

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**



5 May 2004

**Collective Complaint No. 17/2003
World Organisation against Torture (OMCT)
v. Greece**

Case Document No. 6

**ADDITIONAL INFORMATION FROM THE
WORLD ORGANISATION AGAINST TORTURE (OMCT)
ON THE MERITS**

registered at the Secretariat on 30 April 2004

Collective complaint 17/2003
World Organisation against Torture v Greece

Response of the World Organisation against Torture to the written observations submitted by the Government of Greece; please see also separate document including general additional explanations and information on the merits of this complaint.

Summary

1. There is no explicit prohibition of corporal punishment by parents in Greece. The Constitution includes normal provisions against torture and other forms of violence and general provisions promoting respect – but these have not been interpreted as prohibiting all corporal punishment. The Penal Code only prohibits very extreme forms of corporal punishment. The Civil Code confirms parents' rights to take "correctional measures" and, despite limitations on this right, it is interpreted as allowing less severe forms of corporal punishment.
2. While corporal punishment is explicitly prohibited in primary schools, there is no explicit prohibition in secondary schools and there is no prohibition of all other forms of degrading punishment or treatment of school students. We have traced two Ministerial Decisions (not a strong form of law) which explicitly prohibit corporal punishment: Ministerial Decision Γ2β/OK/8291, issued in 1984, "Regulation of operation of state residential institutions for children" (article 23, para. 2); and Ministerial Decision Π2β, issued in 1997, "Standard regulation of operation of municipal day care institutions and nursery schools" (article 14). In other institutions and forms of care there does not appear to be explicit prohibition of corporal punishment and of all other forms of degrading punishment or treatment (see para. 14 below).
3. The Decree explicitly prohibiting corporal punishment in primary schools and the two Ministerial Decisions quoted above are welcome and indicate the Government's acceptance of the need for explicit prohibition in relation to certain contexts of children's lives. But this serves to underline the need for equally explicit prohibition in legislation applying to all other institutional and alternative care settings. In particular, it underlines the need for legislation to send an explicit and clear message to parents in the "privacy" of the home, that all corporal punishment and all other forms of degrading punishment or treatment of children are unlawful.
4. While the Government is indirectly supporting, through the Institute of Child Health, some educational measures against corporal punishment, these are as yet inadequate given the prevalence of corporal punishment revealed by the research which we quote in the complaint.
5. It is plain that corporal punishment, including severe corporal punishment, remains common and socially approved. Explicit prohibition of corporal punishment in the home and in all other settings, coupled with awareness-raising and public education, is required to fulfil Greece's obligations under Article 17.

As the Committee has emphasised, “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact”.¹

6. We note that a statement from the Children’s Rights Department of the Greek Ombudsman, relating to the complaint, refers to recent research which “has indicated that corporal punishment is used as a disciplinary method by a high percentage of parents in Greece”. The Children’s Rights Department “holds and expresses the opinion that there is a need for an explicit prohibition of parental corporal punishment. In particular, it argues for a solemn statement in the Greek Civil Code, which will specify that acts of physical punishment do not fall within the scope of the permissible disciplinary measures of article 1518 of the Civil Code” (see statement annexed). We concur with the Greek Ombudsman in noting that an explicit provision of this type is likely to have “an effective educational impact on Greek families and Greek society”. We also concur with the Ombudsman’s proposal that such a change in the Greek Civil Code “should be followed by a campaign informing and sensitising parents towards avoiding the use of any form of physical punishment”.
7. **We ask the Committee to conclude that Greece is not in compliance with Article 17 of the European Social Charter because its law can still be interpreted as condoning corporal punishment and other forms of degrading punishment or treatment; it has failed to prohibit effectively all corporal punishment and any other forms of degrading treatment or punishment of children by parents and other carers; there is no explicit prohibition of corporal punishment in secondary schools, nor in various public and private institutions and forms of care for children.**
8. **Given the scale and extent of the breaches of children’s right to protection revealed by the quoted research, we hope that the Committee will emphasise the importance and urgency of implementing law reform and other linked comprehensive awareness-raising and educational measures. These are “appropriate and necessary measures” in the terms of article 17.**

Comments on the Greek Government’s Observations

Introduction

9. The Greek Government rejects the complaint on the grounds that its law and other measures “safeguards in their total the rights of children deriving from the ratification of Article 17 of the ESC”. But this complaint is specific and linked to the observations and conclusions of the European Committee of Social Rights relating to protection against corporal punishment and any other forms of degrading punishment or treatment of children.
10. The Greek Government’s Observations range widely over legislative and other measures taken for the purpose of child protection. While welcome, many of these are not relevant to the substance of this complaint. We comment on those that appear relevant to the complaint below.

¹ see, eg, Decision on the Merits, Complaint 1 1998, International Commission of Jurists v Portugal, para. 32.

Corporal punishment in the penal system for young offenders

11. We accept, as we noted in the complaint, that corporal punishment is not among permitted sanctions under the Penal Code or the Code of Criminal Procedure.

Corporal punishment in schools

12. We accept that Presidential Decree 201/1998, applying to primary schools, provides that “Corporal punishment is not allowed” in art. 13, para. 8c. Thus corporal punishment in primary schools is explicitly prohibited. Presidential Decree 104/1979, applying to secondary schools, lists the approved sanctions in art. 27 and corporal punishment is not among them: i) telling off, ii) reprimand, iii) hourly expulsion from the course, iv) expulsion up to 3 days v) expulsion up to 5 days vi) change of school. This “implicit” abolition seems an anomaly, given the explicit prohibition in primary schools. There is no prohibition of any other form of degrading punishment or treatment of children in schools. The more general promotion of positive relationships between teachers and students referred to in the Government’s Observations is welcome but does not in itself constitute a prohibition of all corporal punishment or of any other form of degrading punishment or treatment.

Corporal punishment in other institutions and forms of care

13. Beginning on page 9, there is a section in the Government’s Observations on “Children’s Summer Camps”, including private camps; on adoption; fostering; “closed care”; and child and infant nurseries. In relation to these settings, the Government does not indicate whether corporal punishment is prohibited in the various acts or decrees referred to. In relation to fostering, it states that a Presidential Decree is to be issued (bottom of page 10) to regulate fostering issues. It also refers to a new Act on Adoption, Fostering and Guardianship of a Minor, but not whether it includes a prohibition of corporal punishment.
14. We have reviewed all of the legislation referred to which we could trace and can find no reference to corporal punishment in: Act 749/48 (summer camps); Act 2447/1996 (adoption and fostering); Presidential Decree 337/93 (fostering); Act 2851/22, Royal Decree 273/73 and Act 1431/84 (social care centres); Act 3106/03 (“Child Cities of the National Welfare Organisation”); Legislative Decree 1111/72 (“institutions of Ecclesiastical and private initiative”); Ministerial Decision P2b/2808/97 (child and infant nurseries run by charities). In addition, we have reviewed Act 2721/99 and Act 2479/97 (adoption and fostering) and various Presidential Decrees (95/2000; 337/1993; 138/1992). These do not refer to corporal punishment. As acknowledged above (para. 2), we have traced two Ministerial Decisions which explicitly prohibit corporal punishment: Ministerial Decision Γ2β/OK/8291, issued in 1984, “Regulation of operation of state residential institutions for children” (article 23, para. 2); and Ministerial Decision Π2β, issued in 1997, “Standard regulation of operation of municipal day care institutions and nursery schools” (article 14).
15. The Government also refers, on page 7, to articles of the Greek Constitution. The general constitutional principles quoted are positive and similar to those of many other states in promoting respect for human dignity and special protection for children. If interpreted literally, they would imply prohibition of all corporal

punishment. But in the face of traditional attitudes to children and to parental authority and discipline in Greece, they are plainly not interpreted as prohibiting all corporal punishment and any other form of degrading punishment or treatment.

Corporal punishment in the family

Penal Code:

16. In relation to “the family environment and other institutions”, the Government’s Observations first refer (page 4) to article 312 of the Penal Code. As we note in the complaint, this relates to bodily harm or injury caused by “continuous cruel behaviour”, which is a provision similar to that in most member-states making severe forms of physical cruelty an offence. This provision covers some extreme and persistent forms of corporal punishment, but certainly not all corporal punishment; it sends no signal that all corporal punishment is prohibited. In fact, in the absence of any other explicit prohibition, the text encourages the public and parents to believe that only extreme forms of violence are prohibited.
17. We are also advised that if bodily harm is caused within the framework of parental correctional measures, the unjustified character of the act/crime is removed (articles 308 and 20 Penal Code). This means that in such cases it is not a criminally punishable act.
18. The Government’s observations on the Penal Code also refer (page 4) to various provisions on sexual crimes against minors which are welcome but not relevant to the complaint. They do, however, indicate an acceptance by the Greek Government and Parliament of the necessity of having explicit prohibition of particular offences against children.

Civil Code:

19. The Government refers to general provisions concerning “Relations between parents and children” in the Civil Code and in particular to article 1518. As we noted in the complaint, this provision confirms: “Taking correctional measures is allowed only if they are pedagogically necessary and do not harm the child’s dignity”. (We believe the best translation of the Greek phrase “*sophronistika metra*” is “correctional measures”, rather than “compulsory measures” as in the Government’s observations.)
20. While the limitations in the provision are welcome, they cannot be and are not interpreted as providing a clear message that all corporal punishment is prohibited. Traditionally in Greece, correctional measures have included corporal punishment, and so this would be regarded by many as “pedagogically necessary”. While from a human rights perspective all corporal punishment breaches a child’s human dignity, the final element in the provision is not sufficient to send a message that all corporal punishment and any other form of degrading punishment or treatment are prohibited.
21. The Government’s Observations quote a legal commentary (footnote, page 5), which we understand is the “standard” commentary on Greek Civil Law, suggesting that the limitation on the right of correction would exclude “physical abuse”. But this certainly does not suggest that art. 1518 excludes all corporal

punishment. And in fact in the following paragraph, the commentary indicates that corporal punishment is not prohibited:

“(v) As regards corporal punishment in particular: According to the formulation of the law (meaning Art. 1518 CC) corporal punishment is not prohibited as such, but it will have to be evaluated on a case by case basis taking into consideration what is considered ‘pedagogically necessary’ and ‘an assault on someone’s dignity’...”.² (*unofficial translation*)

22. Another eminent commentator, George Koumandos, Professor of Family Law at the University of Athens, interpreting art. 1518, states: “Correctional measures include light corporal punishment. If corporal punishment exceeds the standard permitted by the law according to modern attitudes because it is either heavier or it is imposed on a more mature child then parental care ceases to be legal and we are talking about bad exercise of parental care (article 1532 Civil Code)”³.
23. It is clear that article 1518 of the Civil Code, far from sending a clear message that all corporal punishment is prohibited, sends at best a confused message and at worst a confirmation of parents’ rights to use moderate forms of corporal punishment.
24. The Government states that “modern legal theory accepts the scientific approach that puts in dispute the necessity of corporal punishment for pedagogic reasons on the one hand, while, on the other hand, it accepts that acts of corporal punishment always cause injury to the child’s dignity”. While these are welcome sentiments, they are plainly not accepted in practice by very large numbers of Greek parents, according to the various research studies into the prevalence of corporal punishment in Greek families quoted in the complaint. We could find no judgments interpreting article 1518 in this way, and even if there were isolated judgments to this effect, the legislation itself would still be inadequate.
25. For the reasons set out above, it cannot be concluded, as the Government suggests in its Observations (top of page 6) that the Penal and Civil Code, through the various provisions mentioned, “safeguard the child’s protection from corporal punishment both by third parties and within the family”.

Educational and other child protection measures

26. From page 6 onwards, the Government’s Observations cover many matters relating in general to the protection of children and their rights, including the welcome establishment of an Ombudsman for Children, prohibition of harmful child labour, services and systems to respond to child abuse and so on. None of these in any way supports the Government’s view that all corporal punishment is effectively prohibited. We would, however, comment that effective child protection by the various bodies mentioned must be undermined in practice by the lack of a clear legislative message to parents and other carers that all corporal punishment is prohibited.

² A. Georgiadis, M. Stathopoulos, *Civil Code: Article Interpretation, Family Law, Vol. VIII, P.N. Sakkoulas publications, Athens, 1997, pp. 183-184.*

³ George Koumandos, *Lectures of Family Law, Ant. Sakkoulas publications, Athens, 1984, p. 196 (in Greek).*

27. On page 7 last paragraph, the Government states that hospital services provide psychosocial support “to children that have suffered from maltreatment, unacceptable corporal punishment, violence and sexual abuse and present mental and behavioural disorders.” The reference to “unacceptable” corporal punishment may suggest that some corporal punishment is regarded as acceptable in this context.
28. On page 14, the Government’s observations suggest that the Children’s Ombudsman intends to organise one-day meetings and seminars targeted on professionals working with children and parents, “in order to support alternative discipline methods and the understanding of respect for the human dignity of minors”. We are aware that there is collaboration planned between the Children’s Ombudsman and the Institute of Child Health and that the Institute – which is financed by the Ministry of Health and Welfare - is also working with the Greek National Committee of UNICEF on a programme devoted to “Prevention of Corporal Punishment”. These are welcome developments, but small-scale in relation to the size of the problem revealed by the research. As far as we can determine, the Government has not at any point made clear public statements that all corporal punishment by parents and other carers is prohibited.

Research into prevalence of corporal punishment

29. The Government’s observations do not refer at all to the research into prevalence of and attitudes to corporal punishment quoted in the complaint (page 6). This research, much of it quoted - and thus presumably accepted - by the Greek Government in its Initial Report under the Convention on the Rights of the Child, shows shockingly high levels of corporal punishment, including severe corporal punishment.⁴ These findings are also referred to in the appended statement from the Greek Ombudsman’s office.
30. Given this research evidence of gross and widespread breaches of children’s rights, the Government has no basis for its claim (page 14/15) that “the issue of children’s corporal punishment in Greece (and its worst form, which is child abuse) is dealt with sufficiently both by law and through the taking of measures and actions (institutions and bodies)”.

⁴ Greece’s Initial Report under the Convention on the Rights of the Child, CRC/C/28/Add.17, para. 174, 25 June 2001.

ANNEX – GREEK OMBUDSMAN STATEMENT

See file attached separately

Collective complaint 17/2003
World Organisation against Torture v Greece

**Additional general explanations and information on the
merits of the complaint**

1. This and other similar complaints (numbers 17-21/2003) submitted by the World Organisation Against Torture concern the human rights of children – who are particularly vulnerable people – to effective protection from all corporal punishment and from any other forms of degrading punishment or treatment of children, within the family and all other settings.
2. In all European countries, there has been a common tradition of corporal punishment being regarded as an acceptable and lawful form of discipline, punishment or control of children. If one goes back centuries, this applied also to “discipline” of wives by their husbands and of servants and apprentices by their masters. Corporal punishment is not simply a particular category of violence against children; its significance is that unlike any other form of inter-personal violence, it still remains in a majority of member-states to varying degrees lawful, or perceived as lawful, common and socially approved.
3. Hitting people breaches their rights to respect for their human dignity and physical integrity. Children are smaller, more fragile people. They are equal holders of human rights. But the acceptance that violent and humiliating forms of discipline breach fundamental human rights - including, where corporal punishment remains explicitly lawful, the right to equal protection under the law - has been relatively recent. It is not easy for children, unenfranchised and generally disempowered, to use legal systems and human rights mechanisms to challenge breaches of their rights, in particular when the perpetrators are their parents.
4. All member states have ratified the UN Convention on the Rights of the Child, requiring them to protect children from “all forms of physical or mental violence” while in the care of parents and others (Article 19). Many states have constitutions asserting these rights. All states have laws prohibiting assault and also varying laws prohibiting cruelty or abuse or maltreatment of children. But these and other relevant developments in international and national law have not in themselves been sufficient to challenge the traditional acceptance of corporal punishment and any other forms of degrading punishment and treatment of children. There has been progressive prohibition of corporal punishment in penal systems, in schools and in other institutions (although enforcement in institutions remains inconsistent). But in the absence of explicit law reform linked to comprehensive awareness-raising, corporal punishment in the family context tends not to be regarded by a majority of parents and the public as prohibited “violence” or as a breach of fundamental rights.
5. This is the overall context in which the European Committee of Social Rights (ECSR) is pursuing respect for children’s rights under the European Social Charter and the Revised Social Charter. As the Committee has emphasised, “the

aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact”.⁵ Thus if the protection from all corporal punishment and any other forms of degrading punishment or treatment is to be realised for children, the legislation must not only be clear and explicit, but also disseminated and understood by the population, including children.

6. The ECSR, in its 2001 observation, has highlighted:⁶
 - That it “attaches great importance to the protection of children against any form of violence, ill-treatment or abuse, whether physical or mental”;
 - That: “Like the European Court of Human Rights it emphasises the fact that children are particularly vulnerable and considers that one of the main objectives of Article 17 is to provide adequate protection for children in this respect”.
 - That the Committee “does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence”.
 - That the Committee “does not consider that there can be any educational value in corporal punishment of children that cannot be otherwise achieved”.
 - That “it is evident that additional measures [our emphasis] to come to terms with this problem are necessary. To prohibit any form of corporal punishment of children is an important measure for the education of the population in this respect in that it gives a clear message about what society considers to be acceptable. It is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable corporal punishment and what is not”.

The observation concludes: “For these reasons, 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.”

7. The Committee, in the context of examining reports on conformity with Article 17, has consistently asked states “whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere”.
8. For example, in its conclusions on Spain’s most recent report under article 17, the Committee stated: “...The Committee notes from the Concluding Observations of the Committee on the Rights of the Child in respect of Spain's first report under the Convention on the Rights of the Child, that Article 154 of the Spanish Civil Code provides that parents ‘may administer punishment to their children reasonably and in moderation’. The Committee notes that this would permit the

⁵ Complaint NO. 1/1998 : International Commission of Jurists against Portugal, Decision on the merits, para. 32.

⁶ European Committee of Social Rights, Introduction to Conclusions XV- 2, Volume 1, 2001

corporal punishment of children, which is in breach of Article 17 of the Charter and it refers to its general observations on Article 17 in the General introduction. The Committee wishes to know whether this provision of the Civil Code has been amended, and further whether legislation prohibits the corporal punishment of children in schools, institutions and elsewhere. Meanwhile, it defers its conclusion.”⁷

9. Some states retain in their law special justifications or defences for parents and some other carers who assault their children as a form of “discipline” or punishment, for example the provision in Spanish law referred to above, the “reasonable chastisement” defence which exists in English common law and is confirmed in statute, and the concept of “justifiable assault” of children, recently introduced into Scottish law by the Criminal Justice (Scotland) Act 2003.
10. In some states, defences have been repealed. But the act of repeal is generally a “silent” reform, sending no clear message to parents and others that the law has changed and corporal punishment is now prohibited. In other member states it appears there has never been a defence. Where there is no explicit defence, the criminal law on assault applies, on paper, equally to disciplinary or punitive assaults of children. But that does not overcome the traditional belief in a right to use corporal punishment.
11. It has been the practice of most member states to prohibit school corporal punishment explicitly. Schools are generally “public” institutions and invariably subject to various forms of inspection and varying degrees of public and parent scrutiny. In the “privacy” of the family home, there is no such supervision and it is for this reason that it is all the more important that parental corporal punishment should be prohibited explicitly and the law well disseminated, in order to send a clear message to parents and children, and to enable all those working with families to deliver a clear message that all violence against children is a breach of human rights and unlawful.
12. The prime purpose of the law in this context is to act as an educational tool and to provide effective deterrence. Given children’s special and dependent status, prosecution of parents for assaulting their children is unlikely to be in children’s best interests except in the most extreme cases where it appears to be the only effective way of protecting the child. Human rights demands that children have equal protection under the law on assault, but guidelines on intervention and prosecution can focus on the best interests of the child and promote wherever possible sensitive and supportive interventions. Law reform, linked to widespread awareness-raising of the law and of children’s rights to protection and promotion of positive, non-violent or degrading forms of discipline, can achieve rapid changes in attitudes and practice. This is likely over time to reduce rather than increase the need for prosecution and formal interventions in families.

International human rights standards

13. The European Committee of Social Rights, in advocating the prohibition and elimination of all corporal punishment and any other form of degrading

⁷ European Committee of Social Rights, Conclusions XV-2, Vol. 2, page 537

punishment or treatment of children, has developed a clear and consistent human rights standard for compliance with Article 17, parallel to that of other human rights bodies.

14. The ECSR refers in its 2001 observation to the European Convention on Human Rights and the jurisprudence of the European Court (in particular, the judgment *A v UK*, 23 September 1998). A particular significance of this unanimous judgment of the Court is its assertion of state responsibility for ensuring adequate protection and effective deterrence from ill-treatment, for children and other vulnerable people, including ill-treatment administered by private individuals. All member states have accepted the Convention and are thus bound by its provisions, including Articles 3 and 8 and the non-discrimination principle of Article 14; some member states have incorporated its provisions into their domestic law.
15. The European Commission on Human Rights and the European Court have rejected applications alleging that prohibition of all corporal punishment can breach family rights or rights to religious freedom.⁸
16. The ECSR also refers in its observation (and in various conclusions) to the jurisprudence of the Committee on the Rights of the Child. This Committee has consistently interpreted the UN Convention on the Rights of the Child as requiring prohibition of all corporal punishment, however light. All member states have ratified the UN Convention, including - without reservation - article 19 and its obligation to take all appropriate legislative, administrative, social and educational measures to protect the child from “all forms of physical or mental violence... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”. The fact that globally 192 states are parties to the UN Convention creates a significant presumption that its relevant provisions are customary law. The Committee on the Rights of the Child is the only body charged with responsibility for interpreting the provisions in the Convention.
17. The acceptance of international and regional human rights standards, common to all member states, does not in itself amount to effective prohibition of corporal punishment of children, as the European Committee of Social Rights has recognised. The Committee on the Rights of the Child has come to the same conclusion in its examination of reports from states. The Committee has recommended prohibition of all corporal punishment in the family to each of the countries subject to collective complaints (17/2003 to 21/2003), and to many other member states. It has emphasised its interpretation of the Convention in concluding observations to more than 130 states in all continents, in the conclusions of two General Discussion days on violence against children (2000 and 2001) and in its General Comment No. 1 on “The aims of Education”.⁹
18. The Committee on Economic, Social and Cultural Rights has also condemned corporal punishment and recommended prohibition. In 1999, the CESCR adopted

⁸ European Commission on Human Rights, *Seven Individuals v Sweden*, admissibility decision, 13 May 1982; European Court of Human Rights, *Philip Williamson and Others v UK*, admissibility decision, 7 September 2000

⁹ Committee on the Rights of the Child documents available at <http://www.unhchr.ch/html/menu2/6/crc/>

a General Comment on “The Right to Education”, covering informal as well as formal education, in which it states: “In the Committee’s view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and both Covenants: the dignity of the individual...” The Committee refers to the jurisprudence of the Committee on the Rights of the Child.¹⁰ In 2002, in its concluding observations on the UK’s fourth periodic report under the International Covenant on Economic, Social and Cultural Rights, the Committee advocated prohibition of corporal punishment in the family, stating: “Given the principle of the dignity of the individual that provides the foundation for international human rights law (see paragraph 41 of the Committee’s General Comment No. 13) and in light of article 10(1) and (3) of the Covenant, the Committee recommends that the physical punishment of children in families be prohibited, in line with the recommendation of the Committee on the Rights of the Child.”¹¹

19. The Committee of Ministers of the Council of Europe first condemned corporal punishment of children in the family in a recommendation to member states on violence in the family adopted nearly 20 years ago in 1985. The recommendation notes in its preamble that “the defence of the family involves the protection of all its members against any form of violence, which all too often occurs among them”. Violence affects “in particular children on the one side and women on the other, though in differing ways” and “children are entitled to special protection by society against any form of discrimination or oppression and against any abuse of authority in the family and other institutions”. The recommendation proposes that member states should “review their legislation on the power to punish children in order to limit or indeed prohibit corporal punishment, even if violation of such a prohibition does not necessarily entail a criminal penalty”. The explanatory memorandum to the recommendation describes corporal punishment as “an evil which must at least be discouraged as a first step towards outright prohibition. It is the very assumption that corporal punishment of children is legitimate that opens the way to all kinds of excesses and makes the traces and symptoms of such punishment acceptable to third parties.” Other relevant recommendations include: “Social measures concerning violence within the family”, Recommendation R (90) 2, and “The medico-social aspects of child abuse”, Recommendation R (93) 2.¹²

Law reforms in member states

20. In Sweden, the first country to institute law reforms to protect children from all corporal punishment in the family, research in the early 1950s found that a large majority of Swedish parents were using corporal punishment; 13 per cent of

¹⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 11 on “The Right to Education”, 1999, HRI/GEN/1/Rev.5, p.83 ; (all the Committee’s documents are at <http://www.unhchr.ch/html/menu2/6/cescr.htm>)

¹¹ Committee on Economic, Social and Cultural Rights, concluding observations on the UK’s Fourth Report under the International Covenant on Economic, Social and Cultural Rights, May 17 2002, E/C.12/1/Add.79, para. 36

¹² Council of Europe Committee of Ministers : all recommendations are available at http://www.coe.int/t/E/Committee_of_Ministers/Home/Documents/

mothers used implements to beat their three to five year-old children.¹³ Law reform began in 1957 by removing from the Swedish Criminal Code a provision protecting parents who caused minor injuries through corporal punishment. The provision allowing “reprimands” in the Parenthood and Guardianship Code was removed in 1966. Despite some accompanying public education campaigns, Sweden found that these repeals did not send a clear message to the public or even to the courts (in 1975 a court acquitted a father accused of maltreating his three year-old daughter, on the grounds that it had not been proved that he had exceeded “the right to corporal chastisement that a parent has towards a child in his custody”). So in 1979, following a recommendation from a Children’s Rights Commission established by the Swedish Parliament in 1977, an explicit prohibition on corporal punishment and other humiliating treatment was added to the Parenthood and Guardianship Code.¹⁴ By 2002, Government-commissioned research found that just 6 per cent of under 35 year-olds believed in any form of corporal punishment; children reported very low levels of corporal punishment.¹⁵

21. Since 1979 it appears that at least 10 and possibly 12 member-states of the Council of Europe have explicitly prohibited all corporal punishment, having previously removed defences or justifications in their criminal or civil codes or both. At least another 10 states have either removed an existing defence, or there has never been a defence – but these states have not as yet gone on to explicitly prohibit all corporal punishment.¹⁶
22. It is clear from Sweden’s well-researched experience that the combination of explicit legal reform, linked to public education, can achieve both rapid and substantial changes in public and parental attitudes and a reduction in violence against children in the family.¹⁷

Views of human rights institutions for children

23. The European Network of Ombudspeople for Children issued in 1999 a position statement urging the Council of Europe and other European institutions and non-governmental organisations concerned with children to work collectively and individually towards ending all corporal punishment of children. The statement concludes: “We urge Governments without delay to introduce legislation prohibiting all corporal punishment, and initiate/support education programmes in positive, non-violent forms of discipline. We commit ourselves, as offices

¹³ Stattin, H., Janson, H., Klackenber-Larsson, I., & Magnusson, D., (1995). *Corporal punishment in everyday life: An intergenerational perspective*, J. McCord, ed. pp 315-347, Cambridge University Press, Cambridge

¹⁴ Swedish Children’s Rights Commission, first report : *The child’s right : 1 A prohibition against beating* ; Bill was passed by the Riksdag on 14 March 1979, coming into force on July 1.

¹⁵ Staffan Janson, *Children and abuse – corporal punishment and other forms of child abuse in Sweden at the end of the second millennium, A scientific report prepared for the Committee on Child Abuse and Related Issues*, Ministry of Health and Social Affairs, Sweden.

¹⁶ Summary table in Council of Europe Forum for Children and Families Document CS-Forum (2003) 5 rev; draft prepared for December 2003 meeting of the Forum from information collected by the Council of Europe and the Global Initiative to End All Corporal Punishment of Children.

¹⁷ For a description of the process of reform in Sweden, see *Ending Corporal Punishment: Swedish experience of efforts to prevent all forms of violence against children – and the results*, Ministry of Health and Social Affairs and Ministry of Foreign Affairs, Sweden, 2001; for a review of research into the effects, see Joan E Durrant, *A Generation Without Smacking: The impact of Sweden’s ban on physical punishment*, Save the Children UK, 2000

committed to improving the lives of all children in Europe, to work actively on this fundamental human rights issue.” (See full text in Annex).

**ANNEX
EUROPEAN NETWORK OF OMBUDSPEOPLE FOR CHILDREN (ENOC)
POSITION STATEMENT ON ENDING CORPORAL PUNISHMENT - 1999**

“The European Network of Ombudsmen for Children (ENOC) urges the governments of all European countries, the European Union, the Council of Europe and other European institutions and non-governmental organisations concerned with children to work collectively and individually towards ending all corporal punishment of children.

“As spokespeople for the children of Europe, we believe that eliminating violent and humiliating forms of discipline is a vital strategy for improving children’s status as people, and reducing child abuse and all other forms of violence in European societies. This is a long overdue reform, with huge potential for improving the quality of lives and family relationships.

“Hitting children is disrespectful and dangerous. Children deserve at least the same protection from violence that we as adults take for granted for ourselves.

“While almost all European countries have eliminated corporal punishment from their schools and other institutions for children, it remains common and legally and socially accepted in the family home in most countries. Many States have laws which explicitly defend the rights of parents and other carers to use ‘reasonable’ or ‘moderate’ corporal punishment. Where the law is silent, corporal punishment tends to be accepted in practice.

“In a growing minority of countries across Europe, all corporal punishment has been prohibited, often as part of a statement of parents’ responsibilities. The purpose of these reforms is not to prosecute more parents, but to send out a clear signal that hitting children is no more acceptable than hitting anyone else.

“The United Nations Convention on the Rights of the Child, ratified by all European states, requires legal, educational and other action to protect children from ‘all forms of physical or mental violence’ while in the care of parents and others. The Committee on the Rights of the Child, the international committee of experts responsible for monitoring implementation, has stated that no level of corporal punishment is compatible with the Convention and has formally recommended prohibition, coupled with education programmes, to eliminate it.

“The Committee of Ministers of the Council of Europe, in a series of recommendations, has condemned corporal punishment and recommended legal reform (see in particular Recommendations R85/4; R90/2 and R93/2).

“We urge Governments without delay to introduce legislation prohibiting all corporal punishment, and initiate/support education programmes in positive, non-violent forms of discipline. We commit ourselves, as offices committed to improving the lives of all children in Europe, to work actively on this fundamental human rights issue.”

ENOC, formed in June 1997, is a new voice for children in Europe. Through the Network, independent offices set up to promote children's rights and interests aim to work together, sharing strategies and collective approaches, and encouraging the fullest possible implementation of the Convention on the Rights of the Child. UNICEF currently provides the Secretariat for the Network.



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Comments on the Collective Complaint 17/2003 lodged against Greece under the European Social Charter.

Athens 22.4.04

The constitutionally sanctioned Independent Authority “The Greek Ombudsman” has operated in Greece since 1998. The Authority mediates between public administration and private individuals, for the purpose of protecting citizens’ rights, ensuring compliance with the rule of law and combating maladministration.

By virtue of Act 3094/2003 an additional, new task, concerning the defence and promotion of children’s rights, has been assigned to the Authority. The newly founded Children’s Rights Department, one of the five departments of “the Greek Ombudsman”, which functions since July 2003 based on the model of the internationally recognised institution of Children’s Ombudsman, has undertaken this task.

The same Act extends the Authority’s scope beyond issues relating to public services (as these are defined by the law) to issues relating to private individuals, physical or legal persons, who infringe upon children’s rights.

Thus, within the framework of defending children’s rights, the Greek Ombudsman also intervenes in those cases where the infringement on the children’s rights takes place within the family, even in the exercise of parental care, and takes action following individual complaints (which may be submitted by the child concerned, a relative or any third party who has direct knowledge of the infringement) or on its own initiative, if it is deemed necessary in cases of serious violations.

In addition, within the framework of promoting children's rights, the Department monitors the implementation and promotes the dissemination of the UN Convention on the Rights of the Child (CRC) and to this end it may prepare special reports on issues considered of great importance.

Also, the Department's activities include -among others- participation in public debate and the undertaking of informative initiatives towards children, parents and professionals who work with children, aiming at the prevention of infringements upon the rights of the child.

With regard to the aim of Collective Complaint 17/2003, lodged against Greece by the international non-governmental organisation “World Organisation Against Torture”, as described in its contents, namely the improvement of effective reinforcement of children’s rights regarding their protection from violence, including all corporal punishment, the Greek Ombudsman notes the following:

According to the law applied in the field of education, corporal punishment is prohibited in primary schools (Presidential Decree 201/1998, article 13 para.8c which repeats the wording of P.D. 497/1981 article 8 para.2), while as far as secondary education is concerned, Presidential Decree 104/1979 does not provide for the exercise of corporal punishment as a sanction imposed in cases of misconduct.

As far as parental physical punishment is concerned, however, there is no explicit prohibition in the provisions of the Greek law. Article 1518 of the Greek Civil Code (CC), referring to the parameters of parental responsibility, allows for the use of disciplinary measures, only “*if these are pedagogically necessary and do not cause injury to the child’s dignity*”.

Modern legal theory¹⁸ has adopted the scientific view which challenges the necessity of corporal punishment for pedagogic reasons on the one hand, while on the other, it accepts that acts of physical punishment always cause injury to the child’s dignity. Also, it has been argued that to the extent to which the 'disciplinary measures' of this article potentially include acts of corporal punishment, which cause physical injury, article 1518 CC is anti-constitutional, being directly in breach of articles 2 para.1 and 7 para.2 of the Greek Constitution.

It is noted that violation of the conditions imposed by article 1518 of the CC amounts to defective exercise of parental responsibility, the consequences of which are defined by article 1532 of the CC and may be the complete or partial removal of parental responsibility.

In accordance with the spirit of the modern view, the Children's Rights Department handles the submitted complaints, which are relevant to cases of parental physical punishment. Given that such complaints are aimed against private individuals, Act 3094/2003 allows for the Greek Ombudsman to take all necessary action to resolve the problems brought to its attention and to propose all required measures for the protection of the rights of the child concerned.

However, the Children’s Rights Department holds and expresses the opinion that there is a need for an **explicit prohibition** of parental corporal punishment. In particular, it argues for a solemn statement in the Greek Civil Code, which will specify that acts of physical punishment do NOT fall within the scope of the permissible disciplinary measures of article 1518 CC.

¹⁸ See *inter alia* : A. Georgiades-M. Stathopoulos, *Civil Code, Commentary article-by-article, VII, Family Law*, P. Sakkoulas, Athenes, 1997, p. 183, E. Kounougeri-Manoledaki, *Family Law, II*, 2nd Edition, Sakkoulas, Thessaloniki, 1998, p. 229, P. Salkigoglou, *The abusive practice of parental care*, A.Sakkoulas, Ahtenes-Komotini, 1993, p. 134

Recent research has indicated that physical punishment is used as a disciplinary method by a high percentage of parents in Greece.¹⁹ Therefore, it is expected that an explicit written provision of this type shall have an effective educational impact on Greek families and Greek society.

In addition, the formal abolition of parental corporal punishment has been considered to be consistent with the European Convention on Human Rights, by the European Commission on Human Rights.²⁰ Also, it would be in full compliance with article 19 of the UN Convention on the Rights of the Child which places a duty on States Parties to take all appropriate measures -including legislative ones- to protect children from all forms of "*physical violence, ... while in the care of parent(s)*".

To this end, the Children's Rights Department, having within its mandate the monitoring of the implementation of the UNCRC, is drafting a public statement and a proposal to promote this specific legislative reform. It is also planning to undertake initiatives for the cooperation with the relevant governmental departments, public organisations, academics, non-governmental organisations with a related scope of action, and other services, in order to improve on and support this proposal.

Any future change in the Greek Civil Code to the desired end should be followed by a campaign informing and sensitising parents towards avoiding the use of any form of physical punishment.

Lastly, within the framework of its scheduled activities for the promotion of children's rights, the Department provides information, advises children about ways of protecting their rights and empowers them to defend themselves against the use of physical punishment or any other form of violence, abuse and exploitation. It also organises seminars addressed to professionals who work with children and their parents, in order to reveal violations against children and to promote alternative disciplinary methods as well as respect for the human dignity of children.

¹⁹ Fereti I. and Stavrianaki M, (1997) "The use of physical punishment in the Greek family: selected socio-demographic aspects", *International Journal of Child and Family Welfare*, 1997 Vol 2., p.206.

²⁰ *X, Y, and Z v. Sweden* 5 EHRR 147 (1982)