

DECISION ON ADMISSIBILITY

COMPLAINT No. 20/2003

From the World Organisation against Torture (OMCT)
against Portugal

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (hereafter referred to as "the Committee"), during its 198th session in the following composition:

MM. Jean-Michel BELORGEY, Président
Nikitas ALIPRANTIS, Vice-Président
Mrs. Polonca KONCAR, Vice-Présidente
MM. Stein EVJU, Rapporteur General
Rolf BIRK
Matti MIKKOLA
Konrad GRILLBERGER
Tekin AKILLIOĞLU
Mrs. Csilla KOLLONAY LEHOCZKY
MM. Lucien FRANÇOIS
Andrzej SWIATKOWSKI

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

Having regard to the complaint registered as number 20/2003, lodged on 31 July 2003 by the World Organisation against Torture (hereinafter referred to as "OMCT"), represented by its President Mr. Eric SOTTAS, requesting that the Committee find that Portugal fails to apply in a satisfactory manner Article 17 of the Revised European Social Charter (hereafter referred to as "Revised Charter");

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on 30 October by the Portuguese Government (hereafter referred to as “the Government”),

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

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

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment 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 (hereafter referred to as “the Protocol”);

Having regard to the Rules of Procedure adopted by the Committee on 9 September 1999 during its 163rd session (hereafter referred to as “the Rules of Procedure”);

After having deliberated on 9 December 2003;

Delivers the following decision, adopted on the above date:

1. The OMCT alleges that Portugal does not comply with Article 17 of the Revised Charter because Portuguese law has not effectively prohibited corporal punishment of children, nor has it prohibited other forms of degrading punishment or treatment of children and provided adequate sanctions in penal or civil law.
2. The Government does not contest that the complaint respects the conditions for admissibility laid down in the Protocol.
3. The Committee notes that, in conformity with Article 4 of the Protocol, which was ratified by Portugal on 20 March 1998 and has entered into force for this State on 1 July 1998, the complaint is presented in writing and concerns Article 17 of the Revised Charter, provision accepted by Portugal on 30 May 2002 at the time of ratification of the Revised Charter.

4. It also notes that, in conformity with Article 1 b) and Article 3 of the Protocol, the OMCT is an international non-governmental organisation with consultative status with the Council of Europe. It appears in the list of non-governmental organizations entitled to lodge a complaint established by the Governmental Committee.

5. The Committee considers that the OMCT is a non-governmental organization whose aim is to contribute to the struggle against torture, summary executions, disappearances, arbitrary detention, psychiatric internment for political reasons, and other cruel, inhuman and degrading treatment has filed a complaint for which it is particularly qualified according to Article 3 of the Protocol.

6. Finally, the complaint submitted on behalf of the OMCT is signed by Mr Eric SOTTAS, Director of the organization, entitled to act in all matters relating to the organisation's aims. The Committee, therefore, considers that the condition provided for in Article 20 of its Rules of procedure is fulfilled.

7. For these reasons, the Committee, on the basis of the report presented by Mr. GRILLBERGER, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE.

In application of Article 7 para. 1 of the Protocol, requests the Executive Secretary to inform the Contracting Parties to the Charter and to the Revised Charter that the present complaint is admissible.

Invites the Government to submit in writing by 31 January 2004 all further relevant explanations or information.

Invites the Contracting Parties to the Protocol and the other States having submitted a declaration pursuant to Article D of the Revised Charter, in order to accept the procedure established by the Protocol, to communicate to it by the same date any observations which they wish to submit.

Invites the OMCT to submit in writing by a deadline which it shall determine all relevant explanations or information in response to the observations of the Government.

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 submit their observations by 31 January 2004.

Konrad GRILLBERGER
Rapporteur

Jean-Michel BELORGEY
President

Régis BRILLAT
Executive Secretary