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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

27 September 2013

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Association for the Protection of All Children (APPROACH) Ltd v. France
Complaint No. 92/2013

**SUBMISSIONS OF THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 26 September 2013

**SUBMISSIONS OF THE GOVERNMENT OF THE FRENCH REPUBLIC
ON THE MERITS OF COMPLAINT No. 92/2013,
APPROACH v. FRANCE**

In a letter dated 26 March 2013, the European Committee of Social Rights (hereafter "ECSR") forwarded to the Government the complaint submitted on 11 February 2013 by the APPROACH organisation, requesting the Committee to declare that France was not satisfactorily implementing Article 17 of the Revised European Social Charter on the grounds of a lack of general prohibition of corporal punishment of children.

The French Government has the honour of submitting the following observations to the Committee.

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1. The complainant organisation considers that the absence of an explicit and effective prohibition of all types of corporal punishment of children amounts to a violation of Article 17 of the Revised European Social Charter, which provides 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.

2. The Government wishes to present the following observations on the merits of the complaint.

1) National law prohibits any kind of violence against children, in accordance with Article 17§1b of the Revised Social Charter.

3. French legislation now comprises the requisite provisions for prohibiting and sanctioning any form of violence against children, that is to say any act or conduct liable to infringe the child's physical integrity, dignity and physical or mental development.
4. Furthermore, these provisions follow on, firstly, from the inviolability of the human body as enshrined in Article 16-1 of the Civil Code, and secondly, from the prohibition of inhuman and degrading treatment deriving from Article 3 of the European Convention of Human Rights.
5. The penalty incurred by the perpetrators of violence is always heavier where the offence is committed against a child under the age of 15 or a direct descendant (Article 222-8, 222-12 and 222-13 of the Penal Code).
6. Moreover, Article 222-14 of the Penal Code further increases the penalties incurred for violence classified as "habitual" violence against children under the age of 15 and persons who are particularly vulnerable.
7. For example, any act of violence committed against a child under the age of 15, even where it has not caused total incapacity for work (ITT), is subject to a 3-year prison sentence and a fine of € 45 000. These penalties are increased to 5 years and € 75 000 where the offence caused ITT lasting 8 days or less and was committed by an ascendant or a person holding authority over the child. On the other hand, where the offence caused ITT lasting over 8 days, the accused incurs a penalty of 7 years' imprisonment and a fine of € 100 000 if he or she is a direct ascendant of the victim or holds authority over the latter.
8. Any act of violence committed against a person between the ages of 15 and 18 is also sanctioned by the Penal Code: violence without ITT or any other aggravating circumstance is subject to a fine of € 750; violence causing ITT lasting less than 8 days is subject to a fine of € 1 500; and violence causing ITT lasting over 8 days, still without any other aggravating circumstance, is subject to 3 years' imprisonment and a fine of € 45 000.
9. It should also be noted that violence causing a permanent disability or mutilation is subject to 10 years' imprisonment and a fine of € 150 000. The penalties are increased to 15 years' imprisonment if the violence was committed against a child under the age of 15, and to 20 years' imprisonment if the perpetrator is a direct ascendant of the victim or holds authority over him or her.
10. Furthermore, violence causing the death of a child under the age of fifteen is subject to 20 years' imprisonment. The penalty increases to 30 years' imprisonment if the perpetrator is a direct ascendant of the victim or holds authority over the latter.
11. French criminal law also penalises deprivation by an ascendant of care and food from children under the age of 15 with 7 years' imprisonment and a fine of

€ 100 000. The penalty is increased to 30 years' imprisonment if the offence leads to the victim's death.

12. Lastly, Law No. 2010-769 of 9 July 2010 complements the criminal-law mechanism by allowing the family court to issue a protection order where violence occurring in a couple "jeopardises (a) child(ren)" (Article 515-9 of the Civil Code).
13. Moreover, the Education Code requires primary schools to base their internal regulations on the provisions of the "departmental model regulations", a reference document which was the subject of a 1991 National Circular which is currently being revised. This Circular (No. 91-124 of 6 June 1991, amended), which provides general guidelines for drawing up model departmental regulations for nursery and primary schools, stipulates, in the section entitled "rewards and sanctions", that:
 - no sanctions can be inflicted on children at nursery school;
 - corporal punishment is prohibited at primary school.
14. As regards secondary schools, Circular No. 2011-111 of 1 August 2011 on the organisation of disciplinary procedures in lower and upper secondary schools and regional schools for adapted education, preventive measures and alternatives to sanctions stipulates that "Punishment must be part of an overall educational approach implemented by all the educational teams and the educational community", and that "all sanctions imposed must comprise an educational dimension".
15. The Government considers that the applicable legislation protects children against any use of violence.

2) Domestic courts punish violence against children

16. In practice, the French courts prevent and sanction all the many forms of violence against children, whether perpetrated in the child's home or at school.
17. It is therefore deemed that because such punishments as depriving boarders of food, shutting them up in cupboards or forcing them to take cold showers constitute degrading treatment, they fall within the category of the aforementioned offence of violence (Cass. Crim., 2 December 1998, no. 97-84.937).
18. Similarly, the Criminal Chamber of the Court of Cassation approved the sentences imposed on two primary school teachers, one of whom had been charged with having **pinched and pulled the ears** of a nine-year-old severely enough to leave traces of bruising (Cass. Crim., 31 January 1995, no. 93-85711), on the ground that disciplinary power could only be adduced by a teacher if it is exercised **in an inoffensive manner**. The other teacher had committed violence against pupils in a nursery school class (Cass. Crim., 16 June 2009, no. 08-88.141).
19. In the case of violence committed in a family context, a judgment issued by the Criminal Chamber on 23 June 2010 (no. 09-84801) rejected an appeal against the conviction of the guardian of an under-age child for aggravated violence, including **slapping and scratching**.

20. While some trial court decisions have mentioned **parents’ and teachers’ “right to smack”**, the Criminal Chamber apparently no longer refers to any such right.
21. For instance, the courts apply the relevant legislation very strictly so as to ensure maximum protection for children against any kind of violence or ill-treatment, in conformity with Article 17§1b of the Social Charter.
- 3) **The case-law of the Court of Cassation concurs on this point with that of the European Court of Human Rights, which, in some cases, classifies corporal punishment as inhuman and degrading treatment where such punishment reaches a specified threshold of gravity.**
22. In some judgments on corporal punishment in schools, the European Court has accepted the applicability of Article 3 of the Convention.
23. For example, in the case of *Tyrer v. United Kingdom*, 25 April 1978, the European Court considered the situation of a fifteen-year-old who had undergone judicial corporal punishment for having attacked and injured an older pupil in his school. He had been forced to take down his trousers and underpants and bend over a table. Held down by two police officers, he was given three strokes of the birch by a third policeman.
24. The European Court of Human Rights described this **type of penalty as “institutionalised violence”** committed in breach of Article 3 of the European Convention on Human Rights.
25. In another case, *A. v. United Kingdom* (judgment of 23 September 1998), in which a nine-year-old who was considered as a “difficult child” had on several occasions been beaten very violently with a stick by his stepfather, causing painful bruising, the perpetrator of the violence argued in his defence before the court that the punishment had been “reasonable”, a plea recognised in the British legal system pertaining at the time, and had been acquitted.
26. The European Court ruled that children and other vulnerable persons were entitled to protection in the form of effective prevention, sheltering them from such types of infringement of human physical integrity. It concluded that Article 3 had been violated on the ground that British law did not ensure adequate protection of children.
27. **Nevertheless, the European Court considers that such infringements must reach a minimum level of gravity.**
28. In another case, *Campbell and Cosans v. United Kingdom*, of 25 February 1982, in which the applicants complained that their sons had suffered inhuman and degrading treatment by being exposed to the risk of corporal punishment as a disciplinary measure at school, the Court considered that while the system of corporal punishment might inspire apprehension in anyone exposed to it, the situation in which the applicants’ sons found themselves could not be construed as “torture” or “inhuman treatment” within the meaning of Article 3 since there was nothing to suggest that they had experienced suffering to the extent inherent in

these concepts as interpreted and applied by the Court in its judgment *Ireland v. United Kingdom* of 18 January 1978.

29. It also explained that the *Tyrer* judgment of 25 April 1978 had supplied a number of criteria vis-à-vis the idea of “degrading penalty”, that no “penalty” had actually been executed and that the said judgment did nevertheless indicate that in order to be “degrading”, the “treatment” had also to cause the person in question humiliation or vilification reaching a minimum level of gravity, in his or her own eyes or in those of others (cf. aforementioned judgment *Ireland v. United Kingdom*).
30. By the same token, in its judgment *Costello-Roberts v. United Kingdom* of 25 March 1993, the Court held that while corporal punishment might prove incompatible with the human dignity and physical integrity of the person concerned, as protected by Article 3, if a penalty was to be “degrading” and to infringe Article 3, the humiliation or vilification which it entailed had to reach a specific level and in any case differ from the usual element of humiliation inherent in all penalties. In the Court’s view, by explicitly prohibiting “inhuman” and “degrading” penalties, Article 3 implies that the latter should not be confused with penalties in general. Therefore, **the appraisal of this minimum level of gravity depends on all the circumstances of the case**, and regard must be had to such factors as the nature and context of the penalty, its mode of execution, its duration, its physical or psychological effects and, sometimes, the sex, age and state of health of the victim (aforementioned judgments *Costello-Roberts* § 30, *Ireland v. United Kingdom* § 162, *Tyrer v. United Kingdom* §§. 29-30).
31. In conclusion, the French courts condemn corporal punishment provided it reaches a specific threshold of gravity and can be seen as equivalent to acts of violence as per Article 17§1b of the Revised Social Charter. The Revised Social Charter does not comprise any general prohibition of corporal punishment. The case-law of the European Court of Human Rights also adopts the same reasoning, refraining from laying down any general prohibition but sanctioning corporal punishment where it reaches a specific degree of gravity and can be treated as equivalent to inhuman and degrading treatment. Lastly, the Government notes that this principle of generally prohibiting all corporal punishment is far from achieving consensus in the member countries of the Council of Europe. In 2011, of the 27 countries which have accepted Article 17 of the European Social Charter, only one had adopted general prohibition of corporal punishment.
32. The Government therefore considers that the lack of a general prohibition of corporal punishment cannot be said to breach Article 17 of the Revised Social Charter.