

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



8 October 2004

**Collective Complaint No. 21/2003
World Organisation against Torture (OMCT)
v. Belgium**

Case Document No. 7

**SUPPLEMENTARY OBSERVATIONS
BY THE BELGIAN GOVERNMENT
ON THE MERITS**

registered at the Secretariat on 3 September 2004

(TRANSLATION)

In reply to the additional observations of the World Organisation against Torture, dated 30 April 2004, it is Belgium's honour to present the additional observations below to the Committee, within the framework of collective complaint No 21/2003 against Belgium.

The present observations are intended to make it clearer to the Committee that the Belgian legal system, in its current form, provides adequate protection for children against any form of violence, and that, what is more, numerous measures intended to make this protection effective on a day-to-day basis are applied by the various Belgian authorities responsible in this sphere.

The Belgian Government therefore believes that it is complying with Article 17 of the European Social Charter, in the 1961 version thereof, as subsequently interpreted by the Committee, and that the allegations against it by the OMCT are therefore unfounded.

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The Belgian Government wishes firstly, replying to the OMCT's comments in reply, to make a few additional observations about its legal system in this sphere.

As far as the prohibition under the criminal law of corporal punishment for children is concerned, it was demonstrated in the Belgian Government's previous observations that such acts can be penalised in the current position of Belgian law and case-law¹. Generally speaking, however, it may be noted that minor assaults, even where they are prosecuted, do not necessarily lead to criminal conviction, which is usually reserved in practice for acts of a minimum level of seriousness, in view of their severe consequences. It should be noted in this respect that, in disputes between parents and their children, these consequences may prove particularly difficult for the children.

Belgium intends to reassure the Committee that it sincerely shares its concern actively to combat every form of violence against children. In this context, like the OMCT, Belgium considers that the bringing up of children without recourse to any form of corporal punishment, should be the general rule. The Belgian Government nevertheless remains convinced that the best way of achieving this ambitious objective lies mainly in prevention and in the raising of families' awareness of the problem, and not in punishment.

¹ In its observations in reply (§ 16, p.6), the OMCT claims that the Belgian Government in its observations refers solely to court decisions relating to severe cases of abuse. This affirmation is inaccurate. In fact the Belgian Government, in its previous observations, cites decisions relating to acts which are not serious and to blows inflicted without excess or cruelty.

The OMCT itself says that the criminal law is not an appropriate way of eradicating the problem of corporal punishment: "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" (cf additional observations, § 12, pp 17-18).

What is more, Belgium considers, over and above this fact, that a criminal-law approach to this matter may constitute a major obstacle to the search for long-term solutions, for it might well damage communication within the family, rather than helping to improve it.

On this issue, it is important to note the joint decision of Claude Lelièvre, Delegate General of the French-speaking Community for Children's Rights, and Ankie Vandekerckhove, Commissioner for Children's Rights in the Flemish-speaking Community, not to favour a repressive approach, taking the view that, in this respect, it is appropriate to formulate a prohibition "in a more positive way, promoting non-violent child-rearing, based on the child's right to integrity, care and a safe upbringing" (cf additional observations of the OMCT, p. 4).

Claude Lelièvre and Ankie Vanderkerckhove thus took the view that "it would be more effective ... to work on explicit legislation in the field of civil law", taking a similar line to Sweden, and also expressed the view that "an article in the civil code could also serve as an explicit basis for campaigns and other government action" (cf additional observations of the OMCT, p.4).

The Belgian Government supports the line taken by Claude Lelièvre and Ankie Vanderkerckhove, namely that a prohibition should be formulated in a positive way, promoting non-violent child-rearing based on the child's right to integrity, care and a safe upbringing, but reminds the Committee that this approach has already been given concrete expression in Belgian law, mainly through the Civil Code and Constitution.

In practice, as already explained, Belgium's civil system is currently largely guided by the idea of protecting and defending the greater interest of the child. At this point, Belgium wishes again to emphasise the importance of Article 371 of the Civil Code. The introduction of this provision, enshrining the fundamental concept of mutual respect between the child and his or her mother and father, effectively bears witness, within Belgian society, to a significant change in mindset relating to the way in which the exercise of parental authority is viewed.

What is more, it is wrong to claim, as does the OMCT, that Article 371 of the Civil Code does not, even implicitly, prohibit the administration of corporal punishment to a child (cf additional observations of the OMCT, § 17, p. 6). In practice, the intended effect of the replacement in Belgian legislation of children's sole duty of submission to their parents by the concept of mutual respect was to emphasise the equality between them as human beings, and

not only as members of the family². Thus there is no doubt that Article 371 of the Civil Code prohibits, at the very least implicitly, the administration of corporal punishment to children, this type of violence never having been tolerated, what is more, among adults/parents.

Lastly, where this provision is concerned, Belgium wishes to draw the Committee's attention to the appropriate nature of Article 371 of the Civil Code as a basis for awareness-raising campaigns and other relevant measures in the future.

Belgium wishes to remind the Committee at this point of the main aim of the present complaint, namely the strengthening of the protection of children on a day-to-day basis. In its view, accumulating legislative texts could not be an appropriate way of doing this³. In this respect, Belgium is convinced that the true solution lies in the continuing and regular development on the ground of measures actively pursuing this objective.

Consequently, where the introduction of a new provision to the Civil Code explicitly prohibiting the corporal punishment of children is concerned, Belgium considers, on the one hand, that this would not be an appropriate means of achieving the desired aim of the present complaint, and, on the other, that it would be superfluous in view of the existing legal arsenal and campaigns and/or measures relating to corporal punishment, which could undeniably be based on Article 371 of the Civil Code and/or Article 22bis of the Constitution.

Where this article of the Constitution is concerned, enshrining every child's right to respect for its moral, physical, psychological and sexual integrity, it is important to point out that this is a natural extension and explicit strengthening of Article 371 of the Civil Code. Both of these provisions in fact specify the most fundamental obligations of parents in the exercise of their authority over their child(ren). Belgium thus considers, in this context, that these two fundamental provisions can usefully and appropriately be used for measures and/or campaigns intended to advocate child-rearing without recourse to any form of violence.

It is also important to note that the OMCT's interpretation of Article 22bis of the Belgian Constitution is incorrect. The OMCT effectively claims that "the second sentence indicates that other legislative provisions are needed to make the right effective" (cf additional observations, § 14, p.6).

This affirmation is manifestly based on a misunderstanding of Belgium's constitutional system. In practice, the word "*garantissant*"

² Parliamentary document, House of Representatives, proposed legislation amending the Civil Code in respect of the mutual rights and duties of parents and children, deposited by Mr Coveliers, No 1187/1, 1993-1994 session, page 3.

³ In its observations in reply (§ 18, p.6), the OMCT refers to the bill proposed by Mrs Sabine de Béthune. However, the OMCT does not demonstrate the added legal value of this proposal, bearing in mind the legal arsenal which already exists in Belgium in this sphere.

(guaranteeing) does not signify in any way that children's right to respect for their moral, physical, psychological and sexual integrity is without any effect unless given concrete expression by the various legislative bodies. The term is more one which indicates that these legislative bodies, each in its own sphere of responsibility, have a positive obligation to make this right "effective and concrete".

Thus, by enshrining within the body of the supreme text of its legal order every child's right to respect for its moral, physical, psychological and sexual integrity, Belgium has not only sent a wide-ranging message to its population, but also, at the same time, offered the most secure legal guarantee of this fundamental right. In practice, Belgium's constitutional law has direct effects, as well as taking priority over every other source of law. Thus Article 22bis of the Constitution may be directly relied upon in Belgian courts.

Lastly, still on the subject of Article 22bis of the Constitution, the OMCT affirms that this article and the Dutroux case are inextricably linked, attempting in this way to restrict the applicability of this provision to acts of extreme violence committed against children (cf additional observations of the OMCT, § 15, p. 6).

It has to be stated that what the OMCT says is again inaccurate. It is in fact very clear from the work done in parliament that the context into which Article 22bis of the Constitution fits is far broader than the Dutroux case, and that this provision therefore has a far wider area of applicability.

In the report to parliament dated 18 February 2000, it is stated that "the examination of the bill was begun on the 10th anniversary of the signing, in New York, of the UN Convention on the Rights of the Child. The bill is an attempt to provide a concrete translation of the rights of the child through a clear constitutional measure"⁴. Undeniably, the proposal to revise Part II of the Constitution, which will subsequently culminate in a new Article 22bis in the Constitution, is not restricted solely to sexual acts committed against children: "A non-violent relationship with children can no longer be limited to an informal activity or to a personal style of upbringing by some individuals. A non-violent relationship must become a standard towards which we as a society must progress, not only because too many children are still victims of violence, but also so that children and their integrity are fully respected at every moment. The adoption of a provision enshrining the right to moral, physical, psychological and sexual integrity in the Constitution would be the democratic expression of the wish to recognise this right"⁵ (the underlining is by the Belgian Government).

⁴ Parliamentary document, House of Representatives, Revision of Part II of the Constitution to introduce new provisions to protect children's right to moral, physical, psychological and sexual integrity; doc. 50 0424/002, 18 February 2000, 1999-2000 session, page 3.

⁵ Parliamentary document, Senate, Revision of Part II of the Constitution to introduce new provisions to protect children's right to moral, physical, psychological and sexual integrity; doc.2-21/4, 13 January 2000, 1999-2000 session, page 3.

The extended scope of Article 22bis of the Constitution, including corporal punishment, also emerges very clearly from the following declaration: "But violence sometimes also appears in the normal relationship between adults and children. Curiously, this violence is sometimes justified by the good of the child. Corporal punishment, which is still in force or tolerated in certain countries, is the best-known form of violence in this context"⁶ (the underlining is again by the Belgian Government).

It therefore appears that Article 22bis of the Belgian Constitution conveys a message which is – absolutely –not limited just to the atrocities committed during the Dutroux case. Belgium therefore reiterates that this provision seems to it appropriate for use in future campaigns and/or measures relating to corporal punishment. In this respect, it should be noted that, during the work done in parliament, the educational, and therefore preventive, potential of Article 22bis of the Constitution was highlighted: "The consecration of this right in the Constitution should be an important step towards a wide-ranging public debate on violence in general, and about violence against children, in particular"⁷.

Lastly, with reference to the comparative law argument contained in its previous observations, Belgium wishes to reply to the inaccurate affirmation by the OMCT that "the Government argues that the law in Belgium has never authorised parental corporal punishment, and so explicit prohibition is not needed" (cf additional observations of the OMCT, § 10, p. 5).

In its previous observations, Belgium had at no time drawn the conclusion from the non-existence in the past of explicit permission to administer corporal punishment to children that there was no need now for a formal prohibition of such behaviour. While Belgium did refer, in its previous observations, to comparative law, it did not do so to justify the absence from its own domestic law of an explicit prohibition of corporal punishment, but to draw the Committee's attention to the fact that, when a legal system is being appraised, it is appropriate to analyse in detail its entire internal logic.

Thus Belgium rejects the comparative-law approach suggested by the OMCT, leading to the conclusion that Belgium has violated the European Social Charter, simply because its current domestic law does not contain a relevant provision exactly identical to those included in Swedish and Bulgarian law.

Bearing in mind all the arguments put forward to the Committee by Belgium in the framework of the present complaint, Belgium considers that, in practice, its current legal system as a whole is sufficient to protect children from corporal punishment. Undeniably, Belgium considers that this system, in conjunction with the practical measures taken by the responsible authorities,

⁶ Idem, page 56.

⁷ Parliamentary document, House of Representatives, see above, doc. 50 0424/002, page 3.

particularly to raise public awareness, does constitute a comprehensive and coherent approach in this sphere.

With more specific reference to these measures, particularly the awareness-raising measures, Belgium reiterates that these are largely the responsibility of the Communities, which, each in its own way, have deployed, and are still continuing to deploy, extensive resources to fulfil their tasks in this respect.

In practice, as already explained in the previous observations by Belgium, the Flemish-speaking Community and French-speaking Community alike have, since the end of the nineties, been conducting annual campaigns on child-rearing which respects first and foremost the child's interest and person, advocating non-violence in the family circle (see Appendices I and II). It clearly emerges from these campaigns that one of the key messages which it is the authorities' intention to convey is the importance of a family atmosphere favourable to the harmonious development of both children and parents, implying the exclusion of the use of any form of violence. Any form of ill-treatment, however "minor", is condemned as inadmissible and, furthermore, as ineffective. These campaigns nevertheless are carried out more with a preventive than a repressive aim.

Nor have the federal authorities, for their part, remained inactive in this sphere. In 2002, they funded a study of domestic violence in the broad sense, one more specific subject of which was child abuse. As a result of this study, a guide was drawn up for use by caring staff in the general medical and emergency services (see Appendix III). This guide itself is part of a strategy to prevent ill-treatment in any form. It is significant to note in this respect that the definition given for "child abuse" is the same as that which appears in a World Health Organisation (WHO) report: *"Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power."* (Report of the Consultation on Child Abuse Prevention, WHO, 1999).

The use of this very broad definition of child abuse bears witness to the Belgian authorities' wish not to minimise either the importance of "minor" acts of violence, such as corporal punishment, or their negative effects on children.

The OMCT is wrong to claim in its observations that all these awareness-raising campaigns do not constitute a coherent and comprehensive attempt by the Belgian authorities to inform parents that all corporal punishment and any other form of degrading treatment or punishment of their children is prohibited.

In the light of the above, Belgium considers that it has demonstrated that, notwithstanding the arguments of the OMCT, it fully satisfies the requirements of Article 17 of the European Social Charter, as interpreted by your Committee.

For these reasons,

Belgium asks the European Committee of Social Rights to declare the present collective complaint unfounded.

The Agent of the Belgian Government

Jan Devadder
Director General
Legal adviser

3 September 2004