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Rape of women, including marital rape

Reply to Recommendation[1]: Recommendation 1887 (2009)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 1887 (2009) on "Rape of women, including marital rape". It has drawn the attention of member states' governments to this recommendation, which it transmitted to a number of intergovernmental bodies.[2]

2. The Committee of Ministers fully shares the Parliamentary Assembly's view that rape, including marital rape, is an unacceptable violation of women's rights and dignity, as well as a most serious crime, and agrees with the Assembly that the fight against rape needs to be stepped up. The Committee of Ministers invites all member states to implement in full its Recommendation Rec(2002)5 on the protection of women against violence.

3. The Committee of Ministers supports the idea that member states' legislation on rape and sexual violence must reach the highest possible standard and avoid a "re-victimisation" of the victim by the criminal justice system. In this respect, the Committee of Ministers wishes to inform the Assembly that, following the adoption of Resolution No. 1 at the 29th Conference of European Ministers of Justice (Tromsø, Norway, 18-19 June 2009) on preventing and responding to domestic violence, the European Committee on Crime Problems (CDPC) has begun work on the status and rights of victims in criminal proceedings, with a view to granting them status in criminal cases.

4. As to the Assembly's request that member states establish marital rape as a separate offence under their domestic law, the Committee of Ministers takes the view that this is not necessary. Rape is classified as a crime in member states' legislation, irrespective of the relationship that may exist between the perpetrator and the victim. The introduction of such a distinction might induce the law maker to define or maintain marital rape as a privileged offence in comparison to extra-marital rape. The Committee of Ministers considers that such a move would run counter to the overall objectives of Parliamentary Assembly Recommendations 1691 (2009) and 1887 (2009). However, the Committee of Ministers wishes to draw the Assembly's attention to the interim report of the Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO), according to which the definitions of offences in the future convention should take into account international law and the definitions contained, *inter alia*, in Recommendation Rec(2002)5, which refers specifically to "rape between spouses". In view of the above, the Committee of Ministers is of the opinion that the standard-setting work in progress would adequately address the criminal law and criminal procedural law questions raised by the Parliamentary Assembly in relation to rape, including marital rape.

5. The Committee of Ministers wishes to point out that, according to the CAHVIO interim report adopted by the Committee of Ministers on 1 July 2009, the future draft convention will cover the widest possible range of forms of violence perpetrated against women, amongst them sexual violence, including sexual assault,

1. adopted at the 1088th meeting of the Ministers' Deputies (16 June 2010)
2. Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO) for information; Steering Committee for Equality between Women and Men (CDEG), European Committee on Crime Problems (CDPC) and European Committee on Legal Co-operation (CDCJ), for information and possible comments.

rape and sexual harassment. The aforementioned report also refers to prevention of violence against women, including through education and training, and protection and support of victims, all of which will be covered in the future convention.

6. Finally, the Committee of Ministers wishes to draw attention to its recent declaration on "Making gender equality a reality", in which member states are invited to "renew their commitment to achieve equality in fact and in law between women and men as an integral part of human rights and a fundamental criterion of democracy in conformity with the values defended by the Council of Europe […]". The Committee of Ministers would therefore be in favour of the idea of starting a Council of Europe campaign on combating the rape of women, including marital rape, with a view to changing public attitudes to rape and sexual violence, provided that its financing is ensured and that the conditions are such that it would have an impact. The launching of the campaign could take place in the context of the promotion of the future Council of Europe convention.

Appendix 1 to the reply

Comments by the Steering Committee for Equality between Women and Men (CDEG)

1. The Steering Committee for Equality between Women and Men (CDEG) has noted with interest Parliamentary Assembly Recommendations 1881 (2009) and 1887 (2009) on, respectively, “The urgent need to combat so-called “honour crimes”” and “Rape of women, including marital rape”.

2. The CDEG fully supports the spirit of these recommendations and refers to its action since the 1970s and right up to the present day to combat all forms of violence against women. It welcomes the fact that its efforts, combined with those of the Parliamentary Assembly, will lead to the first European human rights treaty in this area, in the form of a Council of Europe convention on preventing and combating violence against women and domestic violence.

3. The Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO) has decided that the convention should cover all forms of violence against women, whether this be physical, psychological, sexual or economic. The convention should cover all forms of sexist violence that results or could result in physical, sexual or psychological suffering or harm, including the threat of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.

4. This includes the following non-exhaustive aspects:

– physical and mental aggression, including criminal harassment;

– sexual violence, including sexual assaults, rape and sexual harassment;

– other forms of violence against women, including forced marriages, deprivation of liberty, female genital mutilation and honour crimes.

5. Concerning more particularly paragraph 2.3 of Parliamentary Assembly Recommendation 1887 (2009) requesting member states to “establish marital rape as a separate offence under their domestic law if they have not already done so, in order to avoid any hindrance of legal proceedings” some CDEG members considered that establishing marital rape as a separate offence was not necessary, rape being considered as a crime in their legislation, independently of the existing relationship between the perpetrator and the victim.

6. In connection with the drafting of a new protocol to the European Convention on Human Rights, as advocated in Parliamentary Assembly Recommendation 1881 (2009) on “The urgent need to combat so-called “honour crimes””, it repeats its comments on Parliamentary Assembly Recommendation 1798 (2007) on “Respect for the principle of gender equality in civil law”. In these comments, the CDEG referred to the existing Council of Europe instruments that already offered a legal basis for combating all forms of discrimination against women and asked member states that had not already done so to sign and ratify them, particularly Protocol No. 12 of the European Convention on Human Rights, and to fully apply the provisions of these instruments.

7. The CDEG also notes that Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms invites member states to ratify and implement the "international legal instruments on human rights in general and on women’s and girls’ full enjoyment of human rights in particular" because "they are a fundamental and authoritative basis and a framework for national policies to eliminate discrimination on the grounds of sex and promote gender equality. Their ratification is a first decisive step towards these objectives and their full implementation must be ensured and constantly monitored and evaluated."

8. The CDEG added in its comments that the Committee of Ministers might envisage a new protocol to the European Convention on Human Rights in due course. It also thought that it could give this proposal more detailed consideration in conjunction with other relevant Council of Europe steering committees, in particular the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for Human Rights (CDDH).

9. As to the proposed launch of a Council of Europe campaign against rape, including marital rape, possibly in connection with the promotion of the future Council of Europe convention, as proposed in Parliamentary Assembly Recommendation 1887 (2009) on “Rape of women, including marital rape”, the CDEG would support such an idea provided that the necessary human and financial resources were made available. This point was made by the Committee of Ministers itself in its recent Declaration on “Making gender equality a reality”, in which member states are urged to "renew their commitment to achieve equality in

fact and in law between women and men as an integral part of human rights and a fundamental criterion of democracy in conformity with the values defended by the Council of Europe and to provide the Council of Europe the necessary human and financial resources".

Appendix 2 to the reply

Comments of the European Committee on Crime Problems (CDPC)

1. Following the adoption by the Parliamentary Assembly of Recommendation 1887 (2009) on “Rape of women, including marital rape”, the Committee of Ministers decided to communicate it to the European Committee on Crime Problems (CDPC), for information and/or possible comments. The CDPC examined the above recommendation and decided to contribute to the response of the Committee of Ministers by providing the following comments concerning matters within its fields of competence.

2. The CDPC fully supported the Parliamentary Assembly’s assertion that rape of women, including marital rape, is an unacceptable violation of women’s rights and dignity, as well as a most serious crime. It also agreed that the fight against rape needs to be stepped up through the full implementation of relevant Council of Europe recommendations and the highest possible standards of legislation on rape and sexual violence.

3. With regard to the Parliamentary Assembly’s call to the Committee of Ministers to instruct the Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO) to include in the future Council of Europe convention the severest and most widespread forms of violence against women, including rape and sexual assault, the CDPC wished to recall that, according to the CAHVIO’s interim report adopted by the Committee of Ministers on 1 July 2009, the future draft convention will cover the widest possible range of forms of violence perpetrated against women, amongst which sexual violence, including sexual assault, rape and sexual harassment.

4. Regarding the establishment of marital rape as a separate offence under member states’ domestic law, the CDPC drew the attention of the Assembly to the above-mentioned interim report which states that the definitions of offences in the future convention would take into account international law and the definitions contained, *inter alia,* in Recommendation Rec(2002)5 of the Committee of Ministers, which refers specifically to "rape between spouses".

5. Furthermore in this context, the CDPC would like to draw attention to the risk that establishing marital rape as a separate offence may eventually induce the law maker to define or maintain marital rape as a privileged offence in comparison to extra-marital rape. Such a move would clearly run counter to the overall objectives of the Parliamentary Assembly in Recommendations 1691 (2009) and 1887 (2009).

6. In respect of the recommendation that the Committee of Ministers ask its member states to develop a comprehensive strategy comprising measures to prevent rape in the first place, as well as to ensure protection of and assistance to rape victims at every stage of the proceedings, including, possibly, compensation for the victims, the CDPC wished to highlight that the above-mentioned interim report also refers to prevention of violence against women, including through education and training, and protection and support of victims, all of which will be covered in the future convention.

7. In addition, with regard to certain concerns related to victims expressed in Parliamentary Assembly Resolution 1691 (2009), to which Recommendation 1887 (2009) refers, the CDPC wished to inform the Assembly that, as a follow-up to Resolution No. 1 adopted at the 29th Council of Europe Conference of Ministers of Justice (Tromsø, Norway, 18-19 June 2009) on preventing and responding to domestic violence, it has initiated work on the status and rights of victims in criminal proceedings with a view to granting them status in criminal cases. At its 2009 plenary meeting (12-16 October 2009), the CDPC approved a proposal for an expert to carry out a preliminary report/study on this subject.

8. In view of the above, the CDPC was of the opinion that the standard-setting work in progress will adequately address the criminal law and criminal procedural law questions raised by the Parliamentary Assembly in relation to rape, including marital rape.

9. Finally, the CDPC supported the Parliamentary Assembly’s proposal for the Committee of Ministers to launch a Council of Europe campaign to change public attitudes to rape and sexual assault, possibly in the framework of the promotion of the future Council of Europe convention, and believed that, based on the success of previous Council of Europe campaigns, such a strategy could be very effective.