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Protection orders for victims of domestic violence

Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Arcadio DÍAZ TEJERA, Spain, Socialist Group

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Equal Opportunities for Women and Men, Ms Riitta Myller, on her excellent report, and supports by and large the proposed draft resolution.
2. The committee recalls the importance of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210), which was adopted in Istanbul on 11 May 2011 and has been ratified so far by 16 member states. It stresses that preventing and combating domestic violence requires strong legal measures, including protection orders for victims. Ms Myller's report rightly advocates the implementation of such measures at the European level, taking into account the variety of legal systems involved.
3. The committee wishes to propose some amendments to further strengthen the draft resolution, given the complexity of this subject from the legal point of view.

B. Proposed amendments to the draft resolution

Amendment A (to the draft resolution)

In the draft resolution, paragraph 8.3, delete the words "irrespective of the level of severity".

Amendment B (to the draft resolution)

In the draft resolution, replace paragraph 8.5 by the following sub-paragraph:

"in the context of legal proceedings in the area of domestic violence, ensure that temporary restraining or eviction orders can be imposed for immediate protection, to be followed, as the case may be, by more permanent measures, including ones taken in conjunction with a criminal case;"

Amendment C (to the draft resolution)

In the draft resolution, paragraph 8.10, after the word "substantial" add the word ", proportionate".

1. Reference to committee: [Doc. 12254](#), Reference 3686 of 21 June 2010. Reporting committee: Committee on Equal Opportunities for Women and Men. See [Doc. 12786](#). Opinion approved by the committee on 16 November 2011.



Amendment D (to the draft resolution)

In the draft resolution, paragraph 8.11, after the words “the protection orders are” add the words “available for immediate protection and are”.

Amendment E (to the draft resolution)

In the draft resolution, after paragraph 9, insert the following paragraph:

“The Assembly calls on Council of Europe member states to identify and share best practices in preventing and combating violence against women and domestic violence, with a view to enhancing common standards in this field.”

C. Explanatory memorandum by Mr Diaz Tejera, rapporteur for opinion

1. I can only congratulate Ms Myller on her excellent report, which deals with an important social matter raising some complex legal issues. The report advocates the use of protection orders for victims of domestic violence and provides a clear picture of the measures existing in Council of Europe member states' legislation aimed at protecting such victims. It shows the strengths and weaknesses of different types of protection and, without imposing a single model, it gives guidelines to member states on how to further strengthen the legal protection of victims of domestic violence through appropriate “protection orders”.

2. I should like, however, to propose a few amendments to the draft resolution with a view to strengthening it, mainly by putting emphasis on the legal terminology used by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter “Convention 210”).

Amendment A

The police should investigate and register “all cases” of alleged domestic violence, as the existing text of paragraph 8.3 rightly says. The wording “irrespective of the level of severity” gives the impression that there is a margin of discretion for the police in assessing the severity of acts of violence. Therefore the amendment proposes to delete these words.

Amendment B

As explained in the report, temporary restraining or eviction orders were designed to offer short-term protection to the victim and give her or him time to reflect and seek further, more long-term protection. Such temporary orders may be delivered in the framework of criminal proceedings, but not only. The victim may also institute civil proceedings (paragraphs 25-29 of the report). The amendment proposes to change the wording of paragraph 8.5, by replacing the words “to be followed by a restraining order” by the words “to be followed, as the case may be, by more permanent measures, including ones taken in conjunction with a criminal case”.

Amendment C

The amendment aims to align the wording of paragraph 8.10 of the draft resolution with that of Article 53, paragraph 3, of Convention 210, by adding that sanctions must also be “proportionate” (“Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions”).

Amendment D

The amendment aims to align the wording of paragraph 8.11 of the draft resolution with that of Article 53, paragraph 1, of Convention 210, according to which states parties shall take the necessary legislative or other measures to ensure that the protection orders are “available for immediate protection”.

Amendment E

The amendment emphasises the need to enhance common standards in the area of preventing and combating violence against women and domestic violence, in particular through identifying and sharing best practices (see paragraph 41 of the report).