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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

11 February 2013

Case No. 1

Association for the Protection of All Children (APPROACH) Ltd v. Italy
Complaint No. 94/2013

COMPLAINT

Registered at the Secretariat on 4 February 2013

**Collective Complaint against Italy
submitted by the
Association for the Protection of All Children
(APPROACH) Ltd
under the 1995 Additional Protocol
January 2013**

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Admissibility

Compliance of the Association for the Protection of All Children (APPROACH) Ltd with the requirements of the Additional Protocol Compliance with article 1(b) of the 1995 Additional Protocol:

The Association for the Protection of All Children (APPROACH) Ltd is an international non-governmental organisation, registered as a company limited by guarantee and a charity in the UK. It enjoys participatory status with the Council of Europe. It is on the list established by the Governmental Committee of international non-governmental organisations which have the right to submit a collective complaint.

Compliance with article 3 of the 1995 Additional Protocol:

According to its Memorandum and Articles of Association, the aims and objects of APPROACH Ltd are "To prevent cruelty and maltreatment of children and advance public knowledge in the United Kingdom and abroad in all matters concerning the protection of children and young people from physical punishment and all other injurious, humiliating and/or degrading treatment whether inside or outside the home". APPROACH Ltd provides the secretariat for the Global Initiative to End All Corporal Punishment of Children. It thus has special competence in relation to the

protection of children from all forms of violence, including in particular violent punishment.

Compliance with rule 23(2) of the Rules of Procedure for the system of collective complaints:

The complaint is signed by Peter Newell, Coordinator of the Global Initiative to End All Corporal Punishment of Children, designated to represent APPROACH Ltd by its Trustees for this purpose.

Applicability to Italy of the Revised Social Charter of 1996 and the Additional Protocol to the European Social Charter of 1995, providing for a system of collective complaints

Italy ratified the Revised Social Charter on 5 July 1999. Italy ratified the Additional Protocol on 3 November 1997.

Applicability of Articles 7 and 17 of the Revised Social Charter of 1996 to Italy

Italy considers itself bound by Articles 7 and 17.

Introduction to complaint

This collective complaint follows up complaint number 19/2003, World Organisation against Torture (OMCT) v. Italy. OMCT welcomes this follow up: **see letter in support attached separately.**

The complaint – set out in detail below – alleges that since the European Committee of Social Rights issued its decision on complaint No. 19/2003, in 2004, finding no violation of the Charter, its case law has developed and in the light in particular of its decision in complaint No. 34/2006 against Portugal, it is clear that Italy's lack of a clear and effective prohibition of all corporal punishment in legislation is in violation of Article 17.

The complaint summarises the relevant jurisprudence of the European Committee of Social Rights and its conclusions and decisions relating to Italy; it also summarises the relevant international human rights standards and recommendations to Italy by UN Treaty Bodies and in the Universal Periodic Review by the Human Rights Council. Legislation in Italy is reviewed together with recent information on the prevalence of and attitudes to corporal punishment.

Relevant case-law of the European Committee of Social Rights

For more than a decade, the European Committee of Social Rights has consistently concluded that compliance with the Social Charter requires prohibition and elimination of any form of violence against children, including corporal/physical punishment and other degrading punishment or treatment.

In its General Observations in the Introduction to Conclusions XV – 2, Volume 1 (2001), the European Committee of Social Rights concludes that “... the Committee considers that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It furthermore considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law.”

The Committee comments in the General Observations: “The Committee does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence...”

The Committee’s General Observations relate to both article 7(10) and article 17. In its Observations, the Committee states that it has decided to deal with “protection of children and young people from ill-treatment and abuse” under article 17. In clarifying its interpretation of these provisions of the Charter, the Committee notes that it has done so “in the light of the case-law developed under other international treaties as regards the protection of children and young persons, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights. It has also taken into account developments in national legislation and practice as regards the protection of children”.

Since 2001, in conclusions adopted on member states’ reports the European Committee on Social Rights has found violations wherever corporal punishment is not prohibited in legislation. It has confirmed its clear interpretation of the Charter’s requirements in decisions on a series of collective complaints (Nos.17/2003, 18/2003 and 21/2003).

In its decisions on two other complaints regarding the legality of corporal punishment, No. 19/2003 against Italy and 20/2003 against Portugal, a majority of the Committee relied on the existence of Supreme Court decisions declaring corporal punishment to be unlawful in finding no violation of the Charter. But in its decision on the merits of a further collective complaint against Portugal, No. 34/2006, the ECSR clarifies and develops its interpretation. In Portugal a subsequent decision of the Supreme Court had declared corporal punishment to be lawful. The following are extracts from the Committee’s decision on the merits:

“B. Assessment of the Committee

18. The Committee refers to its interpretation of Article 17 of the Charter with respect to the corporal punishment of children (see collective complaints OMCT v. Greece (17/2003), Italy (19/2003), Ireland (18/2003), Portugal (20/2003) and

Belgium (21/2003), decisions on the merits of 7 December 2004).

19. To comply with Article 17, states’ domestic law must prohibit and penalise 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.”

World Organisation Against Torture (OMCT) v. Portugal, Complaint No. 34/2006, Decision on the Merits, December 5 2006

Relevant decision and conclusions of the European Committee of Social Rights on Italy

Collective complaint No. 19/2003

In its decision on the merits, the ECSR concluded by 11 votes to 2 that there was no violation of Article 17 of the Revised Charter. A dissenting opinion of Mr Matti Mikkola asserted that in supervision cycle XV 2001 the Committee made a decision on principle that contracting parties must clearly ban in legislation all forms of violence against children, including corporal punishment. Mr Mikkola was concerned that the finding of a majority of the Committee (of no violation) in the complaints 19/2003 and 20/2003. weakens the requirement that corporal punishment be clearly prohibited in legislation: “The case law of higher courts while to be welcomed is not a sufficient legal basis for a prohibition nor in my opinion a sufficiently effective basis, having regard in particular to the fact that the corporal punishment of children was traditionally considered as lawful and remains so. Therefore I find the situation in Italy and Portugal to be in breach of the Revised Charter.”

Conclusions of the ECSR on Italy’s successive reports under Article 17

In its conclusions on Italy’s most recent report under Article 17 the Committee asks Italy whether there are any plans to make legislative amendments, following the 1996 [Supreme Court] ruling, that would explicitly ban corporal punishment in all settings, such as home, schools and institutions. Pending receipt of the information requested, the Committee deferred its conclusion (January 2012, Conclusions 2011). In its previous conclusion (Conclusions 2007), the Committee recalled its decision on the merits in complaint No. 19/2003 but also quoted from its more recent Decision on the merits in complaint No. 34/2006 against Portugal:

“The Committee recalls that the situation was found to be in conformity with the Charter in both the previous conclusion and in its decision on the merits of World Organisation against Torture (OMCT) v Italy (complaint No. 19/2003, decision on the merits of 8 December 2004). Italy prohibits corporal punishment of children within the family through a combination of legislation and case law (Decision No. 4909 of 16 May 1996 of the Court of Cassation). Since then, the Committee affirmed that in order ‘to comply with Article 17, states’ domestic law must prohibit and penalise 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. 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. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice’ (World Organisation against Torture (OMCT) v Portugal, complaint No. 34/2006, Decision on the Merits of 5 December 2006, §§19-21). “The Committee asks that the next report explain whether this ruling is still good law.”

(2007, Conclusions XVIII-1, vol.2)

International human rights standards and corporal punishment of children: the UN human rights Treaty Bodies and the Universal Periodic Review at the Human Rights Council

The Committee on the Rights of the Child consistently interprets the CRC, ratified by all member states of the Council of Europe, as requiring prohibition and elimination of all corporal punishment and other cruel or degrading punishment. The Committee has recommended prohibition to more than 160 states in all regions. It provides detailed guidance to states on fulfilling their “immediate obligation” to protect all children in its General Comment No. 8 (The right of the child to protection from corporal punishment and other forms of cruel or degrading punishment, 2006). Other UN Treaty Bodies have echoed the Committee’s recommendations within their respective mandates (Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee against Torture, Committee on the Elimination of All Forms of Discrimination against Women).

Recommendations to Italy:

Committee on the Rights of the Child: In 1995, in its concluding observations on Italy’s initial report under the CRC, the Committee recommended that a ban on corporal punishment in the family should be reflected in the national legislation (27 November 1995, CRC/C/15/Add.41, Concluding observations on initial report, paras. 12 and 20).

In 2011, in concluding observations on Italy’s third and fourth reports under the CRC, the Committee reiterated the need for explicit prohibition:

“The Committee is concerned at the prevalence of corporal punishment in the home, in particular that many parents still find it appropriate to use slapping as a means of discipline. The Committee is also concerned that the State party has not yet passed legislation explicitly prohibiting all forms of corporal punishment in all settings, including in the home (CRC/C/15/Add.41, para. 20), despite the Supreme Court ruling on prohibition of corporal punishment.

“The Committee recommends that the State party reform domestic legislation to ensure the explicit prohibition of all forms of corporal punishment in all settings, including in the home, taking into account the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, and general comment No. 13 (2011) on the right of the child to freedom from all forms of violence. The Committee further recommends that the State party raise awareness among parents and the general public on the impact of corporal punishment on the well-being of children, and on positive alternative methods of discipline in accordance with the rights of the child.”

(31 October 2011, CRC/C/BHR/CO/2-3, Concluding observations on third/fourth report paras. 34 and 35)

Universal Periodic Review: Italy was examined in the first cycle of the Universal Periodic Review in 2010. The following recommendation was made (A/HRC/14/4, Report of the Working Group, para. 84(38)):

“To incorporate in its legislation the 1996 Supreme Court judgement that corporal punishment was not a legitimate method of discipline in the home, and criminalize corporal punishment in all cases, including in education (Spain)”

The Government of Italy rejected the recommendation, stating that corporal punishment has been unlawful in schools since 1928 and that it does not apply in the penal system, but gave no details of prohibiting legislation in this regard. The Government stated that corporal punishment is also unlawful in the private sphere: “In 1996 the Supreme Court ruled that the legislation in force already prohibits any forms of violence in child-rearing and confirmed that this is no longer a legitimate method of discipline nor defensible under the right to correction (‘jus corrigendi’). Therefore Italy deems that there is no need to adopt a specific supplementary law.” (A/HRC/14/4/Add.1, Report of the Working Group: Addendum)

The law in Italy

The law, as set out in the previous complaint and in the Decision on the Merits (2005) continues to confirm a right to correction (“jus corrigenda”). The 1996 Supreme Court ruling states that this cannot be used to defend the use of corporal punishment but this has not been confirmed in legislation.

Research into prevalence of and attitudes to corporal punishment of children in Italy

A study published in 2012 involving 1,000 parents with a child aged 3-16 and 250 young people aged 11-16 living in Italy found that 28% of parents of children aged 3-5, 21% of parents of children aged 6-10 and 26% of parents of children aged 11-16 were opposed to “smacking” and never did it. Around half of parents said they only smacked their children in exceptional circumstances, 18-27% said they smacked their children a few times a month and 3% of parents of 3-5 year olds and 5% of parents of 6-16 year olds said they smacked their children almost every day.

The proportion of parents opposed to corporal punishment increased slightly compared with a similar survey in 2009. Fifty-seven per cent of parents of 3-5 year olds, 48% of parents of 6-10 year olds, 53% of parents of 11-16 year olds, 51% of young people aged 11-13 and 48% of young people aged 14-16 felt that smacking was more violent than educational, and 22-27% of all groups felt that smacking was more educational than violent. Large majorities of parents and young people said that after smacking, parents feel bitter, embarrassed or uncomfortable. Nearly half (49%) of parents of 3-5 year olds, 41% of parents of 6-10 year olds and 42% of parents of 11-16 year olds thought that smacking could teach children to smack others or definitely made children aggressive. Of those who recalled seeing a child being smacked in public, 47% of 11-13 year olds, 51% of 14-16 year olds and 53-58% of parents had reactions which were opposed to smacking, while 17-20% of parents, 11% of 11-13 year olds and 6% of 14-16 year olds tended to justify the smacking. A large majority (81-92%) of parents believed that a public awareness-raising anti-smacking campaign would be effective. (Ipsos Public Affairs (2012), *I metodi educative e il ricorso a punizioni fisiche: Vissuto e opinioni di genitori e figli*, Save the Children Italia Onlus; http://images.savethechildren.it/IT/f/img_publicazioni/img165_b.pdf)

A study carried out in 2008 - 2009 of the relationship between gender and physical punishment used interviews with around 4,000 mothers, fathers and children aged 7-

10 in Italy and eight other countries. In Italy, 61% of girls and 66% of boys involved in the study had experienced “mild” corporal punishment (spanking, hitting, or slapping with a bare hand; hitting or slapping on the hand, arm, or leg; shaking; or hitting with an object) by someone in their household in the past month; 12% of girls and 23% of boys had experienced severe corporal punishment (hitting or slapping the child on the face, head, or ears; beating the child repeatedly with an implement).

Much smaller percentages of parents believed it was necessary to use corporal punishment to bring up their child: for girls, 5% of mothers and 2% of fathers believed it was necessary; for boys, 4% of mothers and fathers. (Lansford, J. et al (2010), “Corporal Punishment of Children in Nine Countries as a Function of Child Gender and Parent Gender”, *International Journal of Pediatrics* vol. 2010, Article ID 672780. doi:10.1155/2010/672780).

In a 2009 study, 63% of parents of children aged 3-5, 55% of parents of children aged 6-10 and 40% of parents of children aged 11-16 said that they had slapped their children; 34% of 11-13 year olds and 24% of 14-16 year olds said their parents had slapped them; 2% of 11-13 year olds and 1% of 14-16 year olds said it happened almost every day. The study involved 1,000 telephone interviews with a representative sample of the Italian population and online interviews with 600 parents and 500 11-16 year olds. Seventeen per cent of parents of 11-16 year olds and around 13% of 11-16 year old young people felt that it was “essential” that all corporal punishment be prohibited by law, while a further 26% of parents and 30-37% of young people said that a law prohibiting corporal punishment would be useful; 67% of parents of 11-16 year olds, 62% of parents of 6-10 year olds and 59% of parents of 3-5 year olds strongly agreed that it is not acceptable or legitimate to beat a child. (Save the Children Italia ONLUS and Ipsos (2009), *Vissuto della punizione corporale e reazioni all'ipotesi di un'educazione senza violenza*; <http://images.savethechildren.it/f/download/ri/ricercaipsosamaniferme.pdf>)

The complaint

Various research studies, summarised above, indicate that very many children in Italy are still suffering corporal punishment, and that violent punishment of children is still culturally/socially accepted. While welcome, the Supreme Court decision of 1996 is inadequate as a legislative base and a subsequent decision of the Court could change its interpretation of Italian law.

The Charter is a living instrument and, as noted above, the European Committee of Social Rights has indicated in its decision on Complaint No. 34/2006 that “to comply with Article 17, states’ domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological wellbeing of children. 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. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice”.

The failure of Italy to adopt the necessary legislation violates Article 17 of the Charter, as does Italy’s failure to act with due diligence to eliminate violent punishment of children in practice.

Despite being made aware of the decision of the ECSR in Complaint No. 34/2006 and recommended to adopt an explicit ban by the Committee on the Rights of the Child and also in the Universal Periodic Review, the Italian Government has continued to maintain that there is no need to adopt any specific supplementary law.

We hope the ECSR will immediately declare this complaint admissible and without delay issue a decision on the merits, reaffirming its interpretation of the requirements of Article 17.