

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



17 August 2004

**Collective Complaint No. 18/2003  
World Organisation against Torture (OMCT)  
v. Ireland**

**Case Document No. 8**

**OMCT'S COMMENTS ON IRELAND'S ADDITIONAL  
OBSERVATIONS ON THE MERITS**

**registered at the Secretariat on 6 August 2004**



**Collective complaint 18/2003:**  
**World Organisation against Torture v Ireland**  
**OMCT comments on Ireland's additional observations - August 2 2004**

1. Additional Observations by the Irish Government on the merits of the complaint were registered on July 9 2004. OMCT would like to submit the following brief comments on these observations, although we suggest the Government has provided no new information in them to challenge the complaint.

2. In relation to paras. 3 to 10 ("Time for reform"), OMCT reiterates that law reform and other measures required to fulfil human rights obligations cannot await majority public support; once identified, states should fulfil their obligations in a timely manner. The complaint makes clear that Ireland has faced a series of recommendations to reform its law, from domestic bodies and the Committee on the Rights of the Child. The complaint did not misrepresent the relevant recommendation of the Law Reform Commission; in fact we quoted it in the complaint and again in para. 5 of our response to Ireland's original observations.

3. OMCT re-emphasises that the existence of the reasonable chastisement defence does self-evidently condone corporal punishment (para. 8), allowing parents to justify assault of their children as lawful punishment. In contrast to the Government's observations (paras. 9 and IO), we maintain there is a significant difference "in practice" between the position adopted by the Irish Government and by OMCT. OMCT believes that removing the common law defence is an essential and urgent step required to bring Ireland into compliance with Article 17 (and also with the UNCRC).

4. The Government's assertion (para. 10) that "Under the current law in Ireland, all such conduct constitutes an assault, unless a court determines that it was reasonable punishment by a parent" is misleading. In fact, if a case goes to court, the onus is on the prosecution to prove that the assault was not reasonable punishment. The existence of the defence plainly inhibits prosecution and supports the belief of a majority of the population that they have a right to hit children as punishment.

5. In paras. 11 to 13, the Government misrepresents OMCT's view of the role of the criminal law. At no point have we suggested that the role of the criminal law is "only" educational. We believe that the criminal law on battery and assault should apply equally to assaults by parents on their children - which would be the effect of removing the common law defence. Trivial assaults between adults are very seldom prosecuted (the *de minimis* principle applies), but this has not led to proposals that they should be de-criminalised. While it is important to recognise the greater vulnerability of child victims of assault, it seems most unlikely, on the same basis, that minor assaults of children would be prosecuted. We noted in our previous observations (para. 34) that in determining whether to pursue a prosecution, the best interests of the child victim should be fully considered; children's dependent status and the delicacy of family relationships must be recognised in determining whether prosecution should go ahead. But this does not in any way lessen children's right to equal protection from assault under the criminal law.

6. It is also obvious that removal of the common law defence will ease prosecution in those cases in which it is regarded as necessary and in the interests of the child. We cannot agree that the "primary" function of the criminal law is to provide for the prosecution of offences (para. 12). The criminal law sets standards intended to educate and deter, as well as providing penalties when those standards are breached.

7. In paras. 14 to 18 ("Non-statutory measures relating to corporal punishment"), the Government suggests that "... ending of corporal punishment within the home forms a clear part of government policy" (para. 16). In the original complaint we drew attention to the extract from the National Children's Strategy which is quoted in para. 15. As noted in para. 6 of our previous observations, inquiries were made on behalf of OMCT earlier this year with the Department of Justice, Equality and Law Reform, Department of Social and Family Affairs, Department of Health and Children, Department of Education, and the National Children's Office, to try to determine if there were any specific materials or programmes related to the target of "ending physical punishment". None was brought to our attention, and the Government has provided no evidence of any. We are aware that some local Family Resource Centres, funded through the Family Support Agency which was established in May 2003, are providing parenting programmes. But beyond the target set in the National Children's Strategy, there is no sign of a clear message from Government to parents "that recourse to corporal punishment is disapproved of and is undesirable" (para. 18).

8. The ISPCC (referred to in para. 18) does indeed support removal of the common law defence, and has campaigned for this for more than 10 years. ISPCC has certainly not advocated delay in implementing this law reform, that it should await a change in public attitudes or implementation of comprehensive public education.

9. In relation to the Government's further comments on "Ireland's Constitutional Framework" (para. 19) we would refer the Committee to our previous observations, paras. 39 to 41. The Government's contention that providing children with the same protection from assault as other family members might be found to be unconstitutional is theoretical. It can provide no justification for avoiding full compliance with the Revised Social Charter or other human rights instruments to which Ireland is a party.

10. In the conclusion to its additional observations, Ireland asserts again that children's foster-care and residential care are covered by legislation prohibiting all corporal punishment and any other form of degrading punishment. While we recognised and welcomed in para. 45 of our previous observations the effect of section 246 of the 2001 Act, and of various regulations, these do not prohibit corporal punishment and any other form of degrading punishment. The guidance, standards, inspection regimes, etc. referred to in the Government's original observations (e.g. paras. 6.13 to 6.16) do not amount to legislation.

11. Finally, we welcome the clear statement that "it is official government policy to end the use of corporal punishment within the home" (para. 20). But we believe that compliance with Article 17 now requires implementation of this policy, through the law reform and other measures indicated in the complaint and in para. 4 of our previous observations.