

Traduction courtoise

**Ms
Lilijana Kozlovič
Minister of Justice
of the Republic of Slovenia**

Dear Madame Minister,

family is the natural and fundamental group unit of society, which plays important functions within the society and should be particularly protected by the society and the State. This arises directly from Article 16(3) of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948. Protection of and support for the family is necessary so that the family could perform its functions in the contemporary world. Such protection should be ensured as soon as possible, namely when the family is formed and throughout its existence. What requires particular support is the protection of the life of a conceived child.

In pursuit of the achievement of the objectives stated above and having regard to the constant threats to the family, the Ministry of Justice of the Republic of Poland proposes that a convention be drafted together to be forwarded to the possibly wide group of addressees at the international forum. The convention should present rights and obligations of the family in a universal manner and without any ideological references.

We propose that the main objectives of the convention be as follows:

- protection of the rights of the family and its members,
- prevention and combat against violence, including domestic violence,
- protection of the members of the family, and in particular children, against moral corruption,
- strengthening of international cooperation in the area of preventing and combating violence, including domestic violence.

As much as the aforementioned objectives are equal and should be duly reflected in the provisions of the convention, it should be noted that one of the main contemporary threats to the family is domestic violence caused by pathological factors, such as alcohol and drug abuse,

sex addiction or omnipresent vulgarisation and sexualisation of the image of women in mass-media. Domestic violence caused by such factors is particularly harmful to the existence and unity of the family.

Apart from the aforementioned objectives, the convention should include necessary definitions, such as the definition of a child, family, spouses, as well as the definition of violence and domestic violence. The definitions should take into account applicable international law.

The understanding of a 'child' should be based on the UN Convention on the Rights of the Child as adopted by the General Assembly on 20 November 1989, with the lower threshold of childhood being clarified. According to this assumption, a child is a human being from conception until the age of majority). These limits have their consequences in further provisions of the convention which acknowledge the rights of the child, among others, to life, utmost health protection, being raised in a family, and development. The convention should also define the concept of the child's best interest, being a condition in which the child achieves its correct, holistic and harmonious personal development, while his or her dignity and natural rights are respected.

The understanding of the 'family' should be based on the relation of kinship, affinity, and adoption. Therefore, the family is deemed to be a community including spouses and a child and a parent and a child, based on the relation of kinship, affinity or adoption. A heterosexual cohabitation partnership may also constitute a family if partners raise their common child or a child of one of such partners. This understanding refers to the sociological concept of a big family, composed not only of parents and children, but also other persons related by kinship or affinity. This definition does not overlook so-called single-parent families, adoption families and families formed through kinship existing without marriage (cohabitation). However, the concept of marriage remains reserved exclusively for the relationship of a woman and a man, entered into in accordance with law of the State-Parties to the convention.

The convention should derogate from the cultural and social perception of sex and violence against women based on the unequal balance of power between women and men, which over the ages led to male domination. The term 'sex' should be understood as a set of biological features, including genetic features, enabling the objective distinction between a woman and a man.

Another part of the convention should be focused on fundamental principles, such as:

- special protection of marriage, family, maternity and paternity by a State-Party,
- the right of the family to exercise human rights and fundamental freedoms, and in particular freedom of thought, conscience and religion, freedom of speech, economic

freedom, undistorted use of private property, and the right to the protection of private and family life,

- the right of the family to its autonomy vis-à-vis public authorities,
- special protection of a child before and after his or her birth,
- the principle of equal treatment and non-discrimination by public authority bodies, institutions and persons responsible for providing protection, help and support to families,
- the principle of excluding the limitations of the State's autonomy in the area of marriage.

A separate chapter of the convention should be focused on the concept of marriage and family.

The convention should acknowledge the rights of women and men of marriageable age to enter into marriage and establish a family, and it should introduce the prohibition of forced marriages and the prohibition of limiting and hampering childbearing.

An important element of the future convention should be emphasising the responsibility of parents for children, which arises from the natural order of things, as well as parental responsibilities and rights, including:

- the right to bring up a child according to one's own beliefs, in particular religious and moral ones,
- freedom to choose adequate upbringing and educational methods and forms that are adequate to the child's degree of maturity,
- the right of a child to his or her identity, including transfer of national identity to a child (culture, religion, and native language).

Rights of the child should also be regulated separately, in particular in terms of the indispensable right to life from conception and to the right of being protected against violence, cruelty, exploitation, moral corruption, neglect, and other ill-treatment. The convention should emphasise that a State-Party in all its efforts will strive to secure the best interest of the child. Other rights of the child should include, inter alia:

- equality towards law,
- the right to know your parents and the consequential prohibition of surrogacy,
- the right to being brought up in a family and maintaining relations with each parent and other relatives,
- the prohibition of child trafficking, ban on organ harvesting,

- the prohibition of hampering the child's communication in the language of one of the parents,
- the right to be treated friendly by the authorities of the State-Party, in particular by the judiciary, and the right to be heard in any case that affects the child.

Following the conventions already existing in some regions of the world, focused on combating violence against women or domestic violence, the convention on the protection of the rights of the family should include provisions related to preventing and combating violence. Such provisions could be based on the provisions included in the convention of the Council of Europe, excluding the provisions that establish a link between violence and gender. The substantive legal content of those provisions was universally accepted by the environments of human rights defenders, and for this reason, it is legitimate to leave them in their shape, in line with the Polish understanding of human rights.

At the same time, I propose that the following general obligations be introduced for the State-Parties in relation to combating violence:

- obligation to adopt legislative and other measures in order to establish and implement a national anti-violence policy,
- obligation to allocate adequate funds and human resources to implement the anti-violence policy,
- obligation to support non-governmental organisations active in the area of preventing violence,
- obligation to adopt legislative and other measures aimed at preventing and sanctioning any forms of violence covered by the scope of the convention,
- obligation to promote programmes aimed at raising social awareness, including to introduce anti-violence content to curricula at all stages of education,
- obligation to organise adequate training sessions for people dealing professionally with victims or perpetrators of any acts of violence.

The draft convention should also require that States respond adequately through civil law and criminal law measures.

As for civil law measures, a State should ensure, first and foremost, that victims of violence have access to civil law remedies against perpetrators, in particular the right to claim damages from the perpetrator for each crime against family. An important aspect of the convention should also be to ensure that forced marriages may be annulled or dissolved without excessive financial or administrative burden for the victim.

As for criminal law, the convention should include provisions that would require States to establish their jurisdiction over crimes against family and to penalise, among others, the following conduct:

- physical and psychological violence,
- harassment,
- sexual violence, including rape, sexual harassment,
- forced marriages and female genital mutilation,
- forced abortion and sterilisation,
- child pornography,
- prostitution.

Having regard to the foundations for the international convention on the protection of the rights of the family outlined above, I invite you, Madame Minister, to make a common effort in further cooperation. I will be looking forward to your response on the need and design of the future convention.

