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

11 April 2014

Case Document No. 6

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

**FURTHER RESPONSE OF THE GOVERNMENT
TO THE RESPONSE FROM APPROACH**

Registered at the Secretariat on 4 April 2014

Council of Europe

European Committee of Social Rights

Collective Complaint No. 93/2013

Association for the Protection of All Children

v.

Ireland

**Further observations of the Respondent dated 4
April 2014**

Introduction

1. The Respondent wishes to avail of the opportunity to submit further comments in light of the response by APPROACH to the Respondent's observations on the merits, dated 17 January 2014.

2. The further observations are divided into two parts. First, the Respondent will comment on the response by APPROACH. Second, the Respondent will comment on the paper prepared by the Child Law Clinic and relied on the Complainant.

The Response by APPROACH to the Respondent's submissions on the Merits

3. In paragraph no. 1, the Complainant refers to highlighting that there is "no prohibition on corporal punishment of children in Ireland in the family home". It bears repeating that section 246 of the Children Act 2001, concerning cruelty to children, makes it a criminal offence to ill-treat a child and defines ill-treatment as including "any frightening, bullying or threatening of the child" and applies in all circumstances.

4. In paragraph no. 3, the Complainant refers to the common law "right" to use reasonable and moderate chastisement. A defence of reasonable chastisement is in principle available under common law. Crucially, it is for the court to determine what is reasonable so the existence of such a defence as the basis for administering corporal punishment could not be relied on by a perpetrator to absolve him/her from criminal sanction or the risk of same.

5. In paragraphs no. 7 to 9, the Complainant dismisses significant legislative and organisational reforms which the Respondent has implemented to enhance child welfare and protection services. The Respondent's contention is that effective prevention, detection, early intervention, and supportive capability are every bit as important as a legal prohibition. The contention that what has been achieved, and continues to be developed, in terms of prevention, detection, etc., measures will not increase children's "protection from violence" is rejected. The Respondent's view is that the steps taken to strengthen child welfare and protection services have had an impact on the acceptability and prevalence of physical punishment in the home in Ireland and in encouraging parents to use alternative non-violent forms of discipline in the family setting.

6. In paragraph no.10, it is reflective of the somewhat limited perspective on dealing with the issue of corporal punishment that the quotation from the Child Law Clinic makes no reference whatever to the important focus on preventive and early intervention actions that will be central to the new Child and Family Agency's function, as required by legislation, to support and encourage the effective functioning of families.

7. In paragraph no. 11, the Complainant invokes the "horrific history of widespread severe violence against children". In doing so they characterise as particularly shocking "the Government's continuing failure to prohibit violent punishment" in residential care settings. There is no recognition given to the steps successive Irish Governments have taken to publicly recognise and address the fact of past abuse of children in institutional care; to prohibit cruelty to children under s. 246

of the 2001 Act; to subject institutions to inspection regimes; and to generally enhance the child welfare and protection framework. In the context of this particular claim it bears emphasising that assault, whether of an adult or a child, has always been illegal.

8. In Paragraphs no. 15 to 17 the Complainant comments on the Respondent's observations regarding foster care. What is presented in that regard does not reflect the considerable focus and resources applied to achieving positive outcomes for children in foster care, including keeping them safe. In that regard, the Respondent wishes to draw to the Committee's attention the following points: The National Standards for Foster Care set out the distinct and different roles for:

- the child's social worker, who represents the interests of the child, visits the child and supervises that the child's needs are being met, prepares the care plan and care plan review meetings, keeps contact and arranges access visits with the birth parent/s and siblings; and

- the link worker (a social worker) who recruits/assesses and recommends the foster carer to the Foster Care Panel. The link worker works with the foster carers to support them in their role, identifies and provides relevant training and organises a review of the foster carer's role at regular intervals and if a placement breaks down.

9. The Child and Family Agency collect Performance Information on the allocation of both the child's social worker and the link worker on a monthly basis. These figures have been published on the Health Service Executive's (HSE) website on a monthly basis for a number of years and will be published on the Agency's website. Figures for December 2013¹ showed that 91.8% of children in care had an allocated social worker, broken-down as follows:

- Special Care 100%
- Residential Care 96%
- Foster Care 92%
- Foster Care with Relatives 89.4%

10. Where a child in care does not have an assigned social worker on a temporary basis, the social work team leader takes responsibility for supervision of the child's welfare.

11. In addition to the above social work safeguards, there is the HIQA inspection regime which results in detailed published reports.

12. Regarding inspections, it is acknowledged that challenges continue to present in the delivery of foster care services and the improvement of outcomes for children is an ongoing objective of the service. Whilst fully aware that significant challenges exist, it should also be noted that the 'Overview of findings of 2012 children's

¹ <http://www.hse.ie/eng/services/Publications/corporate/performance-reports/dec13mdreport.pdf>

inspection activity: foster care and children's residential services'² which was published by HIQA in 2013, stated that "Overall, inspectors found that foster carers provided good quality care to children and young people in a safe environment" and that "In general, there was evidence that children were well cared for and lived in safe and homely environments" (on pages 20 and 24 respectively).

13. In the inspections it carried-out during 2013 HIQA reported that children who were directly interviewed by inspectors stated they were happy with their lives and their care. The standards that were most often fully met in foster care in 2013 were those related to the day-to-day life, having a positive sense of identity, family and friends, preparation for leaving care and aftercare, a safe and positive environment, children's rights, education and care planning and review.

14. In paragraph no. 22, the Complainant asserts (in commenting on statistics in government commissioned studies) "*It is likely that the actual prevalence of corporal punishment is significantly higher...*" The Respondent contends that such assertions, not supported by objective evidence, should be disregarded by the Committee in its consideration of this matter.

15. In paragraph no. 24, the complainant seeks to suggest that a "culture of physical punishment" of children is prevalent in Ireland either in immediate family, extended family or the wider community. The Respondent rejects this assertion by the Complainant as being unsupported by any objective evidence. It is a view point based on an interpretation of statistics of government commissioned studies. Research carried-out in connection with the State of the Nation's Children: Ireland 2012³ which was published by the Minister for Children and Youth Affairs found that 2010 data showed 91% of children reported feeling happy with their lives at present. This finding, which was almost identical to that in 2006 data⁴, contrasts greatly with the situation the Complainant attempts to portray.

² <http://www.hiqa.ie/publications/overview-findings-2012-children%E2%80%99s-inspection-activity-foster-care-and-children%E2%80%99s-reside>

³ <http://www.dcy.gov.ie/documents/research/StateoftheNationsChildren2012.pdf>

⁴ http://www.dcy.gov.ie/documents/Publications/SONC_final.pdf

The Child Law Clinic Review

16. In its replying observation, the Complainant refers extensively to a ‘Review of Irish Law and Policy referred to in the Irish Government Submission of 1st October 2013’ authored by the Child Law Clinic of University College Cork, Ireland. It is important to note that the Review was prepared *in support* of the complaint by APPROACH to this Committee. Consequently, the views of the Child Law Clinic should not be read as impartial opinion on the current situation in Ireland.

The Child and Family Agency

17. The contents of the review require to be updated as regards the establishment of the Child and Family Agency on a statutory basis which took effect from 1 January 2014 following the enactment of the Child and Family Agency Act in December 2013. Similarly, it is unclear what is intended by the reference in the review (on page 6) to “key budgeting and policy arrangements for the new agency have yet to be fully clarified”.

18. Suggesting that the new Agency merely represents a collecting together of the powers and responsibilities of pre-existing bodies is to significantly misunderstand and underestimate the potential of the new body. This will be particularly evident in the focus that will be brought in policy, implementation and service design to the provision of parenting and family support as a key tool of prevention and early intervention to safeguard the welfare of children at risk.

The Children First Bill and Existing Legislation

19. The precise form the Children First legislation will take will be set out in the Children First Bill which the Minister for Children and Youth Affairs intends to submit to Government as soon as possible with a view to publishing the proposed legislation.

Conclusion

20. The Respondent maintains its position that a significant programme of work underpinning child welfare and protection has been undertaken and the issue of corporal punishment is being kept under review.

4 April 2014