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

14 October 2013

Case No. 3

Association for the Protection of All Children (APPROACH) Ltd v. Italy
Complaint No. 94/2013

**SUBMISSIONS OF THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 26 September 2013

COMPLAINT No. 94/2013

**Association for the Protection of All Children
(APPROACH) Ltd
v. ITALY**

OBSERVATIONS FROM THE ITALIAN GOVERNMENT ON THE MERITS

25 SEPTEMBER 2013

1. The Italian Government refers to the collective complaint lodged against Italy by the **Association for the Protection of All Children (APPROACH) Ltd** for non-compliance with Article 17 of the Revised European Social Charter of 1996.
2. In submitting its observations on the merits of the collective complaint which was declared admissible on 2 July 2013, the Italian Government refers to the letter from the European Committee of Social Rights dated 10 July 2013.

PRELIMINARY REMARKS

3. The Government recalls firstly the statement made by the Committee in paragraph 58 of its decision on complaint No. 18/2003 - OMCT v. Ireland:

“The Committee considers that the purpose of the procedure is not to permit a nongovernmental organisation to dictate the pace of law reform in Ireland. The Protocol providing [for a system of collective complaints] permits, inter alia, international non-governmental organisations who fulfil certain criteria to submit complaints to the Committee alleging unsatisfactory application of the Charter or Revised Charter. The purpose of the collective complaints procedure is to improve the effective enforcement of the social rights guaranteed by the Charter”.

4. **The Italian Government submits that the Italian legal system affords effective protection for children against corporal punishment within the family and notes that such punishment is also prohibited in schools.**
5. The same Committee acknowledged the effectiveness of Italian law in its decision of 7 December 2004 on complaint No. 19/2003 lodged by the OMCT, whereas other countries were found to be in breach of Article 17 (Belgium 21/2003; Greece 17/2003; Ireland 18/2003 and Portugal 34/2006).

RELEVANT ITALIAN LAW

6. **It should be pointed out that any reference to individuals or human rights in Italian law also includes children and adolescents and their rights as human beings protected according to the principles of international and European law applied by Italy, as noted by the Committee in the above-mentioned decisions.**

7. The Constitution

Article 2 reads:

“The Republic recognises and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and imposes the performance of unalterable duties of a political, economic and social nature.”

Article 3 reads:

“All citizens have equal social status and are equal before the law, without regard to their sex, race, language, religion, political opinions and personal or social conditions. It is the duty of the Republic to remove all obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic and social organisation of the country.”

Article 29 reads:

“The family is recognised by the Republic as a natural association founded on marriage. Marriage entails moral and legal equality of the spouses within legally defined limits to protect the unity of the family.”

Article 30 reads:

“It is the duty and right of parents to support, instruct and educate their children, including those born out of wedlock. The law provides for the fulfilment of those duties should the parents prove incapable. Full legal and social protection for children born out of wedlock is guaranteed by law, consistent with the rights of other family members. The law lays down rules and limitations for ascertaining paternity.”

Article 31 reads:

“The Republic facilitates, by means of economic and other provisions, the formation of the family and the fulfilment of the tasks connected therewith, with particular consideration for large families. It safeguards maternity, infancy and youth, promoting and encouraging institutions necessary for such purposes.”

9. The Civil Code

Article 147 “Duties towards children” reads:

“Marriage imposes on both spouses the obligation to maintain, raise and educate their children taking into account their abilities, natural inclinations and aspirations”.

Article 342bis “Family protection orders” reads:

“Where the conduct of a spouse or co-habitant causes serious harm to the physical or moral integrity or to the liberty of the other spouse or co-habitant, the judge may, provided that the conduct does not constitute a criminal offence leading automatically to criminal proceedings, adopt one of the measures provided for in Article 342ter by decree and at the request of the party concerned.”

Article 342ter “Substance of protection orders” reads:

“By decree as provided for in Article 342bis, the judge shall order the spouse or co-habitant whose conduct has been abusive to cease such conduct. He or she shall also order the person concerned to stay away from the household, and if necessary to stay away from places

frequented by the plaintiff, particularly his/her workplace, the home of his/her own family, the home of his/her close relations or of other persons, and places where the couple's children are educated, except where those places have to be visited for professional reasons. Where required by the intervention of the local social services or of a family mediation centre or of associations providing support and shelter for women, minors or other victims of abuse and ill-treatment, the judge may also order periodical payment of a cheque to those who, as a result of the measures provided for in the first paragraph, do not have adequate means of subsistence, specifying the payment terms and arrangements and, where appropriate, ordering the sums to be paid directly to the beneficiary by the debtor's employer, who will deduct them from the debtor's pay.

By the same decree, in the cases provided for in the previous paragraphs, the judge shall determine the duration of the protection order, which shall run from the day on which the decree is enforced. That duration may not exceed six months and may be extended at the request of the injured party solely where there are serious grounds for doing so and for as long as is strictly necessary.

By the same decree, the judge shall set out the enforcement arrangements. In the event of problems or disputes concerning enforcement, the same judge must order, by decree, the most appropriate measures to guarantee enforcement, including recourse to the police and health officials."

10. The Criminal Code

Article 571 "Abuse of correctional measures or discipline" reads:

"Whoever misuses correctional measures or discipline to harm a person under their authority, or who has been placed in their care for the purposes of education, instruction, treatment, supervision or custody, or for the exercise of a profession or an art, shall be liable to imprisonment for a period of up to 6 months if the fact results in a physical or mental injury.

If the abuse results in bodily harm the penalties applied shall be the ones established in Articles 582 and 583 reduced by one third; if the abuse results in death, the penalty applied shall be imprisonment for a period of three to eight years."

Article 572 "Ill-treatment in the family or of children" reads:

"Whoever, with the exception of the cases mentioned in the previous article, ill-treats a member of the family, or a person who has been placed in their care for the purposes of education, treatment, supervision or custody, or for the exercise of a profession or an art, shall be liable to **imprisonment for a period of two to six years [the term has been increased by one year]**.

The penalty shall be increased if the offence is committed against a child under 14 years of age. (new provision).

If the act results in grievous bodily harm, the penalty applied shall be imprisonment for a period of four to eight years; if the act results in extremely grievous bodily harm the penalty shall be imprisonment for a period of seven to fifteen years; if the abuse results in death, the penalty applied shall be imprisonment for a period of twelve to twenty-four years."

Article 582 "Bodily harm" reads:

Whoever causes another person bodily harm resulting in physical or mental illness shall be liable to imprisonment for a period of three months to three years. If the illness lasts for

more than twenty days and none of the aggravating circumstances provided for in Articles 583 and 585 are present, except for those listed in No 1 of the final section of Article 577, the offence shall be punishable on the basis of a complaint by the injured party.”

The Government wishes to point out that the civil and criminal code provisions also apply in cases of violence against minors where each form of physical or mental violence, or each type of behaviour that causes either physical or spiritual damage, is inflicted primarily by a family member on a minor. It will further be noted that law no. 172/2012 ratifying the 2007 Lanzarote Convention and the provisions adapting Italian domestic law provide for more severe penalties where the offence is committed against a minor.

11. Since November 2011, furthermore, Italy has set up a:

**National Ombudsman’s Office for Children and Adolescents
through law no. 112 of 12 July 2011**

This legislation was adopted in pursuance of Article 31 of the Constitution and the international provisions contained in the UN Convention on the Rights of the Child of 20 November 1989, Articles 12 and 18 of which refer to specific national institutions tasked with protecting the interests and rights of children and adolescents, and in pursuance of the Council of Europe strategy “Building a Europe for and with children”.

The new office has the authority to:

- monitor implementation of the UN Convention of 1989;
- spread awareness and create a culture of children’s and adolescents’ rights;
- report any violations of minors’ rights to the competent authorities;
- check to ensure that minors are afforded equal opportunities in terms of access to rights;
- give opinions on the National Action Plan and action to promote the rights and development of the persons concerned;
- give opinions on bills presented by the government and on legislation proposed by parliament with regard to minors’ rights;
- draw the attention of central, local and regional authorities to any appropriate initiatives in order to ensure comprehensive promotion of children’s and adolescents’ rights.

It should also be noted that in Italy, the autonomous provinces of Trento and Bolzano have set up **regional ombudsman offices for children and adolescents**, as have the following regions: **Calabria, Campania, Emilia, Lazio, Liguria, Marche, Tuscany, Puglia, Veneto**. These offices have the right to contribute to the promotion and implementation of provisions and initiatives to protect the rights of children and adolescents.

12. ADDITIONAL LEGISLATION

Law No. 285/97 promoting rights and opportunities for children and adolescents.

Law No. 66/96 on sexual violence.

Law No. 269/98 on violence, abuse and sexual exploitation.

Law No. 38/2006 concerning the fight against the sexual exploitation of children and child pornography and via the internet.

OBSERVATIONS ON THE MERITS

13. The Italian Government wishes to draw the Committee's attention to the fact that the complaint is based solely on reports which, even though they were produced by organisations working to protect children's rights, make no mention of the penalties handed down by the Italian courts to parents found guilty of ill-treating their under-age children.

14. In particular, the collective complaint in question demonstrates a lack of awareness of developments in the Italian legal system with regard to corporal punishment, abuse of correctional measures and, most importantly, physical and mental abuse, which are all defined as "ill-treatment in the family" (see Article 572 of the Criminal Code).

14. It is important to note that the expression "ill-treatment in the family" does not cover mere "smacking" but rather refers to punishments such as physical or mental violence that amount to "abuse of correctional measures" committed by persons who have been convicted under the above-mentioned articles of the Criminal Code, as interpreted and applied by the Criminal Court of Cassation: see the following

CASE-LAW

16. **In decision No. 4909 handed down on 16 May 1996, the Court of Cassation** pointed out that the Italian legal system enshrined the primacy of human dignity and regarded minors as fully fledged subjects of law, rather than merely as objects to be protected. According to the Court, violence against children, no matter how slight, is never a "lawful" correctional measure, any abuse of which would be punishable under Article 571, but comes under the ill-treatment provided for in Article 572, which is subject to more severe punishment.

17. The most recent decisions have firmly upheld this principle while applying the above-mentioned provisions:

a) **decision No. 16491 of 3 May 2005, section VI**, whereby a parent who had subjected their under-age son to ill-treatment with the intention of educating him but in a manner that endangered his health was held to have committed an offence under Article 571 of the Civil Code;

b) **decision No. 34674 of 13 September 2007, section VI** whereby the court ruled that a measure employed against a minor was unlawful under Article 572 of the Civil Code, where the measure applied, even if "lawful", was malicious and resulted in suffering, deprivation

and humiliation which constituted a state of continuous misery incompatible with a normal existence;

c) **decision No. 2100 of 18 January 2010, section V** whereby the court upheld a decision by the Bologna Court of Appeal and convicted under Article 571 of the Civil Code a man who had smacked his son only once but with violence sufficient to endanger the child's health. The court wished to affirm the dignity of the minor as a rights-holder, rather than merely as an object to be protected by adults;

d) **decision No. 41142 of 22 November 2010 section V** in which the court held that "the suffering and humiliation of the victims need not necessarily be combined with specific types of malicious behaviour towards a particular passive subject but may derive from a general climate that exists within a community because of acts of abuse indiscriminately and variously committed against persons under the authority of the active subjects, who are all aware of the same, irrespective of the number of malicious acts and their relevance for any of the passive subjects";

e) **decision No. 36503 of 10 October 2011, section VI** whereby the court upheld the decisions of first and second instance handed down by the Ferrara and Bologna courts and ruled that, in the instant case, the ill-treatment inflicted by the mother and the maternal grandfather were "iperprotettivi", causing the minor to suffer retarded mental development such that he was unable to form friendships and become physically independent;

f) **decision No. 45859 of 23 November 2012, section V in which the court held that** "the right to correction ("jus corrigenda") is not a legitimate defence for a parent who, even if it is for educational purposes, inflicts on an under-age child violent acts such as repeated blows causing injuries".

18. The said decisions bear out the Committee's finding that there had been no violation by Italy of Article 17 of the Charter and that, based on the 2007 Italian Government report, during the period of reference, protection against ill-treatment of children had been "strengthened through the ratification of international instruments, the adoption of legislation and implementation measures" (see Conclusion 2007, Volume 2, page 784).

19. This strengthening, as evidenced mainly by the above-mentioned case-law, shows that Italy is in fact implementing Article 17 of the Charter, as interpreted by the Committee in its decision No. 34/2006, according to which "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. 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."

20. The Italian Government rejects all the claims made in the complaint as it is confident that it has acted with due diligence, not least because of the action of the judicial authorities which are called upon to punish perpetrators of violence against minors and adolescents not only for smacking but, more importantly, for any other ill-treatment that takes place within the home amid the silence and fear of other family members.

CONCLUSIONS

21. The Italian Government considers that the collective complaint lodged by APPROACH Ltd is unfounded because the arguments put forward take no account of developments in the Italian legal system and judicial practice, which ensure that children and adolescents are

able to effectively exercise their right to grow up in an environment conducive to their physical and psychological development whilst protecting them from violence of any kind.

22. The Government therefore asks the Committee to dismiss the allegations made by APPROACH as being unfounded, because Italian legislation protects and safeguards the rights of children within the meaning of the Constitution and the articles of the Civil and Criminal Codes against any acts of violence and ill-treatment.

23. The Italian Government wishes to thank the European Committee of Social Rights in advance for taking the trouble to consider its observations and will be happy to provide any further comments in support of its request to have the collective complaint declared unfounded, because the situation in Italy is in conformity with Article 17 of the Revised European Social Charter.

Rome, 25 September 2013

Ersiliagrazia Spatafora
Agent of the Italian Government