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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. Czech Republic**
Complaint No. 96/2013

COMPLAINT

Registered at the Secretariat on 4 February 2013

**Collective Complaint against the Czech Republic
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 the Czech Republic 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

The Czech Republic ratified the 1961 Social Charter on November 3 1999. It has signed but not ratified the Revised Social Charter. It ratified the Additional Protocol on April 4 2012.

Applicability of Articles of the European Social Charter of 1961 to the Czech Republic

The Czech Republic considers itself bound by Articles 7.10 and 17 of the Social Charter.

Introduction to complaint

The complaint alleges that the Czech Republic is in violation of the Charter because of the lack of explicit and effective prohibition of all corporal punishment of children, in the family and other settings, and because the Czech Republic has failed to act with due diligence to eliminate such punishment in practice.

The complaint summarises the relevant jurisprudence of the European Committee of Social Rights and its conclusions on reports under Article 17 from the Czech Republic; it also summarises the relevant international human rights standards and recommendations to the Czech Republic by UN Treaty Bodies and in the Universal Periodic Review by the Human Rights Council. Legislation in the Czech Republic is reviewed together with information on the prevalence of and attitudes to corporal punishment.

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 interpretation of the Charter’s requirements in decisions on a series of collective complaints (Nos. 17/2003, 18/2003 and 21/2003). 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 judgments in each country 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.”

Relevant conclusions and decisions of the European Committee of Social Rights

Conclusions of the ECSR on the Czech Republic's successive reports under Article 17:

Successive conclusions of the ECSR, in 2005 and 2011, have found the Czech Republic not in conformity with Article 17 because corporal punishment of children is not explicitly prohibited in the home and in institutions. The ECSR has noted the similar finding of the Committee on the Rights of the Child (see below).

In its most recent report under Article 17 the Czech Republic states:

“Prohibition of Corporal Punishment

Czech law does not provide for a general prohibition of corporal punishment. Under Section 31 Para. 2 of the Family Act, parents in the exercise of their parental authority are entitled to use only such means of education/upbringing which do not affect the child's dignity and in no way jeopardize the health of the child and the child's physical, emotional, intellectual and moral development. The legal regulation of the rights of parents in the upbringing of a child makes it clear, therefore, that parents cannot resort to inappropriate means of education/upbringing which would degrade the human dignity of the child or in any way endanger his/her health and positive development. This prohibition applies both to the use of excessive corporal punishment as well as to any other inappropriate forms of punishment of the child (e.g. various forms of restrictions and limitations of the child, etc.).

If corporal punishment of a child reaches the intensity of a crime, it shall be punished according to the relevant provisions of the Criminal Code, such as the crime of **battering a person entrusted to one's care** if the child was looked after by the offender or crime of bodily harm under Section 146. We also cannot rule out criminal punishment for the crime of breach of the public peace when the excessive corporal punishment is carried in public but does not result in bodily injury.

In less serious cases in which parents or others persons responsible for the upbringing of the child apply excessive corporal punishment to the child or other inappropriate educational measures but their actions do not amount to a crime, such acts may be punishable as a misdemeanour in the area of socio-legal protection of children under Section 59 Para. 1 h) of the Act on Socio-Legal Protection of Children, for which the offender may be condemned in administrative proceedings to admonition or a fine of up to CZK 50 000.

If parents use physical punishment of children, their actions may lead to restrictions or to elimination of parental authority. A parent thus loses authority to exercise certain precisely defined rights and obligations arising from his/her parental responsibilities when his/her parental authority is limited. In the case of elimination of parental authority, the parent loses their parental rights altogether. Among the reasons for the waiver of parental authority is an intentional crime against the child which – provided a certain level of danger to society is present - could include physical punishment. The

court usually decides on the custody of another person, initiates proceedings for custody or a foster care or adoption proceedings, or decides that the child should be put in institutional care or in a facility for children in need of immediate assistance.

The court or the authority of social-legal protection of children can also adopt the so called educational measures under the provisions of the Family Act according to the intensity of misconduct by the parent. They may warn the parents, introduce supervision over the child's upbringing or the court may put the child in institutional care or in the care of a facility for children in need of immediate assistance, unless a more appropriate way to address the situation is possible.

The Civil Procedure Code gives the courts a tool of a special interim measure - according to Section 76a of the Civil Procedure Code, the court orders placing the child in an appropriate environment if the development of a child is threatened or disrupted. This interim measure allows the courts to respond flexibly to address domestic violence on children. In cases where one parent is committing violence against the child or another child or another person in a common dwelling, the court may also use the form of interim measure to order the offender under Section 76b of the Civil Procedure Code to leave the common dwelling, not to enter it, ban meetings and also order avoiding undesirable behaviour.” (8th report, 10/12/2010 RAP/Cha/CZ/VIII(2010), Article 17, page 65)

This is the relevant text from the Committee’s Conclusions:

“In its previous conclusion the Committee held that the situation was not in conformity with the Charter as there was no explicit prohibition in legislation of corporal punishment in the home and in institutions.

“The Committee notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2005) 24 § 200) that Amendment to Act (No. 109/2002) on Institutional Care signed by the President on 2 September 2005 states exactly the extent of correctional means, which can be used and corporal punishment is not among them and therefore it cannot be used in these institutions. The Committee further notes from the report that the Czech law does not provide for a general prohibition of corporal punishment, but nevertheless parents are only allowed to exercise their parental authority in a way that does not affect the child’s dignity and in no way jeopardises the health of the child and his/her physical, emotional, intellectual and moral development. Parents cannot resort to inappropriate means of education and this prohibition applies to the use of excessive corporal punishment. Such acts are punishable under Section 59 Paragraph 1.h of the Act on Socio-Legal Protection of Children.

“The Committee notes from another source that there that is still no legislation which explicitly prohibits corporal punishment of children in all settings, including in the family. The UN CRC urges the Czech Republic to address the widespread tolerance of corporal punishment by, inter alia, conducting awareness-raising and public education programmes with a view to encouraging the use of alternative disciplinary measures in accordance with the inherent dignity of the child, and in doing so, to ensure that corporal punishment is prohibited in all settings including the family.

“The Committee notes from another source that corporal punishment is lawful in the home. Section 31(2) of the Family Act (1963) states that in caring for children, parents ‘may use adequate upbringing measures so that the child’s dignity is not violated and his or her health, emotional, intellectual and moral development are not endangered’, but neither this nor provisions against violence and abuse in the Act on Social and Legal Protection of Children (amended 2002), the Charter on Fundamental Rights and Freedoms (1992), the Act on Misdemeanours (1990), the Criminal Code (2009), the Constitution (1992) and the Domestic Violence Law (2006) are interpreted as prohibiting all corporal punishment in childrearing. Corporal punishment is lawful in alternative care settings. There is no provision for it in the Act on execution of institutional upbringing or protective upbringing at school facilities and on preventive upbringing care at school facilities, but it is not explicitly prohibited.

“The Committee holds that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity on this ground....

“The Committee concludes that the situation is not in conformity with Article 17 of the Charter of 1961 as corporal punishment of children is not explicitly prohibited in the home and in institutions.”

(January 2012, Conclusions 2011)

This is the text of the Committee’s previous Conclusion, in 2005:

“The Committee recalls that Article 17 of the Charter requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It considers that this prohibition in legislation must be combined with adequate sanctions in penal or civil law.

“The report states that under the amended Families Act (1998), parents have the right to use reasonable correctional means that do not affect the child’s dignity nor endanger the child’s health, or his physical, emotional, intellectual, and moral development. The Committee notes that this provision does not explicitly prohibit the corporal punishment of children within the family. It notes from another source that there is no legislation explicitly prohibiting corporal punishment, and that it is practised in the family, in schools and in other public institutions, including alternative care contexts. The Committee therefore considers that since there is no explicit prohibition in legislation of corporal punishment in the home, in schools and in other institutions, the situation cannot be considered to be in conformity with Article 17 of the Charter on this point.

“The Committee furthermore notes from the report that the Notification of the Ministry of Education, Youth and Sport No. 291/1991 Coll., on elementary school, regulates the correctional and educational measures which the school may use, i.e. praise and other rewards and measures to improve discipline (warnings and reprimands). It asks what other legislative and administrative measures, as well as public education initiatives are used to end the use of corporal punishment.

...

“The Committee concludes that the situation in the Czech Republic is not in conformity with Article 17 of the Charter on the ground that there is no

explicit prohibition in legislation of corporal punishment in the home, in schools and in other institutions.”
(July 2005, Conclusions XVII-2)

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 the Czech Republic:

Committee on the Rights of the Child: In concluding observations on the Czech Republic’s initial, second and third/fourth reports under the Convention on the Rights of the Child (in 1997, 2003 and 2011), the Committee has expressed concern at the prevalence of corporal punishment and the lack of legislation explicitly prohibiting it.

In its most recent concluding observations, the Committee “notes with concern there that is still no legislation which explicitly prohibits corporal punishment of children in all settings, including in the family. The Committee is also concerned at the fact that according to surveys undertaken by the State party, the vast majority of Czech citizens expressed acceptance of corporal punishment in a child’s upbringing.

“The Committee urges the State party to address the widespread tolerance of corporal punishment by, inter alia, conducting awareness-raising and public education programmes with a view to encouraging the use of alternative disciplinary measures in accordance with the inherent dignity of the child, and in doing so, ensure that corporal punishment is prohibited in all settings including the family.

“The Committee welcomes the State party’s participation in the initiatives of the Council of Europe and the United Nations to prevent and ban the corporal punishment of children and the drawing up of a National Strategy of Preventing Violence against Children (2008-2018) as well as its accompanying National Action Plan (2009-2010)”.

(4 August 2011, CRC/C/CZE/CO/3-4, Concluding observations on third/fourth report, paras. 39, 40 and 41)

The following is the text of the Committee’s previous concluding observations, in 2003 and 1997:

“The Committee is concerned that there is no legislation explicitly prohibiting corporal punishment, and that it is practised in the family, in schools and in other public institutions, including alternative care contexts.

“The Committee recommends that the State party take action to address ill-treatment and abuse committed against children in the family, in schools, in the streets, in institutions and in places of detention through, inter alia:

- f) taking all necessary steps to enact legislation prohibiting the use of corporal punishment in schools, institutions, in the family and in any other context;
- g) making use of legislative and administrative measures, as well as public education initiatives to end the use of corporal punishment and ensuring this is adhered to....
- i) taking into account the Committee’s recommendations adopted at its day of general discussion on ‘Violence against children within the family and in schools’ (CRC/C/111).”

(18 March 2003, CRC/C/15/Add.201, Concluding observations on second report, paras. 40 and 41)

“The Committee is concerned that corporal punishment is still used by parents and that internal school regulations do not contain provisions explicitly prohibiting corporal punishment, in conformity with articles 3, 19 and 28 of the Convention....

“The Committee recommends that further measures to protect children from abuse and maltreatment be undertaken, in particular through the development of a widespread public information campaign for the prevention of corporal punishment at home, at school, and in other institutions.”

(27 October 1997, CRC/C/15/Add.81, Concluding observations on initial report, paras. 18 and 35)

Committee against Torture: The Committee against Torture echoed the concerns and recommendations of the Committee on the Rights of the Child in 2012 concluding observations on the Czech Republic’s fourth/fifth report under the Convention against Torture:

“The Committee is concerned about the widespread tolerance of corporal punishment in the State party and the absence of legislation explicitly prohibiting it. It is also concerned about the provision in Act No. 94/1963 Coll. Family Act which states that parents have the right to use ‘adequate educational measures’ and that the issue will be addressed in a similar manner in the new Civil Code (arts. 2 and 16).

“The Committee recommends that the State party amend its legislation, including the Family Act and the new Civil Code, with a view to introducing an explicit prohibition against corporal punishment in all settings. The State party should carry out awareness-raising campaigns among the general public regarding the unacceptability of and the harm done by corporal punishment.”

(13 July 2012, CAT/C/CZE/CO/4-5, Concluding observations on fourth/fifth report, para. 22)

Universal Periodic Review: The Czech Republic was examined in the second cycle in Session 14 (2012). Recommendations were made that corporal punishment should be explicitly prohibited. The Government’s response is due by March 2013.

(A/HRC/WG.6/14/L.1, Draft Report of the Working Group, paras. 94(88), 94(89) and 94(90)).

The law in the Czech Republic

Article 31(2) of the Family Act (1963) states that in caring for children, parents “may use adequate upbringing measures so that the child’s dignity is not violated and his or her health, emotional, intellectual and moral development are not endangered”: this does not provide clear prohibition of all corporal punishment in the family. Similarly, provisions against violence and abuse in the Act on Social and Legal Protection of Children (amended 2002), the Charter on Fundamental Rights and Freedoms (1992), the Act on Misdemeanours (1990), the Criminal Code (2009), the Constitution (1992) and the Domestic Violence Law (2006) are not interpreted consistently as prohibiting all corporal punishment in childrearing.

Corporal punishment is unlawful in institutions under the the Act on Institutional Care (Act No.102, 2002, as amended 2005), which specifies the permitted means of correction and does not include corporal punishment, though does not explicitly prohibit it. It is lawful in non-institutional forms of care.

The extract from the Czech Republic’s most recent report under Article 17 of the Charter on “Prohibition of corporal punishment”, quoted in full above (page 4), indicates plainly that the existing legislation does not prohibit all corporal punishment; the report’s references to “excessive” chastisement in two places underlines this.

Prevalence of and attitudes to corporal punishment

As part of a Government-sponsored campaign on violence against children in 2009, research was undertaken into public tolerance of corporal punishment of children. Almost half (49.9%) of those surveyed felt that corporal punishment may be necessary in some situations; a quarter (24.8%) were in favour of smacking or slapping children as part of their upbringing and did not view this as corporal punishment; 11% expressed a strong belief in the use of corporal punishment in childrearing. Only 8.3% were not in favour of corporal punishment and said they would never use it. (Reported in the Government’s written replies to the List of Issues of the Committee on the Rights of the Child, 10 May 2011, CRC/C/CZE/Q/3-4/Add.1)

A poll in April 2007 conducted by the Median agency for the daily *Lidove noviny* found that three fifths were against a law banning corporal punishment of children. Nearly three out of four (71.5%) reported having been beaten in childhood, and 25% of parents admitted to using it on their children occasionally or regularly; only 31% said they had never beaten their children. (Reported in *Ceske Noviny*, 8 April 2008)

Studies carried out in 1994 and 2004 showed a high prevalence of corporal punishment by parents. One thousand 10-year-olds were questioned in each study. In 1994, 90% had experienced some kind of corporal punishment at home; in 2004, 86% had. In 1994, a third of the children had been hit with an object, hit on a sensitive part of their body, or hit in a way that left visible marks. In 2004, a quarter of children had experienced this. (Reported by Child Abuse and Neglect in Eastern Europe, 24 May 2007, www.canee.net)

The complaint

The lack of explicit prohibition of corporal punishment in the family, in all forms of alternative care and in schools violates Article 17 of the Charter. In addition it is clear that the Czech Republic has not acted with due diligence to eliminate such violent punishment of children in practice.

The ECSR first concluded that the Czech Republic was not in conformity because of the lack of clear prohibition in 2005. It is a matter of deep concern that, despite commitments to reform its law (see following paragraphs) and despite research showing a very high prevalence of corporal punishment, the Czech Republic has failed to act.

The Government of the Czech Republic positively confirmed its commitment to enacting explicit prohibition in a letter from Prime Minister Mirek Topolánek to the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, in September 2007. In 2008, the Minister for Human Rights and National Minorities signed the Council of Europe's petition against all corporal punishment of children. Again, in the state party report to the Committee on the Rights of the Child the Government stated that it was considering enacting explicit prohibition (20 April 2010, CRC/C/CZE/3-4, para. 133).

But in responses to advance questions before its examination by the Committee on the Rights of the Child in 2011, while acknowledging the lack of explicit prohibition of corporal punishment in national legislation, the Government confirmed that the Ministry of Justice, coordinator of a new Civil Code, "is not taking any new steps in the prohibition of corporal punishment" (10 May 2011, CRC/C/CZE/Q/3-4/Add.1, Written replies to the Committee on the Rights of the Child, Q7). The Government has also indicated - in responses to the Committee Against Torture in 2012 - that it considers existing legislation offers adequate protection from corporal punishment (9 March 2012, CAT/C/CZE/Q/4-5/Add.1, Written replies to the Committee against Torture, para. 106). Again, under examination by the Committee against Torture in May 2012, the Government stated that it had no plan to amend legislation to prohibit corporal punishment (30 May 2012, CAT/C/SR.1071, Summary record, para. 40).

We hope that the ECSR will declare this complaint admissible and without delay consider the merits, bearing in mind that any confusion over the legality of corporal punishment is bound to increase the risk of irreparable injury to children, and the Czech Republic's failure to fulfil its obligations, despite repeated conclusions, conflicts with effective respect for the provisions of the Charter.