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

Written question No 495 to the Committee of Ministers

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

I. Written Question No. 495 by Mme Bargholtz (Doc. 10954)

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?

II. Reply by the Committee of Ministers

1. The Committee of Ministers wishes to inform the Honourable Parliamentarian that subsequent to its decision in relation to Collective complaint No. 20/2003 introduced by the World Organisation against Torture (OMCT) against Portugal, in which the European Committee for Social Rights (ECSR) found that there was no violation of Article 17 of the Revised European Social Charter, that Committee, under the reporting procedure provided for in the Charter, asked the Portuguese authorities how children were effectively prohibited from corporal punishment in the home.¹
2. In May 2006, the OMCT lodged a further complaint against Portugal: World Organisation against Torture (OMCT) against Portugal No. 34/2006. The complaint again relates to Article 17 (right of children and young persons to social, legal and economic protection) of the Revised Social Charter and it is alleged that domestic law does not explicitly nor effectively prohibit all corporal punishment of children. The ECSR declared the complaint admissible on 12 June 2006 and is currently considering the merits of the complaint.
3. The Committee of Ministers has been informed by the Portuguese authorities that in order to increase the protection of children from violence and ill-treatment, the Penal Code will be revised and a new crime will be created, which sanctions the physical and psychological ill-treatment of children and the use of violence against minors. In addition, the Family Law will be revised, and in order to reinforce the prohibition of corporal punishment of children, a campaign aimed at informing and motivating society is being prepared in partnership with the Portuguese Committee of UNICEF.
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.

¹ Conclusions XVII-1, p. 695.