

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**



29 September 2004

**Collective Complaint No. 20/2003  
World Organisation against Torture (OMCT)  
v. Portugal**

**Case Document No. 7**

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

**registered at the Secretariat on 27 September 2004**



**Collective complaint 20/2003:**  
**World Organisation against Torture v Portugal**

**OMCT comments on Portugal's additional observations – September 27 2004**

1. The “additional explanations” provided by the Government of Portugal do not add significantly to the Government’s previous observations on the merits. OMCT would like to make the following brief comments.
2. The Government suggests (page 2, para. 1) that our analysis has been “purely sociological”, referring to the research study quoted in our response. But the complaint and our subsequent response to the Government’s Observations have, in fact, focused primarily on the lack of explicit prohibition and necessary educational and other measures in the context of the family. There is no clear message to parents and others that all corporal punishment and any other forms of degrading punishment or treatment are prohibited. The Government has not been involved in relevant public education campaigns.
3. The research study was commissioned on our behalf because of the apparent lack of any studies into prevalence of or attitudes to the use of corporal punishment in Portugal. It is hard to see how any state can measure progress towards fulfilling its human rights obligations to eliminate all corporal punishment and other forms of degrading punishment or treatment except through commissioning interview research with parents and children.
4. In paras. 2.1 to 2.4, the Government describes positive and welcome initiatives to respond to ill-treatment of children, and to wider issues concerning children and their rights. However, their existence and activities do not in any way reduce the need for explicit prohibition of all corporal punishment and of any other forms of degrading treatment or punishment, linked to comprehensive awareness-raising and public education.
5. In para. 2.5, the Government suggests there is “no particular and urgent legal advantage” in an express prohibition of corporal punishment in the Civil Code. We refer the Committee to para. 14 of our previous response to the Government’s observations, where we explain why in our view such a reform does appear necessary and urgent. While we accept that the survey we quote is of limited value in assessing prevalence of corporal punishment in the family in Portugal, its results do emphasise the degree of acceptance of “smacking” among a representative sample of Portuguese adults.
6. We re-emphasise the position taken by the European Committee of Social Rights in its case law, that the aim and purpose of the Charter, being a human rights protection instrument, “is to protect rights not merely theoretically, but also in fact”.<sup>1</sup> The Committee, in its 2001 general observation, also emphasised the need for “additional measures” to come to terms with the problem of corporal punishment. We therefore ask the Committee to uphold the complaint.

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<sup>1</sup> See, eg, Decision on the merits, Complaint 1 1998, International Commission of Jurists v Portugal, para. 32.