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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. Belgium
Complaint No. 98/2013

COMPLAINT

Registered at the Secretariat on 4 February 2013

**Collective Complaint against Belgium
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 Belgium of the European Social Charter of 1961, the Revised Social Charter of 1996 and the Additional Protocol to the European Social Charter of 1995, providing for a system of collective complaints

Belgium signed the European Social Charter of 1961 on 18/10/61 and deposited the instrument of ratification on 16/10/90; the Charter entered into force in Belgium on 15/11/90. Belgium signed the Revised Social Charter on 3/5/96 and ratified it on 2/3/04. Belgium signed the Additional Protocol to the European Social Charter allowing for a system of collective complaints on 14/5/96 and ratified it on 23/6/03. The Protocol entered into force on 1/8/03.

Applicability of Articles 7 and 17 of the European Social Charter of 1961 and Revised Social Charter of 1996 to Belgium

Belgium considers itself bound by articles 7 and 17.

Introduction to complaint

This collective complaint follows up complaint number 21/2003, World Organisation against Torture (OMCT) v. Belgium. **(OMCT welcomes this follow up complaint: see letter in support attached separately).**

The complaint – set out in detail below – alleges that Belgium has taken inadequate action to remedy its violation of Article 17 by explicitly prohibiting all corporal punishment and other cruel or degrading forms of punishment of children and by acting with due diligence to ensure the elimination of violent punishment of children in reality. The complaint urges the European Committee of Social Rights to seek appropriate immediate measures.

The complaint summarises the relevant jurisprudence of the European Committee of Social Rights and its conclusions and decisions relating to Belgium; it also summarises the relevant international human rights standards and repeated recommendations to Belgium by UN Treaty Bodies and in the Universal Periodic Review by the Human Rights Council. Legislation in Belgium 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 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 clear interpretation of the Charter’s requirements in decisions on a series of collective complaints (Nos.17/2003, 18/2003 and 21/2003 (against Belgium)).

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 judgements 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 and decisions of the European Committee of Social Rights

Collective complaint No. 21/2003

Following a complaint against Belgium brought in 2003 by the World Organisation Against Torture (OMCT), the European Committee of Social Rights concluded that Belgium was in violation of Article 17 of the Charter because there is no explicit prohibition in law of corporal punishment of children by parents and some other carers.

In its decision on the merits, the ECSR states:

“40. As a preliminary remark, the Committee points out that according to the case documents there is no problem of conformity with Article 17 of the Charter as regards the prohibition of corporal punishment in prisons and schools. The complaint concerns the absence of an explicit ban on corporal punishment of children by parents and by “other persons”, including for educational purposes. By “other persons”, the OMCT is referring to any setting outside the family home other than schools or prisons, such as non-institutional childcare facilities and arrangements.

41. The Committee notes that none of the above-mentioned provisions explicitly prohibits all forms of violence against children by parents and “other persons”, including for educational purposes and that the Government does not deny this.

42. The Committee then examines whether these provisions provide for a sufficient legislative basis to such a prohibition. It notes that the Constitution and the Criminal Code deal with violence against children.

43. With regard to the Constitution, the Committee points out that the first part of Article 22bis of the Constitution is consistent with Article 17 of the Charter. It nonetheless generally considers that “although the Constitution may offer some protection. [...], the Committee notes that the Constitution lacks the specificity to provide adequate protection” (Conclusions XVI-2, Volume 1, Belgium, Article 15§2, p. 99). Applying this general consideration, *mutatis mutandis*, to the present case, the Committee refers to both the type of control to which Article 22bis of the Constitution primarily lends itself and to the provision's very brief wording. In addition, the Committee considers that the right to integrity under Article 22bis 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.

44. Secondly, with regard to the Criminal Code, the Committee recalls that it has previously held that, even if violence against the person is punished under criminal law provisions and subject to increased penalties where the victim is a child, this does not constitute a sufficient prohibition in law to comply with Article 17§1 of the Revised Charter (Conclusions 2003, Volume 1, France, pp. 173 to 178). The Committee considers *mutatis mutandis* that the above-mentioned provisions of the Belgian Criminal Code do not constitute an adequate legal basis for the purpose of Article 17 as interpreted by the Committee (see §§37-39 above).

45. With regard to the Civil Code, the Committee considers that the introduction, in 1995, of the concept of mutual respect between children and parents in the Title on Parental Authority (Article 371) is also 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. In this regard, the Committee takes note that a proposal to insert an explicit prohibition in the Civil Code is pending before the Senate.

46. The Committee notes the Government has not provided any examples of case-law showing that the above-mentioned provisions of the Civil Code or the Criminal Code have been interpreted as prohibiting all forms of violence against children by parents and ‘other persons’, including for educational purposes.

47. Eventually, the Committee acknowledges, like the Government does, that awareness campaigns are useful but considers that they are not sufficient.

48. The Committee accordingly considers that none of the 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.

CONCLUSION

For these reasons, the Committee concludes by 11 votes to 2 that there is a violation of Article 17 of the Charter.”

(World Organisation against Torture (“OMCT”) v. Belgium, complaint No. 21/2003, Decision on the Merits, 7 December 2004)

Subsequently, in a resolution adopted on 8 June 2005, the Committee of Ministers recorded that it “takes note” of the report of the ECSR. (Resolution ResChS(2005)10, Collective complaint No. 21/2003 by the World Organisation against Torture (OMCT) against Belgium, adopted by the Council of Ministers on 8 June 2005).

Reporting procedure under Article 17: Belgium’s reports and ECSR conclusions

Since its 2004 decision on complaint No. 21/2003, the ECSR has issued conclusions on Belgium’s reports under Article 17 in 2007 and 2011. In each case the Committee concludes that Belgium remains not in conformity with Article 17.

The Governmental Committee’s “Report concerning conclusions 2007” (T-SG(2009)4, 24 February 2009) summarised the response of the representative of Belgium to the finding of non-conformity, reviewing the existing law and a forthcoming circular from the Ministry of Justice (see below). The report states (para.

253): “Moreover, she indicated that 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...”. The Governmental Committee “took note of the positive developments announced and decided to await the ECSR’s next assessment of Article 17.1 of the Revised Charter” (para. 254).

In fact there has been no legislative progress whatsoever.

Belgium’s 2011 report under Article 17 responds to the ECSR’s request for more information (para. 5.1.3): “While it is true that the Belgian Code does not establish a specific offence with regard to corporal punishment, Belgium does nonetheless have relevant legal provision and a system of help and support to families that allows for a global approach that goes beyond merely legal measures, including aspects of prevention, support and assistance...”. It goes on to describe legislation - provisions in the Constitution, Civil Code and Criminal Code – which are unchanged since the 2004 decision on collective complaint 21/2003.

Belgium also notes in its report that the Ministry of Justice in 2008 issued a circular “whose object was to remind prosecutors of the recommendations of the United Nations and the Council of Europe in this matter. This adopts without modification the definition of ‘corporal punishment’ given by the United Nations Committee on the Rights of the Child” (see below, page 9, for details and commentary).

After consideration of this report, the ECSR states as the grounds for its conclusion of non-conformity with Article 17, that “corporal punishment is not prohibited in the home and in childcare institutions in all communities of Belgium”.

Commissioner for Human Rights: report following visit to Belgium

Following a formal visit to Belgium in December 2008, the Commissioner for Human Rights, Thomas Hammarberg, issued a report stating:

“141. The Belgian Constitution has, since 2000, provided that ‘every child has the right to respect for his moral, psychological, physical and sexual integrity’. The criminal and civil codes have subsequently been amended a number of times, but these provisions are not interpreted as entirely prohibiting corporal punishment. The European Committee of Social Rights found in 2005 that Belgium was in breach of Article 17 of the European Social Charter by failing to prohibit corporal punishment. In its decision, the Committee held that Belgium should explicitly prohibit parents and ‘other persons’ from inflicting violence on children. Likewise, the Committee on the Rights of the Child has urged Belgium to prohibit corporal punishment and to run education and awareness-raising campaigns on the issue.”

The Commissioner recommended that Belgium should “Pass a law explicitly prohibiting corporal punishment and make further efforts to promote positive parenting and education without violence” (para. 36).

(Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium 15-19 December 2008, 17 June 2009, CommDH(2009)14)

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 Belgium

Since the previous collective complaint (21/2003), 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 the recommendations:

Committee on the Rights of the Child: “The Committee welcomes efforts by the State party to implement the Committee’s concluding observations on the State party’s second report in 2002 (CRC/C/15/Add.178). However, some recommendations have not been given sufficient follow-up.

“The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the State party’s second periodic report that have not yet been, or not sufficiently, implemented...

“The Committee is concerned that the State party has not taken the necessary measures to ensure that corporal punishment in the family and non-institutional childcare settings is explicitly prohibited by law.

“In light of its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and its previous recommendations (CRC/C/15/Add.178, para. 24(a)), the Committee urges the State party to prohibit corporal punishment of children in all settings, notably in family and in non-institutional childcare settings as a matter of priority. The Committee also recommends that the State party conduct awareness raising campaigns and parenting education programmes to ensure that non-violent alternative forms of discipline are used, in a manner consistent with the child’s human dignity.” (18 June 2010, CRC/C/BEL/CO/3-4, concluding observations on third/fourth report, paras. 7, 8, 39 and 40.

The Committee had previously recommended prohibition of corporal punishment to Belgium in its concluding observations following examination of the initial report in 1995 and periodic report in 2002 (20 June 1995, CRC/C/15/Add.38, para. 15; 13 June 2002, CRC/C/15/Add.178, paras. 23 and 24).

Committee against Torture: “While it welcomes measures adopted by the State party to combat and eliminate violence against women, such as the adoption of the Federal Action Plan 2004-2007 to combat domestic violence, the Committee notes with concern the lack of any coordinated national strategy or programme to combat all forms of violence against women and girls. The Committee is likewise concerned at the persistence of corporal punishment of children within the family and the fact that this practice is not prohibited by law (arts. 2 and 16).

“The Committee recommends that the State party adopt and implement a coherent and comprehensive national strategy for the elimination of violence against women and girls that includes legal, educational, financial and social components. It also requests the State party to strengthen its cooperation with NGOs working in the area of violence against women. The State party should take the necessary steps to include provisions banning corporal punishment of children within the family in its legislation. The State party should guarantee women and child victims of violence access to complaint mechanisms, punish the perpetrators of such acts in an appropriate manner and facilitate victims’ physical and psychological rehabilitation.” (19 January 2009, CAT/C/BEL/CO/2, Concluding observations on second report, para. 24)

Committee on Economic, Social and Cultural Rights: “The Committee notes that corporal punishment of children within the family has not yet been included in the Criminal Code as a specific offence.

“The Committee recommends that the State party adopt specific legislation prohibiting all forms of corporal punishment of children within the family.” (3 December 2007, E/C.12/BEL/CO/3, Concluding observations on third report, paras. 19 and 33)

Universal Periodic Review: Belgium was examined in the first cycle of the Universal Periodic Review in 2011. The following recommendation was made but was rejected by the Government (A/HRC/18/3, Report of the Working Group, para. 103(1)):

“Take necessary measures to ensure that corporal punishment is explicitly prohibited by law under all circumstances (Poland)”

During the review, the Government stated that although corporal punishment is not a specific offence under Belgian law, a number of criminal provisions are applicable to such acts and that preventive, warning and assistance mechanisms are in place to protect children (A/HRC/18/3, Report of the Working Group, para. 63).

The law in Belgium

As has been consistently held by the ECSR and by UN human rights Treaty Bodies, corporal punishment is generally interpreted as being lawful in the home in Belgium. The Civil Code (amended 1995) states that the parent-child relationship should be one of “mutual respect” (article 371), but this is not interpreted as prohibiting parental

corporal punishment. A Constitutional amendment in 2000 (article 22bis), concerning the protection of the child's moral, physical and sexual integrity, is not regarded as changing the ways in which parental authority should be exercised. Provisions against violence and abuse in the Penal Code as amended by the Law Concerning the Penal Protection of Minors (2000) are not interpreted as prohibiting all corporal punishment in childrearing.

In the Flemish Community, corporal punishment is prohibited in institutions in article 28 of the Decree of the Flemish Council (7 May 2004) and articles 11 and 13 of the Flemish Government Decree of 13 July 1994 concerning grants to institutions for youth, but there is no prohibition in relation to non-institutional care. To our knowledge, there is no explicit prohibition of corporal punishment in alternative care settings in the French Community or the German-speaking Community.

In 2008, a Circular was issued by the Ministry of Justice; an accompanying letter explained:

“Please find attached a ministerial circular adopted following the large number of recommendations issued by several international bodies (mainly the United Nations and the Council of Europe) to Belgium regarding the need to effectively ban corporal punishment of children.

The aim of the attached circular is consequently to remind courts and tribunals that such punishments are likely, depending on circumstances, to constitute aggravated assault and/or degrading treatment as stipulated in articles 398 and following and article 417 *quinquies* of the Criminal Code.

I would be grateful for you to start sharing the aforementioned circular across all national jurisdictions at the earliest opportunity.”

The Circular from the Minister of Justice quotes the definition of corporal punishment from the Committee on the Rights of the Child's General Comment No. 8 (para. 11). The Minister notes: “I would like to emphasize that corporal punishment inflicted on children is likely, depending on circumstances, to constitute aggravated assault and/or degrading treatment as stipulated in articles 398 and following and article 417 *quinquies* of the Criminal Code”. The Circular footnotes the decision of the ECSR on Collective Complaint No. 21/2003.

The complaint

Despite the decision of the ECSR in complaint 21/2003, finding a violation of Article 17 and the Committee's repeated conclusions of non-conformity (supported by recommendations from three UN Treaty Bodies and in the Universal Periodic Review), 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.

Claims that current law is sufficient were examined and found to be inadequate by the European Committee of Social Rights nine years ago. The Government has not made the Committee aware of any new relevant legislative developments, although the 2009 report of the Governmental Committee (“Report concerning conclusions 2007” (T-

SG(2009)4, 24 February 2009 – see above page 6) quotes a representative of the Belgium Government stating that:

“... 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...”.

No such legislation has been enacted, and it appears that the Federal Government has not supported these repeated attempts at reform, introduced in each case by individual parliamentarians.

The advice provided to courts etc. in a circular from the Ministry of Justice in 2008 (see above, page 9) certainly does not remedy the deficiencies in legislation, nor does it amount to acting with “due diligence” to ensure that violent punishment of children is eliminated in practice.

We believe the Belgium Government is being disingenuous in not accepting that corporal punishment of children, in its less severe forms, remains very widely socially approved and considered to be lawful by a substantial majority of parents and members of the public. This demonstrates clearly the immediate need for explicit prohibition linked to renewed and sustained public and parent education about the law and children’s right to protection and promotion of positive, non-violent forms of child-rearing and caring.

Also, despite the comments of the ECSR in its decision on the merits of collective complaint 21/2003 (para. 40, quoted above), it appears that there is no explicit prohibition in legislation of corporal punishment in schools, both state and private. We therefore call on the Committee in addition to find non-compliance with Article 17 in relation to schools.

We urge the European Committee to declare this complaint admissible immediately and to consider the merits without delay. We hope the Committee will agree that the lack of clear prohibition of violent punishment adds unacceptably to the risk of serious irreparable injury to children in Belgium. Belgium’s lack of action in response to the Committee’s decision on complaint No. 21/2003, (compounded by its lack of action in response to the ECSR’s subsequent conclusions and to other expressions of concern and recommendations from human rights monitoring bodies) does not provide effective respect for the rights recognised in the Charter.

We therefore urge the Committee, under Rule 36 of its Rules of Procedure, to seek appropriate immediate measures: 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.