

Doc. 11043
2 October 2006

Collective complaint 18/2003 under the Revised Social Charter against Ireland

Written question No 492 to the Committee of Ministers

Reply from the Committee of Ministers
adopted at the 974th meeting of the Ministers' Deputies (27 septembre 2006)

I. Written Question No. 492 by Mrs Bargholtz (Doc. 10951)

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 11 votes to 2, in relation to Collective Complaint no. 18/2003 against Ireland that there was a violation of Article 17 of the Revised Charter.

The Committee noted that its case-law is to the effect that the prohibition of all forms of violence must have a legislative basis. The prohibition must cover all forms of violence regardless of where it occurs or of the identity of the alleged perpetrator. Furthermore the sanctions available must be adequate, dissuasive and proportionate.

The Committee noted that corporal punishment of children within the home is permitted in Ireland by virtue of the existence of the common law defence of reasonable chastisement. Although the criminal law will protect children from very serious violence within the home, it remains the fact that certain forms of violence are permitted. The Committee therefore held that the situation is in violation of Article 17 of the Revised Charter.

The Committee also considered the situation of children in foster care, residential care and certain childminding settings. It took note of the fact that there exist guidelines, standards, registration schemes and inspections. However, it noted that these do not have the force of law and do not alter the existence of the common law defence which remains *prima facie* applicable. It therefore found that children in these situations are not adequately protected against corporal punishment and that the situation therefore constitutes a breach of Article 17 of the Revised Charter.

Mrs Bargholtz

To ask the Committee of Ministers,

What action is the Committee of Ministers taking to ensure that children in Ireland are effectively protected from all corporal punishment in the home, in foster-care, all residential care and all day-care settings, 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?

II. Reply by the Committee of Ministers

1. The Committee of Ministers wishes to inform the Honourable Parliamentarian that on 8 June 2005, it adopted Resolution ResChS(2005)9 in relation to Collective complaint No. 18/2003 introduced by the World Organisation against Torture (OMCT) against Ireland. In this resolution, having regard to the report transmitted by the European Committee for Social Rights (ECSR) containing its decision, in which the latter found that the lack of an adequate prohibition on the corporal punishment of children within the home, in certain child care settings, foster care and in residential care, constituted a violation of Article 17 of the Revised Charter, the Committee took note of the information communicated by the Permanent Representative of Ireland to the Council of Europe during its 924th meeting (20 April 2005). This information indicated the intention of the Department of Health and Children to seek legal advice in relation to amending the regulations to make more explicit the prohibition of corporal punishment of children in care and on the need for any change required in primary legislation. It also indicated the Irish Government's intention to keep the introduction of an outright ban on corporal punishment under review.

2. In the framework of the reporting system provided for under the Charter, states are invited to provide information on developments following the decision on the complaint. The ECSR will examine any developments and decide whether the situation is in conformity with the Charter.

3. The Committee of Ministers has been informed by the Irish authorities that there is an explicit prohibition of corporal punishment of children in special care units, residential schools and in pre-schools. It is the intention of the Department of Health and Children to seek legal advice in relation to amending the regulations to make more explicit the prohibition of corporal punishment of children in other forms of care, such as foster care, in the care of child minders and pre-schools with less than three children, and on the need for any change required in primary legislation. Moreover, the issue is under continuous review and it is anticipated that there will be an appropriate time for the introduction of an outright ban on corporal punishment within the family setting which will be widely accepted and endorsed by society. The Irish Government's approach will continue to be the development and promotion of both policy and legislation working in partnership with family NGOs and other agencies. Its commitment to ensuring the well-being of children and young people is demonstrated by the adoption in 2000 of a ten year National Children's Strategy and this commitment was reiterated by the establishment of the Office of the Minister for Children.

4. Finally, the Committee of Ministers draws the attention of the Honourable Parliamentarian to the Council of Europe three-year action programme "Building a Europe for and with Children" (2006-2008), which was launched at a conference organised in Monaco in April this year. This programme aims, *inter alia*, at combating all forms of violence against children. Given that the member states of the Council of Europe have entered into numerous commitments under general human rights conventions and specific conventions on children's rights and that human rights treaties of the Council of Europe (as well as the UN Convention on the Rights of the Child) require states to prohibit and fight all forms of violence and ill-treatment of children, the programme will assist member states in fulfilling their obligations under such treaties. It will be done in particular by implementing integrated prevention policies and alerting professional circles and the general public to the problem. The programme will address all forms of violence, wherever it takes place (family, school, resident institutions, the community, media and cyberspace) with a special attention to fighting sexual abuse and corporal punishment. The programme will also focus on new forms of violence stemming from the use of the new information technologies, namely child pornography and grooming via Internet and mobile phones.