

New human rights rulings: Ireland and Slovenia must prohibit all corporal punishment of children

27 May 2015

The European Committee of Social Rights has ruled that Ireland and Slovenia are in violation of the European Social Charter because all corporal punishment of children is not prohibited.

In the decisions released today, 27 May 2015, the Committee states that: “The European Committee of Social Rights notes that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law”. It recalls its consistent interpretation of the Charter as regards corporal punishment of children, laid down most recently in its 2006 decision on a complaint against Portugal, that to comply with Article 17 of the European Social Charter, states' domestic law must prohibit and penalise all forms of violence against children and that the relevant provisions must be sufficiently clear, binding and precise to preclude the courts from refusing to apply them to violence against children.¹

In the decisions the Committee notes that, when examining states' implementation of the Charter, it has repeatedly found that both states are in violation of article 17 because they have not prohibited corporal punishment. The decision on Ireland repeats the Committee's 2003 finding on a complaint on the same issue. In the new decision, the Committee notes that there have been no legislative developments on the issue since the earlier finding.

Corporal punishment of children is lawful in the family home in both states. In Ireland, it is also lawful in foster care, residential care settings and some childminding services. In Slovenia, it is lawful in all alternative care settings and some day care settings.

“These decisions against Ireland and Slovenia reinforce the human rights obligations of these states to explicitly prohibit all corporal punishment of children. In the case of Ireland, this repeated finding by the Committee highlights that there have been no developments towards ensuring children's legal protection from corporal punishment in the past 12 years. 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” said Peter Newell, Coordinator of the Global Initiative to End All Corporal Punishment of Children.

Background information

The European Social Charter is a Council of Europe (not European Union) treaty which was adopted in 1961. The Revised European Social Charter came into force in 1999 and is gradually replacing the 1961 treaty. Forty-three of the 47 Council of Europe member states have ratified one or both of the treaties.

The European Committee of Social Rights monitors implementation of the European Social Charter and Revised Social Charter. Under the 1995 Additional Protocol providing for a system of Collective Complaints, the Committee can examine and make decisions on complaints of violations of the Charters.

¹ World Organisation against Torture (OMCT) v. Portugal, Complaint No. 34/2006, decision on the merits of 5 December 2006, §§19-21

Article 17 of the Charter, on the right of children and young persons to social, legal and economic protection, requires states to protect children and young persons against negligence, violence or exploitation.

The complaints were lodged by the Association for the Protection of All Children (APPROACH) Ltd in 2013, and stated that:

- in Ireland, the existence of the common law of “reasonable chastisement” allows parents and some other adults to assault children with impunity
- in Slovenia, there is no explicit and effective prohibition of all corporal punishment of children, in the family, schools and other settings

Twenty-eight Council of Europe member states have prohibited corporal punishment of children in all settings of their lives including the family home: Albania (prohibition achieved in 2010), Andorra (2014), Austria (1989), Bulgaria (2000), Croatia (1999), Cyprus (1994), Denmark (1997), Estonia (2014), Finland (1983), Germany (2000), Greece (2006), Hungary (2005), Iceland (2003), Latvia (1998), Liechtenstein (2008), Luxembourg (2008), Malta (2014), Netherlands (2007), Norway (1987), Poland (2010), Portugal (2007), Republic of Moldova (2008), Romania (2004), San Marino (2014), Spain (2007), Sweden (1979), TFYR Macedonia (2013) and Ukraine (2004).

Details of the legality of corporal punishment of children across the Council of Europe are available at:

<http://www.endcorporalpunishment.org/pages/docs/Council%20of%20Europe%20progress%20table.docx>.

Detailed reports on the legality of corporal punishment in each country are available at:

www.endcorporalpunishment.org.

Full details of the decisions and other documents relating to the complaints are available at:

http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.

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