

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



3 September 2004

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

Case Document No. 7

**ADDITIONAL OBSERVATIONS FROM
THE GREEK GOVERNMENT ON THE MERITS**

registered at the Secretariat on 3 September 2004



**HELLENIC REPUBLIC
MINISTRY OF EMPLOYMENT
& SOCIAL PROTECTION**

**To Mr. Regis Brillat
Executive Secretary of the
European Social Charter**

**General Directorate of Human Rights
European Social Charter Secretariat**

**Council of Europe
Strasbourg – France**

**Collective Complaint 17/2003
“World Organization Against Torture” against Greece**

Dear Mr. Brillat,

The Hellenic Government insists on its observations on the merits of the allegations of the complainant organization and has no further observations to make. We would like, however, to bring the following issue to the attention of the European Committee of Social Rights: the international NGO's, which fulfill the preconditions set by the Additional Protocol of Collective Complaints (art.1b) exercise the right deriving from this Protocol to submit collective complaints about the non-satisfactory application of the European Social Charter by contracting parties. We consider that, in accordance with the general principles of law, this right should not be exercised excessively against the contracting state. The present complaint of the NGO “World Organization Against Torture” was based on one and only criterion to support its main argument, i.e. that the children in Greece receive corporal punishment from their parents to a degree that makes the phenomenon worrying: it was based on one and only survey published in the press once and more times. We consider that such manners of addressing this type of issues (a press publication, which causes such reactions and has such results concerning the way in which the country is confronted by international organizations, whose it is a member) are, if nothing else, dangerous

due to the fact that they lead to the drawing of uncritical conclusions, which profoundly influence the country's image and make it defend itself for issues that were never thought to be of such extent and degree as to give rise to concern. The complainant NGO used a study to press its argument that the Hellenic Government should amend its legislation on the specific issue. The criticism resulting from such complaints is always welcomed by the Hellenic Government, is appropriately evaluated and results in fertile dialogue. In any case, the criticism should be precise, well founded and based on data, whose correctness and validity have been proven. Therefore, every NGO, which, for various reasons, would like to raise an issue that it would consider so severe as to follow the procedure provided for in the Additional Protocol of Collective Complaints, should first and foremost check its sources and look into the issue in depth (regarding its correctness, validity and purpose).

Within this frame, we contradict any reference made by the complainant organization regarding the social acceptance by the Greek family of even the severe type of corporal punishment of children (para5 of the synopsis included in the reply of the complainant organization to the written observations on the merits made by the Hellenic Government) as an exaggerating, arbitrary and anachronistic comment, which influences negatively the country's image and creates wrong and dangerous impressions.

Respecting secondary education, the complainant organization (para12, comments on the observations of the Hellenic Government, introduction) arrives to a conclusion far from both the legislation in force and the policy in practice at schools: it is clear that, once the corporal punishment of a student is not included in the allowed by article 27 of Presidential Decree 104/79 penalties, which, it should be noted, are prescribed exclusively by law, it is impermissible and consequently illegal. Corporal punishment is a phenomenon socially unacceptable and does not comply with the policy implemented at schools; as a result, in case of corporal punishment imposed by a teacher, the parents of the punished student react immediately and strongly against it.

Despite all this and by reason of the issue raised by means of the complaint under discussion, the Directorate of International Educational Relations, Section C' of International Organizations (General Directorate of International Educational Relations) of the Ministry of National Education and Religions has informed the

competent directorate of the Ministry by field of knowledge (Directorate of Secondary Education), so that the latter deal with the issue and introduce the necessary legislative amendments, so that the relevant legislative provision become more specific and explicit. Furthermore, the Directorate of International Educational Relations has also informed the Pedagogical Institute about the issue.

The conclusion included in para15 of the comments of the complainant organization on our written observations regarding the Constitution, is also utterly arbitrary. The constitutional principles are read only “literally” and “imply” nothing more than what is clearly and unambiguously expressed.

Please, also note that every reference made in our observations on the merits of the allegations of the complainant organization regarding measures and actions of the Greek state as far as children and adolescents are concerned, aims at presenting the general principles governing the country’s policy on issues of children’s protection and the free development of their personality, and is in no way irrelevant to the rebuttal of the main conclusion of the complaint, i.e. that Greece is a country where children are unprotected and often victims of extreme behaviour, even within their family environment.

We would also like to note that with respect to the Penal Law our Penal Code in the 16th Chapter under the title “Bodily Harm”, which includes articles 308-315, provides for and punishes the following punishable acts: 1) simple bodily harm, which is divided into mild, completely mild and inconsiderable harm (article 308 of the Penal Code), 2) unprovoked bodily harm (article 308A of the Penal Code), 3) dangerous bodily harm (article 309 of the Penal Code), 4) grave bodily harm (article 310 of the Penal Code), 5) fatal bodily harm (article 311 of the Penal Code) and 6) bodily harm by negligence (article 314 of the Penal Code). Perpetrators of these crimes, when they are committed against minors may be both their parents and teachers. Moreover, in the same chapter of the Penal Code, the provision of article 312 is also included, in accordance with which “in case no more severe punishable act has been committed: (a) a punishment is imposed on whoever by continuous cruel behaviour causes bodily injury or harm to the health of a person, who has not yet completed the seventeenth year of age or cannot defend him/herself; also when the perpetrator has custody of the victim, or the victim is in his/her protection or a member of his/her household...”. This crime of bodily harm against minors or weak

persons does not constitute a distinguished case of the basic crime provided for in article 308 of the Penal Code, but is a special offence and therefore is self-subsistent and self-existent and is more severe than simple bodily harm due to the special relation between the perpetrator and the victim. The victim's personality as a whole is protected by the law, which means that both his/her physical integrity and health, and his/her smooth psychosomatic development are lawfully protected. Victims of the crime are both any minor and any person who cannot defend him/herself, while offenders may be the parents and teachers of the minor, as well as other persons, e.g. pedagogues, institutions' staff, etc.

The abovementioned provisions of the Penal Code (articles 308-315) in their total safeguard and secure the protection of the minor against any kind of physical violence both from third persons and within the family. This comes in direct conflict with everything that is arbitrarily supported by the complainant organization in its additional observations, i.e. that our penal law forbids only the "extreme forms of violence" against minors and that "without any other explicit prohibition, the law encourages the public and the parents to believe that only the extreme forms of violence are prohibited" (para16 of the comments of the complainant organization on our observations).

Finally, we would like to inform the European Committee of Social Rights that a fertile dialogue has already begun at a level of involved bodies (Ministry of Justice, Ministry of Health: Child's Health Institute – National Social Care Council, Ministry of Education, The Greek Ombudsman) regarding further improvement of the legislation on the specific issue and all its relevant aspects.

Please accept the assurance of my
highest consideration,

THE SECRETARY GENERAL

DIMITRIOS KONTOS