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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. Cyprus
Complaint No. 97/2013

COMPLAINT

Registered at the Secretariat on 4 February 2013

**Collective Complaint against Cyprus
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 Cyprus 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

Cyprus ratified the Revised Social Charter on September 27 2000 and ratified the Additional Protocol on August 6 1996.

Applicability of Article 7 of the Revised Social Charter of 1996 to Cyprus

Cyprus considers itself bound by Article 7.10.

Introduction to complaint

Despite claims by the Government that corporal punishment is fully and effectively prohibited in Cyprus, it appears that a defence still exists in children's legislation which renders the legal position confused and so in violation of the Charter.

The complaint summarises the relevant jurisprudence of the European Committee of Social Rights and its conclusions on reports from Cyprus; it also summarises the relevant international human rights standards and recommendations to Cyprus by UN Treaty Bodies and in the Universal Periodic Review by the Human Rights Council. Legislation in Cyprus is reviewed.

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 Charter 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...”

In clarifying its interpretation 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 Cyprus under Article 7.10

In its conclusions adopted following examination of Cyprus’s reports under Article 7.10 in 2006 and 2011, the ECSR reserves its position, in each case asking for further clarification of the law.

Cyprus's most recent report (under Article 7.10 for period 2003 – 2009) states: "Domestic Violence was criminalised in 1994 by Law (L.47(I)/1994) and later replaced by The Violence in the Family (Prevention and Protection of Victims) Law (L.119(I)/2000), as amended. Furthermore, The Children Law has been amended in 1999 and 2002. The Laws explicitly prohibit corporal punishment and include no defences. The aim of the legislation is to fully harmonise the national legislation with the European acquis, as well as to better implement the UN Convention for the Rights of the Children." In Cyprus's previous report (third report, 2003/- 2004, also under article 7.10, it reported: "Regarding corporal punishment, Cyprus has ratified the Convention on the Rights of the Child, which specifically prohibits it. According to Article 169 of the Constitution, ratified international Conventions have superior force to domestic Law. In addition, the Violence in the Family Law of 2000 provides for the protection of children from physical abuse committed by a family member."

The following is the text of the ECSR's relevant conclusions in 2006 and 2011: "The Committee notes from another source that corporal punishment was made unlawful in the home in 1994, in the Violence in the Family (Prevention and Protection of Victims) Law (1994) which prohibits 'any unlawful act or controlling behaviour which results in direct actual physical, sexual or psychological injury to any member of the family' (Article 3) and was interpreted as prohibiting all corporal punishment in childrearing. The provision was reiterated in the new Act on Violence in the Family adopted in 2000. However, the Children Law (1956) provides for 'the right of any parent, teacher or other person having the lawful control or charge of the child to administer punishment to him' (Section 54). "In June 2009 a new draft Law for the Welfare, Care and Protection of Children, intended to replace the Children Law and to harmonise domestic legislation with the Convention on the Rights of the Child, was expected to be submitted to the House of Representatives in 2010. "According to the report, the Children Law was amended in 1999 and 2002 and explicitly prohibits corporal punishment and includes no defences. The Committee asks whether the above mentioned draft law entered into force and if so, whether it explicitly prohibits corporal punishment in the home. In the meantime it reserves its position on this point." (January 2012, Conclusions 2011)

"As regards corporal punishment of children, the report refers to the Violence in the Family (Prevention and Protection of Victims) Law 2000 which defines violence as any action, omission or behaviour which causes physical, sexual or psychological damage. Further the report states that the UN Convention on the Rights of the Child, which has superior force to domestic law prohibits all forms of corporal punishment of children in all settings. However the Committee notes that in Cyprus's response to the UN Secretary General's Study on violence against children (submitted August 2005) according to the Children Law (Cap.352) the parent, teacher or other person having lawful control or care of a child have a right to administer punishment to him. Although the response states that the law is under review and the new legislation will explicitly prohibit corporal punishment and will include no defenses whatsoever. The Committee asks for further information on the situation i.e. the inter relationship between the legislation and the UN Convention on the Rights of the Child, as well as

information on the repeal of the defence. Meanwhile it reserves its position on the situation.”

(2006, Conclusions 2006, vol. 1, pages 152-153)

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 Cyprus:

Committee on the Rights of the Child

The Committee recommended prohibition of corporal punishment in the family in its concluding observations on Cyprus’s second report in 2003 (6 June 2003, CRC/C/15/Add.205, Concluding observations on second report, para. 46). In its concluding observations on the third/fourth reports it referred specifically to the need to remove the defence existing in children’s legislation:

“The Committee is concerned at the widespread social acceptance of corporal punishment in the State party. Furthermore, the Committee is concerned that article 54 of the State party’s Children Law (1956) has a provision allowing for ‘the right of any parent, teacher or other person having the lawful control or charge of the child to administer punishment to him’ which is still in force.

“The Committee recommends that the State party continue conducting awareness-raising and public education campaigns promoting alternative forms of discipline which are non-violent, and participatory forms of child-rearing and education. Furthermore, the Committee recommends that the State party repeal article 54 of its Children Law (1956) to ensure all of its legislation explicitly prohibits all forms of corporal punishment of children in all settings, including the home.”

(15 June 2012, CRC/C/CYP/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 29 and 30)

Universal Periodic Review: Cyprus was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). During the review, the Government stated that corporal punishment is unlawful (A/HRC/13/7, Report of the Working Group, para. 13): “Corporal punishment in the family is prohibited by law and prosecuted. There is a record of such criminal cases brought before the courts which resulted in convictions.”

No recommendations were made concerning corporal punishment of children. However, the following recommendation was made and was accepted by the Government (A/HRC/13/7, Report of the Working Group, para. 87(44)):

“Bring legislation governing the rights of the child into line with relevant international instruments and provide the office of the Commissioner for the Protection of Children’s Rights with the support needed for it to assume its role of preservation and protection of children’s rights (Algeria)”

The law in Cyprus

The Violence in the Family (Prevention and Protection of Victims) Law 1994 prohibits “any unlawful act or controlling behaviour which results in direct actual physical, sexual or psychological injury to any member of the family” (article 3) and when it came into force was promoted as prohibiting all corporal punishment in childrearing. The provision was reiterated in the Act on Violence in the Family adopted in 2000. In good faith the Council of Europe and the Global Initiative to End All Corporal Punishment of Children included Cyprus in lists of states which have achieved complete prohibition.

However, the Government of Cyprus’s response to the questionnaire of the UNSG’s Study on Violence against Children in 2005 noted that a defence was still on the statute books: The response to question 5, dated 19 August 2005, stated: “According to the Children Law (Cap. 352) the parent, teacher or other person having the lawful control or care of a child have a right to administer punishment to him. Please note that this Law is currently under review and the new legislation will explicitly prohibit corporal punishment and will include no defences whatsoever. According to the Violence in the Family Law, there are no defences for physical or other abuse.”

Article 54(6) of the Children’s Law (1956) provides for “the right of any parent, teacher or other person having the lawful control or charge of the child to administer punishment to him” (from English law adopted originally in the colonial period).

As noted above, in Cyprus’s report to the European Committee of Social Rights in 2011, the Government stated the Children Law was amended in 1999 and 2002 and does not include the defence (28 February 2011, RAP/RCha/CY/VIII(2011), National report to the European Committee of Social Rights, pages 6-7).

But in a 2011 report to the Committee on the Rights of the Child, Cyprus’s Commissioner for Children’s Rights reports: “...It is regrettable that in relation to corporal punishment, there is no legal certainty as to its prohibition in all situations. Section 54 of the Children’s Law, which prohibits any form of cruelty against children under sixteen, including ill treatment and any suffering, specifically provides that these provisions may not be construed as affecting the right of any parent or teacher or any person having the lawful control or charge of the child to administer punishment on him/her. Moreover, the protection from cruelty only applies to children under sixteen, leaving completely unprotected children up to the age of 18 and, especially, children who may be particularly vulnerable to cruelty and abuse, due to their personal circumstances.”

The Commissioner goes on to recommend: “...any form of violence against children, under any circumstances including corporal punishment in any context, should be banned by the law and specific actions should be taken in order to raise awareness of

the Cypriot society at large and, particularly, the family and teachers, and increase sensitivity on issues of violence against children”.
(Commissioner for Children’s Rights, Supplementary Report to the 3rd and 4th Periodic Report of Cyprus to the Committee on the Rights of the Child, September 2011, section 5.5 “Abuse and Neglect”, page 42)

Thus there is confusion over the state of relevant children’s legislation.

The complaint

Our complaint alleges that Cyprus remains in violation of the Charter because of the existence of a clear defence of violent punishment in children’s legislation and the lack of explicit prohibition of all corporal punishment in the family and other settings. We have been unable to identify legislation explicitly prohibiting corporal punishment in schools, all forms of alternative care and in the penal system. We hope this complaint will ensure that accurate and detailed information on the legal framework is provided to the Committee. Also in violation of the Social Charter, it is clear that the Government has not acted with due diligence to eliminate violent punishment of children in practice.

We hope the Committee will declare the complaint admissible and proceed to consider the merits without delay. The Government’s own reports and other information suggest that the childhoods of many of Cyprus’s youngest and most vulnerable citizens are being scarred by violent punishment administered by parents and others.