

**DECISION ON THE MERITS**

**Adoption: 20 January 2015**

**Notification: 28 January 2015**

**Publication: 29 May 2015**

**Association for the Protection of All Children (APPROACH) Ltd. v. Belgium**

Complaint No. 98/2013

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 276<sup>th</sup> session attended by:

Eliane CHEMLA, Acting President  
Monika SCHLACHTER,  
Petros STANGOS  
Colm O’CINNEIDE  
Lauri LEPIIK  
Birgitta NYSTRÖM  
Elena MACHULSKAYA  
Giuseppe PALMISANO  
Karin LUKAS  
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Marcin WUJCZYK  
Krassimira SREDKOVA  
Raul CANOSA USERA  
Marit FROGNER

Assisted by Régis BRILLAT, Executive Secretary

Having deliberated on 20 January 2015,

On the basis of the report presented by Colm O'CONNOR

Delivers the following decision adopted on the latter date:

## **PROCEDURE**

1. The complaint submitted by the Association for the Protection of All Children (APPROACH) was registered on 4 February 2013. It was communicated to the Government on 7 February 2013.
2. The complainant organisation alleges that Belgium is in violation of Article 17 of the Revised European Social Charter ("the Charter") on the grounds that there is no explicit and effective prohibition of all corporal punishment of children in the family, schools and other settings.
3. In accordance with Rule 29§1 of the Rules, on 22 March 2013, the President of the Committee asked the Government of Belgium ("the Government") to make, before 3 May, written observations on admissibility of the complaint.
4. The Government's observations on admissibility were registered on 3 May 2013.
5. On 2 July 2013, the Committee declared the complaint admissible. On 10 July 2013, the admissibility decision was communicated to the parties and the Government was simultaneously invited to make written submissions on the merits of the complaint by the time-limit of 27 September 2013.
6. On 16 July 2013, referring to Article 7§1 of the Protocol providing for a system of collective complaints ("the Protocol"), the Committee invited the States Parties to the Protocol, having made a declaration in accordance with Article D§2 of the Charter, to transmit to it any observations they may wish to make on the merits of the complaint before 27 September 2013.
7. On 4 February 2013 the complainant organisation made a request for immediate measures in accordance with Rule 36§1 of the Rules. On 19 July, the Government was invited to make written submissions on the request. The submissions were received on 9 August 2013.
8. On 2 December 2013, the Committee decided not to invite the Government to adopt immediate measures. The decision was communicated to the parties on 5 December 2013.

9. At the request of the Government, the President granted an extension of the time-limit for the submissions on the merits until 25 October 2013. The Government's submissions on the merits were registered on 22 October 2013.

10. No such observations were received.

11. The deadline set for APPROACH's response to the Government's submissions on the merits was 2 December 2013. At the request of APPROACH, the President granted an extension of the time-limit until 20 January 2014. The response was registered on 17 January 2014.

## **SUBMISSIONS OF THE PARTIES**

### **A – The complainant organisation**

12. APPROACH alleges that Belgium is not in conformity with Article 17 of the Charter on the grounds that it has taken inadequate action to remedy its violation of Article 17 by failing to explicitly prohibit all corporal punishment of children and has not acted with the diligence required to ensure the elimination of corporal punishment of children in practice.

### **B – The respondent Government**

13. The Government rejects the allegations put forward by APPROACH.

## **RELEVANT DOMESTIC LAW AND PRACTICE**

14. In their submissions, the parties make reference to the following main domestic legal sources :

### **The Constitution**

#### **Article 22bis**

"Every child has the right to respect for his moral, psychological, physical and sexual integrity. This right shall be protected by legislation, decrees or regulations, as provided for in Article 134."

### **The Civil Code**

Articles 371 to 387bis of the Civil Code Book I - Persons, Title IX - Parental authority, Section I - Children's persons and Section II - Children's property:

**Article 371:** "There is a duty of mutual respect between parents and children at any age".

**Article 387bis:** "In all circumstance, and subject to the jurisdiction of the court of first instance acting under the urgent procedure, pursuant to Article 1280 of the Judicial Code, the juvenile court may, at the request of the father and mother, of either of them, or of the crown prosecutor, order or modify any arrangement regarding parental authority, in the interests of the child."

**The Penal Code:**

**Article 398:** "A person is guilty of an offence punishable by from eight days' to six months' imprisonment and a fine of twenty-six to one hundred francs or just one of these penalties if he intentionally causes injury to or strikes another. Where there is premeditation, the offender shall be liable to one month's to one year's imprisonment and a fine of fifty to two hundred francs."

**Article 399:** "If the blows or injuries have resulted in sickness or incapacity for work, the offender shall be liable to two months' to two years' imprisonment and a fine of fifty to two hundred francs. Where there is premeditation, the offender shall be liable to six months' to three years' imprisonment and a fine of one hundred to five hundred francs."

**Article 400:** "If the blows or injuries have resulted in an apparently incurable condition or permanent incapacity for work, or the full loss of use of an organ, or serious mutilation, the offender shall be liable to two to five years' imprisonment and a fine of two hundred to five hundred francs. Where there is premeditation, the offender shall be liable to five to ten years' imprisonment."

**Article 401:** "If the blows or injuries resulted in the victim's death, even if unintentionally, the offender shall be liable to five to ten years' imprisonment. Where there is assault with premeditation, the offender shall be liable to ten to fifteen years' imprisonment."

**Article 402:** "A person is guilty of an offence punishable by from three months' to five years' imprisonment and a fine of fifty to five hundred francs if he deliberately, though without intention to kill, administers substances that can cause death or substances that, while unable to cause death, may be seriously detrimental to health."

**Article 403:** "If the substances have resulted in an apparently incurable condition or permanent incapacity for work, or the full loss of use of an organ, the offender shall be liable to five to ten years' imprisonment."

**Article 405bis:** "In the aforementioned cases, if the offence was committed against a child or young person or against a person whose physical or mental state prevents him from caring for himself, the penalties shall be as follows:

1: in the cases provided for in Article 398§1, the penalties shall be one month's to one imprisonment and a fine of twenty-six to a hundred francs;

2: in the cases provided for in Article 398§2, the penalties shall be two months' to two imprisonment and a fine of fifty to two hundred francs;

3: in the cases provided for in Article 399§1, the penalties shall be four months' to four imprisonment and a fine of fifty to two hundred francs;

4: in the cases provided for in Article 399§2, the penalties shall be one year's to five imprisonment and a fine of one hundred to five hundred francs;

5: in the cases provided for in Article 400§1, the penalty shall be five to ten years' imprisonment;

6: in the cases provided for in Article 400§2, the penalty shall be ten to fifteen years' imprisonment;

7: in the cases provided for in Article 401§1, the penalty shall be ten to fifteen years' imprisonment;

8: in the cases provided for in Article 401§2, the penalty shall be fifteen to twenty years' imprisonment;

9: in the cases provided for in Article 402, the penalty shall be five to ten years' imprisonment;

10: in the cases provided for in Article 403, the penalty shall be ten to fifteen years' imprisonment;

11: in the cases provided for in Article 404, the penalty shall be seventeen to twenty years' imprisonment."

**Article 405ter:** "In cases provided for in Articles 398 to 405bis where offences have been committed on minors - or other persons who, because of their physical or mental state, are unable to provide for their own maintenance - by the child's or person's father, mother or other ascendants, any other persons exercising authority over or having custody of the child or dependent person, or persons occasionally or habitually cohabiting with the victim, the minimum sentences in these provisions shall be doubled in the case of short-term imprisonment or increased by two years in the case of long-term imprisonment."

**Article 417bis:** "For the purposes of this section, shall be understood by:

1. torture: any inhuman treatment by which extremely severe pain or suffering, whether physical or mental, is intentionally inflicted on a person;
2. inhuman treatment: any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him, or intimidating or coercing him or a third person;
3. degrading treatment: any act that, in the eyes of others or in the eyes of the victim, causes severe humiliation or debasement."

**Article 417ter:** "A person is guilty of an offence punishable by ten to fifteen years' imprisonment if he commits torture on another. The offence referred to in the first sentence is punishable by fifteen to twenty years' imprisonment in the following cases:

1. if it is committed:
  - a. by a public official, a person exercising public authority or a law enforcement officer acting in the exercise of his duties;
  - b. on a person who is particularly vulnerable, on account of pregnancy, sickness or infirmity or physical or mental deficiency, or other insecure circumstances;
  - c. on a child or young person.
2. when the actions have resulted in an apparently incurable condition or permanent incapacity for work, or the full loss of use of an organ, or serious mutilation.

The offence referred to in the first sentence is punishable by twenty to thirty years' imprisonment:

1. where it has been committed on a minor - or another person who, because of his physical or mental state, is unable to provide for his own maintenance - by the child's or person's father, mother or other ascendants, any other persons exercising authority over or having custody of the child or dependent person, or persons occasionally or habitually cohabiting with the victim;
2. or if it resulted, unintentionally, in the victim's death. The perpetrator may not invoke the orders of a superior or other authority as justification for the offence."

**Article 417quater:** "A person is guilty of an offence punishable by five to ten years' imprisonment if he subjects another to ill-treatment. The offence referred to in the first sentence is punishable by ten to fifteen years' imprisonment in the following cases:

1. if it is committed:
  - a. by a public official, a person exercising public authority or a law enforcement officer acting in the exercise of his duties;
  - b. on a person who is particularly vulnerable, on account of pregnancy, sickness or infirmity or physical or mental deficiency, or other insecure circumstances;
  - c. on a child or young person.
2. when the actions have resulted in an apparently incurable condition or permanent incapacity for work, or the full loss of use of an organ, or serious mutilation.

The offence referred to in the first sentence is punishable by fifteen to twenty years' imprisonment:

1. where it has been committed on a minor - or another person who, because of his physical or mental state, is unable to provide for his own maintenance - by the child's or person's father, mother or other ascendants, any other persons exercising authority over or having custody of the child or dependent person, or persons occasionally or habitually cohabiting with the victim;
2. or if it resulted, unintentionally, in the victim's death. The perpetrator may not invoke the orders of a superior or other authority as justification for the offence."

**Article 417quinquies:** "A person is guilty of an offence punishable by fifteen days' to two years' imprisonment and a fine of EUR 50 to 300 or just one of these penalties if he subjects another to degrading treatment."

**Article 425**

"1. A person is guilty of an offence punishable by one month's to three years' imprisonment and a fine of twenty-six to three hundred francs or just one of these penalties if he intentionally deprives a child or young person, or a person whose physical or mental state prevents him from caring for himself, of nutrition or care to the point where his health is threatened.

2. If the deprivation of nutrition or care has resulted in an apparently incurable condition or permanent incapacity for work, or the full loss of use of an organ, or serious mutilation, the offender shall be liable to five to ten years' imprisonment.

3. If deliberate deprivation of nutrition or care has resulted in the victim's death, even if unintentionally, the offender shall be liable to ten to fifteen years' imprisonment."

## RELEVANT INTERNATIONAL MATERIALS

### I. The Council of Europe

15. The European Convention on Human Rights 1950 ("the Convention") includes the following provisions

**Article 3 -Prohibition of torture**

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

### **Article 8 -Right to respect for private and family life**

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

#### **a. Relevant Judgments of the European Court of Human Rights**

- [Case of A v. The United Kingdom](#), Application No. 100/1997/884/1096, judgment of 23 September 1998
- Case of Costello-Roberts v. The United Kingdom, Application No. [13134/87](#), judgment of 25 March 1993
- Case of Campbell and Cosans v. The United Kingdom, Application Nos. 7511/76, 743/76, judgment of 25 February 1982

#### **b. Other materials**

16. The Parliamentary Assembly of the Council of Europe has adopted the following text:

- Recommendation 1666 (2004) "Europe-wide ban on corporal punishment of children" adopted on 24 June 2004.

## **II. The United Nations**

17. The United Nations Convention on the Rights of the Child New York, 20 November 1989; (entry into force 2 September 1990, United Nations Treaty Series, vol. 1577; ratified by Belgium on 16 December 1991) includes the following provisions:

### **Article 19**

"1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement. “

**Article 28**

“1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

...

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.”

18. General Comment No. 8 (2006), of the Committee on the Rights of the Child “The right of the child to protection from corporal punishment and other cruel and degrading forms of punishment”, (CRC/C/GC/8; §§21-22) includes the following statements:

“Once visible, it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.

The Committee emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties”.

19. General Comment No. 13 (2011), of the Committee on the Rights of the Child “The right of the child to freedom from all forms of violence”, (CRC/C/GC/13; §17) includes the following statement:

“The Committee has consistently maintained the position that all forms of violence against children, however light, are unacceptable. “All forms of physical or mental violence” does not leave room for any level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child's absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.”



## THE LAW

20. Article 17§1 of the Charter 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 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;

### A – Arguments of the parties

#### 1. The complainant organisation

21. APPROACH recalls that the Committee found Belgium to be in breach of Article 17 of the Charter in the case of *World Organisation against Torture (OMCT) v. Belgium*, Complaint No. 21/2003, decision on the merits of 8 December 2003.

22. APPROACH alleges that the Government has taken insufficient action to remedy the violation of Article 17 of the Charter found in this complaint.

23. It argues that the corporal punishment of children remains lawful within the family and other alternative settings, including schools.

24. APPROACH argues that neither Article 22bis of the Constitution (see above), nor the Civil Code Article 371 (see above) nor the relevant provisions of the Penal Code (see above) are interpreted as prohibiting all forms of corporal punishment.

25. APPROACH notes that corporal punishment is prohibited in institutions by Article 28 of the Decree of the Flemish Council (7 May 2004) and Article 11 and 13 of Flemish Government Decree of 13 July 1994 concerning grants to institutions for youth but there is no explicit prohibition of corporal punishment in relation to non-institutional care.

26. APPROACH states that, to their knowledge, there is no explicit prohibition of corporal punishment in alternative care settings in the French speaking or the German speaking community.

27. APPROACH acknowledges that a Circular from the Ministry of Justice was issued in 2008, addressed to all national jurisdictions, following the large number of recommendations issued by several international bodies (mainly the United Nations and the Council of Europe) to Belgium regarding the need to effectively ban corporal punishment of children. The aim of the circular was to remind courts and tribunals that such punishments are likely, depending on circumstances, to constitute aggravated assault and/or degrading treatment as stipulated in articles 398 and following and article 417 *quinquies* of the Penal Code.

28. The Circular from the Minister of Justice quotes the definition of corporal punishment from the Committee on the Rights of the Child's General Comment No. 8 (§11). The Circular footnotes the decision of the Committee in *OMCT v. Belgium* (cited above).

29. However it does not amount to a prohibition in law. APPROACH states that the legislation cited by the Government, namely the Constitution, Civil Code and Criminal Code are unchanged since the Committee's previous decision in *OMCT v. Belgium* (cited above).

30. APPROACH recalls that the relevant legal provisions relied upon by the Government were found by the Committee to be inadequate, in that they had not been interpreted as prohibiting all forms of corporal punishment.

31. In addition it argues that contrary to the findings of the Committee in *OMCT v. Belgium* Complaint corporal punishment in schools is not prohibited.

32. APPROACH notes that several attempts have been made by Parliament to amend Belgian law to prohibit corporal punishment, more specifically the Civil Code, however to date these attempts at reform have failed.

33. Further APPROACH refers to the Concluding Observations of the Committee on the Rights of the Child in respect of Belgium which recommended the prohibition of corporal punishment of children in all settings, notably in the family and in non-institutional childcare settings as a matter of priority (Committee of the Rights of the Child 18 June 2010, CRC/C/BEL/CO/3-4 §§7-8, 39-40). It also cites the Concluding Observations of the Committee Against Torture and the Committee on Economic, Social and Cultural Rights which also recommended the prohibition of corporal punishment of children within the family (19 January 2009, CAT/C/BEL/CO/2 §24).

34. APPROACH also refers to recommendations of the previous Council of Europe Commissioner for Human Rights Thomas Hammarberg who recommended that Belgium “should pass a law explicitly prohibiting corporal punishment....” (Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe CommDH(2009)14 para 36).

35. In its supplementary submissions APPROACH refers to a study carried out in Flanders, which in its view indicates that the corporal punishment of children is prevalent within the home, in schools and alternative care settings (*Kinderrechtencommissariaat (2011), geweld gemeld en geteld*, Brussels).

36. APPROACH argues that despite the previous decision in *OMCT v. Belgium* (cited above) of the Committee that Belgium continues to be in violation of Article 17 by failing to prohibit adequately the corporal punishment of children within the family and other alternative settings, including schools. It has failed to take any effective action to remedy the breach. Further it argues Belgium has failed to act with due diligence to eliminate corporal punishment in practice.

## **2. The respondent Government**

37. The Government argues that the current legislative framework and support for families in Belgium adequately protects children from all forms of violence.

38. It cites Article 22bis of the Constitution, provisions of the Penal Code and of the Civil Code. The Government further refers to the Ministerial Circular issued in 2008 by the Minister of Justice on the issue of corporal punishment (see above).

39. The Government highlights that under the Penal Code, Articles 398 and following, corporal punishment is liable to prosecution as criminal assault a notion that the courts have interpreted broadly. In support of its submissions, the Government refers to the case-law of the Court of Cassation, which has held that the notion of injuries extends to any internal or external lesion of the human body, however minor (judgment of 12 April 1983) and that “a deliberate act could constitute criminal assault, whatever the motives that impelled it and even if the perpetrator did not seek the resulting harm” (judgment of 25 February 1987).

40. It also cites on two lower court decisions that have applied the relevant provisions of the Criminal Code to cases of corporal punishment of children for punitive or educational reasons, in the family and in an institution for persons with disabilities. In both the cases the courts to reject the notion that corporal punishment can be considered an acceptable educational method.

41. Articles 405bis and 405ter of the Penal Code deal specifically with the criminal assault of children. Article 405bis imposes higher penalties for intentional assault on children or young persons while Article 405ter is explicitly concerned with violence against children within the family, which it makes an aggravating circumstance that can increase still further the penalties incurred by the perpetrators. Article 417bis to quinquies penalizes moral suffering in addition to physical suffering and Article 425 also punishes neglect of minors by depriving him/her of food or care.

42. Corporal punishment may also be liable to prosecution under the provisions of the Criminal Code introduced in 2002 on torture and inhuman and degrading treatment. The Government states that Belgian courts may interpret these notions broadly and extensively, taking into account the case-law of the European Court of Human Rights.

43. The Government argues that the provisions of the Penal Code are adequate. Moreover it maintains that the criminal law is not necessarily the most appropriate means of solving problems within the family, the imposition of penal sanctions on parents or other caregivers for inflicting corporal punishment may not be in the best interests of the child.

44. The Government, furthermore, argues that a ban on corporal punishment of children is implicit in the Civil Code. The articles on parents' duties and parental authority expressly require them to defend and protect their children's interests. The emphasis is now on children's interests and their protection by parents, rather than the latter's "powers" vis-à-vis their children. Provisions of the Civil Code require that parental authority be exercised in best interests of the child. In particular, Article 371 of the Civil Code introduced the notion of mutual respect between a child and its parents, whereas previously it simply owed them a duty of respect. This provision in particular, can be considered as implicitly prohibiting corporal punishment.

45. Lastly the Government refers to Article 22bis of the Constitution (cited above) which provides every child has the right to respect for his or her moral, physical, psychological and sexual integrity. It states that this provision formally prohibits all forms of corporal punishment of children, no matter how light, administered by parents or other persons.

46. As regards the situation in practice the Government refers to measures taken by the Flemish and French speaking communities to protect children from ill treatment.

47. The Government in conclusion argues that all forms of corporal punishment are unacceptable. It argues that an express prohibition in the Penal Code would not be in the best interests of the child. However it might give consideration to reinforcing the Civil Code.

## **B – Assessment of the Committee**

48. The Charter contains comprehensive provisions protecting the fundamental rights and human dignity of children – that is persons aged under 18 (Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2008, §§ 25-26). It enhances the European Convention on Human Rights in this regard. It also reflects the provisions of the United Nations Convention on the Rights of the Child, on which in particular Article 17 is based.

49. The Committee notes that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comment Nos. 8 and 13 of the Committee on the Rights of the Child.

50. In this regard, the Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in World Organisation against Torture (OMCT) v. Portugal, Complaint No. 34/2006, decision on the merits of 5 December 2006, §§19-21:

“19. To comply with Article 17, states' domestic law must prohibit and penalize all forms of violence against children that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

20. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

21. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.”

51. The Committee takes note of the Government's statement that the provisions of the Constitution, Penal Code and Civil Code referred to in the context of this complaint prohibit corporal punishment of children. However, none of the legislation referred to by the Government sets out an express and comprehensive prohibition on all forms of corporal punishment of children that is likely to affect their physical integrity, dignity, development or psychological well-being. The Committee recalls that in its decision in OMCT v. Belgium (cited above) it held that:

“43. With regard to the Constitution, the Committee points out that the first part of Article 22bis of the Constitution is consistent with Article 17 of the Charter. It nonetheless generally considers that "although the Constitution may offer some protection. [...], the Committee notes that the Constitution lacks the specificity to provide adequate protection" (Conclusions XVI-2, Volume 1, Belgium, Article 15§2, p. 99). Applying this general consideration, *mutatis mutandis*, to the present case, the Committee refers to both the type of control to which Article 22bis of the Constitution primarily lends itself and to the provision's very brief wording. In addition, the Committee considers that the right to integrity under Article 22bis does not *prima facie* encompass all the aspects covered by Article 17 of the Charter, notably in that the latter applies to punishment for educational purposes.

44. Secondly, with regard to the Criminal Code, the Committee recalls that it has previously held that, even if violence against the person is punished under criminal law provisions and subject to increased penalties where the victim is a child, this does not constitute a sufficient prohibition in law to comply with Article 17§1 of the Revised Charter (Conclusions 2003, Volume 1, France, pp. 173 to 178). The Committee considers *mutatis mutandis* that the above-mentioned provisions of the Belgian Criminal Code do not constitute an adequate legal basis for the purpose of Article 17 as interpreted by the Committee (see §§37-39 above).

45. With regard to the Civil Code, the Committee considers that the introduction, in 1995, of the concept of mutual respect between children and parents in the Title on Parental Authority (Article 371) is also consistent with Article 17 of the Charter. However, its general wording prevents it from amounting to a clear, precise duty on parents not to use corporal punishment for educational purposes. In this regard, the Committee takes note that a proposal to insert an explicit prohibition in the Civil Code is pending before the Senate.

...

48. The Committee accordingly considers that none of the provisions, taken together or in isolation, is set out in sufficiently precise terms to suffice to enable parents and “other persons” to model their conduct on Article 17 of the Charter and to attain the result required by that provision.”

52. The Committee further more recalls it has repeatedly found the situation not to be in conformity with Article 17 under the reporting procedure (Conclusions 2003, 2005 and 2011).

53. The Committee notes there have been no legislative developments since its previous decision in *OMCT v. Belgium* (cited above).

54. Further as regards the case law cited by the Government, the Committee notes the Government has not provided any examples of case-law by superior courts showing that the above-mentioned provisions of the Civil Code have been interpreted as prohibiting all forms of violence against children by parents and “other persons”, including for educational purposes.

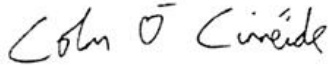
55. Two cases under the Penal Code have been cited which appear to reject the notion that corporal punishment can be considered an acceptable educational method. However the Committee notes that no information was provided on the severity of the punishment inflicted in the cases mentioned and that this interpretation would extend to all forms of corporal punishment. Nor did the Government argue that this interpretation was widespread. The Committee therefore considers that the examples provided to it do not sufficiently establish the existence of a clear and precise case law prohibiting corporal punishment of children and young persons.

56. As such, the Committee holds that there is no adequate and effective prohibition in law contrary to the requirements of Article 17.

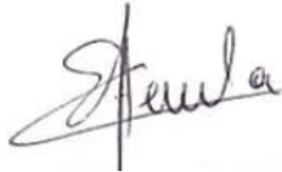
## CONCLUSION

For these reasons, the Committee concludes:

unanimously that there is a violation of Article 17§1 of the Charter.



Colm O'CONNOR  
Rapporteur



Eliane CHEMLA  
Acting President



Régis BRILLAT  
Executive Secretary