

EU APPROACH TOWARDS VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE – NEW EU DIRECTIVE**

Abstract

European Union (EU) approach towards violence against women and domestic violence is analyzed through interconnection with principles of gender equality and nondiscrimination. The combination of gender-based discrimination and gender inequality with other forms of discrimination (economic, political, etc.) very often result in specific forms of violence against women. EU acceded the Istanbul Convention on preventing and combating violence against women and domestic violence of the Council of Europe in June 2023, which was spiritus movens for the adoption of the new EU Directive in this field. Achievements and shortcomings of this Directive are presented, as well as its significance within existing relevant EU primary and secondary legislation. New legislation criminalizes the following offences across the EU: female genital mutilation, forced marriage, non-consensual sharing of intimate images, cyber stalking, cyber harassment and cyber incitement to hatred or violence. However, criminalization of rape is lacking due to the absence of agreement of the constitutional element of sexual consent. Instead, prevention of rape and raising awareness of the importance of central role of consent are included. Taking into account the problem of secondary victimization, the Directive regulates rules on the measures of assistance and protection to victims that are to be secured by Member States, who are obliged to implement Directive in three years period. Directive gains special significance when taking into account relevant official data on violence against women in the EU. This Directive is to be considered the step forward in the direction of realization of gender equality de facto.

Keywords: EU, directive, violence against women, gender equality.

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I Introduction

The combination of gender-based discrimination and gender inequality with other forms of discrimination (economic, political, etc.) very often results in specific forms of violence against women. Consequently, gender equality is inextricably linked with the fight against violence against women and domestic violence, being basic framework. Domestic violence is a form of violence against women as it disproportionately affects women. It occurs in the family or domestic unit, irrespective of biological or legal family ties, either between intimate partners or between other family members.

The primary legislation of the European Union (EU) lays the foundation for the adoption of secondary legislation, in the form of provisions of Art. 2. EU Treaty from Lisbon (2009) in which the equality of women and men is included in the values on which the Union rests. Violence against women and domestic violence can affect numerous of the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union. These rights include the right to human dignity (Article 1), the right to life (Article 2), the prohibition of torture and inhuman or degrading treatment (Article 4), the right to freedom from discrimination, including on the grounds of sex (Article 21) and the right to access justice (Article 47).

Many authors consider that the defining of EU values, along with the legally binding EU Charter of Fundamental Rights (Article 6 of the EU Treaty), represents a particular contribution of the Lisbon Treaty on the EU and that the stated values are part of the very essence of the EU.¹ In addition, in Art. 3 it was proclaimed that the EU will promote the equality of women and men and that the goal of the EU is to promote the equality of women and men in all its activities. Besides, in Article 10 of the Treaty on the Functioning of the EU, it is stipulated that the EU, in defining and implementing policies and activities, is focused on the fight against discrimination based on gender, among other things.²

The EU's determination to fight discrimination based on gender is expressed in the powers of the Council of Ministers and the European Parliament to adopt anti-discriminatory measures at the EU level. According to the Art. 19 of the Treaty on the functioning of the EU the Council may, without prejudice

¹ J. C. Piris, *The Lisbon Treaty – A Legal and Political Analysis*, Cambridge University Press 2010, 71-72.

² Consolidated versions Treaty on the EU and the Treaty on Functioning of the EU, *Official Journal of the European Union (EU)*, 115, Vol. 51, 09/05/2008.

to the other provisions of the Treaty, within the competences assigned to the Union by the Treaties, deciding unanimously in accordance with a special legislative procedure and with the prior consent of the European Parliament, take appropriate actions to combat discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation.³ In addition, the EU Treaty authorizes the European Parliament and the Council to adopt measures to prevent human trafficking, especially trafficking in women and children, who are most often the victims of that serious crime, within the framework of the common migration policy. The Treaty also empowers the European Parliament and the Council, through the adoption of directives, to establish minimum rules regarding criminal offenses and sanctions in the field of serious crime with a cross-border dimension, which includes human trafficking and sexual exploitation of women and children (Art. 83, paragraph 1, Treaty on the Functioning of the EU).⁴

In the context of the economic dimension of the equality of women and men, that is, wider seen as a gender equality, the Treaty in Art. 153 authorizes the Union to support and supplement Member States in the area of equal opportunities for women and men in the labor market and treatment in the workplace. This article forms the legal basis of the so-called gender equality directives: Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services⁵, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of

³ „Article 19

1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonization of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.”

Treaty on the functioning of the EU, *Official Journal* 115, Vol. 51, 09/05/2008 P. 0056 – 0056.

⁴ *Ibid.*

⁵ OJ L 373, 21.12.2004, p. 37–43.

employment and occupation (recast)⁶, Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.⁷

However, according to recent research by European Confederation of Trade Unions (ECTU), of February 2021, there is a need for urgent action on dismantling sexual violence and harassment in the world of work against women, being the prevalent victims, especially during COVID-19 pandemic.⁸ Another research by European foundation for living and working conditions improving (2007) indicated the presence of mobbing i.e. harassment at work against women in all Member States, which caused an increased percentage of sick leave with subsequent costs of healing and rehabilitation.⁹ In theory,¹⁰ the causes of mobbing are identified as the existence of a conflict situation in the workplace, during longer period, whose intensity is being multiplied. Furthermore, each Member State is obliged to ensure the application of the principle of equal pay for men and women for equal work, or for work of equal value, pursuant to Art. 157 of the Treaty on the Functioning of the EU.¹¹ For the legal aspects of gender equality, the EU Charter on Fundamental Rights is of great legal importance, since it establishes equality before the law and prohibits any discrimination based, *inter alia*, on gender.

⁶ OJ L 204, 26.7.2006, p. 23–36.

⁷ OJ L 180, 15.7.2010, p. 1–6. For more see G. Gasmi, Strateško – pravni okviru EU o ravnopravnosti polova – značaj za Srbiju, *Strani pravni život* 59(2015)1, 123-142.

⁸ „The pandemic has created additional threats for women at work, whether it’s violence from customers and clients who refuse to comply with COVID-19 safety rules, new forms of sexual harassment online or an increase of cases of domestic violence when working at home.” Ester Linch, Deputy General Secretary of ECTU in: S. Paunović, R. Kosanović, *Konvencija 190 o nasilju i uznemiravanju u svetu rada - Predlog za ratifikaciju sa komentarom*, Savez samostalnih sindikata Srbije, Beograd 2021, 22.

⁹ *Ibid.*, 32, 33.

¹⁰ Leymann considers mobbing as „negative communication treatment, which is directed against a person (with one or more other) occurring very often and in longer terms being identified relationship between the perpetrator and the victim.” At the same time, this whole long process occurs in the workplace. (H. Leymann, *Mobbing: Psychoteror am Arbeitsplatz und wie man sich dagegen wehren kann*, Rowohlt, Reinbek 1993, 21, quoted according to: A. Divincová, B. Siváková, *Mobbing at Workplace and its Impact on Employee Performance*, *Human Resources Management & Ergonomics* VIII(2014)2, 21.

¹¹ *Ibid.*

II EU approach towards violence against women and domestic violence

In the EU, the commitment to fight against gender-based violence, to support and protect the victim and to hold the perpetrators accountable, has recently been reinforced by soft law instruments, such as the Gender Equality Strategy 2020-2025¹² and Communication of the European Commission from 2021 on hate speech and hate crime,¹³ which also deals with some specific gender-based crimes against women.

The EU has only recently begun to focus on the issue of violence against women using binding legal instruments, and the starting point is the decision to sign the Istanbul Convention on preventing and combating violence against women and domestic violence of the Council of Europe (hereinafter Istanbul Convention) in 2016. After a lengthy internal procedure, the Union officially became a contracting party to the Istanbul Convention in June 2023.¹⁴ The EU includes 14 of the 20 countries that are ranked highest in the world in terms of achieving gender equality. Despite this, around 22 percent of women in the EU have experienced intimate partner violence, according to available data.¹⁵

By acceding to the Convention, the EU obtains an important tool for combating violence against women and domestic violence, which reaffirms the central importance of the Convention, being a cornerstone of international legal standards in this area. The Istanbul Convention of the Council of Europe for the European Union entered into force on October 1, 2023, although not all

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Union of Equality: Gender Equality Strategy 2020-2025, of 5 March 2020, COM (2020) 152 final.

¹³ Communication from the Commission to the European Parliament and the Council, A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime, of 9 December 2021, COM(2021) 777 final.

¹⁴ Council Decision (EU) 2023/1075 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union, OJ L 143I , 2 June 2023, p. 1; Council Decision (EU) 2023/1076 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, OJ L 143I , 2 June 2023, p. 4.

¹⁵ <https://www.coe.int/en/web/portal/-/the-european-union-deposited-the-instrument-of-approval-of-the-istanbul-convention>, last visited 4. 4. 2024.

Member States ratified the Convention (at the time of writing this paper), but twenty-one of them have done it. These are the following EU members: Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, and Sweden. At the time of writing this paper, the Istanbul Convention has 38 contracting parties, of which 37 are member states of the Council of Europe (out of 46 member states) and the EU.

By ratifying the Istanbul Convention, the EU guarantees that minimum criminal law standards are applied in the fight against violence against women and domestic violence throughout the whole Union, and the message is that dealing with these forms of violence is a priority. The European Parliament, in its Resolution of February 15, 2023, called on the remaining six EU Member States (Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania and Slovakia) to ratify the Istanbul Convention of the Council of Europe without delay.

Due to the specific division of competences between Member States on the one side, and the EU institutions on the other, the largest number of acts of secondary legislation in the field of gender equality, especially its economic dimension, are directives. These are legal acts that do not have direct legal effect in the Member States, but they incorporate them with their acts into the national legal order. Directives define the goals to be achieved in a certain area, while leaving the choice of methods and form of their implementation to the Member States.¹⁶

In the field of combating violence against women and domestic violence, the ratification of the Istanbul Convention was the driving force behind the formulation of the Proposal for an EU Directive in this area. The EU Directive was adopted on 24 April 2024 with the aim to mutually harmonize the national legislation of the Member States and thus strengthen the role of the EU as a member of the Istanbul Convention, which makes it responsible for its implementation, through the realization of the rights and obligations of the EU institutions and the Member States that are signatories to the Convention.¹⁷

¹⁶ G. Gasmi, *Quo vadis EU? – Relevantni pravni i institucionalni faktori*, Institut za uporedno pravo, Beograd 2016, 101-104, 109.

¹⁷ E. Bergamini, *Combating violence against women and domestic violence – from the Istanbul Convention to the EU framework: the Proposal for an EU Directive*, *Freedom, Security & Justice: European Legal Studies* (2023)2, 21-41.

The Directive on combating violence against women and domestic violence¹⁸ was prepared as a kind of supplement to the Istanbul Convention, not as a replacement for it, i.e. it has partial content overlap, but the Convention remains “an essential tool for the EU strategy to combat gender-based violence”.¹⁹ The adoption of this legal document was followed by strong conceptual differences in the understandings of Member States about the definition of rape. Many EU countries oppose the inclusion of this criminal offense in the Directive, with the essential element being the absence of free sexual consent, as formulated in the Istanbul Convention. Disagreement focuses mainly on the existence of a legal basis in the Treaties providing the EU with the power to impose such a definition. The Directive is based on the combined provisions of Article 82(2) and Article 83(1) of the Treaty on the Functioning of the EU. Article 82(2) of the Treaty provides the legal basis for the establishment of minimum standards regarding the rights of victims of crime necessary to facilitate the mutual recognition of judgments and other court decisions, as well as to improve police and judicial cooperation in criminal matters for issues with a cross-border dimension. Article 83(1) of the Treaty provides the legal basis for minimum standards related to the definition of criminal offenses and sanctions related to sexual exploitation of women and children and cybercrime.

Certain EU members believe that defining rape based on the absence of free consent would lead to major problems in court proceedings when proving this criminal offense. The traditional approach to defining rape in national legislations in the EU is based on the assumption of violence, threats or the impossibility for rape victims to resist the aggression. However, new cases of rape proved this approach as seriously deficient. The narrow definition of rape based on force and coercion does not take into account the fact that a reaction known as ‘frozen fright’ or ‘tonic immobility’, and not active physical resistance, is rape victims’ most common response.

The importance of this Directive is contained in the fact that before this Directive, there was no EU legislation that specifically and explicitly deals with violence against women and domestic violence. Positive secondary EU legislation that existed before the Directive, can only be indirectly applied to violence against

¹⁸ COM (2022) 105 final.

¹⁹ European Parliament Resolution of 15 February 2023 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 (COM (2016)0109 - 2016/0062R(NLE)), point 29.

women and domestic violence and therefore it was estimated as not being efficient. Those directives are: Victims' Rights Directive (Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA); Directive against the sexual abuse of minors (Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and the sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA) and Anti-trafficking in human beings directive (Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA) and Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.²⁰

According to relevant assessments, the current EU legislation has proven to be an ineffective tool for preventing and combating violence against women and domestic violence.²¹ Among valid Directives, the Directive on the rights of victims (2012/29/EU) is particularly important²², since it establishes a mechanism for mutual recognition of protection measures in criminal matters between Member States and sets minimum standards for victims' rights in all EU Member States, including the right to access to justice, protection and support. This means that Member States can expand the set of victims' rights, in order to ensure a higher level of protection. Member States are required to ensure that victims of domestic violence receive appropriate protection and support, including access to legal aid, medical care, counselling, and emergency services. According to para. (11) and (13), the Directive sets minimum rules and applies in relation to criminal offenses committed in the Union and to criminal proceedings conducted in the EU. It grants rights to victims of extraterritorial crimes, but only in relation to criminal proceedings conducted in the EU. Child victims should be considered and treated as full bearers of the

²⁰ OJ L 261, 6.8.2004, p. 15–18.

²¹ M. Picchi, Violence against Women and Domestic Violence: The European Commission's Directive Proposal, *Athens Journal of Law* 8(2022)4, 395–408.

²² Victims' Rights Directive (Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA), OJ L 315/57, 14. 11. 2012, <https://eur-lex.europa.eu/eli/dir/2012/29/oj>, last visited 12. 4. 2024.

rights set forth in this Directive and should have the right to enjoy the rights provided for in the Directive, in a manner that takes into account their ability to form their own views (par. 14). When applying the Directive, it is primarily based on the principle of protecting the best interests of child, in accordance with the EU Charter on Fundamental Rights and the UN Convention on the Rights of the Child, adopted on November 20, 1989.

Directive 2011/99/EU on the European Protection Order (EPO, 2011)²³ is another important act of secondary legislation of the EU with indirect application in the domain of violence against women and domestic violence. This directive establishes a mechanism that enables the recognition between Member States of protective measures issued in criminal proceedings. A new protection measure is issued according to a simplified and accelerated procedure in another member state to which the subject travels or moves. When it comes to protective measures issued as part of civil litigation in the Member State where the subject is a resident, i.e. has a permanent residence, then the person can refer to Regulation (EU) no. 606/2013 on mutual recognition of protection measures in civil matters.²⁴ This Regulation establishes a mechanism of direct recognition between member states of protection measures issued in civil litigation, through a certificate, which a person presents to the competent authorities in order to prove his rights.

III New Directive on combating violence against women and domestic violence

Council of the EU stated that “taking decisive action against these acts of violence is essential to ensure the values and fundamental rights of equality between women and men and of non-discrimination”.²⁵ This statement affirms the inextricable strong link between gender equality and combating violence against women.

²³ Directive 2011/99/EU on the European Protection Order (EPO), OJ L 338/2 from 21. 12. 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0099>, last visited 12. 4. 2024.

²⁴ Regulation (EU) no. 606/2013 on mutual recognition of protection measures in civil matters, OJ L 181/4 from 29. 6. 2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0606>, last visited 12. 4. 2024.

²⁵ Council of the European Union, Council adopts first-ever EU law combating violence against women, 2024, <https://www.consilium.europa.eu/en/press/press-releases/2024/05/07/council-adopts-first-ever-eu-law-combating-violence-against-women/>, last visited 10. 5. 2024.

The Directive envisages codifying minimum standards in EU law for the criminalization of certain forms of violence against women, to protect victims and improve access to justice, to support victims and ensure coordination between competent services, in order to prevent such crimes. Member States should take measures to prevent the cultivation of harmful gender stereotypes, to eradicate the idea of women's inferiority or the stereotypical roles of women and men, and preventive measures should furthermore be implemented in formal education. It is crucial to address gender stereotypes, starting with early childhood education and childcare, because children are exposed to gender roles from an early age, which later shape their self-perception and influence their social, academic, and professional choices in life. Member States should regularly conduct surveys to collect data and forward them to the Commission, enabling it to effectively monitor the development of the situation in the fight against violence against women and domestic violence in the Member States with a view to further progress. Member States have three years to implement the provisions of the Directive.

The new Directive on combating violence against women and domestic violence prohibits forced marriage and female genital mutilation and has specific rules on cybercrimes, such as cyber-flashing and cyber-stalking. Victims will have improved access to justice and to healthcare, including sexual and reproductive services, while the legislation will include provisions to prevent rape.

The advantage of the Directive on the fight against violence against women and domestic violence, compared with the Istanbul Convention of the Council of Europe, is that it sets minimum standards for the Member States within the area of EU jurisdiction, including the criminalization of the criminal act of cyber violence, which is not specifically covered by the Istanbul Convention. Cyber violence against women and girls includes a range of different forms of violence perpetrated through information and communication technology (ICT) tools, based on gender or a combination of gender and other factors (e.g., race, age, disability, sexuality, profession, or personal beliefs).

Cyberstalking is a modern form of violence, which is often perpetrated against family members or former partners, in order to intensify coercive control and surveillance, but special provisions on this are rarely present in the domestic legal systems of the Member States. Therefore, minimum rules on cyberstalking should be established. In addition, cyber-harassment includes attacks, such as threats, insults, or other offensive behavior toward individuals, especially women and girls, which usually occur through social media or

other online services. This modern form of violence has a particularly negative effect on women active in public life, such as politicians, journalists, and human rights activists. Although cyber harassment can have the ultimate effect of silencing women, by hindering their participation in social and political life and finally, by undermining the principles of democracy, as protected by the EU Treaty, currently this form of violence is very rarely regulated in the criminal regulations of the Member States. Disclosing private information online without consent is prohibited, as is “cyber-flashing” in the Directive.

EU Directive does not prevent the Member States, especially those that are already contracting parties to the Istanbul Convention, from maintaining and applying higher standards in the fight against violence against women and domestic violence. In addition, the directives have proven to be the most optimal and flexible means of harmonizing the national legal systems of the EU Member States in the specific areas that they regulate.²⁶

In accordance with the position of international human rights organizations, including the Council of Europe, the Commission proposed the criminalization of rape in the Proposal for a Directive. Article 5(1) of the Proposal defines rape as punishable behavior: “a) engaging in an act with a woman without her consent, which implies vaginal, anal or oral penetration of a sexual nature, with any part of the body or object, without her consent; b) to force a woman to engage in an act with another person, which includes vaginal, anal or oral penetration of a sexual nature, without her consent, with any body part or object”.²⁷ This approach aimed to overcome the fact that, although rape is criminalized in all EU member states, many of them require the use of force, threat or coercion to make rape punishable. Only the approach that defines rape when the sexual act is without the woman’s sexual consent achieves full protection of the sexual integrity of female victims. Therefore, in order to ensure equal protection of female victims in these cases, throughout the European Union, it is necessary to establish a minimum standard in the definition of rape as an act without the consent of a woman, which is a constitutive element of that crime.

However, due to strong opposition to such definition coming from many Member States and the Council of the EU, this definition has been removed from the final text of the Directive. The political agreement between Council

²⁶ G. Gasmi (2016), 109.

²⁷ Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, Strasbourg, COM (2022) 105 final.

and the European Parliament was reached in February 2024. Criminalization of rape based on the lack of sexual consent of the victim had been the main stumbling block during the negotiations, with the EU Council objecting to the criminalization of rape as being outside the EU's legal remit, while the Parliament and Commission held the opposite view. Compromising those attitudes, the political agreement obliges Member States to take rape prevention measures and to raise awareness of the central role of sexual consent. Instead of criminalization of rape, the Directive contains actions to prevent rape and increase understanding of sexual consent.

The Directive, in addition to the above, also criminalizes the sharing of intimate images without consent. Some Member States already punish this crime, which can be particularly harmful to the concerned person, due to the way it is easily, quickly and widely distributed.

Female genital mutilation is explicitly dealt with in criminal law in only fifteen Member States,²⁸ while other Member States regulate it with general criminal offences, such as bodily harm, mutilation, and criminal offenses against health. This primitive practice causes irreparable harm to victims and is used to exercise social control over the sexuality of women and girls, as well as to preserve and confirm male dominance over them. Consequently, female genital mutilation and forced marriages are considered as crimes in the Directive.

It is important to point out the importance of the issue of secondary victimization of the victim.²⁹ This question is increasingly being pointed out by the European Court of Human Rights, emphasizing the inadequacy of the internal regulations of the member states and the fact that this problem is a consequence of the functioning of a culture characterized by gender stereotypes. Only appropriate education and professional training can reverse the trend of this phenomenon, while the inability to detect signs of violence, along with sexist prejudices, delays interventions or prevent careful judicial evaluation of cases, leading to further secondary victimization. Consequently, the Directive contains measures of specialized assistance to victims in order to be treated in a gender sensitive manner. Furthermore, aiming to prevent repeated victimization, the Directive foresees that victim's past sexual conduct should only be analyzed in criminal proceedings when it is relevant and necessary.

²⁸ M. Picchi, *op. cit.*, 401.

²⁹ Secondary victimization refers to victimization by responsible state authorities when reporting offence or during criminal proceedings.

Strengthening victims' access to justice and rights to appropriate protection also include:

- providing for an individual needs assessment for protection and support tailored to the specific needs of victims of violence against women or domestic violence;
- providing for specific safeguards for child victims of violence against women or domestic violence;
- ensuring protection through emergency barring and protection orders;
- ensuring that victims can effectively claim compensation from the offender;
- ensuring the removal of online content in relation to offences of cyber violence, and a possibility of judicial redress for the affected users; and
- ensuring that government bodies exist to assist, advise and to represent victims in court proceedings in matters of violence against women or domestic violence.

IV Concluding remarks

Feminist organizations in Europe were not satisfied with the Directive due to the lack of criminalization of rape, which is considered to be a serious legal shortcoming. Instead of that, prevention of rape and measures to raise awareness of the central role of consent in Member States are foreseen. Member States are obliged to implement the Directive in a three-year period.

Seen from the perspective of formulation and adoption of the first legal document of the EU in the area of directly regulating the ban of violence against women and domestic violence, this Directive is to be considered the step forward in the direction of realization of gender equality *de facto*. Therefore, the Directive is to be regarded in a broader framework of the EU efforts to achieve gender equality and non-discrimination³⁰ by adopting the minimum rules in the area of combating violence against women and domestic violence. Directive gains significance when taking into account relevant official data on violence against women in the EU: 1 in 3 women in the EU suffer from gender-based violence, more specifically, 1 in 10 women reported that they had been victim

³⁰ G. Gasmi (2016), 124-127.

of sexual violence and 1 in 20 had been raped. More than 1 in 5 women have suffered domestic violence.³¹

Cyber violence is just as prevalent: in 2020, it was estimated that 1 in 2 young women experienced gender-based cyber violence.³² Women are systematically targeted online by violent right wing extremist groups and terrorist groups intending to spread hatred against them.³³ Cyber violence particularly impacts women active in public life, such as politicians, journalists and human rights defenders. Direct effect of such forms of violence is silencing women and thus limiting their social participation. Further consequence is the undermining the principle of democracy as enshrined in the Treaty on European Union. Those facts represent underlying reasons for the adoption of the new Directive on combating violence against women and domestic violence and point to the importance of this Directive at the same time.

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EU pristup nasilju nad ženama i nasilju u porodici - nova Direktiva EU

Sažetak

Pristup Evropske unije (EU) nasilju nad ženama i nasilju u porodici sagledava se kroz međupovezanost sa principima rodne ravnopravnosti i nediskriminacije. Kombinacija rodne diskriminacije i rodne nejednakosti sa drugim oblicima diskriminacije (ekonomske, političke i dr.) vrlo često rezultira specifičnim oblicima nasilja nad ženama. EU je pristupila Istanbulskoj Konvenciji Saveta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici u junu 2023. godine, što je bio *spiritus movens* za usvajanje nove di-

³¹ European Union Agency for Fundamental Rights (FRA), Violence against women: an EU-wide survey. Main results report, Luxembourg 2014. The FRA survey on violence against women is based on face-to-face interviews with 42,000 women across the EU. The survey presents the most comprehensive survey worldwide on women's experiences of violence.

³² European Parliamentary Research Service (EPRS), Combating gender-based violence: Cyber-violence, European added value assessment, 2021.

³³ Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, Strasbourg, COM (2022) 105 final.

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rektive EU u ovoj oblasti. Prikazana su dostignuća i nedostaci ove Direktive, kao i njen značaj u okviru postojećeg relevantnog primarnog i sekundarnog zakonodavstva EU. Novo zakonodavstvo inkriminiše sledeća krivična dela širom EU: sakaćenje ženskih genitalija, prisilni brak, deljenje intimnih slika bez pristanka, sajber uhođenje, sajber uznemiravanje i sajber podsticanje na mržnju ili nasilje. Međutim, kriminalizacija silovanja nedostaje zbog odsustva saglasnosti o konstitutivnom elementu pristanka. Umesto toga, uključeni su prevencija silovanja i podizanje svesti o suštinskoj važnosti seksualnog pristanka. Uzimajući u obzir problem sekundarne viktimizacije, Direktiva reguliše pravila o merama pomoći i zaštite žrtvama koje treba da obezbede države članice, koje su dužne da Direktivu primene u roku od tri godine. Direktiva posebno dobija na značaju kada se uzmu u obzir relevantni zvanični podaci o nasilju nad ženama u EU. Ovu Direktivu treba smatrati korakom napred u pravcu ostvarivanja rodne ravnopravnosti *de facto*.

Ključne reči: EU, direktiva, nasilje nad ženama, rodna ravnopravnost.

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