

DECISION ON ADMISSIBILITY

World Organisation Against Torture (OMCT)
v. Portugal

Complaint No. 34/2006

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 216th session attended by:

Mr. Jean-Michel BELORGEY, President
Mrs Polonca KONČAR, First Vice-President
Mssrs Andrzej SWIATKOWSKI, Second Vice-President
Stein EVJU, General Rapporteur
Rolf BIRK
Matti MIKKOLA
Nikitas ALIPRANTIS
Alfredo BRUTO DA COSTA
Tekin AKILLIOĞLU
Mrs Csilla KOLLONAY LEHOCZKY
Mr. Lucien FRANÇOIS
Mrs Beatrix KARL

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter,

Having regard to the complaint dated 31 May 2006, registered on the same date as number 34/2006 and lodged by the World Organisation Against Torture ("OMCT) and signed by its Director, Mr Eric SOTTAS, requesting the Committee to find that Portugal is not in conformity with Article 17 of the Revised European Social Charter ("the Revised Charter");

Having regard to the documents appended to the complaint;

Having regard to the Revised Charter, and in particular to Article 17 which reads as follows:

Article 17 – The right of children and young persons to social, legal and economic protection

Part I: " Children and young persons have the right to appropriate social, legal and economic protection."

Part II: " With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environ-ment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- 1 a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
- b to protect children and young persons against negligence, violence or exploitation;
- c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
- 2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools."

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session ("the Rules");

Having deliberated on 12 June 2006;

Delivers the following decision, adopted on the above date:

1. OMCT alleges that, in the light of the Supreme Court judgment of 5 April 2006 (06P 468), the situation in Portugal is not in conformity with Article 17 of the Revised Charter since domestic law does not explicitly nor effectively prohibit all corporal punishment of children. According to OMCT, the effect of this judgment is explicitly contrary to what the Committee previously understood as being the effect of prior judgments, of the same Court, on which it based its dismissal of its previous application. Moreover, OMCT invites the Committee to give precedence to this complaint because it concerns the rights of vulnerable children and because OMCT considers that the interpretation of Article 17 is clear in this respect.

THE LAW

2. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Portugal on 30 May 2002 and entered into force for this state on 1 July 2002, the complaint has been submitted in writing and concerns Article 17 of the Revised Charter, a provision accepted by Portugal when it ratified this treaty and to which it is bound since the entry into force of this treaty in its respect on 1 July 2002.

3. Moreover, the grounds for the complaint are indicated.

4. The Committee also observes that, in accordance with Articles 1 b) and 3 of the Protocol, OMCT is an international non-governmental organisation with participatory status with the Council of Europe. It is included on the list, established by the Governmental Committee, of international nongovernmental organisations that are entitled to lodge complaints.

5. The Committee has already considered that OMCT has particular competence. See, *inter alias*, OMCT v. Portugal, complaint n° 20/2003, decision on admissibility of 9 December 2003 §5. It confirms this decision since no significant change has taken place.

6. The complaint is signed by Mr Eric SOTTAS, who is Director of the organisation. The Committee therefore considers that the complaint complies with Rule 23. (See, *inter alias*, OMCT v. Portugal, complaint n° 20/2003, decision on admissibility of 9 December 2003 §5).

7. For these reasons, the Committee, without finding it necessary to invite the Government to submit observations on admissibility (Article 6 of the Protocol and Rule 29§3), on the basis of the report presented by Mr Jean-Michel BELORGEY and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the defending state of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Invites the Government to make written submissions on the merits of the complaint by 30 September 2006 including a translation of the Supreme Court's judgment of 5 April 2006 in one of the Council of Europe's official languages.

Invites OMCT to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 30 September 2006, should they so wish.

In application of Article 7§2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27§2 of the Charter and to invite them to make observations by 30 September 2006.

Jean-Michel BELORGEY
President and Rapporteur

Regis BRILLAT
Executive Secretary