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## **DRAFT REPORT**

on the impact of intimate partner violence and custody rights on women and children  
(2019/2166(INI))

Committee on Legal Affairs  
Committee on Women's Rights and Gender Equality

Rapporteurs: Luisa Regimenti, Elena Kountoura

(Joint committee meetings - Rule 58 of the Rules of Procedure)

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the impact of intimate partner violence and custody rights on women and children (2019/2166(INI))

*The European Parliament,*

- having regard to Articles 2 and 3(3) of the Treaty on European Union (TEU), and Articles 6 and 8 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Articles 21, 23 and 24 of the Charter of Fundamental Rights of the European Union (CFR),
- having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which entered into force on 1 August 2014,
- having regard to the UN Convention on the Rights of the Child (CRC) of 20 November 1989,
- having regard to General Comment No 13 of the Committee on the Rights of the Child of 18 April 2011 on the right of the child to freedom from all forms of violence,
- having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 4 November 1950,
- having regard to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted on 18 December 1979,
- having regard to the 2030 Agenda for Sustainable Development which entered into force on 1 January 2016, and, in particular, to Sustainable Development Goal (SDG) 5 on gender equality,
- having regard to the Commission proposal of 4 March 2016 for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (COM(2016)0109),
- having regard to the Commission communication of 5 March 2020 entitled ‘A Union of Equality: Gender Equality Strategy 2020-2025’ (COM(2020)0152), in particular its first target on freeing women and girls from violence and stereotypes,
- having regard to the Commission communication of 24 June 2020 entitled ‘EU Strategy on victims’ rights (2020-2025)’ (COM(2020)0258),
- having regard to the Commission staff working document of 6 March 2019 entitled ‘2019 Report on equality between women and men in the EU’ (SWD(2019)0101),
- having regard to its resolution of 12 September 2017 on the proposal for a Council

decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence<sup>1</sup>,

- having regard to its resolution of 28 November 2019 on the EU’s accession to the Istanbul Convention and other measures to combat gender-based violence<sup>2</sup>,
- having regard to its resolution of 21 January 2021 on the gender perspective in the COVID-19 crisis and post-crisis period<sup>3</sup>,
- having regard to Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters<sup>4</sup>,
- having regard to Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (‘the Brussels IIa Regulation’)<sup>5</sup>,
- having regard to the European Institute for Gender Equality (EIGE) study of 12 June 2019 entitled ‘Understanding intimate partner violence in the EU: the role of data’,
- having regard to the EIGE study of 18 November 2019 entitled ‘A guide to risk assessment and risk management of intimate partner violence against women for police’,
- having regard to the report by the European Union Agency for Fundamental Rights (FRA) of 3 March 2014 entitled ‘Violence against women: an EU-wide survey’,
- having regard to the Platform of Independent Expert Mechanisms on Discrimination and Violence against Women (EDVAW Platform), and its statement of 31 May 2019 entitled ‘Intimate partner violence against women is an essential factor in the determination of child custody’,
- having regard to the statement of 24 March 2020 by the President of the Council of Europe’s Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), Marceline Naudi, entitled ‘For many women and children, the home is not a safe place’, on the need to uphold the standards of the Istanbul Convention in times of a pandemic,
- having regard to Rule 54 of its Rules of Procedure,
- having regard to the joint deliberations of the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality under Rule 58 of the Rules of Procedure,

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<sup>1</sup> OJ C 337, 20.9.2018, p. 167.

<sup>2</sup> Texts adopted, P9\_TA(2019)0080.

<sup>3</sup> Texts adopted, P9\_TA(2021)0024.

<sup>4</sup> OJ L 181, 29.6.2013, p. 4.

<sup>5</sup> OJ L 338, 23.12.2003, p. 1.

- having regard to the report of the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality (A9-0000/2021),
- A. whereas gender equality is a fundamental value and an objective of the EU; whereas gender-based violence is an extreme form of discrimination against women and one of the biggest obstacles to achieving gender equality;
- B. whereas, in spite of numerous instances of formal recognition and progress having been made on gender equality, women and men do not enjoy the same rights in practice and social, economic and cultural inequalities persist;
- C. whereas intimate partner violence refers to any act of physical, sexual, psychological or economic violence that occurs between former or current spouses or partners, whether or not the perpetrator shares or has shared a residence with the victim; whereas intimate partner violence is one of the most prevalent forms of gender-based violence, with an estimated 22 % of women having experienced physical and/or sexual violence, and 43 % having experienced psychological violence by their partner<sup>6</sup>; whereas women and children are disproportionately affected by this type of violence; whereas domestic violence is a serious and often hidden social problem that can cause systematic physical and psychological trauma with serious consequences for the victims, as the perpetrator is a person the victim should be able to trust;
- D. whereas the lockdown and social distancing measures during the COVID-19 pandemic have been associated with an exponential increase in the prevalence and intensity of intimate partner violence cases in many Member States, resulting from forced confinement within the home and making it difficult for women to access effective protection and support; whereas in spite of the prevalence of the phenomenon, intimate partner violence against women remains under-reported in the EU and there is a significant lack of comprehensive data;
- E. whereas children may suffer ‘witnessed violence’ in the family environment, through experiencing any form of ill-treatment, carried out through acts of physical, verbal, psychological, sexual and economic violence against reference figures or other affectively significant figures; whereas such violence has very serious consequences for the psychological and emotional development of the child, and whereas it is therefore essential to pay due attention to this type of violence in separations and parental custody arrangements, taking the best interests of the child into account, in particular in order to determine custody and visitation rights in separation cases;
- F. whereas, in order to address the issue of the eradication of gender-based violence, it is necessary to rely on consistent and comparable administrative data, based on a robust and coordinated framework of data collection; whereas the current available data collected by the Member States’ law enforcement and justice authorities fail to reflect the full extent of intimate partner violence, as most Member States neither collect gender-segregated comparable data on gender-based violence nor do they recognise intimate partner violence as a specific offence;
- G. whereas in some Member States intimate partner violence against women is often

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<sup>6</sup> FRA report of 3 March 2014 entitled ‘Violence against women: an EU-wide survey’.

neglected and the default rule of joint custody appears to prevail in cases of child custody, access, contact and visitation arrangements and decisions; whereas disregarding such violence can lead to dire consequences for women and children, which may escalate into femicide and/or infanticide; whereas victims of intimate partner violence need special protection measures; whereas the victims' situation is likely to worsen if they are economically or socially dependent on the perpetrator;

- H. whereas the right of every child to maintain contact with both parents, implied in Article 8 of the ECHR and Article 9 of the CRC, may be restricted by the best interests of the child;
- I. whereas criminal proceedings arising from a complaint of domestic violence are often dealt with completely separately from separation proceedings; whereas this can mean that shared custody of the children is ordered and/or visitation rights imposed that endanger the rights and safety of the victim or the children;
- J. whereas it is preferable to avoid all mediation in cases of violence against women, either before or during the judicial process, where the safety of the victim needs to be the primary consideration;
- K. whereas the Istanbul Convention requires the Parties to adopt legislative or other necessary measures to ensure that incidents of domestic violence are taken into account when determining custody and visitation rights in relation to children, and that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or their children;
- L. whereas shared custody in situations of intimate partner violence exposes women to a continuum of preventable violence, by forcing them to stay in geographical proximity to their abusers, and subjecting them to further exposure to physical and psychological violence, as well as emotional abuse; whereas, in cases of intimate partner violence, the right of women to be protected and live a life free of physical and psychological violence should take precedence over the preference for shared custody;
- M. whereas intimate partner violence is inherently interlinked with violence against children and child abuse; whereas children who are exposed to domestic violence are likely to suffer negative mental and physical health consequences that could be acute and chronic in nature; whereas child victimisation in situations of violence against women may continue and escalate in the context of parental disputes over custody and care;
- N. whereas growing up in a violent domestic environment has important implications for the child's development and subsequent behaviour as an adult; whereas exposure to violence as a child, either through experiencing maltreatment and/or witnessing partner violence, constitutes a risk factor for becoming vulnerable to victimisation or committing violence as an adult;
- O. whereas transnational separation proceedings are more complex in nature;
- P. whereas Article 82(2) of the TFEU provides for the possibility of establishing minimum rules applicable in the Member States in order to facilitate mutual recognition of

judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, in particular as regards the rights of victims of crime;

1. Strongly condemns all forms of violence against women and deplores the fact that women continue to be exposed to intimate partner violence which constitutes a serious violation of their human rights and dignity;
2. Notes that, in principle, shared custody and unsupervised visits are desirable in order to ensure that parents enjoy equal rights and responsibilities, as well as to safeguard the best interests of the child; underlines, however, that intimate partner violence is clearly incompatible with shared custody and care, owing to its severe consequences for women and children, including the risk of extreme acts of femicide and infanticide; stresses that when establishing the arrangements for custody allocation and visitation rights, the protection of women and children from violence and the best interests of the child must be paramount and should take precedence over other criteria; stresses, therefore, that awarding exclusive custody to the non-violent partner, most frequently the mother, represents the best alternative in order to prevent further violence and secondary victimisation of the victims;
3. Calls for mandatory targeted training for judicial and law enforcement officers about domestic violence and its mechanisms, including coercion, manipulation and psychological violence, and about the relevance of intimate partner violence to children's rights, and to their protection and well-being, as well as to provide adequate skills to enable the officers to assess the situation using reliable risk assessment tools;
4. Strongly recommends that Member States establish specialised courts and judicial offices, as well as appropriate laws, training, procedures and guidelines for all professionals dealing with the victims, including raising awareness of gender-based violence, in order to avoid discrepancies between judicial decisions and discrimination or secondary victimisation during judicial, medical and police proceedings, ensuring that children and women are duly heard and their protection is given priority; emphasises the need to strengthen dedicated judicial offices and child and female victim-friendly justice, limiting the excessive discretionary powers of practitioners and establishing checks on child custody procedures by qualified professional figures;
5. Stresses the importance in these procedures of the role of the doctor providing forensic expertise in caring not only for women victims of domestic abuse or violence, but also for the children involved, in particular when the environment in which they live is not suitable to protect their health, dignity and quality of life; recalls, therefore, the need for the forensic practitioners and professionals involved to be able to benefit, inter alia, from guidelines drawn from a set of data, practice and best practices at European level;
6. Stresses the importance of action at both EU and national level to reach agreement on common legal definitions, as this type of witnessed violence is not recognised in many legal systems and has a direct impact on data collection in the police and judicial sectors, and on cross-border cooperation;
7. Calls on the Commission and the Member States to provide quality, gender-segregated and comparable EU-wide data on the prevalence, causes, consequences and management of intimate partner violence and custody rights, making full use of the

capacity and expertise of the EIGE;

8. Expresses its concern about the fact that discriminatory gender bias often leads to a lack of trust in women, in particular concerning presumed false allegations of child abuse and of domestic violence;
9. Highlights that perpetrators often use litigation to extend their power and control, and to continue to intimidate and incite fear in their victims; stresses that perpetrators often abuse, or threaten to harm or to take the children, in order to harm their partners and ex-partners;
10. Calls on the Member States to promote better access to legal protection, effective hearings and restraining orders, counselling and victim funds for women victims of intimate partner violence, and to apply particular procedures and give support to mothers who are victims of domestic violence, in order to prevent them from becoming victims again as a result of losing custody of their children;
11. Calls on the Commission to promote EU-wide public awareness campaigns as a necessary measure in the prevention of domestic violence and the creation of a climate of zero tolerance towards violence;
12. Emphasises that hearing from the child is important to establish what is in the best interests of the child while examining custody cases; points out nevertheless that in every case, but crucially in cases where intimate partnership violence is suspected, such hearings should be conducted in a child-friendly environment, with no pressure or influence from parents or relatives, by trained professionals, including those qualified in child neuropsychiatry, to avoid deepening the trauma and victimisation;
13. Underlines the importance of the exchange of information between courts, the central authorities of Member States and police bodies, especially in relation to cross-border custody cases; hopes that the revised rules under Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction<sup>7</sup> will enhance the cooperation between judicial systems to effectively determine the best interests of the child; calls, in this context, on the Commission and the Member States to implement the Brussels IIa Regulation effectively;
14. Stresses the need to recognise the interconnectedness of criminal, civil and other legal proceedings in order to coordinate the judicial responses to intimate partner violence and to avoid discrepancies between judicial decisions that are harmful to children and women victims;
15. Instructs its President to forward this resolution to the Council and the Commission.

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<sup>7</sup> OJ L 178, 2.7.2019, p. 1.