

The conflict between the legal principles of freedom of expression vs. gender equality revisited

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In the article *FREEDOM OF EXPRESSION VS. GENDER EQUALITY – conflicting values when regulating gender stereotypes in advertising*, by Eva-Maria Svensson and Maria Edström, published in the *Tidsskrift for Rettsvitenskap*, vol. 127, 5/2014, s. 479–511, the focus was on the tension between the two legal principles freedom of expression and gender equality.

The analysis showed how the principles are balanced in the international, European and Swedish legal context and how they could be balanced. The specific issue used to illustrate the balance was gender stereotypes in advertising, an issue regulated in all Northern countries except Sweden. In Sweden it is seen as a topic that should be dealt with by self-regulation (i.e. ICC ethical code of marketing).

The question of whether or not it can – in legal terms – be argued that the balancing of interests should be made in favor of gender equality, and not as has been so far, in favor of freedom of expression. The article was a contribution to the debate by highlighting gender stereotypes in advertising and analyzing different positions and arguments in that regard. The objective was to clarify and analyze some traits in the legal debate that reflect a broader societal context. To begin with, how the issue of gender stereotypes in advertising has been framed in relation to freedom of expression. The different positions and arguments were analyzed by introducing a conceptual distinction between market-driven and democracy-driven freedom of expression. The distinction captured a tension between two ideal type rationalities. The rationality of democracy-driven freedom of expression is committed to safeguarding free and independent information and expressions as a prerequisite for democracy. The rationality of the market-driven freedom of expression is committed to safeguarding all information and expressions regardless of their interests and purposes.

The question of whether or not it can be argued that the balancing of interests should be made in favor of gender equality was reformulated to an alternative understanding of how to perceive legal regulations of gender stereotypes in advertising. Legal regulation of gender stereotypes in advertising must not be understood as a restriction of freedom of expression at all.

In this revision of the article, the question will be raised whether it is in fact the freedom to conduct a business (recognized in e.g. Art. 16 in the EU Charter of Fundamental Rights) that is the legal principle which impregnates the legal position held in Sweden (and also other countries, except for the other Nordic countries).