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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 France
Complaint No 92/2013

COMPLAINT

Registered at the Secretariat on 4 February 2013

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

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**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 France 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

France ratified the Revised Social Charter and the Additional Protocol on 7 May 1999.

Applicability of Article 17 of the Revised Social Charter of 1996 to France

France considers itself bound by Article 17 of the Revised Social Charter.

Introduction to complaint

The complaint alleges that France is in violation of Article 17 of the Charter because of the lack of explicit and effective prohibition of all corporal punishment of children, in the family, schools and other settings, and because France has failed to act with due diligence to eliminate such punishment in practice.

The complaint summarises the relevant jurisprudence of the European Committee of Social Rights and its conclusions on France's reports under Article 17; it also summarises the relevant international human rights standards and recommendations to France by UN Treaty Bodies and in the Universal Periodic Review by the Human Rights Council. Legislation in France is reviewed together with 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. It has confirmed its interpretation of the Charter’s requirements in decisions on a series of collective complaints (Nos.17/2003, 18/2003 and 21/2003). In decisions on two other complaints regarding the legality of corporal punishment, Nos. 19/2003 (against Italy) and 20/2003 (against Portugal), a majority of the Committee relied on the existence of Supreme Court judgments in each country 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 conclusions of the European Committee of Social Rights on reports from France under Article 17

In its conclusions following examination of successive reports from France under Article 17, the ECSR has concluded in 2003, 2005 and 2011 that France is not in conformity because all forms of corporal punishment of children are not prohibited.

The following are the relevant extracts from the ECSR conclusions:

Conclusions 2011, January 2012:

“In its previous conclusion (Conclusions 2005) the Committee held that the situation was not in conformity with the Charter as all forms of corporal punishment of children were not prohibited. In this connection the Committee notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2005) 25, §78) that there is no specific prohibition of corporal punishment but under the Criminal Code any act of violence is prohibited. The French authorities consider that there is no need for further legislation.

“In its previous conclusion the Committee asked what were the implications of the 2000 judicial ruling which stated that corporal punishment which is repetitive and not educational is not covered by the ‘right to correction’ for teachers and for parents. According to the report some judicial decisions in fact acknowledged the use of ‘right of correction’ by parents, teachers and educators, provided that it is harmless, moderate (spank, clothes seized, ears and hair pulled) and aims at maintaining school order and discipline. However, if the objective is to humiliate the student, if the correction causes physical damage or if it is too degrading, courts tend to convict the adult.

“The Committee notes from another source that a survey by the Union of Families in Europe (UFE) of 2,000 grandparents, parents and children found that 96% of children have been smacked; 84% of grandparents and 87% of parents have administered the corporal punishment. One in ten parents admitted to punishing their children with a ‘martinet’ (a small whip); 30% of children said they had been punished with a martinet. Corporal punishment is lawful in alternative care settings under the customary ‘right of correction’. In 2003 the Court of Cassation confirmed that nannies and babysitters have this right.

“According to the report a draft law to include the prohibition of corporal punishment, including spanking, in the Civil Code has been brought to the National Assembly in 2010. The Committee wishes to be informed about the outcome.

“The Committee recalls that to comply with Article 17 with respect to the corporal punishment of children, 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.

“The Committee holds that there has been no change to the situation which it has previously found not to be in conformity with the Charter. Therefore it reiterates its previous finding of non-conformity on this ground....

“The Committee concludes that the situation in France is not in conformity with Article 17§1 of the Charter on the grounds that:

- all forms of corporal punishment of children are not prohibited....”

Conclusions 2005, March 2005:

“In the previous conclusion the Committee noted that the Penal Code prohibits violence against the person and provides for increased penalties where the victim is under 15 years of age or where the perpetrator is related to the child or has authority over the child, but does not necessarily cover all forms of corporal punishment which it found not to be in conformity with the Revised Charter. The Committee finds no information in the report that the situation has changed. The Committee notes therefore that corporal punishment is not prohibited in the home or in institutions and other childcare settings and that this situation is not in conformity with the Revised Charter.

“The Committee notes from another source that High Court ruling of 1889 allowed a ‘right to correction’ for teachers and for parents. A 2000 judicial ruling stated that corporal punishment which is repetitive and not educational is not covered by this right. The Committee asks the next report to explain the implications of the 2000 judicial ruling with regard to the use of corporal punishment in the home.

...

“The Committee concludes that the situation in France is not in conformity with Article 17.1 of the Revised Charter on the grounds that:

- corporal punishment of children is not prohibited....”

Conclusions 2003 Vol. 1, page 173, October 2003:

“As regards corporal punishment of children, the Committee notes that according to the report corporal punishment of children is not explicitly prohibited in the home, in school or in other institutions. Although the Penal Code prohibits violence against the person and provides for increased penalties where the victim is under 15 years of age or where the perpetrator is related to the child or has authority over the child. The Committee notes that these provisions of the Penal Code do not necessarily cover all forms of corporal punishment and therefore finds that the situation is not in conformity with the Revised Charter....

“The Committee concludes that the situation in France is not in conformity with Article 17.1 of the Revised Charter as the corporal punishment of children is not prohibited.”

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 France:

Committee on the Rights of the Child: In successive concluding observations on France’s second and third/fourth reports under the Convention on the Rights of the Child, in 2004 and 2009, the Committee has expressed concern at the lack of explicit prohibition of corporal punishment and recommended explicit prohibition including in the family, schools and all child-care institutions.

The following are the relevant extracts

“The Committee regrets that some of the concerns and recommendations (CRC/C/15/Add. 240) it made upon consideration of the State party’s second periodic report have been insufficiently addressed, particularly those relating to ... corporal punishment....

“While taking note of the State party’s assertion that all forms of physical corporal punishment are prohibited in the French Penal Code, the Committee reiterates its concern that corporal punishment, in particular in the home, as well as in schools, remains widespread, especially in the Overseas Departments and Territories, and that a specific provision to prohibit explicitly corporal punishment against children is still missing.

“Reiterating its previous recommendation and in accordance with its General Comment No. 8, the Committee recommends that the State party explicitly prohibit corporal punishment in all settings, including in the family, in schools, in institutions and other childcare settings, increase awareness-raising in this respect and promote the value of education without violence according to article 28, para. 2 of the Convention. In this endeavour, the Committee further recommends that the State party follow-up on the Council of Europe’s campaign to achieve full prohibition of all forms of corporal punishment which it has signed up for.”

(11 June 2009, CRC/C/FRA/CO/4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 6, 57 and 58)

“The Committee welcomes the fact that the State party considers corporal punishment totally unacceptable and inadmissible, however it remains concerned that corporal punishment is not explicitly prohibited in the family, in schools, in institutions and in other childcare settings.

“The Committee encourages the State party to expressly prohibit corporal punishment by law in the family, in schools, in institutions and in other childcare settings. It further recommends awareness-raising and promotion of positive, non-violent forms of

discipline, especially in families, schools and care institutions in light of article 28, paragraph 2, of the Convention.”
(30 June 2004, CRC/C/15/Add.240, Concluding observations on second report, paras. 38 and 39)

Universal Periodic Review: During its examination in the 15th session of UPR (second cycle) in January 2013, France received recommendations to prohibit all corporal punishment of children from a number of states; it is due to respond to these recommendations by June 2013 at the latest (23 January 2013, A/HRC/WG.6/15/L.2 Unedited Version, Draft report of the working group).

The law in France

Some forms of corporal punishment of children are lawful in the home, in the various forms of alternative care and in schools, given the existence, confirmed by France’s highest court, of a “right of correction” in customary law. Thus, provisions against violence and abuse in the Penal Code (1994), the Civil Code, Act No. 2007-293 (2007) reforming child welfare and Act No. 2006-399 (2006) concerning domestic violence and violence against children are not interpreted consistently, nor understood by the public, as prohibiting all corporal punishment in childrearing and education.

We note that the Government of France has itself confirmed, in its national report to the European Committee of Social Rights in 2010, that judicial decisions have acknowledged the “right of correction” by parents, teachers and educators. The Government summarises these as laying down the conditions that such correction must be (i) harmless, (ii) of moderate intensity (slaps, clothes seized, ears and hair pulled) and (iii) aimed at maintaining school order and discipline (16 December 2010, RAP/RCha/FR/X(2010), pp. 54-55).

The following is a summary of some key decisions in which French courts have ruled that parents, some other carers and teachers have a “right of correction” in relation to children and that this includes some level of violent punishment.

In an early judgment in 1819, the French supreme court in criminal and private law matters, the *Cour de Cassation*, confirmed parents had a right of correction (Court of Cassation, Criminal Chamber, 17 December 1819, Bull. Crim., n°137, p. 427). In this case a mother hit her daughter causing marks on her body which were still visible 20 days after the punishment. She was sentenced, at the First Instance, to five years imprisonment. However, the Court of Cassation decided that even if the marks on the body were visible 20 days later, the punishment did not cause damages, hence the Articles of the Penal Code were misapplied.

A judgment in 1908 gave the same right to teachers (Court of Cassation, Criminal Chamber, December 4 1908, Bull. Crim., n°482, p. 907). The Court found that the

actions taken by the teacher did not exceed the limits of the correction and discipline rights given to him in relation to the children who are entrusted to him.

Until the last few decades of the 20th century, parents and teachers could use very severe and sometimes extreme violence. It was as late as 1967 that the Court of Cassation (Court of Cassation, Criminal Chamber, February 21 1967, Bull. Crim., n°66-91, p. 824) put some limit on violence against minors: the right of correction did not apply when children's health was placed at risk. The case concerned two juvenile delinquents aged 13 and 14 detained in a centre where four of their "educators" had tied their hands, feet and neck day and night for several days and severely beaten them (even using pipes), forced them to walk out naked, sometimes in the rain and questioned them about a robbery for up to 23 hours without interruption.

French courts have not as yet renounced the customary right of correction. They have adapted to the general state of opinion in France so that extreme and severe violence against children is no longer accepted. But the idea that mild violence is necessary and is for children's own good persists in some decisions. For punishment to come within the "right of correction", the violence has both to be mild and to have an educational purpose.

More recently, case law has at times seemed to be taking a more protective stance towards children. For example, in a 1990 judgment, the Court of Cassation held that under both the "educational purpose" and "degree of violence" criteria, a man in the household of a six year-old child had no legal right to put her head into a toilet, then flush the chain and slap her face, even if it was at her mother's request (Court of Cassation, Criminal Chamber, February 21 1990, unpublished): "... les juges relèvent qu'il importe peu que la mère ait consenti à cette correction, dès lors que les violences commises, par leur nature et par leurs conséquences, dépassaient, même en l'absence d'une incapacité de travail, les limites de l'exercice d'un droit de correction, lequel en toute hypothèse n'appartenait pas à X..."

(Unofficial English translation: "... the judges decided that it is not important that the mother has consented to this punishment, since the violence committed, by its nature and consequences and even in the absence of incapacity of work, exceeded the limits of the right of correction, which in any event, did not belong to X..."). But, again, this judgment confirmed the existence of the "right of correction".

In a 2003 decision, the Court of Cassation found that the right to chastise applied to a nanny who had slapped a 23 month-old toddler (Court of Cassation, Criminal Chamber, June 17, 2003, case n° 02-84986): "... mais il n'est nullement établi que ce geste ait excédé les limites du droit de correction inhérent à la mission de surveillance qui avait été confiée à la gardienne de l'enfant ; que les nombreuses investigations diligentées n'ont pas permis de mettre en relation les troubles comportementaux du jeune Gabin avec des faits de violence ou de maltraitance imputables à Marie Z..."

(Unofficial English translation: "But it wasn't established that the gesture had exceeded the right of correction's limits given to the nanny in her mandate to supervise the child;

that the numerous investigations did not establish a relation between the behavioural problems of little Gabin with any violence or abuse attributable to Marie Z's actions... ”.

Tribunals and courts of appeal are left free to interpret the limits of the right of correction, so decisions on what will be regarded as acceptable correction cannot be predicted. Some cases have continued to justify significant forms of violence as correction. For example, the Caen Court of Appeal ruled that a teacher was within his rights in dragging an eight year-old boy by the collar up to the second floor of the school and violently dropping him in an office chair, leaving bruises on his neck, because the child, who otherwise had good grades, but liked to make his fellow pupils laugh, had replied: “Oh yeah? Great!” when the teacher had told him that he was to come to his office during recess (Caen, May 4 1998, case n° 970667). The court found that the teacher still has the right to educate and use corrective measures to educate the students in class; as long as no harm (morally or physically) was done, the teacher is not guilty.

The Court of Cassation states that tribunals and courts of appeal interpret freely the limits of the right of correction; see, eg, Court of Cassation, Criminal Chamber, November 26 2002, n° 02-81727, unpublished: “Attendu qu’en l’état de ces énonciations procédant de son appréciation souveraine, la cour d’appel a justifié sa décision”.

Unofficial English translation: “Having regards to the supreme discretion of the Court of Appeal, the latter has justified its decision... ”.

In this case, a teacher punished some of his students very severely, by pulling their hair, hitting them on their back, etc. The Court of Appeal decided that he was guilty and ordered him to pay compensation to the victims and their families. The Court of Cassation decided that this decision of the Court of Appeal violated the Articles of the Penal Code since the teacher should not personally pay anything for the victims even though he is guilty.

And most recently, a 2012 decision of the Court of Appeal (Court of Appeal of Douai, 10 October 2012, Chamber 4, N° 12/729) excused the mayor of a city who had slapped a child aged under 15, considering this justified under the circumstances because the behaviour of the child was unacceptable in view of the authority of his office. Thus this court again revived the “right of correction”.

Ministerial Circulars on school corporal punishment Ministerial circulars state that corporal punishment should not be used in schools (Circular No. 91-124 of 6 June 1991 regarding primary schools and Circular No. 2000-105 of 11 July 2000 for secondary schools). But these do not amount to legislation and there is no explicit prohibition in law; “light correction” is tolerated in the same way as it is for parents.

Prevalence of and attitudes to corporal punishment in France

A study carried out in 2007 examined five European countries: Sweden, Austria, Germany, France and Spain. Five thousand parents (1,000 in each nation) were interviewed about their use of and attitude towards corporal punishment, their own

experiences of violence and their knowledge and beliefs about the law: 72% of French parents said they had “mildly” slapped their child on the face, 87% on the bottom; 32% had given their child a “resounding” slap on the face; 4.5% had beaten their child with an object; 7.9% never used corporal punishment; 85% agreed that “one should try to use as little corporal punishment as possible”, and 82.5% agreed that “non-violent child-rearing is the ideal”. (Bussmann, K. D. (2009), *The Effect of Banning Corporal Punishment in Europe: A Five-Nation Comparison*, Martin-Luther-Universität Halle-Wittenberg)

A survey by the Union of Families in Europe (UFE) of 2,000 grandparents, parents and children found that 95% of adults and 96% of children had been smacked; 84% of grandparents and 87% of parents had administered corporal punishment. One in ten parents admitted to punishing their children with a “martinet” (a small whip); 30% of children said they had been punished with a martinet. When asked the reason for smacking their children, parents said it was part of “bringing up” their children (77%), it was to “relieve their feelings” (7%) or both of these things. When asked how they planned to discipline their own children when they become parents, 64% of children said “the same”. 61% of grandparents and 53% of parents said that they oppose a ban on corporal punishment of children. (Union of Families in Europe (2007), *POUR ou CONTRE les fessées?*, Tassin: UFE)

The complaint

The lack of effective prohibition of corporal punishment in the family, in all forms of alternative care and in schools in France violates Article 17 of the Charter. In addition it is clear that France has not acted with due diligence to eliminate such violent punishment of children in practice. The ECSR first concluded that France was not in conformity because of the lack of clear prohibition in 2003 and repeated this conclusion in 2005 and 2011.

The ECSR has explained in its decision on complaint No. 34/2006 that the legal provisions prohibiting all violence against children “must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children”. (Complaint No. 34/2006, Decision on the Merits, para. 20). Yet French Courts, including its highest court, have continued to imply that a right of correction exists and can be used to justify some degree of violent punishment of children by parents, teachers and others caring for children.

It is disingenuous of the French Government to assert that its legal framework is adequate when it is plain that milder forms of corporal punishment have been condoned by court decisions and are still widely approved by a majority of the population: millions of children are thus suffering violations of their right to respect for their human dignity and physical integrity.

We hope that the ECSR will declare this complaint admissible and without delay consider the merits, bearing in mind that any confusion over the legality of corporal punishment is bound to increase the risk of irreparable injury to children, and France’s

failure to fulfil its obligations, despite repeated conclusions of the ECSR and recommendations from UN Treaty Bodies, conflicts with effective respect for the provisions of the Charter.