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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. Slovenia
Complaint No. 95/2013

COMPLAINT

Registered at the Secretariat on 4 February 2013

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

Slovenia ratified the Revised Social Charter and also the Additional Protocol on May 7 1999.

Applicability of Article 17 of the Revised Social Charter of 1996 to Slovenia

Slovenia considers itself bound by Article 17.

Introduction to complaint

The complaint alleges that Slovenia is in violation of Article 17 of the Charter because of the lack of explicit and effective prohibition of all corporal punishment of children, in the family and other settings, and because Slovenia has failed to act with due diligence to eliminate such punishment in practice.

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

Relevant conclusions of the European Committee of Social Rights on reports from Slovenia

Conclusions of the ECSR on Slovenia's successive reports under Article 17 have found the State not to be in conformity with the Article, in 2003, 2005 and 2012. Slovenia's reports to the Committee have not mentioned the issue of corporal punishment explicitly.

The following are the relevant extracts:

“In its previous conclusion the Committee held that the situation in Slovenia was not in conformity with the Charter as corporal punishment was not prohibited within the family. In this connection it notes from the report that the Family Violence Act (2008) defines various forms of family violence and contains provisions on the child victim of family violence. Social Work Centres are required to keep records of family violence to be able to take appropriate measures in a timely manner to protect those in need.

“The Committee notes from another source that corporal punishment is lawful in the home. Provisions against violence and abuse in the Criminal Code (1994), the Constitution (1991), the Marriage and Family Relations Act (1989) and the Family Violence Prevention Act (2008) are not interpreted as prohibiting all corporal punishment in childrearing.

“According to the same source, in October 2004, the Government stated its intention to consider an explicit prohibition of corporal punishment of children within the family. In 2008, a number of government officials signed the Council of Europe petition against all corporal punishment of children. As at November 2010, a Draft Family Code, Article 7 of which would prohibit corporal punishment of children by parents and all other persons, was under discussion and had passed its second reading in the National Assembly. The Committee wishes to be kept informed.

“The Committee recalls that according to its case law, to comply with Article 17 with respect to the corporal punishment of children, 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. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.

“The Committee considers that the situation which it has previously held not to be in conformity has not changed in the reference period. Therefore, it reiterates its previous conclusion of nonconformity on this ground.

“The Committee concludes that the situation in Slovenia is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment in the home is not prohibited.”

(January 2012, Conclusions 2011)

“The Committee recalls 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 considers that this prohibition must be combined with adequate sanctions in penal or civil law.

“The Committee notes no change regarding the fact that no legislation exists prohibiting all forms of corporal punishment of children within the family.

The Committee finds the situation not to be in conformity with the Revised Charter on this point.

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

- corporal punishment of children within the family is not prohibited....”

(March 2005, Conclusions 2005)

“According to additional information received from the authorities there is no particular legislation prohibiting the corporal punishment of children within the family. The Committee finds the situation not to be in conformity with the Revised Charter in this respect....

“The Committee concludes that the situation is not in conformity with the Charter as the corporal punishment of children within the family is not expressly prohibited....”

(1 October 2003, Conclusions 2003 Vol. 1, page 511)

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 Slovenia:

Committee on the Rights of the Child: In its concluding observations following examination of Slovenia’s second report, in 2004, the Committee expressed concern at the lack of explicit prohibition of corporal punishment in the family and recommended that reform should be included in new legislation under preparation.

“The Committee is concerned that there is no legislation explicitly prohibiting corporal punishment within the home and that the latest draft amendments to the Marriage and Family Relations Act do not envisage such a prohibition.

“The Committee recommends that the State party strengthen its efforts to address ill-treatment of children in the family, including by raising awareness of alternative non-violent forms of discipline through public campaigns. The Committee also urges the State party to consider introducing an explicit prohibition on corporal punishment of children in the family, either in the draft amendments to the Marriage and Family

Relations Act or in the special act on preventing violence in the family currently in preparation.”

(26 February 2004, CRC/C/15/Add.230, Concluding observations on second report, paras. 40 and 41)

Committee against Torture: In 2011, the Committee against Torture echoed the concern and recommendations of the Committee on the Rights of the Child:

“While noting the legal and administrative measures undertaken by the State party to combat gender-based violence and violence against children, the Committee remains concerned about the prevalence of violence against women and girls (see concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/SVN/CO/4, para. 23). The Committee is also concerned that corporal punishment of children remains lawful at home (arts. 2, 12 and 16).

“The Committee recommends that the State party enhances its efforts to prevent, prosecute and punish all forms of violence against women and children, including domestic violence, and ensure effective and full implementation of the existing laws and the national strategies adopted to that end, including the National Programme of Family Violence Prevention for the period 2009–2014. The Committee also recommends that the State party accelerate the adoption of the draft Marriage and Family Act, which prohibits corporal punishment of children in the home (see concluding observations of the Committee on the Rights of the Child, CRC/C/15/Add.230, para. 40). Furthermore, the State party is encouraged to conduct broader awareness-raising campaigns and training on domestic violence for law enforcement agencies, judges, lawyers and social workers who are in direct contact with the victims and for the public at large.”

(20 June 2011, CAT/C/SVN/CO/3, Concluding observations on third report, para. 15)

Universal Periodic Review: Slovenia was examined in the first cycle of the Universal Periodic Review in 2010. The following recommendations were made:

“To adopt the latest draft amendments to the Marriage and Family Relations Act that equalize same-sex unions and other family unions and ban the corporal punishment of children (Norway)

“To add a provision to the Marriage and Family Relations Act prohibiting other forms of the demeaning treatment of children, such as psychological violence (Norway)”

In accepting the recommendations, the Government stated that the draft Family Code adopted by the Government in December 2009 and submitted to the National Assembly prohibits corporal punishment and is binding on parents and other persons, state bodies, and public officials (A/HRC/14/15/Add.1, Report of the Working Group: Addendum).

The mid-term report on the implementation of the recommendations notes that the Family Code Bill was adopted by the National Assembly in June 2011. (As noted below, this Bill was rejected by referendum in 2012.)

The law in Slovenia

Corporal punishment is unlawful in schools, and in the penal system, both as a sentence of the courts and in penal institutions. Since 2004, the Government has stated its intention to explicitly prohibit corporal punishment, accepting that provisions against violence and abuse in the Criminal Code (2008), the Constitution (1991), the

Marriage and Family Relations Act 1989 and the Family Violence Prevention Act 2008 are not interpreted as prohibiting all corporal punishment in childrearing.

In 2011, a Family Code Bill, article 7 of which prohibits corporal punishment of children by parents and all other persons, was introduced. But in 2012 the legislation was rejected in a referendum. Our information suggests that a group called the “Civil Initiative for the Family and the Rights of Children” opposed the legislative provisions relating to same-sex partnerships and gathered enough signatures to force a referendum on the law. The referendum was held on 25 March 2012: voter turnout was 30.31%, 54.55% of which voted against the law.

Thus corporal punishment remains lawful in the home. Corporal punishment is considered unlawful in educational day care centres and residential school institutions under the rules relating to schools but there is no explicit prohibition in other forms of alternative care. The Provision of Foster Care Act (2002) sets out the standards required for foster care and the obligations of foster carers but makes no reference to corporal punishment or related matters; similarly, there is no prohibition of corporal punishment in the Rules on the Conditions and Procedures for Implementing Foster Care (2003). The Kindergarten Act (1996) does not prohibit corporal punishment.

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

A study carried out in 2004-2005 which involved 1,223 parents of children aged 9-10 and 13-14 and 137 children in the same age-groups found that corporal punishment was widespread. Over a third (37%) of the children aged 9-10 experienced corporal punishment and 39% of the children aged 13-14 had been physically punished. The younger children stated that they were punished for “naughtiness”, “disobedience” or “teasing”, while the older children said that they were punished for no reason. Over two thirds of the parents had been beaten as children, 43.2% had been slapped and 36.3% believed that the corporal punishment they experienced was “educational” for them. Fifty-one per cent of parents said that their child never experienced corporal punishment, 33.5% that they experienced it once a year, 11.4% once a month, 1.7% once a week and 0.4% once a day. Nearly half (48.7%) of the parents said that they hit their children with a hand, 8.4% pulled their hair, 2.5% hit them with an object and 1.8% drenched them with water. Nearly half (48.4%) of parents thought that it is acceptable to use corporal punishment if a child destroys their own or others’ property, 51.6% if a child endangers someone else, 44.3% if a child endangers him- or herself and around 28% if a child “behaves inappropriately”. Thirty-six per cent of parents were in favour of prohibition of all corporal punishment, 30% were opposed to it and 33% were undecided.

(Kornhauser, P., 2007, *Youth without corporal punishment for our children*, Ljubljana: Forum Against Corporal Punishment of Children in the Family)

The complaint

The lack of explicit prohibition of corporal punishment in the family and in some forms of alternative care violates Article 17 of the Charter. In addition it is clear from the research quoted that Slovenia, while it has attempted to adopt a law explicitly

prohibiting corporal punishment, has not acted with due diligence to eliminate such violent punishment of children in practice.

The ECSR first concluded that Slovenia was not in conformity because of the lack of clear prohibition in 2003 and repeated this conclusion in 2005 and 2011.

We hope that the ECSR will declare this complaint admissible and without delay consider the merits, bearing in mind that any persisting confusion over the legality of corporal punishment is bound to increase the risk of irreparable injury to children; also that Slovenia's failure to fulfil effectively its obligations, despite repeated conclusions, conflicts with effective respect for the provisions of the Charter. We hope the Committee will recommend that Slovenia should with urgency seek the re-introduction and adoption of the necessary legislation to prohibit corporal punishment.