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

29 November 2013

Case Document No. 4

Association for the Protection of All Children (APPROACH) Ltd v. Ireland
Complaint No. 93/2013

**RESPONSE TO THE SUBMISSIONS OF THE GOVERNMENT
ON THE REQUEST FOR IMMEDIATE MEASURES**

Registered at the Secretariat on 25 November 2013

Association for the Protection of All Children (APPROACH) Ltd v. Ireland Complaint No. 93/2013

Response to the Observations of Ireland on the request for immediate measures

November 25 2013

Introduction

The Government of Ireland made submissions, registered on 27 September 2013, both on the merits of Complaint No. 93/2013 and on our request to the Committee to indicate “immediate measures”. This is our response to the Government’s comments on “immediate measures”.

The Government contends that we have not justified our request for immediate measures. Para. 1 of Rule 36 states that the Committee may indicate “any immediate measure the adoption of which seems necessary with a view to avoiding the risk of a serious irreparable injury and to ensuring the effective respect for the rights recognised in the European Social Charter”. Our response therefore addresses these two points in detail. But first, we comment on the Government’s comparison of the Rule with the “interim measures” Rule of the European Court of Human Rights. Secondly, we address the Government’s assertion that the request cannot be considered in advance of a decision on the merits. Given the Committee’s consistent interpretation of the requirements of the Charter in relation to corporal punishment of children, we are confident that the Committee will find continuing violation by Ireland when it examines the merits. But we recognise that for the Committee at this stage of consideration of the complaint to indicate as we request that the Government should immediately commit to introduce legislation may not be appropriate. We note that in relation to complaints No. 86/2012 and 90/2013, the Committee rejected the requested immediate measures to suspend legislation, but invited the Government concerned to take other immediate, non-legislative measures, in advance of decisions on the merits. **Given the nature of the immediate measures that we request the Committee to indicate, we conclude that it may be appropriate to defer consideration of such measures until the decision on the merits, as Rule 36 allows.**

1 Comparisons with the European Court of Human Right’s rule on “interim measures”

The Government of Ireland suggests that: “It is legitimate to draw comparisons between the immediate measures Rule as detailed in Rule 36 of the Committee’s Rules and interim measures detailed in Rule 39 provided for in the Rules of Court of the European Court of Human Rights. The European Court of Human Right’s rule on interim measures operates without prejudice to the ultimate conclusion of an application and is confined to situations where there is a risk to the right of individual application. In the present application there is no threat to the application being fully considered by the Committee.”

Given the very different nature of the collective complaints procedure, we regard these comparisons as invalid and urge the Committee to continue to interpret Rule 36 in a manner appropriate to its own innovative procedure.

We note that the Committee has already considered the very similar comparison between the ECHR interim measures rule and Rule 36 made by the Government of the Netherlands in its submissions on the request for immediate measures in complaint No. 90/2013, *Conference of European Churches (CEC) v. the Netherlands*. The Committee's decision (dated October 25 2013) to indicate immediate measures to avoid serious, irreparable injury to the persons concerned by that complaint (who, as in this complaint No. 93/2013, are separate from the applicant) clearly implies a rejection of the Irish Government's contention that the rule should be used only when there are "risks to the right to individual application".

Since the right of individual petition to the European Court of Human Rights applies to alleged violations of the rights of identified individuals, it is to be expected that the Court's use of the interim measures rule focuses on "an imminent risk of irreparable harm" to the applicant(s); it has been used most commonly when the applicant requests suspension of an expulsion or extradition. We would disagree with the Government's assertion that the ECHR rule "is confined to situations where there is a risk to the right of individual application", but in any case this appears irrelevant to this case; we accept that there is no threat to this complaint being fully considered by the Committee, nor any threat to the applicant.

Under the collective complaints procedure, the applicant need not be the victim of the rights violation, and in this case is not. We can see no reason why the "immediate measures" Rule 36 should be confined to cases where there is a threat to the application being fully considered by the Committee. The Rule states clearly that the Committee can "indicate to the parties any immediate measure the adoption of which seems necessary with a view to avoiding the risk of a serious irreparable injury and to ensuring the effective respect for the rights recognised in the European Social Charter". We address these two criteria identified in the Rule in detail below.

2 Consideration of request for "immediate measures" in relation to consideration of the merits

The Rule makes clear that the Committee can consider or initiate a request for immediate measures following an admissibility decision "at any subsequent time during the proceedings before or after the adoption of the decision on the merits". We note that the Committee has twice indicated immediate measures before issuing decisions on the merits of complaints (Nos. 86/2013 and 90/2013, decisions dated October 25 2013).

The assertion by the Irish Government that the immediate measures sought in this case "go to the merits of the complaint" is very similar to the argument advanced by the Government of the Netherlands (in complaint No. 90/2013) that immediate measures could not be adopted before considering the merits of the complaint since the existence of possible irreparable harm is what the parties disagree on. In the particular circumstances of complaint No. 90/2013 this was implicitly rejected by the Committee's decision to issue its decision requesting certain immediate measures before that on merits.

However, in this case we accept that it may not be appropriate for the Committee to request the immediate measures we are seeking, including "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...", at this stage of consideration

of the complaint. To do so would certainly assume acceptance of the merits and a finding of violation of the Charter.

Given the Committee's consistent jurisprudence on states' obligations with regard to violent punishment of children, and its decision on the previous complaint No. 18/2003 and on other complaints including No. 34/2006, we do not believe a finding of continuing violation is in doubt. However, in our complaint (last para.) we did not suggest at what point the Committee should indicate the necessary immediate measures: we urged the Committee "to declare this complaint admissible immediately and to consider the merits without delay...". In the light of the immediate measures requested, and the Irish Government's observations on the request (in particular para. 44 first sentence and para. 46 last sentence), we suggest that the Committee should consider making the request with or immediately after the decision on the merits.

We urge the Committee to consider the special vulnerability and developmental status of the child. If any other population group in Ireland was found to be still at risk of legalised assault, we cannot imagine that the Committee would hesitate about indicating, at an appropriate stage of the proceedings, "immediate measures" which the Government should take.

We believe that indicating, at the appropriate point in the procedure, immediate measures which the Committee considers necessary is an essential as well as logical next step in asserting its long-term and consistent interpretation of the Charter as requiring respect for children's right to clear and effective protection from assault disguised as punishment or discipline. It is proportionate, given Ireland's lack of action or even commitment to reform. A commitment to keep an issue under review is a wholly inadequate response to the Committee's clear finding of a violation of the Charter in its decision on the previous complaint, No. 18/2003, issued almost nine years ago in December 2004.

Physical punishment of children is the only form of inter-personal violence remaining lawful in Ireland: why should children wait still longer for full legal recognition of their right to respect for their physical integrity and human dignity and to equal protection under the law? We respectfully refer the Committee to its 1999 statement: "... the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact." (International Commission of Jurists v. Portugal, complaint No. 1/1999, decision on the merits of 9 September 1999, § 32).

3 Avoiding the risk of serious irreparable injury

We contend that the lack of prohibition of corporal punishment inevitably increases the risk of serious irreparable injury to Ireland's children, including injury to their physical and mental health and well-being, their dignity and their status in Irish society. We of course fully accept that prohibition on its own will not end the use of physical punishment. But resisting and delaying law reform not only violates children's rights but undermines the other educational measures required to move towards elimination of violent punishment: the law, properly and sensitively enforced, is an effective instrument of social change. The immediate measures we propose are "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".

It is 12 years since the Committee in General Observations in 2001 emphasised: “The Committee attaches great importance to the protection of children against any form of violence, ill-treatment or abuse, whether physical or mental... 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... Moreover, in a field where the available statistics show a constant increase in the number of cases of ill-treatment of children reported to the police and prosecutors, it is evident that additional measures to come to terms with this problem are necessary. To prohibit any form of corporal punishment of children, is an important measure for the education of the population in this respect in that it gives a clear message about what society considers to be acceptable. It is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable corporal punishment and what is not.”

The research evidence quoted below – much of it government-commissioned – shows that many Irish children continue to suffer punitive assaults from their parents and there has been a consistent rise in reports of physical abuse of children.

Our request that the Committee should indicate immediate measures is reinforced by the lack of action or even commitment to act following the decision on the previous complaint almost nine years ago and by the Government’s assumption that a commitment to “keep the issue of corporal punishment under review” is an adequate response (para. 45 of Observations on the merits).

Research suggests that in the years which have passed since the Committee’s decision on complaint No. 18/2003, children in Ireland have continued to be subject to painful and humiliating corporal punishment by family members and others. In a 2013 government-commissioned study of nearly 10,000 three year olds, 45% of their primary caregivers “smacked” them sometimes;¹ similarly, government-commissioned research in 2010 found that 37% of parents of two-four year olds sometimes physically punished them.² In research in 2007-2008, 42% of nine year old girls and 41% of boys the same age said they were “sometimes” or “always” smacked by their mother.³

It is likely that the actual prevalence of corporal punishment is significantly higher than the already shockingly high figures in these self-report studies. Since all three studies cover corporal punishment by only one parent, none gives a clear picture of children’s overall experience, since children in two-parent families may be punished by both parents, or only by the parent not included in the studies. And children are also physically punished in the family home and elsewhere by a wide range of adults other than their parents – including parents’ partners, grandparents, other family members, babysitters, nannies and others. Moreover, two of the three studies cover only “smacking”, leaving other forms of corporal punishment – such as shaking, pushing, pinching and grabbing children – invisible.

¹ Williams, J. et al (2013), *Growing Up in Ireland: Development from Birth to Three Years – Infant Cohort*, Department of Children and Youth Affairs

² 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

³ Williams, J. et al (2009), *Growing Up in Ireland: National Longitudinal Study of Children – The Lives of 9-Year-Olds*, Dublin: Office of the Minister for Children and Youth Affairs, Department of Health and Children

In the past nine years, the body of evidence on the negative impacts of corporal punishment on children has grown to the extent that it is now overwhelming. Some of this research is presented here in order to illustrate the very real risk to children and thus the need for immediate measures. It shows how further delay in prohibition is likely to cause serious and irreparable injury to children, as well as damaging family life and Irish society as a whole. Children are a disproportionately vulnerable group. Because they are in a process of maturation, violations of their rights have greater impact on them than on adults.

The legality of corporal punishment is inimical to child protection. Research clearly shows that most physical “child abuse” is corporal punishment – adults using violence to control and punish children. The majority of incidents substantiated by authorities as abuse occur in a punitive context, as shown by studies including a major Canadian study which found that nearly three quarters (74%) of all cases of “substantiated physical abuse” were cases of physical punishment.⁴ In the UK, the intent to discipline or punish has been shown to be a common precursor in many child homicide cases.⁵

All physical punishment, however “mild” and “light”, carries an inbuilt risk of escalation: its effectiveness in controlling children’s behaviour decreases over time, encouraging the punisher to increase the intensity of the punishment.⁶ This was recognised by the European Committee of Social Rights in its 2001 General Observation, quoted above. The risk of escalation is increased by the fact that adults who inflict physical punishment are often angry: their anger can increase the level of force used beyond what was intended, and their intent may be retaliatory as well as punitive. All ten of the studies on child protection in a major 2002 meta-analysis found that corporal punishment was significantly associated with physical “abuse”⁷; later studies have found similar associations.⁸ These associations are of particular concern given that the most recent official figures which are available in Ireland show a consistent rise in reports of cases of physical abuse for nearly every year between 2007 and 2011. Between 2010 and 2011, the number of reports rose by 16%, from 2,608 to 3,033.⁹

As children consistently say (in Ireland and internationally), corporal punishment is physically and emotionally painful and can lead children to fear and avoid their parents. It is therefore not surprising that corporal punishment injures family relationships. In 2010 government-commissioned research, children in Ireland said that physical punishment was physically painful and made them feel bad, using words such as “sadness, unloved, mad, upset, hurt” to describe their feelings. They said that physical punishment could damage the relationship between a child and their parents: “I think it ruins the relationship between the

⁴ Trocmé, N. et al (2010), *Canadian Incidence Study of Reported Child Abuse and Neglect – 2008: Executive Summary & Chapters 1-5*, Public Health Agency of Canada: Ottawa, 2010; see also A. & Trocmé, N. (2013), [Physical Abuse and Physical Punishment in Canada](#), Child Canadian Welfare Research Portal Information Sheet # 122

⁵ Cavanagh, K. & Dobash, P. (2007), “The murder of children by fathers in the context of child abuse”, *Child Abuse & Neglect*, 31: 731–46

⁶ Straus M. & Douglas E (2008), “Research on spanking by parents: Implications for public policy” *The Family Psychologist: Bulletin of the Division of Family Psychology* (43) 24: 18-20

⁷ Gershoff, E. T. (2002), “Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review”, *Psychological Bulletin*, 128(4), 539-579

⁸ For example, Clément, M. E. et al (2000), *La violence familiale dans la vie des enfants du Québec*, Québec: Institut de la Statistique du Québec

⁹ Health Service Executive (2011), *Review of Adequacy for HSE Children and Family Services*

son and the parent if the parent hits him... the children will grow up hating their parents”.¹⁰ In research involving more than 1,300 parents, 43% agreed that smacking can damage the relationship between parents and children and 80% reported feeling guilty or sorry after the last time they had smacked their child.¹¹ Internationally, research has confirmed that parental corporal punishment is associated with a decrease in the quality of parent-child relationships,¹² with poor attachment by babies to their mothers¹³ and with poor family relationships in adolescence¹⁴ and young adulthood.¹⁵

Physical punishment has been found to be associated with a host of other negative outcomes. As well as causing direct physical injury and harm to children, it is associated with poor mental health – including anxiety, depression, substance abuse and self-harm – in children, adolescents and adults.¹⁶ Far from teaching children how to behave, it is associated with increased antisocial behaviour – including bullying, lying, truancy, school behaviour problems and involvement in crime as a child and young adult.¹⁷ There is overwhelming evidence that corporal punishment increases aggression in children: children who have experienced corporal punishment are more likely to be aggressive towards their peers,¹⁸ to approve of the use of violence in peer relationships, to bully and to experience violence from their peers,¹⁹ to use violent methods to resolve conflict²⁰ and to be aggressive towards their parents.²¹

For children whose response to being physically punished is to behave violently themselves, their violent behaviour may persist into adulthood: corporal punishment in childhood is associated with aggressive, antisocial and criminal behaviour in adulthood.²² Corporal punishment is closely linked to intimate partner violence (domestic violence). The two kinds of violence often coexist,²³ the perpetrators may be the same and tolerance of corporal punishment increases acceptance of other kinds of violence in family relationships. Research shows associations between childhood experience of corporal punishment and perpetration

¹⁰ 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, 47 and 49

¹¹ Halpenny, A. M., Nixon, E. & Watson, D. (2010), op cit

¹² Gershoff, E. T. (2002), op cit

¹³ Coyl, D. D. et al (2002) “Stress, Maternal Depression, and Negative Mother-Infant Interactions in Relation to Infant Attachment”, *Infant Mental Health Journal* 23(1-2),145-163

¹⁴ Lau, J. T. F. et al (1999), “Prevalence and correlates of physical abuse in Hong Kong Chinese adolescents: A population-based approach”, *Child Abuse & Neglect*, 23, 549-557

¹⁵ Leary, C. E. et al (2008) “Parental Use of Physical Punishment as Related to Family Environment, Psychological Well-being, and Personality in Undergraduates”, *Journal of Family Violence* 23,1-7

¹⁶ Gershoff, E. T. (2002), op cit; Afifi, T. O. et al (2012), “Physical Punishment and Mental Disorders: Results From a Nationally Representative US Sample”, *Pediatrics*, 2 July 2012

¹⁷ Gershoff, E. T. (2002), op cit

¹⁸ Ani, C.C., & Grantham-McGregor, S. (1998) “Family and personal characteristics of aggressive Nigerian boys: Differences from and similarities with Western findings”, *Journal of Adolescent Health*, 23(5), 311-317

¹⁹ Ohene, S. et al (2006) “Parental Expectations, Physical Punishment, and Violence Among Adolescents Who Score Positive on a Psychosocial Screening Test in Primary Care”, *Pediatrics* 117(2), 441-447

²⁰ Hart, C.H. et al (1990) “Children's expectations of the outcomes of social strategies: Relations with sociometric status and maternal disciplinary styles”, *Child Development*, 61(1), 127-137

²¹ Ulman, A. & Straus, M. A. (2003) “Violence by children against mothers in relation to violence between parents and corporal punishment by parents”, *Journal of Comparative Family Studies* 34, 41-60

²² Gershoff, E. T. (2002), op cit

²³ Taylor, C. A. et al (2012), “Use of Spanking for 3-Year-Old Children and Associated Intimate Partner Aggression or Violence”, *Pediatrics* 126(3), 415-424

and approval of intimate partner violence as an adult.²⁴ As the UN Committee on the Rights of the Child has said, ending corporal punishment is “a key strategy for reducing and preventing all forms of violence in societies”.²⁵

4 Ensuring effective respect for the rights recognised in the European Social Charter

We believe our current complaint shows beyond doubt how Ireland’s response to the nine year-old decision on the previous complaint No. 18/2003 threatens effective respect for the rights recognised in the Charter. We repeat that Ireland has taken no significant action to effectively prohibit all corporal punishment of children by parents and others. This is despite the Committee’s decision (2004) and later (2012) conclusions and despite successive recommendations to prohibit and an expression of “deep concern” from the UN Committee on the Rights of the Child and an expression of grave concern and similar pressure to prohibit from the UN Committee against Torture. In 2011 Ireland was pressed to prohibit all corporal punishment in its Universal Periodic Review (see complaint page 7 et seq. for details).

If the European Committee of Social Rights, following consideration of the merits, simply reiterates its decision on complaint No. 18/2003, it will be accepting long-term lack of respect for rights it has consistently found to be guaranteed by the Charter.

We draw the Committee’s attention in particular to the following extract from the current complaint:

“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.”

²⁴ For example, Gershoff, E. T. (2002), op cit; Cast, A. D. et al (2006), “Childhood physical punishment and problem solving in marriage”, *Journal of Interpersonal Violence*, 21:244-261; Straus, M. A., & Yodanis, C. L. (1996), “Corporal punishment in adolescence and physical assaults on spouses later in life: What accounts for the link?” *Journal of Marriage and Family*, 58, 825–841

²⁵ Committee on the Rights of the Child (2006), [General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment \(arts. 19; 28, para. 2; and 37, inter alia\)](#) (CRC/C/GC/8)

Conclusion

We are confident that the Committee will find Ireland to be still in violation of Article 17. We urge it when it issues its decision, or immediately afterwards, to indicate necessary immediate measures along the lines of those we propose in the final paragraph of the complaint: “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”. This will in addition enable the Committee to follow up with the state on implementation of the indicated measures (para. 3 of Rule 36).