

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



22 September 2003

COMPLAINT No. 21/2003

World Organisation against Torture (OMCT)

v. Belgium

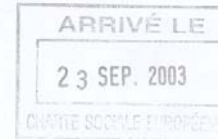
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ORGANISATION MONDIALE CONTRE LA TORTURE
WORLD ORGANISATION AGAINST TORTURE
ORGANIZACION MUNDIAL CONTRA LA TORTURA
WELTORGANISATION GEGEN DIE FOLTER
Directeur Eric Sottas

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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 September 2003

Dear Régis Brillat,

Please find enclosed a collective complaint against Belgium presented by the World Organisation Against Torture (OMCT) under the Additional Protocol to the European Social Charter of 1995 concerning its compliance with Article 17 of the European 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 Belgium
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 Belgium 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

Belgium signed the European Social Charter of 1961 on 18/10/61 and deposited the instrument of ratification on 16/10/90; the Charter entered into force in Belgium on 15/11/90. Belgium signed the Revised Social Charter on 3/5/96. Belgium signed the Additional Protocol to the European Social Charter allowing for a system of collective complaints on 14/5/96 and ratified it on 23/6/03. The Protocol entered into force on 1/8/03.

Applicability of Articles 7 and 17 of the European Social Charter of 1996 to Belgium

According to the declaration contained in the instrument of ratification of the Social Charter, Belgium 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 Committee of Social Rights 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 also note that in 2003, in its conclusions adopted following examination of the **Slovak Republic’s** Report on article 17 of the Social Charter, the Committee “*concludes that the situation in the Slovak Republic is not in conformity with Article 17 of the Charter, as the corporal punishment of children is not prohibited.*” (European Committee of Social Rights, *Conclusions XVI-2 – Slovak Republic*, Article 17, pp 104- 105)

We also note that most recently the Committee has issued similar findings of non-conformity with Article 17, because corporal punishment is not explicitly prohibited, in relation to **France** (*Conclusions 2003 Vol 1*, pages 185, 187), **Romania** (*Conclusions 2003 Vol 2*, pages 62, 65-66) and **Slovenia** (*Conclusions 2003 Vol 2*, pages 175 and 177).

We note that in *Conclusions XV-2*, the European Committee of Social Rights considers Belgium’s conformity with article 17 of the 1961 Charter and notes:

“Protection of children against ill-treatment and abuse
... *The Committee observes from Summary Record of the 226th meeting of the United Nations Committee on the Rights of the Child that corporal punishment is unlawful in schools in Belgium. There is however no prohibition of corporal punishment of children within the family. The Committee observes that the United Nations Committee encourages Belgium to reform its legislation with a view to ensuring the prohibition of corporal punishment within the family. This would be in line with the relevant provision in the Convention on the Rights of the Child.*

“Referring to its general observation with respect to Article 17, the Committee asks the Government whether Belgian legislation contains a prohibition against corporal punishment exercised within the family and in institutions other than schools...”

“Conclusion

The Committee defers its conclusion pending an answer to the questions asked about the extent to which legislation in Belgium prohibits the corporal punishment of children.”

(Conclusions XV-2, Vol. 1, pages 110/111)

Belgium’s obligations under other international human rights instruments

Belgium has also ratified the United Nations Convention on the Rights of the Child, in 1992.

We note that when Belgium’s Initial Report under the Convention on the Rights of the Child was considered by the Committee on the Rights of the Child in 1995, the Committee’s concluding observations stated:

“...The Committee further encourages the State party to consider reforming its legislation with a view to ensuring the prohibition of corporal punishment within the family”.

(20 June 1995, CRC/C/15/Add.38, para. 15)

When Belgium’s second report under the Convention on the Rights of the Child was examined in 2002, the Committee concluded:

“In the area of child abuse, including sexual abuse, the Committee notes with satisfaction the numerous initiatives taken, such as the law on the criminal protection of minors (28 November 2000), amendments to the Criminal Code and adoption of article 22-bis of the Constitution, concerning the protection of the child’s moral, physical and sexual integrity. But it remains concerned that corporal punishment is not expressly prohibited by law...”

“The Committee recommends that the State party:

take legislative measures to prohibit corporal punishment of children in the family, schools and in institutions;

continue to carry out public education campaigns about the negative consequences of corporal punishment, and promote positive, non-violent forms of discipline;

establish effective procedures and mechanisms to receive, monitor, and investigate complaints, including intervening where necessary...”

(7 June 2002, CRC/C/15/Add.178, paras 21 and 22 (a/b/c))

Belgium has also ratified the International Covenant on Civil and Political Rights, in 1983. 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 Belgium

Despite some positive constitutional and legislative changes, there is no explicit prohibition of parental corporal punishment, and the Government has not interpreted the recent changes as implying prohibition. While there is no special defence available to parents and others who use corporal punishment, corporal punishment by parents is tolerated in society.

A Constitutional amendment in 2000, concerning the protection of the child's moral, physical and sexual integrity, has not been interpreted as changing the ways in which parental authority should be exercised.

The Civil Code (1995) states that the parent-child relationship should be one of "mutual respect" (article 371), but this has not been interpreted as prohibiting parental corporal punishment.

Article 398 of the Penal Code (2000) prohibits any form of violence, including "slapping and causing injury". But it appears that this does not effectively criminalise all parental corporal punishment, and prosecution for violence to children tends to be restricted to severe cases. Again, it has not been interpreted by the Government as prohibiting all corporal punishment. An amendment to the Penal Code in the Law Concerning the Penal Protection of Minors (2000, effective 2001) increases the penalties for violence towards children. It also recognises as aggravating factors the victim being a minor and the relation of authority between perpetrator and victim – but again this has not been interpreted as prohibiting all corporal punishment of children by parents.

Corporal punishment is unlawful in schools and the penal system and there are decrees –at least in the Flemish community - which prohibit corporal punishment in institutions for children and in foster-care. But it is not clear that legislation effectively prohibits corporal punishment of children in all settings outside the home, including in non-institutional day care arrangements, throughout the jurisdiction.

Research into prevalence of and attitudes to corporal punishment

There does not appear to have been any significant recent research into the prevalence of corporal punishment within the family in Belgium. A government commissioned study in 1988 into women's experiences of violence found that of 58% who had experienced violence in their lives, 65% of it was at the hands of their parents. 35% of the total sample had experienced violence before the age of 16. Typically, the violence was experienced at a young age (41% in infancy, 21% between the ages of 6 and 12).

Bruynooghe, R. et al. (1988), *Ervaringen van vrouwen met fysiek en seksueel geweld: prevalentie en gevolgen* (Diepenbeek: Centre Universitaire Limbourgeois)

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.

Belgium is failing to conform with its obligations under article 17 of the European Social Charter because it has not explicitly and effectively prohibited all corporal punishment of children within the family and accompanied such law reform with comprehensive awareness-raising on the law and children's rights to protection. The Government does not appear to have taken any action to promote knowledge of children's right to protection and to discourage all corporal punishment and deliberate humiliation of children. The current state of the Constitution and civil and criminal codes does not send a clear message to parents and others that all corporal punishment is prohibited, within the family and in all other settings. It is not clear that legislation and administrative arrangements including inspection effectively prohibit all corporal punishment of children in all settings outside the home throughout the jurisdiction, including for example non-institutional forms of day care.

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

In the absence of explicit prohibition in legislation and comprehensive awareness-raising and public education on children's rights to protection and promotion of positive, non-violent forms of discipline, we believe that hundreds of thousands of Belgium's smallest and most vulnerable citizens are still being subjected to preventable breaches of their rights to respect for human dignity and physical integrity.