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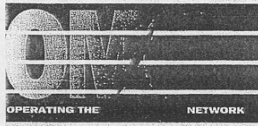
4 September 2003

COMPLAINT No. 17/2003

World Organisation against Torture (OMCT)

v. Greece

registered at the Secretariat on 28 July 2003



ORGANISATION MONDIALE CONTRE LA TORTURE

المنظمة العالمية ضد التعذيب WORLD ORGANIZATION AGAINST TORTURE 世界反对酷刑组织 世界拷問阻止機關
ORGANIZACION MUNDIAL CONTRA LA TORTURA Всемирная организация против пыток
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Regis Brillat
Executive Secretary
Secretariat of the European Social Charter
Directorate General of Human Rights – DG II
Council of Europe
F-67705 Strasbourg Cedex
FRANCE

Geneva, 17 July 2003

Dear Mr. Brillat,

Please find enclosed two collective complaints presented by the World Organisation Against Torture (OMCT) under the European Social Charter of 1961, the Revised Social Charter of 1996 and the Additional Protocol to the European Social Charter of 1995 against Ireland and Greece concerning its compliance with Article 17 of the Social Charter. You will also find enclosed the required annexes.

All future communications regarding this matter should be addressed to the OMCT at:

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Yours sincerely,

Eric Sottas
OMCT Director

**Collective Complaint against Greece
submitted by the
World Organisation against Torture (OMCT)
under the 1995 Additional Protocol**

Compliance of OMCT (World Organisation against Torture) with the requirements of the Additional Protocol

Compliance with article 1(b) of the 1995 Additional Protocol:

OMCT is an international non-governmental organisation; it enjoys consultative status with the Council of Europe. It was put on the list established by the Governmental Committee of international non-governmental organisations which have the right to submit a collective complaint.

Compliance with article 3 of the 1995 Additional Protocol:

According to Article 2 of its Statutes, the OMCT's aim is to "*contribute to the struggle against torture, summary executions, disappearances, arbitrary detention, psychiatric internment for political reasons, and other cruel, inhuman and degrading treatment*" (OMCT Statutes, Geneva, December 2001, art. 2, page 2).

Ten years after the decision taken by its 1991 General Assembly to set up a specific programme on children, the OMCT, in conjunction with the Mannerheim League for Child Welfare (Finland), and under the auspices of the Office of the United Nations High Commissioner on Human Rights, held an international conference on children, torture and other forms of violence in Tampere (Finland) from 27 to 30 November 2001 that brought together 183 participants from 73 countries. At the close of three days of discussions, the Conference unanimously adopted the Tampere Declaration which calls for the establishment of new international mechanisms in the fight to eradicate violence against children. The declaration states that "*violence against children, both girls and boys, encompasses all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and includes, inter alia, sexual abuse, harmful traditional practices, trafficking, exploitation, bullying in schools and corporal punishment*".

It further recommends to states that they "*review, enact and amend as necessary all laws to prevent and prohibit torture and all forms of violence against children*". (*Children, torture and other forms of violence – Facing the Facts, Forging the Future*, conference report, Tampere Declaration rec.11, OMCT, 2002, Geneva, page 13).

For preventive and rehabilitative purposes, OMCT regularly documents practices of corporal punishment against children in the context of its urgent appeals and of its reports submitted to the UN Committee on the Rights of the Child (in order to brief the Committee before it examines reports from states under the Convention on the Rights of the Child). These reports always contain an analysis of the legal framework

and practice of torture and other cruel, inhuman or degrading treatments or punishments, including corporal punishment. In 2001-2002, in partnership with local NGOs and members of its network, OMCT has produced 18 alternative country reports presented to the UN Committee on the Rights of the Child, on the rights of the child in Ethiopia, Egypt, Democratic Republic of the Congo, Turkey, Guatemala, Paraguay, Cameroon, Kenya, Bahrain, Spain, Switzerland, Tunisia, Argentina, Sudan, the Ukraine, Italy, the Czech Republic, and Haiti.

In addition, OMCT has regularly made specific statements on the issue of corporal punishment. On 28 September 2001, at the Committee on the Rights of the Child Day of General Discussion on Violence Against Children within the Family and in Schools, OMCT presented a report including analysis and recommendations on physical violence in the home, including corporal punishment.

Compliance with rule 20 of the Rules of Procedure for the system of collective complaints:

The complaint is signed by Eric Sottas, Director of OMCT. Article 20/3 of OMCT's Statutes states that "The director is entitled to take any measures deemed necessary for the implementation of the programmes defined by the General Assembly, the Council and its Bureau, within the limits of the approved budget" (OMCT Statutes, art.20 page 8).

Applicability to Greece of the European Social Charter of 1961 and the Additional Protocol to the European Social Charter of 1995, providing for a system of collective complaints

Greece signed the European Social Charter of 1961 on 18/10/61 and deposited the instrument of ratification on 6/6/84. Greece signed the Revised Social Charter on 3/5/96. Greece signed and ratified the Additional Protocol to the European Social Charter allowing for a system of collective complaints on 18/6/98. The Protocol entered into force on 1/8/98.

Applicability of Articles 7 and 17 of the European Social Charter of 1961 to Greece

According to the declarations contained in the instrument of ratification of the European Social Charter of 1961 deposited by Greece on 6/6/84, Greece considers itself bound by articles 7 and 17.

These provide:

Article 7 – The right of children and young persons to protection

"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

...

10) to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.”

Article 17 – The right of mothers and children to social and economic protection

“With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.”

European Social Rights Committee observations and conclusions

In its General Observations in the Introduction to Conclusions XV – 2, Volume 1 (2001), the European Committee of Social Rights concludes that “... *the Committee considers that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It furthermore considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law.*”

The Committee’s General Observations relate to both article 7(10) and article 17. In its Observations, the Committee states that it has decided to deal with “protection of children and young people from ill-treatment and abuse” under article 17.

In clarifying its interpretation of these provisions of the Charter, the Committee notes that it has done so “*in the light of the case-law developed under other international treaties as regards the protection of children and young persons, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights. It has also taken into account developments in national legislation and practice as regards the protection of children*”.

We note that in 2003, in its conclusions adopted following examination of Poland’s report on article 17, the Committee states: “*The Committee concludes that the situation in Poland is not in conformity with Article 17 of the Charter on the following grounds: – corporal punishment of children in the home is not prohibited....*” (European Committee of Social Rights, *Conclusions XVI-2*, Volume 2, Chapter 14)

We note that in its Conclusions XV-2, vol. 1, the European Social Rights Committee inquires, in relation to Greece’s conformity with article 17 of the 1961 Charter, (page 257):

“Protection from ill-treatment and abuse

... *The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere.*”

Greece’s obligations under other international human rights instruments

Greece has also ratified the United Nations Convention on the Rights of the Child, in 1993. Article 19 of the Convention requires States Parties to protect the child from

“all forms of physical or mental violence” while in the care of parents and others. Other provisions of the Convention are also relevant to protection from violence.

We note that when Greece’s Initial Report under the Convention on the Rights of the Child was considered by the Committee on the Rights of the Child in 2002, the Committee’s concluding observations stated:

“The Committee is concerned that:

- *As indicated in the State party report, about 60% of parents practice corporal punishment on children*
- *Although corporal punishment is prohibited by law in schools it is not prohibited in the family.*

“The Committee recommends that the State party:

- *... Prohibit all forms of violence against children, including corporal punishment, by law in all contexts, including in the family.*
- *... Undertake education and awareness campaigns to inform, inter-alia, teachers, parents, medical and law enforcement personnel of the harm of violence, including corporal punishment, and the alternative, non-violent, forms of educating children”.*

(1 Feb 2002, CRC/C/15/Add.170, paras 42 (a) and (b) and 43 (a) and (b))

Greece has also ratified the International Covenant on Civil and Political Rights (in 1997). The Covenant states (article 26): *“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law...”*

The Covenant also requires that (article 24) every child shall have *“the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State”*.

The law relating to corporal punishment of children in Greece

Corporal punishment of children remains lawful in the home, and parents have a right to take “corrective measures”, although according to section 1518 of the Civil Code (1983) “only if these are necessary from a pedagogic point of view and do not cause injury to the child’s dignity”. Also under section 1507, “Parents and children are under a reciprocal obligation of assistance, affection and respect”. Abuse of parents’ duty of care may lead to court intervention and removal of the exercise of parental care wholly or partly, or other measures (section 1532). Children (under 17 year-olds) are protected from continuous cruel behaviour and malicious neglect which lead to injury and suffering by section 312 of the Criminal Code (1950).

In schools, corporal punishment is prohibited as a means of correcting children through Presidential Decree (201/1998) and circulars to schools.

In the penal system, corporal punishment is unlawful: it is not a permitted sanction under the Criminal Code (sections 121-133) or the Code of Criminal Procedure.

There is no explicit prohibition of corporal punishment in other institutions and forms of care, but the Criminal Code (see above) applies.

Research into prevalence of and attitudes to corporal punishment

A study in 1993 of 8,158 children aged seven, found that one in three (37.7%) was spanked at least once a week and one in six daily (18%) (Agathonos-Georgopoulou, H. (1997), "Child Maltreatment in Greece: A Review of Research", *Child Abuse Review*, vol. 6, pp. 257-271).

Between 1994 and 1997, 591 structured interviews were carried out with mothers of 6 year-old and 12 year-old schoolchildren in research at the Department of Family Relations in the Institute of Child Health in Athens. 65.5% of mothers reported using physical punishment on their children, with mothers of 6 year-olds three times more likely to do so than mothers of 12 year-olds. 62% of mothers believed that physical punishment is used by most parents, and 82% believed that at least half of all parents hit their children. 4% of children who were physically punished suffered minor injuries such as a bleeding nose and scratches, 1.2% suffered more severe injuries needing stitches and/or hospitalisation (Fereti, I. & Stavrianki, M. (1997), "The use of physical punishment in the Greek family: selected socio-demographic aspects", *International Journal of Child and Family Welfare*, vol. 3, pp.206-216; Fereti, I. (2002), "Initiatives to reduce and prevent corporal punishment of children within the family in Greece", Athens: Institute of Child Health).

Greece's Initial Report submitted under the UN Convention on the Rights of the Child reports on some of the research findings of the Institute of Child Health in Athens: *"The research of the Institute of Child Health shows that the mortality rate among physically abused and neglected children is 6 per cent, while the rate of permanent disability is 8 per cent. Several research projects have been conducted on the use of corporal punishment in education, based on different samples of populations. In a project conducted in the schools of the Greater Athens area, it was discovered that 50 per cent of the fathers of primary school children administered corporal punishment to their children. This project also found that more mothers (65 per cent) than fathers beat their children by hand or using various objects. A research project conducted among Greek students aged 18-20 years discovered that 70 per cent of them had experience of corporal punishment by their parents at various ages up to majority."* (Greece's Initial Report under the Convention on the Rights of the Child, CRC/C/28/Add.17, para. 174, 25 June 2001)

In a "Parallel Report" on Greece's compliance with the International Covenant on Economic, Social and Cultural Rights, Greek Helsinki Monitor and Minority Rights Group – Greece, provided further information on corporal punishment within the family, including an analysis of calls to "Smile of the Child", an SOS hotline for abused children, which reports that 46 per cent of the calls it receives in one area are related to family members physically beating children. (Greek Helsinki Monitor and Minority Rights Group – Greece: "Parallel Report on Greece's Compliance with the UN Covenant on Economic, Cultural and Social Rights, September 2002, Extracts)

The complaint

The overall purpose of the Additional Protocol is “to improve the effective enforcement of the social rights guaranteed by the Charter”. The purpose of this complaint is to improve the effective enforcement of children’s right to protection from violence, including all corporal punishment.

Greece is failing to conform with its obligations under article 17 of the European Social Charter because it has not effectively prohibited all corporal punishment of children, including by parents and others.

Nor has it explicitly prohibited corporal punishment in all forms of care. Corporal punishment in schools is prohibited currently only by a Presidential Decree.

Greece has not prohibited in legislation any other form of degrading punishment or treatment of children and provided adequate sanctions in penal or civil law.

Research carried out in the 1990s suggests that hundreds of thousands of Greece’s smallest and most vulnerable citizens are being subjected to breaches of their rights to respect for human dignity and physical integrity.

There can be no justification for any further delay in extending to children the full protection of the law from all corporal punishment and other humiliating punishment or treatment. Explicit prohibition is required, backed by comprehensive awareness-raising and public education on children’s rights to protection and promotion of positive, non-violent forms of discipline.