

Topic: Equality and gender diversity

Anti-discrimination laws have been enacted based on international human rights treaties and conventions¹ in which *inter alia* women and homosexuals are highlighted as being in a more vulnerable position within societies. These identity categories cover *inter alia* sex and sexual identity², sexual orientation, age and activity in workers' unions.³ The current approach creates legal identities that are understood to be subordinated to the normal heterosexual way of being a human, based on the assumption of heterosexuality as being the normal organizing principle of human association. People outside these categories are not allotted specific identities.⁴ This privilege of not having to choose an identity means belonging to the dominant "unmarked" group against which difference is constructed as a relation,⁵ and legislated upon.

I will present a draft paper which is part of my PhD project. I want to develop my master's thesis in which I used Johnson's⁶ sociological study's periodization of cases concerning sexual orientation at the European Court of Human Rights. I analyzed the body of case law by applying queer legal theory and traced the legal subjectivity of non-heterosexual people and I found that the European Convention can be understood to have a heterosexual underpinning and thus it is applicable to heterosexual people *ab initio*. Consequently, non-heterosexual legal subjectivity has to be established *ad hoc* but only under certain Convention articles, covering only some aspects of non-heterosexual life. The Court has been able to act since the 90's with reference to Art. 14 prohibition of discrimination. This approach of course has helped in widening the scope of the Convention to new legal subjects, but can be seen as being based on *identity politics of discrimination*. It can be argued that the Convention and jurisprudence from the Court protect the performance of heterosexual gender identity⁷ by leaving it *unmarked*. This leads to hierarchization of sexes, sexual identities and other grounds of discrimination, that simultaneously reinforces the implicit heterosexual underpinning of the Convention and jurisprudence thereof.

¹ Article 14 of the European Convention on Human Rights

² Laki naisten ja miesten välisestä tasa-arvosta 609/1986 (Lag om jämställdhet mellan kvinnor och män)

³ Yhdenvertaisuuslaki 1325/2014 (Lag om likabehandling)

⁴ M. L. Fellows & S. Razack, 'The Race to Innocence: Confronting Hierarchical Relations among Women' (1998) 1 *The Journal of Gender, Race & Justice* 335-52 p. 341

⁵ G. Lipsitz, 'The Possessive Investment in Whiteness: Racialized Social Democracy and The "White" Problem in American Studies' (1995) 47 *American Quarterly* 369-387 p. 369

⁶ P. Johnson, *Homosexuality and the European Court of Human Rights* (1st edn. Oxon: Routledge, 2013)

⁷ J. Butler, *Gender Trouble: Feminism and the Subversion of Identity* (1st edn, New York: Routledge 1990)

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