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

29 April 2014

Case document No. 5

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

FURTHER RESPONSE BY THE GOVERNMENT

Registered at the Secretariat on 29 April 2014

EUROPEAN COMMITTEE OF
SOCIAL RIGHTS

COMPLAINT No. 94/2013

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

OBSERVATIONS OF THE ITALIAN GOVERNMENT

in reply to the response by APPROACH
Ltd of January 2014

Rome, 29 April 2014

1. The Italian Government refers to the letter of 31 March 2014 in which the European Committee of Social Rights (“the Committee”) enclosed the response of the **Association for the Protection of All Children – APPROACH Ltd (“the association”)** to the Government’s submissions on the merits of 25 September 2013.

2. The Italian Government would like to present the Committee with the following submissions on the merits in reply to the association’s response.

OBSERVATIONS

3. The Government would begin by reiterating its own observations of 25 September 2013, which clearly demonstrate how, through its laws and its case-law, the Italian legal system fully protects children against corporal punishment in the family and in other very dangerous situations while prohibiting it in schools.

4. Above all the Government rejects the arguments put forward by the association in its conclusions on page 7 of the response, in which it accuses Italy of failing to introduce exhaustive legislation on the prohibition of violent punishment of children, not only in the home **but also in alternative care or day care settings, to which there is no reference in the collective complaint.**

5. The Government considers that it responds adequately to the association’s complaint by pointing out that Italian law fully applies Article 17 of the Charter, which reads 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.

It does so through the Constitution and the Civil and Criminal Codes and – as it pointed out in its observations of 25 September 2013 – through ratification of Council of Europe Conventions and the UN Convention on the Rights of the Child.

6. Special mention should also be made of the **European Convention on the Exercise of Children's Rights of 25 January 1996, which Italy has ratified and introduced into its law.**

When the instrument of ratification was deposited on 4 July 2003 it was accompanied by a letter from the Permanent Representative of Italy to the Deputy Secretary General of the Council of Europe containing the following declaration:

"In accordance with Article 1, paragraph 4, of the Convention, the Government of the Italian Republic indicates that the categories of family cases to which the Convention shall apply are: those contemplated in Article 145 of the Civil Code, on parental authority ; Article 244, last paragraph, of the Civil Code, on natural affiliation ; Article 247, last paragraph, of the Civil Code, on the same subject ; Articles 264, paragraph 2, and 274 of the Civil Code, on the same subject; Articles 322 and 323 of the Civil Code, on the son's opposition to certain acts regarding the administration of property accomplished by his parents."

7. **The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007 was also ratified by Italy on 1 May 2013 and a law has been adopted which amends the relevant articles of the Criminal Code accordingly (see Appendix 1).**

8. Also of relevance is **the Council of Europe Convention on preventing and combating violence against women and domestic violence, which Italy ratified on 10 September 2013 and Article 3f of which provides that "women" includes girls under the age of 18.**

9. **Consequently**, the Government wishes to point out to the Committee that Article 17 is applied in substance in Italy's legislation and Codes, which prohibit all forms of violent corporal punishment of children in every circumstance and with respect for human dignity (see again the submissions of 25 September 2013).

10. It should be emphasised that Article 17, which provides:

"the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed to protect children",

asks the states for an undertaking that they will take all appropriate and necessary measures but does not specify the content and the nature of these measures, leaving it to the states to choose the most suitable legal or judicial instrument for the persons concerned.

11. Consequently, while corporal punishment is not specifically prohibited in the legislation of the states accused by the association, this does not mean that children are not protected.

12. In this connection, the Government adds that the terms "personal injury", "abuse", "violence" and "domestic violence" used in the Italian Criminal Code and in national, European and international laws equally encompass and in fact, refer above all to all forms of "corporal punishment", which can lead to ill-treatment, serious or very serious injury or even death.

13. The Government refers to France's assertions in paragraph 31 of its response to the association on the merits: "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".

14. In this manner, the Government wishes to make it clear to the Committee that it cannot accept the association's conclusions concerning the "inadequacy of current Italian legislation and of case law to prohibit all corporal punishment of children" (§6 of the response).

15. The Government would point out that its legislation regulates all situations which are detrimental or harmful for children, covering situations which include not only corporal punishment such as smacks and slaps but also, unfortunately, every form of physical or mental violence or form of behaviour which causes physical or psychological damage to children (see again the case-law cited in the submissions of 25 September 2013).

16. One example of this in Italy is **Legislative Decree No. 39 of 4 March 2014, which put into practice Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children, and child pornography, and replaced Decision 2004/68/GAI (14G00051), amending certain articles of the Criminal Code (Appendix 2).**

17. The Government also points to the case-law already cited in its submissions of 25 September 2013, to which it would like to add the **order of the Milan Youth Court** of 35 March 2011, **Judgment No. 46848 of the Court of Cassation** of 20 November 2012, in which it was held that "the death of a minor was caused by continuous violent treatment" and, in another context, Judgment No. 14753 of 28 March 2014, in which an infants' school teacher was convicted for abuse of her pupils through corporal and psychological punishment.

18. As a result of all of this, the Government considers that the lack of a general ban on corporal punishment cannot be considered a violation of Article 17 of the Revised Social Charter.

19. As already pointed out, **in November 2011, Italy set up the National Ombudsman's Office for Children and Adolescents, putting into practice Law No. 112 of 12 July 2011**, which 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" (see paragraph 11 of the submissions of 25 September 2013).

20. The head of this office, Mr Vincenzo Spadafora, also works in co-operation with the European Network of Ombudspersons for Children and has been elected to the steering committee of this network as well as taking a role in other European and international institutions for children's rights.

21. 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 Romagna, Lazio, Liguria, Marche, Tuscany, Puglia and 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.

22. The Government would point out that other national bodies are active in this area such as:

a) **the Parliamentary Committee for Childhood and Adolescence;**

b) **the National Monitoring Centre on Childhood and Adolescence;**

c) **the National Documentation and Research Centre for Childhood and Adolescence, which works with the Family Policy Department of the Prime Minister's Office. All three** of these have the power to promote any measure required to protect children in co-operation with other national authorities such as the parliament and the National Ombudsman's Office for Children and Adolescents.

23. The National Monitoring Centre on Childhood and Adolescence, in particular, drew up a summary report for 2013 and has examined every possible amendment of existing laws or the new law on children's rights and, in particular, the right of children to be heard in civil and criminal proceedings.

24. 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 or other persons found guilty of ill-treating their under-age children.

25. 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).

26. The Italian Government rejects all the claims made in the association's response 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.

27. The Committee acknowledged the effectiveness of Italian legislation in its decision of 7 December 2004 on Complaint No. 19/2003 by the OMCT, whereas it held that Article 17 had been violated by the other states concerned (Belgium, 21/2003; Greece, 17/2003; Ireland, 18/2003 and Portugal, 34/2006).

28. 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.

29. 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.

30. 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, 29 April 2014.

Ersiliagrazia Spatafora

Agent of the Italian Government