Fighting Domestic Violence - South Korea

3. Similarities and differences in terminology

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# 3.1 Domestic violence

Means activities involving physical or psychological harm or damage to property among family members.

# 3.2 Stalking

Means any person who requests to meet or date by consistently attempting to approach any third person, or watches, follows or secretly waits for any third person against the explicit will of the person.[12]

# 3.3 Harassment

Means a case in which any employee, employer or worker of a government agency, local government, public organization, etc.: (i) makes the other party feel sexual humiliation or repulsion with verbal or physical behavior of a sexual nature or demands by utilizing his/her position or in relation to his/her duties; and (ii) expresses one's intention to put the other party at a disadvantage for not complying with any verbal or physical behavior of a sexual nature or demand or to grant him/her any benefit on the condition of complying therewith.[13]

# 3.4 Victim

Means a person who suffers direct damage from a crime of domestic violence.

# 3.5 Abuser

Abuser/"domestic violence offender" - means a person who commits a crime of domestic violence and a co-offender who is his/her family member.

# 3.6 Civil protection order

If deemed necessary for the protection of a victim, a judge may issue any of the following victim protection orders against a domestic violence offender by ruling, at the request of a victim or legal representative thereof:

evacuation, etc., from a room, in which victims or family members live, or a room occupied thereby, to isolate the offender from the victims

denial of access within 100 meters from the residences or places of work of victims or family members

denial of access to victims or family members through telecommunications under subparagraph 1 of Article 2 of the Framework Act on Telecommunications

restriction on the exercise of parental power against a domestic violence offender in parental power

See Special Act for the Punishment of Domestic Violence, Chapter II, Section 3 (Protection Orders).

# 3.7 Causes of action

N/A

# 3.8 Marital rape

Spousal rape is not criminalized in the Republic of Korea.[14] However, Country Reports for 2008 notes that while spousal rape is not illegal, "courts have established a precedent by prosecuting spouses in such cases."[15] In June 2007, in its response to CEDAW, the Republic of Korea indicated that marital rape cases might "follow a different path in the future" due to precedents set in earlier cases.[16]

In January 2009, according to The Korea Times, a husband was convicted of raping his wife and was given a 30-month suspended sentence in Busan District Court.[17] The offender had "frequently" raped his wife while threatening her with weapons. According to The Korea Times, the ruling was the first time a South Korean court had recognized martial rape as a crime.

In May 2013, according to The Korea JoongAng Daily, the Supreme Court of Korea upheld a high court conviction against a man for three counts of spousal rape.[18] The ruling also set a precedent that an offender's legally married wife is included in the definition of "female" in a rape charge, as provided by Article 297 of the Criminal Act. (ibid.) The ruling marked the first conviction for rape between a husband and wife who stayed in the marriage throughout the legal process.[19]

# 3.9 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

**Home protection case**

Means a case subject to a protective disposition under this act due to a crime of domestic violence.

**Protective disposition**

Means the disposition under Article 40 against an offender, which is taken after the court examines home protection cases.

**Victim protection order case**

Means a case subject to a victim protection order under Article 55-2 due to a crime of domestic violence.

**Digital sex crime, stalking and dating violence**

Is a developing area of law related to cyberstalking.

**Child abuse**

Means doing harm to a child's health or welfare or committing physical, mental or sexual violence, or cruel acts that are likely to impede normal growth of a child by adults, including the child's protector, and abandoning or neglecting a child by his/her protector.

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