-pension_674009.html