

EUROPE: Progress on corporal punishment of children after collective complaints

Summary

By issuing seven separate collective complaints to the European Committee of Social Rights, APPROACH, an organisation seeking a global ban on the corporal punishment of children, has prompted the governments of several European countries to enact new legislation or publicly debate the issue.

Background

Many children are smacked, whipped and beaten for mistakes and misdemeanours throughout the world, all in the name of discipline. Similar attacks on an adult, on the other hand, could result in a jail sentence.

From caning at school and smacking at home to beatings administered with rocks and shoes, people across the globe are slow to adopt the principle that violence against children is just as wrong as violence against adults.

A total of 46 States have [completely banned](#) corporal punishment of children, yet it's still legal in 152 others in the family home and often in other settings such as schools and penal institutions, demonstrating just [how ingrained it has become in most societies](#).

Some countries put restrictions on where this violence can take place, or who can mete it out, but children's rights advocates argue that it is still violence against a child at the hands of an adult.

The Association for the Protection of All Children (APPROACH) is a UK-based NGO that campaigns for a global ban on the corporal punishment of children. As an organisation they combine legal research and advocacy on the issue and run the campaign known as the Global Initiative to End All Corporal Punishment of Children.

In 2013 the Global Initiative's coordinator, Peter Newell, brought seven complaints [before the European Committee of Social Rights](#) on behalf of APPROACH, pointing out where States that had signed up to protect children from violence were falling short.

The seven complaints were registered on 4 February 2013, singling out Belgium, Cyprus, the Czech Republic, France, Ireland, Italy and Slovenia as countries whose laws failed to adequately protect children from physical punishment.

These countries lacked an explicit ban on hitting children, but because they have each [signed up to an additional protocol](#), organisations recognised by the Council of Europe are allowed to bring complaints against them.

Countries that sign up to the European Social Charter are obliged to reform where their laws are lacking and APPROACH felt that bringing these seven collective complaints would encourage them to do so.

Bringing the case to the Committee

Elinor Milne, Advocacy and Communications Coordinator at APPROACH, explained that for their organisation it made sense to progress with all of the complaints at once.

She explained: "The strategy was a simple one really. We looked at each of the countries [which had not yet prohibited corporal punishment] that had ratified the additional protocol that lets us bring a collective complaint and then targeted them.

"We thought - if you can do seven then why not, rather than just doing one?"

APPROACH's argument to the Committee relied on the fact that Article 17 of the European Social Charter specifically prohibits violence against children.

The cases also drew on one of the Committee's decisions against Portugal, in which it found that domestic laws should prohibit and penalise violence against children and be "sufficiently clear, binding and precise" so domestic courts would have no choice but to apply them.

This phrasing was a problem for some of the States - while several had laws or legal precedents in place effectively outlawing violence against children in certain settings, they did not amount to a total, explicit ban, including in the family home, and some allowed for a defence of "reasonable chastisement" or similar.

All of the complaints were originally drafted in 2013 based on a template that was then tailored to fit each individual case.

For APPROACH this was the easy part, as they had all of the research to hand and had conducted their own investigations into how each country in the world has treated the corporal punishment of children in the past.

Milne explained that the complaints were registered in February 2013 and all of the cases were resolved in just over two years, a fairly normal response rate when a complaint is issued to the Committee.

APPROACH had three people working on responses to the States' various defences as they filtered in, alongside their other work.

During the course of reading the responses APPROACH had one happy surprise as the government of Cyprus wrote back to say that it was working on changing the law around corporal punishment of children and [enacted a total ban a few months later](#).

Seeing that their efforts were not needed there, APPROACH chose to withdraw the complaint against Cyprus, leaving them with six to see through.

Outcome

In March, May and June 2015 the Committee [returned its decisions](#). It declared that there had been a breach of the European Social Charter in Ireland, Slovenia, Belgium, the Czech Republic and France, but not in Italy.

In its decision the Committee noted that there is now a consensus in Europe and further afield that corporal punishment of children should be expressly banned.

It also claimed that the decisions on Ireland and Belgium reinforced the Committee's findings from 2003 as there have been no legislative developments on the issue since then.

Slovenia's government argued that it tried to pass a law banning corporal punishment of children in all settings but [saw the law rejected](#) in its parliament.

It is currently unclear how Slovenia will move forwards but, at the very least, its government's comments show that the will to ban corporal punishment of children nationally does exist.

In France and the Czech Republic the law has not yet been changed. Both have gaps in the law when it comes to alternative care and daycare settings and France retains a "right of correction" which is not yet explicitly prohibited in law.

Surprisingly the Committee ruled that Italy was not in breach of the European Social Charter, but APPROACH has argued that this runs contrary to the decision in the 2006 case against Portugal, which the Committee cited in decisions relating to other States APPROACH brought complaints against.

An Italian Supreme Court decision in 1996 outlawed violence against children including in childrearing but, if the decision in the Portuguese case were to be followed, this would not be enough to count as an explicit prohibition in law.

Speaking about the successful judgments Peter Newell added: "We hope that the decisions will encourage governments in these States to take immediate action to reform their laws to afford children legal protection from all violent punishment, in the family home and elsewhere."

Impact

As well as the positive rulings the successful cases also prompted public debate in several countries, with media coverage in [France](#) and [Ireland](#) showcasing the arguments for and against.

Shortly after the ruling the Irish Minister for Children, James Reilly, said he had instructed his department to enact a law [banning corporal punishment](#) where it was allowed in foster and residential care and said he would discuss removing the defence of reasonable chastisement from Irish common law.

This announcement came despite the Irish government informing the UN Committee on the Rights of the Child that it would not [remove the reasonable chastisement defence](#) just two years earlier.

France has not seen a government response yet but the debate in the country is still open. One poll [found that 80 percent of the French population](#) opposed a ban on smacking children, but a man was [fined €500 for smacking his son](#) in 2013, suggesting that the judiciary is open to punishing people for this kind of abuse.

Fact box: The collective complaints procedure

- Can be used when a State ratifies the [Additional Protocol to the European Social Charter for the complaints procedure](#).
- International NGOs may use the system if given participatory status with the Council of Europe and national NGOs may bring complaints if they are recognised by their State.
- National organisations can work with international NGOs that have participatory status to file a complaint.
- Complaints relate to the unsatisfactory application of specific provisions of the Charter accepted by a State, do not need to name specific victims and can be used without exhausting all domestic remedies first.

Further information

- Read CRIN's case summary of [Association for the Protection of All Children \(APPROACH\) v. France](#)
- Read CRIN's [briefing on the collective complaints procedure under the Additional Protocol to the European Social Charter](#)
- Find out more about [strategic litigation](#)
- Read CRIN's reports on access to justice for children in [Belgium](#), [Cyprus](#), the [Czech Republic](#), [France](#), [Ireland](#), [Italy](#) and [Slovenia](#)

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