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

17 January 2014

Case Document No. 6

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

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

Registered at the Secretariat on 17 January 2014

APPROACH Ltd

Response to the Submissions of the Government of Belgium on the merits of Complaint No. 98/2013, Association for the Protection of All Children (APPROACH) Ltd v. Belgium

January 2014

I. Introduction

1. This is the response of APPROACH Ltd to the Submissions of Belgium on the merits of Complaint No. 98/2013, dated 22 October 2013. Below, we briefly respond to Belgium's comments on the relationship between the current Complaint and Complaint No. 21/2003. We go on to highlight the continuing inadequacy of legislation in Belgium. Finally, we emphasise Belgium's failure to act with due diligence to eliminate corporal punishment in practice.
2. In its Decision on the merits of Complaint No. 21/2003 against Belgium, the European Committee of Social Rights (ECSR) states: "The Committee furthermore recalls that the Charter is a living instrument which must be interpreted in light of developments in the national law of member states of the Council of Europe as well as relevant international instruments" (para. 38). We urge the ECSR, in considering the merits of our current Complaint, to note that in the decade since 2003 there has been substantial international and European progress confirming the immediate human rights obligation to effectively prohibit and eliminate all violent punishment of children and substantial progress towards universal prohibition by Council of Europe Member States.
3. During this period the ECSR has further developed its case law on corporal punishment, in particular in its Decision on the merits of Complaint No. 34/2006 and in subsequent conclusions it has issued on reports under Article 17. The UN Committee on the Rights of the Child has issued General Comment No. 8 on the right of the child to protection from corporal punishment and other forms of cruel or degrading punishment and General Comment No. 13 on the right of the child to freedom from all forms of violence. It has continued to recommend prohibition to all States whose reports it examines and its recommendations have been reflected by other UN Treaty Bodies (in the case of Belgium, as our Complaint sets out in detail, there have been further recommendations from the Committee on the Rights of the Child (in 2010), the Committee against Torture (2009) and the Committee on Economic, Social and Cultural Rights (2007)). The comprehensive UN Secretary General's Study on violence against children, requested by the Committee on the Rights of the Child, included among its key recommendations (2006) the prohibition of all forms of violence including corporal punishment. There has also been substantial coverage of the need for prohibition in the first two cycles of the Universal Periodic Review process in the Human Rights Council. During the decade from 2003,

13 additional Member States of the Council of Europe have effectively prohibited all corporal punishment.

II. The current Complaint in relation to Collective Complaint No. 21/2003

4. More than nine years have passed since the ECSR adopted its Decision (on December 7 2004), in response to Complaint No. 21/2003, finding Belgium 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 to suffice to enable parents and ‘other persons’ to model their conduct on Article 17 of the Charter and to attain the result required by that provision”. In those years, no legislative progress has been made towards ensuring the necessary clarity in the law in relation to all violent punishment of children. The few developments since 2003 described in the Submissions show no such progress.
5. Belgium’s current Submissions fail to engage with the Committee’s Decision on the previous Complaint No. 21/2003 or the new elements of the current Complaint, including the emergence of the fact that Belgium lacks explicit or effective prohibition of corporal punishment in schools as well as in the family home and childcare settings. Large sections of the Government’s Submissions on the current Complaint are copied directly from its Submissions on Complaint No. 21/2003, regardless of the fact that the Committee has already considered and responded to these points. Nearly all of the section of the Submissions entitled “Sanctions to be applied” (p. 10-12¹) appears to be copied, unaltered and unreferenced, from a 2010 article on corporal punishment in a Belgian children’s rights journal.²
6. What is new and to be welcomed in these Submissions from the Government is that Belgium emphasises that it is willing to consider drawing up new legislation specifically prohibiting corporal punishment in civil law (p. 5, expanded on p. 14). The conclusion (p. 18) emphasises that Belgium “regards corporal punishment in any form as unacceptable” and again notes that it “does not rule out strengthening its civil law”.

III. Belgium’s failure to prohibit all corporal punishment of children

7. For clarity, we repeat the core of our Complaint, which is that Belgium has not explicitly and effectively prohibited all corporal punishment of children within the family, in all forms of alternative care and in schools throughout all communities, and accompanied such law reform with comprehensive awareness-raising on the law and children’s rights to protection from all violent punishment.
8. Much of Belgium’s Submissions are dedicated to claims that various laws – most of which have already been examined by the ECSR and found to be inadequate – are sufficient to prohibit corporal punishment. Here we briefly survey these claims again.
9. The claim that article 22bis of the Constitution is sufficient to protect children from all violent punishment has already been examined by the ECSR, which in its Decision on Complaint No. 21/2003 concluded that “the right to integrity under Article 22bis

¹ Page references to the Submissions refer to the English translation provided by the ECSR Secretariat

² Fierens, J. (2010), “Pas panpan culcul papa! Les châtiments corporels et le droit applicable en Belgique”, *Journal des Droits des Jeunes*, 300: 15-25

does not *prima facie* encompass all the aspects covered by article 17 of the Charter, notably in that the latter applies to punishment for educational purposes” (para. 43).

10. Similarly, the provisions in the Criminal Code which make assault an offence and allow for increased penalties when the victim is a child have already been found by the Committee to be insufficient for compliance with article 17. We have not disputed that, as the Government asserts and demonstrates by quoting various judgments, it is possible to prosecute and punish forms of corporal punishment against children under provisions of the Criminal Code. In every state, as these Submissions document for Belgium, there are prosecutions of conduct which is considered to amount to abuse or ill-treatment of children. But given the widespread social approval and traditional assumption of the legality of violent punishment of children across Belgium, Europe and globally, more is required to provide a clear legal foundation and deliver a clear preventive message that all violent punishment of children is prohibited. As the Committee decided in Complaint No. 34/2006 against Portugal:

“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. 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.” (paras. 19-21)

11. In its Decision on Complaint No. 21/2003, the ECSR also clearly responded to Belgium’s suggestion, repeated in its current Submissions, that article 371 of the Civil Code, which states that children and their parents have a duty of mutual respect, “implicitly rules out the submission of children to corporal punishment” (p. 12). The ECSR stated that it considered Article 371 to be “consistent” with Article 17 of the Charter, “... However, its general wording prevents it from amounting to a clear, precise duty on parents not to use corporal punishment for educational purposes” (para. 45).
12. Our Complaint highlighted (p. 10) that the 2008 Ministry of Justice circular mentioned on p. 3 of the Submissions does not remedy the deficiencies in legislation identified by the Committee in its Decision on Complaint No. 21/2003.
13. Finally, with reference to p. 8 of the Submissions, while of course we agree that corporal punishment of children can amount to torture or inhuman or degrading treatment, it is absolutely clear that provisions against torture, etc., in Belgian law do not amount to prohibition of all violent punishment of children. It is equally evident that the laws mentioned by the Government on restraining orders, parental duties and the powers of juvenile courts do not prohibit corporal punishment.
14. Throughout its Submissions, Belgium makes almost no reference to the lack of explicit or effective prohibition of corporal punishment in alternative care, day care or schools. The only direct reference to these settings is the tacit acknowledgment that corporal punishment is not prohibited, in the statement (which appears to refer only to the Flemish Community) that, “As to the administration of corporal punishment outside the family, there are regulations which set out the procedure to follow in the event of conduct which goes beyond what is acceptable” (p. 15). According to our information, as set out in our Complaint (p. 9), the only explicit prohibition of

corporal punishment is in institutional care in the Flemish Community, where corporal punishment is prohibited in institutions in Article 28 of the Decree of the Flemish Council dated 7 May 2004 and Articles 11 and 13 of the Flemish Government Decree of 13 July 1994 concerning grants to institutions for youth. We understand there is no prohibition in relation to non-institutional care in the Flemish community, any form of care in the German and French communities or schools throughout the country. As we discuss in section V below, there is recent research evidence that violent punishment is widely experienced by children in schools and youth and sports clubs.

IV. Law reform necessary to achieve prohibition of all corporal punishment in Belgium

15. Within the section of its Submissions on the Criminal Code, on “Sanctions to be applied” (p. 10),³ the Government quotes points contributed by the French Community of Belgium concerning the jurisprudence of the Committee on the Rights of the Child on prohibition of corporal punishment. The Submissions quote part of para. 39 of General Comment No. 8 of the Committee, suggesting that it “seems to require the enactment of new criminal legislation” (p. 11). This is misleading since, when read as a whole, para. 39 makes it very clear that explicit prohibition may be in criminal or civil law, depending on the laws of the state in question:

“Achieving a clear and unconditional prohibition of all corporal punishment will require varying legal reforms in different States parties. It may require specific provisions in sectoral laws covering education, juvenile justice and all forms of alternative care. But it should be made explicitly clear that the criminal law provisions on assault also cover all corporal punishment, including in the family. This may require an additional provision in the criminal code of the State party. But it is also possible to include a provision in the civil code or family law, prohibiting the use of all forms of violence, including all corporal punishment. Such a provision emphasizes that parents or other caretakers can no longer use any traditional defence that it is their right (“reasonably” or “moderately”) to use corporal punishment if they face prosecution under the criminal code. Family law should also positively emphasize that parental responsibility includes providing appropriate direction and guidance to children without any form of violence.”⁴

16. The Submissions (p. 11) also quote parts of paras. 40 and 41 of the General Comment which emphasise additionally, in summary, that the Committee does not believe that all cases of parental corporal punishment of children that come to light should lead to prosecution and that decisions on prosecution and other formal intervention should be taken with very great care and only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the

³ This section appears to be copied, unaltered and unreferenced, from a 2010 article on corporal punishment in a Belgian children’s rights journal (see note 1 above).

⁴ 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)*

affected child. We of course concur, but none of this reduces the need for absolute clarity in the law that all corporal punishment is unlawful.

17. We would emphasise that there is no evidence whatsoever that prohibition has caused any increase in prosecutions of parents which are not in the best interests of children in any of the 34 countries which have prohibited all corporal punishment, and much evidence that prohibition, accompanied by appropriate measures to raise awareness of and implement the new law, has led to large decreases in the use and approval of corporal punishment in many of those countries.
18. We concur with the statement that systematic prosecution of parents when corporal punishment comes to light would not be in children's best interests (p. 12). Nevertheless, we are shocked by the statement on p. 12 of the Submissions – it is not clear whether it is being made by the Government of Belgium, or only by commentators from the French Community – that this “would mean that children would feel they have the power to accuse adults in front of others or at least to threaten to do so, and this would tend to distort the relationship between parents or guardians and children to everyone's detriment and undermine the position of father figures (in the broadest sense of an authority which can be embodied by any parent or guardian), which many people say is being dangerously eroded in an over-individualistic society failing to provide reference points for children”. Extraordinarily, this appears to question children's right to report violence against them.
19. The Government of Belgium states (p. 5 of the Submissions) that,
“in recent years, parliament has taken many steps 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 children and other forms of psychological or physical violence against them. These steps have not, however, resulted in any legislation. Belgium emphasises that it is willing to consider drawing up new legislation specifically prohibiting these practices in civil law.”
20. Our Complaint indicates (p. 10) that it is our understanding that these previous attempts to achieve explicit prohibition, as required by the Charter and other human rights instruments, were legislative proposals introduced by individual parliamentarians, which did not receive at the time any support from the Federal Government. But, as noted above, we welcome the statement of willingness to consider explicit prohibition, including the possibility of basing prohibiting legislation on this earlier initiative.

V. Belgium's failure to act with due diligence to eliminate corporal punishment in practice

21. In addition to failing to ensure that its legislation effectively prohibits all corporal punishment, Belgium has also failed to act with due diligence to eliminate corporal punishment in practice, as the ECSR states is required by the Charter (see Decision on the merits, Complaint No. 34/2006, para. 21).
22. Much of the Submissions and the whole of the Appendix (which appears to concern only the French Community) describe measures taken in Belgium to combat child abuse. While welcome, there is nothing in the Submissions to suggest that these

measures address systematically the illegality and dangers of all corporal punishment, nor that there is systematic promotion of positive, non-violent forms of discipline. Acting with due diligence surely requires systematic, explicit and sustained attention to fulfilling children's right to protection from all violent punishment, whatever form it takes.

23. The Submissions quote the French Community (p. 16), as placing the emphasis on “non-penalising, non-criminal and non-judicial methods”. In suggesting that legal and other measures are alternatives rather than complementary, this disregards children's rights and the Committee's clear jurisprudence that governments are required both to prohibit corporal punishment in law and to act with due diligence to ensure that it is eliminated in practice. Children have a right to protection which incorporates both clear prohibition and other, primarily educational, measures. Clear and widely disseminated legal standards can be among the most effective tools for social change and law reform is an essential, rights-based element of any effort to end corporal punishment.
24. We respectfully submit to the Committee that the measures which Belgium and other states should take to accompany effective prohibition and to demonstrate due diligence would 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/enforcement of the prohibition into the national and local child protection system. The impact of law reform and these measures should be evaluated through, inter alia, baseline and regular follow-up interview research involving children and parents. We see no evidence of any such consistent measures in the Government's Submissions on the merits.
25. The urgent need both for clear prohibition and for due diligence in working to eliminate violent punishment is shown by research drawn to our attention since submission of the Complaint and described below. This shows that large numbers of children in Belgium continue to experience corporal punishment in their homes, schools and leisure settings.
26. A study⁵ 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.

⁵ Kinderrechtencommissariaat (2011), *Geweld gemeld en geteld*, Brussels: Kinderrechtencommissaris

27. It appears that physical punishment is also regularly practised in schools. The report of the same 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%). The report states that, extrapolated to the whole of Flemish society, the results suggest that in Flanders alone around 38,000 children have had these or other “extreme punishments” inflicted on them by teachers.
28. Similar violent and degrading punishments were found to be 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 hand.
29. 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.

VI. Conclusion

30. In Complaint No. 21/2003, the Committee found that Belgium was in violation of the Charter because none of the provisions of its legislation, “taken together or in isolation, is set out in sufficiently precise terms to suffice to enable parents and ‘other persons’ to model their conduct on Article 17 of the Charter and to attain the result required by that provision” (para. 48).
31. Nothing in the Government’s Submissions on the merits suggests that it has taken the necessary legislative and other actions to bring Belgium into compliance with the Charter. It is, however, positive that the Government states, in the context of this Complaint, its willingness to “consider”, or “not to rule out” drawing up new legislation explicitly prohibiting corporal punishment in Civil Law (p. 5, 14 and 18).
32. Belgium’s failure to bring its law into conformity with the Charter since the Committee’s Decision on Complaint No.21/2003 prompted us, in this Complaint (p. 10), to request that the Committee indicate immediate measures to the Government: 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. In our Response to the Government’s Observations on our original request for immediate measures (Case

Document No. 5, registered on 25 November 2013), we explained in detail why we believed the adoption of such measures was 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. We concluded that it could be appropriate to defer consideration of such measures until the decision on the merits had been made.

33. While noting the Committee's Decision on immediate measures (dated 3 December 2013), we would like to draw the Committee's attention once again to the inaction since its last Decision on Belgium and the evidence, in our Response to the Observations of the Government on the request for immediate measures, of the risk of irreparable injury to children. In light of this and of Belgium's welcome new statements in its Submissions that it is prepared to consider explicit prohibition, we hope the Committee will find Belgium to be in violation of the Charter and will do whatever is in its power to request immediate action.