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

29 November 2013

**Case Document No. 5**

**Association for the Protection of All Children (APPROACH) Ltd v. Belgium**  
Complaint No. 98/2013

**RESPONSE TO THE SUBMISSIONS OF THE GOVERNMENT  
ON THE REQUEST FOR IMMEDIATE MEASURES**

**Registered at the Secretariat on 25 November 2013**



**Association for the Protection of All Children (APPROACH) Ltd v.  
Belgium  
Complaint No. 98/2013**

**Response to the Observations of Belgium on the request for immediate  
measures**

**November 24 2013**

**Introduction**

This is our response to the comments of the Government of the Kingdom of Belgium (response dated August 6 2013) on our request to the European Committee of Social Rights to indicate “immediate measures”. We will respond to the Government’s observations on the merits of the complaint separately, before the deadline.

The Government contends that our request for immediate measures is “unwarranted and unexplained”. Para. 1 of Rule 36 states that the Committee may indicate “any immediate measure the adoption of which seems necessary with a view to avoiding the risk of a serious irreparable injury and to ensuring the effective respect for the rights recognised in the European Social Charter.” Our response therefore addresses these two points in detail.

But first we comment on the relationship of the request for immediate measures to the decision on the merits of this complaint. **Given the nature of the immediate measures that we request the Committee to indicate, we conclude that it may be appropriate to defer consideration of such measures until the decision on the merits, as Rule 36 allows.**

Finally, we answer specific comments made by the Government.

**1 Consideration of request for “immediate measures” in relation to  
consideration of the merits of the complaint**

Rule 36 makes clear that the Committee can consider or initiate a request for immediate measures following an admissibility decision “at any subsequent time during the proceedings before or after the adoption of the decision on the merits”.

The “immediate measures” we propose in the complaint are within the competence of the Government and are fully in line with the Committee’s interpretation of the requirements of the Charter: “an immediate commitment to bring forward legislation explicitly to prohibit all corporal punishment and other cruel or degrading forms of punishment of children, in their homes, in all forms of alternative care and in schools and to work with due diligence towards the elimination of all such punishment”.

We note that in relation to complaints Nos. 86/2012 and 90/2013, the Committee rejected the requested immediate measures to suspend legislation, but invited the Government concerned to take other immediate, non-legislative measures, in advance of decisions on the merits. Thus the Committee has twice indicated immediate measures before issuing decisions on the merits of the complaints (Nos. 86/2013 and 90/2013, decisions dated October 25 2013). But

we accept that it may not be appropriate for the Committee, at this stage of consideration of complaint No. 98/2013, to request the immediate measures we are seeking; to do so would certainly assume acceptance of the merits and pre-empt a finding of violation of the Charter.

However, we believe that indicating, at the appropriate point in the procedure, immediate measures which the Committee considers necessary is an essential as well as logical next step in asserting its long-term and consistent interpretation of the Charter as requiring respect for children's right to clear and effective protection from assault disguised as punishment or discipline. It is a proportionate response to Belgium's lack of action or even commitment to reform; it is almost nine years since the Committee issued its decision (in December 2004) on the previous and similar complaint against Belgium, No. 21/2003.

We urge the Committee to consider the special vulnerability and developmental status of the child. If any other population group in Belgium was still at risk of legalised assault, we are confident that the Committee would not hesitate about indicating, at the appropriate stage of the process, immediate measures which the Government should take. We respectfully refer the Committee to its 1999 statement: "... the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact" (International Commission of Jurists v. Portugal, complaint No. 1/1999, decision on the merits of 9 September 1999, § 32).

Given the Committee's consistent jurisprudence on states' obligations with regard to violent punishment of children, and its decision on the previous complaint No. 21/2003 and on other complaints including in particular No. 34/2006, we do not believe a finding of violation is in doubt. However, in this complaint (last para.) we did not suggest at what point in the procedure the Committee should request the necessary immediate measures. We urged the Committee "to declare this complaint admissible immediately and to consider the merits without delay...".

**In the light of the circumstances of this complaint, and the Government's comments that the request for immediate measures goes to "the very core of the complaint", we urge the Committee to indicate immediate measures with or immediately after its decision on the merits.**

## **2 Avoiding the risk of serious irreparable injury**

It is 12 years since the Committee, in General Observations in 2001, emphasised: "The Committee attaches great importance to the protection of children against any form of violence, ill-treatment or abuse, whether physical or mental... 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... Moreover, in a field where the available statistics show a constant increase in the number of cases of ill-treatment of children reported to the police and prosecutors, it is evident that additional measures to come to terms with this problem are necessary. To prohibit any form of corporal punishment of children, is an important measure for the education of the population in this respect in that it gives a clear message about what society considers to be acceptable. It is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable corporal punishment and what is not."

Almost nine years have passed since the Committee's decision, in response to collective complaint No. 21/2003, that Belgium was in violation of Article 17 of the Revised Social Charter because "none of the [relevant] legal provisions, taken together or in isolation, is set out in sufficiently precise terms...". In those years, no legislative progress whatsoever has been made towards ensuring clarity in the law in relation to all violent punishment. It has also emerged that there is no explicit prohibition in schools and that violent punishment continues to be practised by teachers and by staff in sports and youth clubs. As our complaint notes, the Government has informed the Committee that Belgium's Parliament "has made a number of attempts in recent years to amend Belgian law, and more specifically the Civil Code, to grant children the right to a non-violent upbringing and to prohibit the corporal punishment of and other forms of psychological or physical violence against children. The most recent draft legislation on this subject was tabled in the Chamber of Representatives on 15 July 2008, and the enactment procedure is under way...". But these successive attempts to achieve explicit prohibition, through legislative proposals introduced by individual parliamentarians, have not been supported by the Federal Government and have therefore failed (we understand a further Bill was presented in the Senate in 2010).

A study<sup>1</sup> carried out in 2010-2011, which involved nearly 2,000 10-18 year olds in Flanders, makes visible the very high prevalence of corporal punishment in the family home and elsewhere. In the family home, 32.4% of respondents had been pinched or had their hair or ears pulled, 29.7% had been beaten, hit or smacked and 23.4% had been pushed, kicked or grabbed. Parents were the main perpetrators. Nearly half of respondents had experienced at least one of these three kinds of violence and 12% had experienced all three. Nearly a quarter had experienced "extreme violence" (including being beaten with an object, locked in a small room or tied up and forced to stand in the same position or do physical exercises) in the family home; fathers were the main perpetrators.

Perhaps counter to common perceptions, it appears that physical punishment is also regularly practised in schools. The report of the study states that, "Teachers still appear to resort to punishments which we thought had been consigned to the past, such as forcing pupils to stand in a painful position, putting them outside in the cold, forcing them to do something dangerous" (p. 47). Nearly a quarter (22.9%) of respondents had been punished in school by having their ear pulled, 18% by having their hair pulled and 19.8% by being hit with a hand on their hand or fingers. Forty-two per cent of respondents had experienced at least one form of "extreme punishment" in school; the most common types were being shut outside in hot or cold temperatures (experienced by 15% of respondents), being forced to do something dangerous (14.6%), being forced to stand or kneel in a painful position (13.8%) and being denied food (12.5%). Extrapolated to the whole of Flemish society, the results suggest that in Flanders alone around 38,000 children could have had these or other "extreme punishments" inflicted on them by teachers.

Similar violent and degrading punishments were found to have been inflicted on children in sports and youth clubs. In youth clubs, nearly a quarter (23.7%) of children had been punished by being forced to remain in a painful position and 12.7% had been placed in hot or cold water. In sports clubs, 9.3% of children had been punished by being hit on the face or head and 8.7% by being hit on the arm or fingers.

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<sup>1</sup> Kinderrechtencommissariaat (2011), *Geweld gemeld en geteld*, Brussels: Kinderrechtencommissaris

Although in this study, the majority of children said that corporal punishment was unacceptable, the high percentages of children who believed it acceptable for adults to physically punish them provide further clear evidence of the ongoing social acceptance of physical punishment in Belgian society. Nearly a third of children thought that being hit with an object such as a stick, hairbrush or belt was sometimes, usually or always an acceptable punishment in the family, and 42% thought that being hit with a bare hand was acceptable. Nearly 10% of children thought that being hit with a hand was an acceptable punishment at school.

Our request that the Committee should consider indicating immediate measures is provoked by the lack of action, or even commitment to act, following the decision on the previous complaint almost nine years ago. We contend that the lack of prohibition of corporal punishment inevitably adds to and does not avoid the risk of serious irreparable injury to Belgium's children, including injury to their physical and mental health, their dignity and their status in Belgian society. We of course fully accept, as the European Committee of Social Rights does in its successive decisions on this issue, that prohibition on its own will not end the use of physical punishment. But resisting and delaying law reform not only violates children's rights but undermines the other educational measures required to move towards elimination of violent punishment. The law, properly and sensitively enforced, is an effective instrument of social change. The immediate measures we have proposed that the Committee should indicate reflect this.

Additionally, in the past nine years, the body of evidence on the negative impacts of corporal punishment on children has grown to the extent that it is now overwhelming. Some of this research is presented here in order to illustrate the risk to children and thus the need for immediate measures. Children are a disproportionately vulnerable group. Because they are in a process of maturation, violations of their rights have greater impact on them than on adults.

The legality of corporal punishment is inimical to child protection. Research clearly shows that most physical "child abuse" is corporal punishment – adults using violence to control and punish children. The majority of incidents substantiated by authorities as abuse occur in a punitive context, as shown by studies in many states, including a major Canadian study which found that nearly three quarters (74%) of all cases of "substantiated physical abuse" were cases of physical punishment.<sup>2</sup> In the UK, the intent to discipline or punish has been shown to be a common precursor in many child homicide cases.<sup>3</sup>

All physical punishment, however "mild" and "light", carries an inbuilt risk of escalation: its effectiveness in controlling children's behaviour decreases over time, encouraging the perpetrator to increase the intensity of the punishment.<sup>4</sup> This was recognised by the European Committee of Social Rights in its 2001 General Observation, quoted above. The risk of escalation is increased by the fact that adults who inflict physical punishment are often angry: their anger can increase the level of force used beyond what was intended, and their intent

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<sup>2</sup> Trocmé, N. et al (2010), *Canadian Incidence Study of Reported Child Abuse and Neglect – 2008: Executive Summary & Chapters 1-5*, Public Health Agency of Canada: Ottawa, 2010; see also A. & Trocmé, N. (2013), [Physical Abuse and Physical Punishment in Canada](#), Child Canadian Welfare Research Portal Information Sheet # 122

<sup>3</sup> Cavanagh, K. & Dobash, P. (2007), "The murder of children by fathers in the context of child abuse", *Child Abuse & Neglect*, 31: 731–46

<sup>4</sup> Straus M. & Douglas E (2008), "Research on spanking by parents: Implications for public policy" *The Family Psychologist: Bulletin of the Division of Family Psychology* (43) 24, 18-20

may be retaliatory as well as punitive. All ten of the studies on child protection in a major 2002 meta-analysis found that corporal punishment was significantly associated with physical “abuse”<sup>5</sup>; later studies have found similar associations.<sup>6</sup>

Children consistently say corporal punishment is physically and emotionally painful and can lead them to fear and avoid their parents. It is therefore not surprising that corporal punishment damages family relationships. Internationally, research has confirmed that parental corporal punishment is associated with a decrease in the quality of parent-child relationships,<sup>7</sup> with poor attachment by babies to their mothers<sup>8</sup> and with poor family relationships in adolescence<sup>9</sup> and young adulthood.<sup>10</sup>

Physical punishment has been found to be associated with a host of other negative outcomes. As well as causing direct physical harm to children, it is associated with poor mental health – including anxiety, depression, substance abuse and self-harm – in children, adolescents and adults.<sup>11</sup> Far from teaching children how to behave, it is associated with increased antisocial behaviour – including bullying, lying, truancy, school behaviour problems and involvement in crime as a child and young adult.<sup>12</sup> There is overwhelming evidence that corporal punishment increases aggression in children: children who have experienced corporal punishment are more likely to be aggressive towards their peers,<sup>13</sup> to approve of the use of violence in peer relationships, to bully and to experience violence from their peers,<sup>14</sup> to use violent methods to resolve conflict<sup>15</sup> and to be aggressive towards their parents.<sup>16</sup>

For children whose response to being physically punished is to behave violently themselves, their violent behaviour may persist into adulthood: corporal punishment in childhood is associated with aggressive, antisocial and criminal behaviour in adulthood.<sup>17</sup> Corporal punishment is closely linked to intimate partner violence (domestic violence). The two kinds of violence often coexist,<sup>18</sup> the perpetrators may be the same and tolerance of corporal punishment increases acceptance of other kinds of violence in family relationships. Research

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<sup>5</sup> Gershoff, E. T. (2002), “Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review”, *Psychological Bulletin*, 128(4), 539-579

<sup>6</sup> For example, Clément, M. E. et al (2000), *La violence familiale dans la vie des enfants du Québec*, Québec: Institut de la Statistique du Québec

<sup>7</sup> Gershoff, E. T. (2002), op cit

<sup>8</sup> Coyl, D. D. et al (2002) “Stress, Maternal Depression, and Negative Mother-Infant Interactions in Relation to Infant Attachment”, *Infant Mental Health Journal* 23(1-2), 145-163

<sup>9</sup> Lau, J. T. F. et al (1999), “Prevalence and correlates of physical abuse in Hong Kong Chinese adolescents: A population-based approach”, *Child Abuse & Neglect*, 23, 549-557

<sup>10</sup> Leary, C. E. et al (2008) “Parental Use of Physical Punishment as Related to Family Environment, Psychological Well-being, and Personality in Undergraduates”, *Journal of Family Violence* 23, 1-7

<sup>11</sup> Gershoff, E. T. (2002), op cit; Afifi, T. O. et al (2012), “Physical Punishment and Mental Disorders: Results From a Nationally Representative US Sample”, *Pediatrics*, 2 July 2012

<sup>12</sup> Gershoff, E. T. (2002), op cit

<sup>13</sup> Ani, C.C., & Grantham-McGregor, S. (1998) “Family and personal characteristics of aggressive Nigerian boys: Differences from and similarities with Western findings”, *Journal of Adolescent Health*, 23(5), 311-317

<sup>14</sup> Ohene, S. et al (2006) “Parental Expectations, Physical Punishment, and Violence Among Adolescents Who Score Positive on a Psychosocial Screening Test in Primary Care”, *Pediatrics* 117(2), 441-447

<sup>15</sup> Hart, C.H. et al (1990) “Children’s expectations of the outcomes of social strategies: Relations with sociometric status and maternal disciplinary styles”, *Child Development*, 61(1), 127-137

<sup>16</sup> Ulman, A. & Straus, M. A. (2003) “Violence by children against mothers in relation to violence between parents and corporal punishment by parents”, *Journal of Comparative Family Studies* 34: 41-60

<sup>17</sup> Gershoff, E. T. (2002), op cit

<sup>18</sup> Taylor, C. A. et al (2012), “Use of Spanking for 3-Year-Old Children and Associated Intimate Partner Aggression or Violence”, *Pediatrics* 126(3), 415-424

shows associations between childhood experience of corporal punishment and perpetration and approval of intimate partner violence as an adult.<sup>19</sup> As the UN Committee on the Rights of the Child has said, ending corporal punishment is “a key strategy for reducing and preventing all forms of violence in societies”.<sup>20</sup>

### **3 Ensuring effective respect for the rights recognised in the European Social Charter**

We believe our current complaint shows beyond doubt how Belgium’s lack of any positive response in the almost nine years since the decision on the previous complaint No. 21/2003 threatens effective respect for the rights recognised in the Charter. We repeat that Belgium has taken no significant action to effectively prohibit all corporal punishment of children by parents and others, despite the result of complaint No. 21/2003 and later (2007 and 2011) conclusions of the Committee. In addition, during these nine years three UN Treaty Bodies have noted the lack of provisions in Belgian law prohibiting all corporal punishment in all settings of children’s lives including the home and family, and have recommended prohibition: the Committee on the Rights of the Child (2010), the Committee against Torture (2009) and the Committee on Economic, Social and Cultural Rights (2007; these are referenced in our complaint). Following the examination of Belgium in the first cycle of the Universal Periodic Review in 2011, the Government rejected a recommendation to “Take necessary measures to ensure that corporal punishment is explicitly prohibited by law under all circumstances”.

If the Committee simply reiterates the decision it made on complaint No. 21/2003, it may appear to be accepting long-term lack of respect for rights which it has consistently found to be guaranteed by the Charter.

### **5 Other issues raised by the Government of Belgium**

Here we respond to other statements made by the Government in its reply (extracts in italics):

*“Thus, as opposed to what Approach is implying, children do not lack legal protection....”:* We have acknowledged positive protective provisions in Belgium’s law. The complaint is about the persisting lack of sufficiently explicit legislation clearly interpreted as prohibiting all violent punishment of children.

*“During a previous collective complaint (21/2003 OMCT v. Belgium), the Committee declared that the protection provided was not explicit enough to be considered in accordance with article 17 of the Charter, yet it did not, at the time, find the adoption of immediate measures necessary to remedy the situation.”:*

Almost nine years has passed since the Committee’s decision on the previous complaint; further delay is surely inexcusable. We note that Rule 36, allowing the Committee to indicate “immediate measures” has only been in force since 2011.

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<sup>19</sup> For example, Gershoff, E. T. (2002), op cit; Cast, A. D. et al (2006), “Childhood physical punishment and problem solving in marriage”, *Journal of Interpersonal Violence*, 21, 244-261; Straus, M. A. & Yodanis, C. L. (1996), “Corporal punishment in adolescence and physical assaults on spouses later in life: What accounts for the link?” *Journal of Marriage and Family*, 58, 825–841

<sup>20</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 \(arts. 19; 28, para. 2; and 37, inter alia\)\*](#) (CRC/C/GC/8)



*“Belgium notes that, with the exception of Ireland, no requests for immediate measures were addressed to any of the concerned countries.”:*

Following previous collective complaints on the need to prohibit corporal punishment effectively, Greece (complaint No. 17/2003) and Portugal (No. 34/2006) quickly reformed their laws to achieve compliance. We are requesting an indication of immediate measures in the case of Ireland and Belgium because of the lack of action since previous decisions on similar complaints. The other complaints currently under consideration are new to the countries concerned and we trust that if the Committee finds non-compliance they will move quickly to remedy the violation. In the case of Italy the Committee found compliance in its decision on complaint No. 19/2003; in our complaint No. 94/2013 we are seeking reconsideration of that decision.

*“Belgium wonders what the immediate effect of a ‘commitment to bring forward legislation’ would be over the situation considering the length of the legislative process.”:*

We do not fully understand this comment. We realise that a government, in a democracy, cannot dictate to Parliament. But it can publicly commit to bring forward the necessary legislation to explicitly prohibit corporal punishment. This in itself would send an immediate, clear and positive message about children’s rights. The length of the legislative process simply makes this first step more urgent.

## **Conclusion**

We are confident that the Committee, in line with its consistent jurisprudence, will find Belgium to be still in violation of Article 17. We urge it when it issues its decision, or immediately afterwards, to indicate necessary immediate measures along the lines of those we propose in the final paragraph of the complaint: “an immediate commitment to bring forward legislation explicitly to prohibit all corporal punishment and other cruel or degrading forms of punishment of children, in their homes, in all forms of alternative care and in schools and to work with due diligence towards the elimination of all such punishment”. This will, in addition, enable the Committee to follow up with the state on implementation of the indicated measures (para. 3 of Rule 36).