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Collective Complaint 20/2003 under the Revised Social Charter against Portugal

Written question No 495 to the Committee of Ministers
presented by Mrs Bargholtz

In a decision first reported to the Committee of Ministers in January 2005 and made public in May 2005, the European Committee of Social Rights concluded by 9 votes to 4, in relation to Collective Complaint no. 20/2003 against Portugal, that there was no violation of Article 17 of the Revised Charter.

The Committee concluded (see paras. 42 and 43 of the decision on the merits): "Given Section 143 of the Criminal Code as interpreted by the Supreme Court, the Committee holds that in Portugal the prohibition of all forms of violence has a legislative basis; it has the potential to reach all forms of violence regardless of where it occurs or to the identity of the alleged perpetrator; and it is backed by adequate, dissuasive and proportionate sanctions.

"As for the Complainant organisation's claim that Portuguese law is ineffective in practice, the Committee considers that the poll which the OMCT used to back its allegations does not provide sufficient evidence that, despite the absolute legal ban on all forms of corporal assault, corporal punishment is viewed as a legitimate means of education and discipline of children and is therefore a common behaviour in Portuguese society."

However, in a judgment publicized in April 2006, Portugal's Supreme Court declared that corporal punishment by parents and other caregivers was both lawful and necessary. This suggests that the decision of the European Committee of Social Rights in response to the collective complaint against Portugal was unsafe.

Mrs Bargholtz

To ask the Committee of Ministers,

What action is the Committee of Ministers taking, in the light of the recent Supreme Court decision, to ensure that children in Portugal are effectively protected from all corporal punishment in the home and in non-institutional childcare facilities and arrangements, as required by the Revised Social Charter?

In view of the fact that this decision concerns the basic protection of the rights of children, whom the human rights mechanisms of the Council of Europe have recognized as particularly vulnerable, what action does the Committee of Ministers propose to take to expedite action?

*Signed*¹:

¹ SOC: Socialist Group
EPP/CD: Group of the European People's Party
ALDE: Alliance of Liberals and Democrats for Europe
EDG: European Democratic Group
UEL: Group of the Unified European Left
NR: not registered in a group

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