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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. Ireland
Complaint No. 93/2013

COMPLAINT

Registered at the Secretariat on 4 February 2013

**Collective Complaint against Ireland
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 Ireland of the European Social Charter of 1961, the Revised Social Charter of 1996 and the Additional Protocol to the European Social Charter of 1995, providing for a system of collective complaints

Ireland ratified the European Social Charter of 1961 on 7 October 1964 and the Revised Social Charter on 4 November 2000. The Revised Charter came into force on 1 January 2001. Ireland signed and ratified the Additional Protocol to the European Social Charter allowing for a system of collective complaints on 4 November 2000 and the Protocol entered into force on 1 January 2001.

Applicability of Article 17 of the European Social Charter of 1961 and Revised Social Charter of 1996 to Ireland

According to the declarations contained in the instrument of ratification of the European Social Charter of 1961 and the instrument of ratification of the Revised Social Charter, Ireland considers itself bound by Article 17.

Introduction to complaint

This collective complaint follows up complaint number 18/2003, World Organisation against Torture (OMCT) v. Ireland. (OMCT welcomes this follow up: see letter in support attached separately).

The complaint – set out in detail below - alleges that Ireland has taken no effective action to remedy its violation of Article 17 by prohibiting all corporal punishment and other cruel or degrading forms of punishment of children. The existence of the common law defence of “reasonable chastisement” allows parents and some other carers to assault children with impunity. Research suggests that millions of Ireland’s youngest citizens are subjected to punitive assaults.

The complaint summarises the relevant jurisprudence of the European Committee of Social Rights and its conclusions and decisions relating to Ireland; it also summarises the relevant international human rights standards and recommendations to Ireland by UN Treaty Bodies and in the Universal Periodic Review by the Human Rights Council. Legislation in Ireland 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 clear interpretation of the Charter’s requirements in decisions on a series of collective complaints (Nos.17/2003, 18/2003 (against Ireland) 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

Conclusions and decision of ECSR relating to the legality of corporal punishment in Ireland

Collective Complaint 18/2003

Following a collective complaint against Ireland brought in 2003 by the World Organisation Against Torture (OMCT), the European Committee of Social Rights (ECSR) concluded that Ireland was in violation of Article 17 of the Revised Charter, because corporal punishment of children within the home is permitted by the common law defence of reasonable chastisement, which is also applicable in foster care, residential care and certain childminding settings

In its Decision on the Merits, the ECSR states:

“64. The Committee’s case-law is to the effect that the prohibition of all the forms of violence must have a legislative basis. The prohibition must cover all forms of violence regardless of where it occurs or of the identity of the alleged perpetrator. Furthermore the sanctions available must be adequate, dissuasive and proportionate.

65. The Committee notes that the corporal punishment of children within the home is permitted in Ireland by virtue of the existence of the common law defence of reasonable chastisement. Although the criminal law will protect children from very serious violence within the home, it remains the fact that certain forms of violence are permitted. The Committee therefore holds that the situation is in violation of Article 17 of the Revised Charter.

66. As regards the situation of children in foster care, residential care and certain childminding settings, the Committee takes note of the fact that there exist guidelines, standards, registration schemes and inspections. However it notes that these do not have the force of law and do not alter the existence of the common law defence which remains *prima facie* applicable. It therefore finds that children in these situations are not adequately protected against corporal punishment. It therefore holds that the situation constitutes a breach of Article 17 of the Revised Charter.

CONCLUSION

For these reasons, the Committee concludes by 11 votes to 2 that there is a violation of Article 17 of the Revised Charter.”

Resolution adopted following ECSR decision on Collective complaint 18/2003,

June 2005: The resolution adopted by the Council of Europe Committee of Ministers, following the 2004 decision on the collective complaint against Ireland, states that the Committee:

“Takes note of the intention of the Department of Health and Children to seek legal advice in relation to amending the regulations to make more explicit the prohibition of corporal punishment of children in care, and on the need for any change required in primary legislation.

“Takes note of the intention of the government to keep the introduction of an outright ban on corporal punishment under review.”

(Resolution ResChS(2005)9, Collective complaint No. 18/2003 by the World Organisation against Torture (OMCT) against Ireland, adopted by the Council of Ministers on 8 June 2005).

Reporting procedure under Article 17: Ireland’s report and ECSR conclusions

In its latest report under Article 17 of the Revised Social Charter, the Government of Ireland does not refer directly to the decision of the ECSR on complaint No. 18/2003. The failure to report on follow-up violates Rule 40 of the ECSR’s Rules of Procedure (“Measures required to bring the situation into conformity: In cases where a decision finds that there has been a violation, the respondent State shall present in every subsequent report on the provisions concerned in the complaint the measures taken to bring the situation into conformity.”: (Rules as adopted during the 201st session on 29 March 2004 and revised during the 207th session on 12 May 2005, during the 234th session on 20 February 2009 and during the 250th session on 10 May 2011)).

The report has a short passage on corporal punishment in which it first refers to changes limiting the legality of corporal punishment in some settings which were implemented more than a decade ago and are not disputed. It then states:

“A prohibition in legislation of corporal punishment within the family has not been brought forward to date however the matter is under continuous review. It is the Government’s view that there is a balance to be found in trying to dissuade parents

from using physical chastisement, supporting them in effective parenting *versus* criminalising parents who smack their children. The policy focus to date has been on changing parent’s attitudes and understanding of the problems associated with physical punishment and offering them alternatives as the most appropriate course.

“The National Children’s Strategy specifically commented on the need to change public attitudes to physical punishment in the home. Actions supporting this are focused on the provision of quality parenting programmes with a focus on alternative approaches to managing difficult behaviour in children. In addition to this the state has undertaken specific research in relation to parenting styles and disciplines which demonstrate a significant decline in the use of physical punishment by parents.

“Any further changes or clarifications of the operation of the existing act will be considered in the wider evolving general corporal punishment policy context.”

(Government of Ireland, 8th National Report on the implementation of the Revised European Social Charter, Report registered by the Secretariat on 8th June 2011, Cycle 2011, Cycle 2011, RAP/RCha/IRE/VIII, para. 17.1.25)

Following examination of this report from the Irish Government, the ECSR concludes:

“In its previous conclusion the Committee noted that by the common law immunity parents and other persons *in loco parentis* could use reasonable and moderate chastisement in the correction of their children. It asked whether the Government intended to remove this immunity and prohibit all forms of corporal punishment of children.

“In this connection it notes from the report that a prohibition in legislation of corporal punishment within the family has not been brought forward to date. It is the Government’s view that there is a balance to be found in trying to dissuade parents from using physical chastisement, supporting them in effective parenting versus criminalising parents who smack their children...

“In its decision in complaint World Organisation against Torture (OMCT) v. Ireland Complaint No 18/2003, decision on the merits of 7 December 2004 the Committee observed that the corporal punishment of children within the home was permitted in Ireland by virtue of the existence of the common law defence of reasonable chastisement. Although the criminal law protected children from very serious violence within the home, it remained the fact that certain forms of violence are permitted. The Committee therefore held that the situation was in violation of Article 17 of the Charter.

“The Committee considers that the situation has not been remedied. Therefore it reiterates its finding of non-conformity on the ground that corporal punishment is not explicitly prohibited in the home.

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

- corporal punishment of children is not explicitly prohibited in the home.”
(Conclusions 2011, January 2012)

Commissioner for Human Rights: report following visit to Ireland 2011

In his report following a formal visit to Ireland in 2011, Thomas Hammarberg commented:

“Following the discussion in Ireland, the Commissioner believes that the time is right to unconditionally ban corporal punishment and abolish the much criticised common law defence of ‘reasonable chastisement’. In this context, the Commissioner recalls that the European Committee on Social Rights found Ireland in breach of Article 17 of the Revised Social Charter already in December 2004, and that the UN Committee on the Rights of the Child reiterated its previous recommendations to ban all forms of corporal punishment including within the family. The Commissioner is convinced that fears are unfounded that such a ban would lead to the criminal prosecution of parents on a large scale, as judicial authorities enjoy a margin of discretion. A complete ban would send a strong signal of respect for children to society at large and would bring Ireland into line with its international obligations.”
(para. 34)

The Commissioner reiterated his recommendation “for an outright ban of corporal punishment of children, implementing agreed European and international standards”.
(para. 55)

(Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Ireland from 1 to 2 June 2011, CommDH(2011)27)

The Commissioner also corresponded with successive Taoiseachs, urging the Irish Government to ban all corporal punishment, in 2007 and in 2010. In a response dated 5 October 2007, Bertie Ahern T.D. responded: "... The Government has indicated its commitment at international level to keep the issue of a ban on corporal punishment in the context of the family under review". In November 2011, Brian Cowen T.D. responded: "... We have undertaken a number of positive legislative and policy changes in this area in recent years and a move towards a blanket ban at some stage in the future has not been ruled out. There is, however, a concern that this could be counter-productive, due to the delicate constitutional framework which exists in relation to the role of parents.

"In the meantime the Government is examining the possibility of changing the law relating to the so called 'reasonable chastisement' defence, which in practice is only available to parents in respect of a diminishing range of physical punishment...". (letter dated 26 November 2011)

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 Ireland:

Committee on the Rights of the Child: In its concluding observations on the initial report of Ireland under the Convention on the Rights of the Child (CRC), the Committee on the Rights of the Child in 1998 recommended prohibition of corporal punishment in the family (*4 February 1998, CRC/C/15/Add.85, paras. 16 and 39*). Further concluding observations, expressing "deep concern" at the lack of action, were issued by the Committee in 2006, following examination of Ireland's second report under the CRC. These state:

"While noting that the prohibition of corporal punishment within the family is under review and that parental educational programmes have been developed, the Committee is deeply concerned that corporal punishment within the family is still not prohibited by law.

"The Committee reiterates its previous recommendation (CRC/C/15/Add.85 para. 39) and urges the State party to:

- a) explicitly prohibit all forms of corporal punishment in the family;

- b) sensitize and educate parents and the general public about the unacceptability of corporal punishment;
- c) promote positive, non-violent forms of discipline as an alternative to corporal punishment; and
- d) take 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."

(Committee on the Rights of the Child, 29 September 2006, CRC/C/IRL/CO/2, Concluding observations on second report, paras 39 and 40).

Committee against Torture: In June 2011, following examination of Ireland's first report under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee against Torture expresses "grave concern" at the persisting legality of corporal punishment in the home and some other settings. The Committee's concluding observations state:

"While taking note that corporal punishment is prohibited in schools and in the penal system, the Committee is gravely concerned that such punishment is lawful in the home under the common law right to use 'reasonable and moderate chastisement' in disciplining children and also in certain alternative care settings (arts. 2 and 16).

"The Committee recommends that the State party prohibit all corporal punishment of children in all settings, conduct public campaigns to educate parents and the general public about its harmful effects, and promote positive non-violent forms of discipline as an alternative to corporal punishment." (17 June 2011, CAT/IRL/CO/1, Concluding observations on initial report, para. 24)

Universal Periodic Review at the Human Rights Council: Ireland was examined in the first cycle of the Universal Periodic Review (UPR) in the Human Rights Council in 2011 (session 12). The following recommendations were made:

"Explicitly prohibit any form of corporal punishment in the family and continue developing awareness-raising campaigns and education for parents and for the public in general." (Uruguay);

"Promote forms of discrimination and non-violent discipline as an alternative to corporal punishment, taking into consideration general comment No. 8 (2006) of the Committee on the Rights of the Child on the protection of children from corporal punishment and other cruel or degrading forms of punishment." (Uruguay)"

(A/HRC/19/9, Report of the Working Group, paras. 107(41) and 107(42));

The Government partially accepted the recommendations to prohibit all corporal punishment of children, stating:

"This matter is under continuous review. A proposal to either prohibit the defence of reasonable chastisement or to further circumscribe the definitions of what constitutes reasonable chastisement would require careful consideration. Details of any possible future significant developments in this area will be communicated to the UN CRC [Committee on the Rights of the Child]."

(A/HRC/19/9/Add.1, Report of the Working Group: Addendum, para. 53)

The law in Ireland

The common law right of parents and others to use “reasonable and moderate chastisement” in disciplining children was confirmed in article 37 of the Children Act 1908. The Children Act 2001 repealed article 37, but the Government has accepted that removal of the common law defence requires an explicit provision in addition to this repeal.

Corporal punishment is explicitly prohibited in pre-school establishments in Regulation 8 of the Child Care (Pre-School Services) Regulations (1996). But under section 58 of the Child Care Act 1991, childminders caring for children of relatives, children of the same family or not more than three children of different families are exempt from these regulations. Guidance (National Standards) relating to foster care states that corporal punishment should not be used, but there is no prohibition in legislation. Similarly, Health Boards recommend the avoidance of corporal punishment in residential services in favour of “reasonable and humane sanctions”, and the National Standards for Children’s Residential Centres state that young people should not be subjected to humiliating or degrading treatment, but there is no prohibition of corporal punishment in legislation.

The Child Care (Special Care) Regulations (2004) regulate Special Care Units which provide secure residential care for a small number of non-offending children in need of special care or protection, and prohibit “corporal punishment or any form of physical violence”.

Early recommendations for prohibition: 18 years ago, in 1994, the Irish Law Reform Commission reviewed the law on assault and issued a “Report on Non-fatal Offences against the Person” (LRC 45-1994). This considered whether the common law power of chastisement of children, as then recognised by section 37 of the Children Act 1908, should be abolished or restricted by statute. In relation to school corporal punishment, the Commission recommended (para. 9.205) “that the law should be clarified so as to remove any existing immunity of teachers from criminal prosecution for assaults on children”. This reform was implemented by section 24 of the Non-Fatal Offences against the Person Act 1997.

The Commission went on to consider parental chastisement. The report notes that the Commission considered various proposals for restricting the right to chastise by statute, but its report concludes that “The Commission is satisfied there is no legislative ‘half-way house’”. It recommends: “Whereas it would be premature to abolish the common law chastisement exception immediately, the re-education of parents should proceed without delay and the exception should be abolished at the right time” (para 9.214).

In 1997, a Report of the parliamentary Select Committee on Social Affairs on “Non-Fatal Offences against the Person in respect of Children” recommended repeal of the common law defence of “reasonable chastisement” and of its statutory confirmation in section 37 of the 1908 Children Act, “and that the Government adopt the recommendation of the Law Reform Commission on the implementation of a major programme for positive parenting”.

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

Recent research into parents' and children's perspectives on "Parenting styles and discipline"

Government-commissioned research published in 2010 found that a quarter of parents of children of all ages had used some form of physical punishment in the past year. 15.8% of parents reported that they had smacked their child on the bottom at some point during the past year, with 7.4% having done so "often" or "occasionally". 7.3% had shaken, grabbed or pushed their child; 2.7% had done so often or occasionally. Parents of younger children were significantly more likely to report using physical punishment than parents of older children, with 37% of parents of 2-4 year olds sometimes using physical punishment.

Parents who reported punishing their children physically were more likely to use psychologically aggressive discipline strategies such as shouting or yelling at a child and threatening to hit or smack a child.

The survey also found a very low level of knowledge of the law on corporal punishment and considerable confusion. However, 42% believed that smacking should be illegal, compared with 34% who believed it should remain legal.

(Halpenny, A. M., Nixon, E. & Watson, D. (2010), *Parenting Styles and Discipline: Parents' Perspectives on Parenting Styles and Disciplining Children*. Dublin: The Stationery Office / Office of the Minister for Children and Youth Affairs. [Online] Available at

http://omc.gov.ie/documents/publications/Parents_Perspectives_on_parenting_styles.pdf)

A series of focus groups with children found them describing physical punishment as slapping or smacking; they said that it made them feel bad, using words such as 'sadness, unloved, mad, upset, hurt' (p. 47) to describe their feelings. While some young people justified physical punishment in terms of its effectiveness: 'You can beat it [misbehaviour] out of their system ... You can scare it out of them' (boy aged 15 – 17, p. 47), overall, children of all ages expressed disapproval of physical punishment: '[It's] a bad idea ... because they might hurt you really hard' (boy aged 6 – 8, p. 48), 'I think it ruins the relationship between the son and the parent if the parent hits him... the children will grow up hating their parents' (boy aged 12 – 14, p. 49), 'It's a bit stupid because if they're using physical punishment on you, when you have kids you're going to learn from them, so then maybe you'll hit your kids' (girl aged 6 – 8, p. 49). (Nixon, E. & Halpenny, A. M. (2010), *Children's Perspectives on Parenting Styles and Discipline: A Developmental Approach*. Dublin: The Stationery Office / Office of the Minister for Children and Youth Affairs. [Online] Available at

http://omc.gov.ie/documents/publications/childrens_perspectives_on_parenting_styles.pdf)

The complaint

Ireland's responses to previous decisions and conclusions of the ECSR and to other recommendations to prohibit all corporal punishment are detailed in sections above. They show no commitment to remedying the persisting violation of Irish children's rights.

The Committee of Ministers' resolution adopted in June 2005 following the decision of the ECSR on collective complaint 18/2003, records that the Committee took note "of the intention of the government to keep the introduction of an outright ban on corporal punishment under review." Similarly in correspondence with the Commissioner for Human Rights, successive Taoiseachs referred to a ban being kept "under review" or – in 2011 – "has not been ruled out".

As also noted above, in its latest report to the ECSR under Article 17 (2012), Ireland repeated that the matter is "under continuous review". It also suggested "there is a balance to be found in trying to dissuade parents from using physical chastisement, supporting them in effective parenting *versus* criminalising parents who smack their children...".

And most recently, in its response to recommendations to prohibit all corporal punishment made in its Universal Periodic Review examination in 2012, Ireland responded: "This matter is under continuous review. A proposal to either prohibit the defence of reasonable chastisement or to further circumscribe the definitions of what constitutes reasonable chastisement would require careful consideration. Details of any possible future significant developments in this area will be communicated to the UN CRC [Committee on the Rights of the Child]."

None of these responses comes near to an unequivocal acceptance of the obligation to remove the common law defence of "reasonable chastisement" and end the legal justification of punitive assaults on Irish children. Keeping a matter "under review" is a wholly inadequate response to a clear and repeatedly confirmed human rights obligation. In fact Ireland's most recent response, to recommendations made in the UPR, appears to move it a step backwards from acceptance of its obligations. Suggesting that a proposal to remove or limit [our emphasis] the defence of "reasonable chastisement" would require "careful consideration" directly contradicts previous responses implying that the proposal has been under continuous review for years. In addition, this response implies that now the Government may even be contemplating limiting rather than removing the "reasonable chastisement" defence, although this would plainly leave it in continuing violation of Article 17.

Ireland has taken no significant action to effectively prohibit all corporal punishment of children, by parents and others, despite the seven year-old decision of the European Committee of Social Rights on complaint 18/2003, successive recommendations to prohibit and an expression of "deep concern" from the Committee on the Rights of the Child and an expression of grave concern and similar pressure to prohibit from the Committee against Torture. Most recently Ireland was pressed to prohibit all corporal punishment in its Universal Periodic Review.

The considerations the Irish Government advances to justify further delay in fulfilling its obligations, in its most recent report under Article 17 of the Charter, confirm a profound lack of commitment to respecting children's human rights: "... there is a

balance to be found in trying to dissuade parents from using physical chastisement, supporting them in effective parenting versus criminalising parents who smack their children...”. The concept of balance is deeply flawed. It conflicts with the clear obligations both to remove the “reasonable chastisement” defence and in addition - in the words of the ECSR in its decision on complaint 34/2006 - to act with due diligence to ensure that such violence is eliminated in practice.

Clear prohibition of all physical punishment is an essential element of any programme to dissuade parents from its use. The idea that parents can best be persuaded not to smack by continuation of a law upholding their right to do so is plainly absurd. The proposition that “supporting effective parenting” is somehow “versus” giving children a right not to be smacked is offensive to parents and children alike.

No Government would seriously suggest that any other population group merited reduced protection under the criminal law on assault, or that their right to protection could be upheld by “trying to dissuade” others from assaulting them deliberately.

It is seven years since the Committee’s clear decision on Complaint 18/2003. It is more than 15 years since expert bodies within Ireland recommended complete removal of the “reasonable chastisement” defence. The Irish Government appears to give a very low priority to protecting successive generation of Irish children from violent punishment. The lack of clear prohibition of corporal punishment in all forms of care is additionally shocking, given the horrific revelations of the institutional abuse of Irish children over a long period.

We urge the European Committee to declare this complaint admissible immediately and to consider the merits without delay. We hope the Committee will agree that the existence of a justification for violent assault on children adds unacceptably to the risk of serious irreparable injury to Irish children. Ireland’s lack of action in response to the Committee’s decision on complaint No. 18/2003, compounded by its lack of action in response to the ECSR’s conclusions and to other expressions of concern and recommendations from human rights monitoring bodies is in conflict with effective respect for the rights recognised in the Charter. We therefore urge the Committee, under Rule 36 of its Rules of Procedure, to seek appropriate immediate measures: an immediate commitment to bring forward legislation to remove the “reasonable chastisement” defence and to ensure explicit and effective prohibition of corporal punishment and other cruel or degrading punishment of children, in their homes and in all forms of alternative care, and to work with due diligence towards the elimination of such punishment.