

Combating violence against women and domestic violence

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The Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality adopted the report presented by Frances FITZGERALD (EPP, IE) and Evin INCIR (S&D, SE) on the proposal for a directive of the European Parliament and of the Council on combating violence against women and domestic violence.

The relevant committees recommended that the European Parliament's position adopted at first reading in the ordinary legislative procedure should amend the proposal as follows:

The proposed Directive lays down rules to prevent and combat violence against women and domestic violence. It should establish minimum rules on the **rights of victims to protection and support**, as well as prevention and early intervention.

The Directive should take into account the increased risk of violence faced by victims of intersectional discrimination based on both sex and gender. Member States should ensure that, in the application of this Directive, particular attention is paid to the risk of intimidation, retaliation, secondary and repeat victimisation and to the need to protect the dignity and rights of victims, including their physical and psychological integrity, privacy and safety.

Criminal conduct

According to Members, the directive should apply to criminal conduct which amounts to violence against women or domestic violence, as criminalised under Union or national law. This includes the criminal offences defined in this Directive, namely rape, sexual assault, female genital mutilation, intersex genital mutilation, forced sterilisation, forced marriage, sexual harassment in the world of work, the non-consensual sharing of intimate or manipulated material, cyber stalking, cyber harassment, the unsolicited receipt of sexually explicit material, cyber incitement to violence or hatred and criminal conduct covered by other Union instruments,

Concept of consent

Members proposed broadening the definition of rape to include all other acts of non-consensual sexual nature. '**Non-consensual act**' means an act performed without the woman's consent given voluntarily or where the woman is unable to form a free will due to her physical or mental condition, thereby exploiting her incapacity to form a free will, such as in a state of fear, intimidation, unconsciousness, intoxication, sleep, illness, bodily injury or disability or in an otherwise particularly vulnerable situation.

It is emphasised that consent can be **withdrawn at any moment** during the act. The absence of consent cannot be refuted by the woman's silence, verbal or physical non-resistance or past sexual conduct or existing or past relationship with the offender including marital or any other partnership status.

Sanctions

Members believe that sexual assault should carry a maximum penalty of at least three years in prison and at least five years if the offence was committed under aggravating circumstances. Sexual harassment offences in the workplace should carry a maximum penalty of at least one year in prison.

Aggravating circumstances

Members expanded the list of aggravating circumstances. This should include situations where:

- the offence was committed against a person made vulnerable by special circumstances, such as residency status, pregnancy, dependency, physical, mental, intellectual or sensory distress or disability, a person who is a victim of trafficking or living in an institution including retirement homes, children's homes, reception centres, detention or accommodation centres for asylum seekers;
- the offence was committed against a public representative, journalist or human rights defender;
- the intent of the crime was to preserve or restore the "honour" of a person, family, community;
- the crime was intended to punish victims for their sexual orientation, gender expression or identity, sexual characteristics, skin colour, religion, social origin or political beliefs.

Protection of victims

Victims should have access to **legal aid and assistance, free of charge** and in a language they can reasonably understand, when reporting criminal offences and during judicial proceedings. The competent authorities should take all necessary steps to ensure that all evidence is obtained as soon as possible. Member States should ensure that victims are referred to a specialised contact person within the competent authority irrespective of whether a criminal complaint is filed.

Members stressed the importance of always recognising as victims children who have witnessed violence against women and domestic violence and suggested specific improvements to ensure that the best interests of the child are duly taken into account. To this end, Member States should ensure that professionals specialising in the care and support of children are present in order to assist them in reporting procedures.

Investigations and court proceedings

Competent authorities should promptly and effectively **record** and investigate allegations of violence against women or domestic violence and ensure that an administrative record is kept in all cases and that evidence is preserved, whether or not the investigation proceeds. Victims should be informed of the importance of collecting evidence at the earliest possible time.

Specialised individual assessment to identify victims' needs

The specialised individual assessment should be initiated without delay upon the first contact of the victim with the competent authorities and should be carried out by professionals with **expertise** in this area. Circumstances requiring special attention should include the fact that the victim is pregnant, the victim's dependence on or relationship to the offender, the risk of the victim returning to the offender or suspect, recent separation from an offender or suspect, the possible risk that children and companion animals are used to exercise control over the victim and the risks for victims with disabilities.

Emergency barring, restraining and protection orders, arrest and detention

Members proposed enhanced measures to **ensure the safety of victims** during the process, stressing the need for barring, restraining and protection orders as well as arrests and detention as a way of protecting women's safety and obtaining evidence. Member State authorities should also make greater efforts to

secure evidence, both online and offline, as early as possible, and **electronic monitoring**, such as ankle bracelets, should be used to make sure that barring, restraining and protection orders are respected, and can be followed up upon.

Lastly, Member States should facilitate the tasks of a **Union coordinator** on combating gender-based violence, responsible for improving coordination between Union institutions, bodies, offices and agencies, Member States and international actors, and the coherence of the actions they take in the fight against violence against women and domestic violence.