

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



5 October 2004

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

Case Document No. 8

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

registered at the Secretariat on 4 October 2004

Collective complaint 21/2003:
World Organisation against Torture v Belgium

OMCT comments on Belgium's additional observations – October 1 2004

1. We would like to comment briefly on the further observations submitted by the Government of Belgium on September 3 2004. We welcome the Government's reiteration of its statement that it believes that children should be brought up without recourse to any form of corporal punishment, etc. However, 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".¹ The Committee, in its 2001 general observation, also emphasised the need for "additional measures" to come to terms with the problem of corporal punishment. The Government has certainly not publicised its policy to the population and the current law sends no clear message that all corporal punishment is prohibited.
2. We have already acknowledged that the Criminal Code prohibits any form of violence and that recent changes have increased penalties for violence towards children. The Government is wrong to suggest that OMCT believes that criminalisation is not one necessary and appropriate method for the eradication of corporal punishment. We believe that article 17 of the Charter, as interpreted by the European Committee of Social Rights, does require the criminalisation of any assault of a child which would be treated as a criminal assault if the victim was an adult. But criminalisation does not have to imply automatic or frequent prosecution. We are in apparent agreement with the Government in noting in our additional observations that: "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".
3. The comments we quoted in our response (para. 8) to the Government's observations from Ankie Vandekerckhove, Kinderrechtencommissaris for the Flemish Community, and Claude Lelièvre, Délégué Général aux Droits de L'enfant in the French Community, plainly call for explicit prohibition of corporal punishment in the Civil Code.
4. The Government goes on to suggest that "this approach has already found concrete expression in Belgian law, more particularly in the Civil Code and the Constitution". As set out in detail in our previous response, we emphasise that there is no explicit prohibition of corporal punishment in the Constitution or Civil Code, and no clear message to parents, children and others that all corporal punishment and any other forms of degrading punishment or treatment of children are prohibited.
5. We agree with the Government that introduction of an explicit prohibition in the Civil Code would not alone be an "adequate" means to implement article 17

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

effectively; plainly comprehensive awareness-raising and public education are required to accompany explicit prohibition. We welcomed in our previous response certain awareness-raising campaigns conducted by the Communities (not annual), but underlined that they do not add up “to a consistent and comprehensive attempt to inform parents that all corporal punishment and any other form of degrading treatment or punishment are prohibited” (para. 24).

6. We cannot agree with the Government’s claim that explicit prohibition is “superfluous”, for the reasons set out in our previous response. We reiterate that explicit prohibition is an “appropriate and necessary” measure in the terms of article 17. We ask the Committee to uphold the complaint.