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

**17 January 2014**

**Case Document No. 4**

**Association for the Protection of All Children (APPROACH) Ltd v. Slovenia**  
Complaint No. 95/2013

**RESPONSE BY APPROACH  
TO THE GOVERNMENT'S SUBMISSIONS  
ON THE MERITS**

**Registered at the Secretariat on 17 January 2014**



## **APPROACH Ltd**

### **Response to the Opinion of the Republic of Slovenia on the merits of Complaint No. 95/2013, Association for the Protection of All Children (APPROACH) Ltd v. Slovenia**

**January 2014**

#### **I. Introduction**

1. This is the response of APPROACH Ltd to the Opinion of the Republic of Slovenia on the merits of Complaint No. 95/2013, dated 26 September 2013. We first comment on the Government of Slovenia's contention that its legislation is adequate to protect children. We then discuss the Government's assertion that it has acted with due diligence to eliminate corporal punishment in practice.
2. We would emphasise that we do not doubt the Government of Slovenia's commitment to children's rights and protection of children from violence. We are well aware of positive initiatives taken by the Government, including in relation to the UN Study on Violence against Children and its follow-up. We are also aware, as our Complaint made clear, that the Government has attempted to introduce legislation explicitly prohibiting corporal punishment and that it was through no fault of the Government that this legislation is not in force today.

#### **II. The need for explicit prohibition of corporal punishment of children in Slovenian legislation**

3. The Government of Slovenia's Opinion on the merits of our Complaint asserts that "national legislation does provide children with protection against violence, negligence and exploitation" (p. 3). Yet it is clear – and, as our Complaint notes (p.6-7), has been previously acknowledged by the Government – that violent punishment of children in their homes remains lawful and that there is no explicit prohibition in many alternative care settings or in day care. In allowing corporal punishment to remain lawful, the Government of Slovenia is ignoring the conclusions of the European Committee of Social Rights (ECSR) that Slovenia is not in conformity with the Charter because corporal punishment is not prohibited (issued in 2003,<sup>1</sup> 2005<sup>2</sup> and

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<sup>1</sup> 1 October 2003, Conclusions 2003 Vol. 1, page 511

<sup>2</sup> March 2005, Conclusions 2005

2012<sup>3</sup>), as well as recommendations received from the Committee on the Rights of the Child,<sup>4</sup> the Committee Against Torture and in the Universal Periodic Review.<sup>5</sup>

4. No changes have been made to the law relating to corporal punishment since the ECSR stated in its 2012 conclusions on Slovenia,

*“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)*

5. The Government of Slovenia suggests (p. 4) that adequate protection for children is provided by the Criminal Code 2008, the Constitution 1991, the Marriage and Family Relations Act 2004 and the Family Violence Prevention Act 2008. However, as noted in our Complaint, provisions against violence and abuse in these laws are not interpreted as prohibiting all corporal punishment in the family.
6. The Constitutional provisions on children’s rights to special protection and care (mentioned on p. 3 of the Opinion) do not prohibit corporal punishment. Neither do the general provisions on children’s best interests quoted from the Marriage and Family Relations Act (p. 4).
7. While the concept of “special protection” for children, which the Government states (p. 4) is enshrined in the Family Violence Prevention Act, is positive, the Act does not prohibit all corporal punishment. Children’s protection under this Act extends only to corporal punishment of a certain level of severity or frequency: the Opinion states that “if corporal punishment is severe or frequent, the act may be qualified as family violence under the ZPND” (p. 4).
8. Similarly, the Opinion makes it clear that under the Criminal Code and case law, some but not all corporal punishment of children in the family home is considered to be an offence (p. 10-12). The Opinion describes case law as showing that, to fall under the offence of “violence in the family” offenders must “distort[s] normal interpersonal relationships in a family to the point that certain family members lack

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<sup>3</sup> January 2012, Conclusions 2011

<sup>4</sup> 26 February 2004, CRC/C/15/Add.230, *Concluding observations on second report*, paras. 40 and 41; 8 July 2013, CRC/C/SVN/CO/3-4, *Concluding observations on third/fourth report*, paras. 37 and 38

<sup>5</sup> 20 June 2011, CAT/C/SVN/CO/3, *Concluding observations on third report*, para. 15

the warmth of a home, a sense of safety, are frightened or in a subordinate position or a position comparable in meaning to this notion due to the offender's conduct" (p. 10).

9. As the Committee has repeatedly stated, "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" must be prohibited. The Committee on the Rights of the Child's General Comment No. 8 makes it equally clear that the Convention on the Rights of the Child requires prohibition of all corporal punishment, defined as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light".<sup>6</sup> In allowing some corporal punishment to remain lawful, Slovenian legislation, including the laws quoted in the Government's Opinion on the merits, does not fulfil these obligations.
10. We do not dispute that corporal punishment is prohibited in schools, including residential schools, and in educational day care settings. However, as our Complaint highlights, there is no explicit prohibition in alternative care settings – including institutional and foster care – and in non-educational day care settings. 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.
11. The Government's insistence in its current Opinion that its legislation is adequate is inconsistent with its previous acknowledgements of the need for prohibition of all corporal punishment and its 2013 statements on the issue to the Committee on the Rights of the Child. As our Complaint notes (p. 6), since 2004 the Government has stated its intention to explicitly prohibit corporal punishment. It included plans for law reform in its National Programme on Family Violence Prevention 2009-2014. It supported and introduced to Parliament legislation which would have explicitly prohibited corporal punishment: the 2011 Family Code Bill, mentioned on p. 4 of the Opinion. Through no fault of the Government, this Bill was rejected by a referendum in 2012. Reporting to the Committee on the Rights of the Child in June 2013, the Government stated that the child protection parts of the Family Code Bill had not been contested (the Bill was rejected because of the part concerning same sex marriages) and that it still hoped that a new Family Code, including prohibition of all corporal punishment, would be adopted soon.
12. We note that in its Opinion the Government states that it

*"believes that the explicit prohibition of corporal punishment in national legislation is not and cannot fully protect children against violence. The systemic arrangement of prevention of violence against children in the*

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<sup>6</sup> 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)*, para. 11

*Republic of Slovenia encompasses a wider spectrum of arrangements to prohibit such violence, including the prohibition of physical violence, regardless of motive” (p. 12)*

13. Of course we do not suggest that prohibition of corporal punishment is the only measure needed to ensure children’s protection from violence. But it is an essential element of the process. We do concur with the Government’s statement in the conclusion of its Opinion, that explicit prohibition and other legislative provisions cannot, on their own, eliminate physical punishment in practice: as the ECSR has stated (most clearly in its decision on Complaint No. 34/2006 against Portugal), to comply with Article 17, in addition to clarity of prohibition of all forms of violence, “... states must act with due diligence to ensure that such violence is eliminated in practice” (para. 21). But the Government’s statement that it

*“believes that measures intended to raise awareness and recognition of all forms of violence in society and the development of social skills in the broader public, in addition to the suitable systemic arrangement of children’s rights, are more efficient in preventing the corporal punishment of children in practice than the explicit prohibitions in the legislation” (p. 12)*

suggests that legal and other measures are alternatives rather than complementary: children have a right to protection which incorporates both clear prohibition and other, primarily educational, measures.

### **III. Slovenia’s failure to act with due diligence to eliminate corporal punishment in practice**

14. The Government of Slovenia claims that it has acted with due diligence to eliminate corporal punishment in practice. We have already acknowledged above (para. 11) that it was through no fault of the Government that its attempt to introduce legislation which effectively and explicitly prohibits corporal punishment failed. But nearly all the examples it gives (p. 6-9) of its programmes and other measures to “prevent physical violence in practice” in the family home and other settings contain no direct reference to corporal punishment. We note that the family centre programmes financed by the government involve “family education”, including on positive parenting, that the Forum Against Corporal Punishment in the Family is co-financed by the Government and that some materials aimed at preventing corporal punishment have been published. However, while these measures are positive, they do not represent the population-level efforts to end corporal punishment which are required, alongside explicit law reform, to ensure children’s protection in practice.
15. We respectfully submit to the Committee that the measures which the state should take to accompany prohibition and demonstrate due diligence should include widespread dissemination of information on the law and on children’s right to protection, including at contact points such as birth registration, pre- and post-natal services, health services, school entry, the school curriculum and social and welfare

services; the promotion of positive, non-violent forms of discipline, including to children, parents and the general public; initial and in-service training of all those working with and for families and children, including teachers and care workers; the provision of detailed guidance, for all involved, on how the law should be implemented in the best interests of children; and the integration of implementation of the prohibition into the national and local child protection system. The impact of law reform and these measures should be evaluated through baseline and regular follow-up interview research involving children and parents. We see no evidence of such measures in the Government's Opinion on the merits. And in any case we repeat that the effectiveness of such measures in Slovenia would necessarily be weakened by the continuing legality of corporal punishment. Clear law can be among the most effective tools for social change and law reform is an essential element of any effort to end corporal punishment.

16. The Government's research into the issue shows high levels of acceptance and prevalence of corporal punishment. The 2005 study quoted on p. 9-10 of the Opinion on the merits (the most recent which we have been able to identify) found that nearly a third of the representative sample of adult citizens of Slovenia (33.1%) knew at least one family in which slapping a child was a normal form of punishment (7.6% knew one family, 6.7% two families and 18.8% more than two families). Nearly a quarter of respondents (23.9%) thought that children were (very) frequently smacked on the bottom and 6.1% that children were (very) frequently smacked on the mouth.
17. We quoted other research evidence of the prevalence of corporal punishment and the extent of social approval of it in our Complaint (p. 7). This evidence casts doubt on the effectiveness of any non-legislative measures which have been taken to eliminate corporal punishment in practice. The lack of more up to date government-commissioned research on the issue is also concerning.

#### **IV. Conclusion**

18. We urge the ECSR to find that Slovenia is in violation of the Charter through the lack of effective prohibition in legislation. While the Slovenian Government is to be commended for promoting changes to its family legislation explicitly prohibiting corporal punishment in the form of the Family Code Bill which was rejected, we hope the Committee will recommend that Slovenia should with urgency seek the re-introduction and adoption of this legislation.