



European
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COUNCIL OF EUROPE



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

5 November 2013

Case No. 4

**Association for the Protection of All Children (APPROACH) Ltd
v. Czech Republic
Complaint No. 96/2013**

**SUBMISSIONS OF THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 25 September 2013

**Submission
of the Government of the Czech Republic
on the Collective Complaint against the Czech Republic for violation of
the European Social Charter
due to the lack of explicit and effective prohibition of all corporal
punishment of children in the family, at school and in other institutions
and settings Introduction**

In its collective complaint (see enclosure) submitted on 4 February 2013 and registered under ref. No. 96/13, the Association for the Protection of All Children (“APPROACH”) alleges that the Czech Republic is in violation of Article 17 of the 1961 European Social Charter (hereinafter referred to as “Charter”) on “***The right of mothers and children to social and economic protection***“, which reads as follows:

“With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.”

A. The Merits of the Complaint

1. General Introduction

The Government of the Czech Republic (hereinafter referred to as “the Government”) is convinced that corporal punishment may not constitute a part of any child’s education and upbringing and that physical violence does not belong in any advanced society. A similar statement was provided by the Government in the same sense regarding the Conclusions of the 2012 Universal Periodic Review:

“The Czech Republic considers violence against children totally unacceptable and strives to combat this phenomenon in all ways and by all means. At present, corporal punishment of children is prohibited in all public facilities, such as schools or institutional child care facilities. In all these facilities, the children enjoy the right to a treatment that respects their rights and human dignity. Within the family, the parents may apply only such educational methods, which do not jeopardize the child’s dignity or its health, psychological or emotional development and are adequate to the situation. Consequently, excessive corporal or other punishment in the family is prohibited, and the parents can be sanctioned for them, including prosecution in the most serious cases. In such case, the child can even be taken away from them. The same applies for substitute family care. In addition, the Czech Republic continues to raise awareness in the society in relation to the topic of violence against children, by organizing government campaigns in order to step up protection of children against violence and to increase public sensitivity to this issue, including alternative methods of positive parenthood and violence-free education.”

The fact that the Czech law does not include an explicit prohibition of all corporal punishment of children in the family and other settings should certainly not be interpreted in such a way that corporal punishment of children is allowed in the Czech Republic and is considered to represent an appropriate and acceptable (tolerable) educational tool within the family as well as outside the family.

The Government cannot share the allegations of the complainant that the Czech Republic does not make adequate efforts to eliminate corporal punishment of

children in practice. On contrary, the Government is fully aware of the impact of violence on both the shaping of personality and the society as a whole, which is evidenced by many researches.

The issue of combating violence against children is one of the fundamental priorities of the Government and is intensively dealt with by the particular Government departments as well by non-governmental organizations.

The Government adopted relevant government programming documents focused on the protection of children's rights, including the **National Strategy on Prevention of Violence against Children in the Czech Republic for the period 2008–2018**, which was approved by Government Resolution No. 1139 dated 3 September 2008.

This National Strategy builds on and focuses on the results of the studies conducted in 1994 and 2004 as well as on the 2007 survey by the Median agency, which is referred to by APPROACH in the complaint. The National Strategy refers to the recommendations of the World Report on Violence against Children, which was prepared by the United Nations in cooperation with the World Health Organization and discussed in the UN General Assembly in October 2006.

The World Report on Violence against Children emphasizes the promotion and protection of the rights of the child and, last but not least, **the right of a child to protection from corporal punishment and other cruel or degrading forms of punishment**. The World Report on Violence against Children makes particularly the following recommendations to the states:

1. To develop, by the end of 2007, national strategies to prevent violence against children;
2. **Ensure prohibition of all forms of violence against children by legislative intervention** and develop reliable data collection systems.

The National Strategy on Prevention of Violence against Children includes also a definition of "corporal punishment", which is based on the definition adopted by the UN Committee on the Rights of the Child in 2001. **Corporal punishment of a child shall be understood to include any punishment using physical force, which causes pain or even slight discomfort to the child**. Any corporal punishment using an object on a sensitive part of the child's body or leaving traces after the hitting shall be considered to constitute **child torture**.

A government campaign called **Stop Violence against Children**, which was implemented in 2009, was aimed at raising public awareness of violence against children, its forms, root causes and consequences, thus contributing to increased sensitivity to violence and reducing tolerance to all forms of violence against children, including corporal punishment. As part of the strategy, various materials were developed to support positive parenthood, such as an instructional DVD for parents or "Slabikář" (syllabic guide available online at the campaign website <http://stopnasilinadetch.cz>). The ROSA citizens' association focuses on providing assistance to children in difficult situations, such as domestic violence, parents getting divorced, etc. The association runs, inter alia, a children's crisis centre and published a brochure called the "Magic Book" aimed at helping children in such situations. The Fund for Children in Need (Fond ohrožených dětí) and the Our Child Foundation (Nadace naše dítě), which receive full government support, operate on a similar basis.

Corporal punishment of a child may result in limitation or withdrawal of parental rights (parental responsibility) to such a child,¹ a sanction imposed in consistence with the Administrative Misdemeanour Act or, as the case may be, a sanction imposed pursuant to the Criminal Code where the corporal punishment of the child has reached such an intensity that some of the facts constitute a crime against life and health or, as appropriate, a crime against family and children as defined in the Criminal Code.

Protection of children and youth is widely enshrined in the legislation of the Czech Republic. The applicable provisions in force thoroughly regulate the relationships in the family, outside the family and in the institutions. The statutory protection covers not only physical, but also psychological health of children and their positive mental and emotional development.

Situations where, for instance, a parent has not spoken to the child for several days, the child must eat in isolation from others for a long period of time or is denied food, the child is left without expression of emotions or, on contrary, is subject to verbal abuse and insults or is mocked or humiliated, clearly mark the individuals, and possibly the society, for the rest of their lives in various forms ranging from bad habits, shattered self-confidence, inability to enter into a relationship and fear to start family, fear of failure at work to a lifelong fight against depression. For these reasons, the scope of the Czech legal system covers both physical and mental torture, which also has severe and long-lasting consequences and, thus, cannot be tolerated or ignored. The aim of the legal provisions is to regulate or prohibit, as appropriate, any activities with harmful effects for the society.

The general definition of mental torture of a child, as formulated by the Council of Europe Health Committee in 1992 and by the World Health Organization, consists in attacks affecting the emotional development, self-confidence and dignity of a child; it takes particularly the form of verbal attacks targeting the child, repeated humiliation, excessive criticism, rejection or repudiation of the child or imposition of inappropriate sanctions on the child, which do not have the characteristics of corporal punishment (various forms of prohibitions and restrictions); mental torture of a child includes also situations where the child is a witness to domestic violence and conflicts between the parents or other persons in the household inhabited by the child (the child is in position of the so-called secondary victim of domestic violence). The methodological guide of the Ministry of Health concerning the procedure to be followed by primary care physicians in case of a suspected Child Abuse and Neglect syndrome, as published in the Ministry of Health Bulletin No. 3/2008 dated 30 May 2008 (see below), builds on the classification of the World Health Organization.

The Government considers that, if the protection of children is to be comprehensive, efficient and effective, it is not sufficient to prohibit corporal punishment only – it is necessary to protect children against all forms of punishment, i.e. both corporal and mental. This protection is fully guaranteed by the general wording of the prohibition of undignified treatment, followed by legal regulations providing for sanctions for such a behaviour. Considering that an explicit enumerations of what does and what does not constitute a form of corporal or mental punishment could result in an undesired perception by the public of such legal provisions as effectively narrowing the

¹ Cf. decision of the Supreme Court of the Czech Republic ref. no. Prz 32/65, which explicitly states that the court is obliged to withdraw parental rights in case it has found that the parents abuse their rights or significantly neglect their duties arising particularly under Section 32 (2) of the Family Act and other regulations.

protection of children, the Government is of the view that the existing Czech legislation providing for such educational methods only, which do not allow even just a danger to the child's dignity or its health (physical), mental or emotional development and are adequate to the situation, offers a sufficiently broad scope for effective protection of children and youth. In order to make sure that all disproportionate educational tools are covered in the statutory provisions, the provision concerned has been formulated by the Government with such a broad-based scope.

The Government has also addressed the issue from the point of view of analogy to the European Convention on Human Rights ("ECHR") as the most important human rights-related convention agreed within the Council of Europe and international law-based protection of human rights in Europe. Its Article 3 provides for a general prohibition of torture, inhuman or degrading treatment or punishment, without simultaneously enumerating the particular vulnerable groups of persons or explicitly distinguishing between the different forms of punishment. As the lack of an explicit prohibition of corporal punishment in the national legislation of the ECHR contracting parties has not been found to constitute a violation of its Article 3, there is no obvious reason why non-conformity for the same reason should be observed in case of Article 17 of the European Social Charter of 1961, which – unlike ECHR – does not even include an explicit prohibition of torture, inhuman or degrading treatment or punishment at all.

For the Czech Republic, the Charter entered into force in December 1999. The ratification of the Charter was preceded by a detailed analysis and comparison of the national law and practice with the requirements contained in the Charter, including the interpretation of the Charter review bodies. The interpretation of Article 17 thereof included social and economic protection of children, women and family, particularly as regards ensuring equal rights for children born outside of marriage, their patrimonial rights, protection of children and mother before and after childbirth, protection of homeless single mothers and actions taken to protect children from physical and ethical threats (such as measures to prevent the use of addictive drugs at schools and educational facilities). Neither one of the criteria concerned an explicit prohibition of corporal punishment. No violation has been found as regards the scope of protection and the measures taken by the Czech Republic in order to comply with the Articles or the provisions covering social and economic protection in relation to mothers and children.

Aware of these commitments, the Czech Republic initiated the ratification process. In the review of the first Charter implementation report covering Article 17 thereof (in 2005), however, non-conformity was already found by the European Committee of Social Rights ("ECSR") because of the lack of explicit prohibition of corporal punishment. At the 126th meeting of the Governmental Committee of the European Social Charter, which took place in autumn 2012, the ECSR secretariat recognized that – while the wording of Article 17 of the 1961 Charter is more restricted and does not include explicit reference to protection from physical violence – this was the interpretation in Article 17 (1) of the **revised European Social Charter of 1996** (hereinafter referred to as "revised Charter"). Although the revised Charter has not yet been ratified by the Czech Republic, ECSR applied the interpretation of the revised Charter when examining the situation in the Czech Republic. While the 1961 Charter and the revised Charter are, by their nature, so-called "live documents" with evolving interpretation thereof, this interpretation should be developed in a manner as not to render unclear the distinction between the two individual documents. This

approach is also supported by the fact that both documents are simultaneously open for ratification. Such an extensive interpretation of the provisions in the different Articles, however, may give rise to uncertainties regarding the true content of the international law commitments entered into, on a voluntary basis, by the state parties where they have joined an international treaty in good faith to then find themselves in a situation of non-conformity.

2. Prevention of Violence against Children

The Government supports primary prevention aimed at creating such conditions that will make the use of violence impossible, as well as secondary prevention aimed at early detection of risks and prevention of their materialization.

- **Prevention of Violence against Children** Working Group was established in 2008. It coordinates and contributes to the implementation of actions falling under the competence of the Ministry of Health, which deal with the issues of prevention of violence against children and high-risk behaviour of children and youth. Members of the Working Group include experts in social pediatrics, pediatrics, general pediatrics, youth medicine, child psychiatry, gynaecology and clinical psychology.
- **“Methodological Guide concerning the Procedure to be followed by Primary Care Physicians in case of a Suspected Child Abuse and Neglect Syndrome (sy CAN)”** was published in the Ministry of Health bulletin No. 3/2008. An update to the methodological guide of 2005 (Ministry of Health Bulletin No. 10/2005) complemented the methodology with the issues of commercial sexual exploitation of children, domestic violence in relation to children, illegal child handling, trafficking, and persecution. The methodological guide, which is primarily designed as a differential diagnostics tool in the daily routine of a general practitioner, serves as a standard *“lege artis”* procedure. A supplement dealing with the sy CAN issues was published as part of the *Pediatric pro praxi* journal (“Pediatrics for Practice”), which was distributed to the journal subscribers, being predominantly primary care physicians.
- **“Methodological Guide concerning the Procedure to be followed by Physicians when Providing Health Care Services to Persons at Risk of Domestic Violence”** was published in the Ministry of Health Bulletin No. 9/2008. An update to the methodological guide of 2006 (Ministry of Health Bulletin No. 3/2006) complemented the methodology with the issue of children in domestic violence settings – where children as witnesses of domestic violence are also considered to be abused and neglected.
- **“Positive Parenthood” – educational programme focussing on health care professionals providing child and family care**; in 2010, the project received support from the grant scheme of the Ministry of Health and was verified in practice. It offers a simple and comprehensible concept for child education. Positive parenthood excludes the use of corporal and mental punishment for children.
- **National Coordination Centre for Prevention of Injuries, Violence and Support to Children Safety** was established in 2011 in the University Hospital Motol in Prague. The main activities of the Centre include, in particular, networking

(in order to develop a network of cooperating locations), education and cooperation at the international level.

- Preventive measure is also enshrined in Section 10(4) of the Act No. 359/1999 Coll., to regulate the Social and Legal Protection of Children, as amended (hereinafter referred to as “the Act on Social and Legal Protection of Children”), which stipulates the obligation of authorities, schools, educational institutions, health care providers and other institutions to report to municipal authority facts that indicate suspicion of abuse, child abuse or neglect the care of a child.

3. Prohibition of Corporal Punishment in Institutions

Although there is no explicit prohibition of corporal punishment in the Czech law, the Government considers the existing provisions concerning the prohibition of punishments in school and school facilities for institutional education to be fully suitable and adequate. The Government builds on the principle that “Everything that is not permitted is prohibited”; consequently, punishment, which is not permitted, is prohibited. The field in question is regulated as follows:

(1) Section 2 of the Act No. 561/2004 Coll., regulating Pre-school, Basic, Secondary, Tertiary Professional and Other Education (Education Act), as amended, reads as follows:

(1) Education is based on the principles of:

c) Mutual respect, honour, opinion tolerance, solidarity and dignity of all participants in education.

(2) General objectives of education are particularly the following:

c) Understanding and application of the principles of democracy and rule of law, fundamental human rights and freedoms, together with responsibility and sense of social coherence.

(2) Section 21 of the Act No. 109/2002 Coll., to regulate Institutional Education or Protective Care in Educational Facilities and on Preventive Educational Care in Educational Facilities and on the amendment of certain acts, as amended, provides for an explicit exhaustive list of measures applicable in education; as corporal punishment is not acceptable, it is not included in the list and may not be used in these facilities.

If any person violates the legal regulations in this regard, the violation is to be dealt with, depending on its nature, either at the level of labour law or as a misdemeanour or a crime, as appropriate.

4. Sanctions for Corporal Punishment of Children as part of Misdemeanours in Social and Legal Protection of Children

As regards the provisions concerning misdemeanours in the field of social and legal protection of children, the scope of children protection against excessive punishment including corporal punishment will be extended, with effect as of 1 January 2014, as part of the amendments to the offences committed in the field of social and legal protection of children pursuant to the Act on Social and Legal Protection of Children.

The existing provisions concerning a misdemeanour in Section 59(1)(h) of Act on Social and Legal Protection of Children stipulate that a misdemeanour shall be committed by a person, who uses an excessive measure against a child **with the intention to degrade the child's human dignity**. The concept of a misdemeanour as currently designed is too narrow because, in order to become liable for the misdemeanour, it requires the wilful misconduct including the intention to degrade the child's human dignity be proven in the offender.

Under the new revised version, these provisions will stipulate that a misdemeanour shall be committed by a person, **who uses inappropriate means of education/upbringing or restriction against a child**, with the possibility of imposing a fine of up to CZK 50,000 for such misdemeanour. In order to become liable for the misdemeanour, it shall be sufficient to prove the offender's fault in the form of **wilful or unwilful negligence**. An offender may be any person who, based on the law, a court decision or any other relevant circumstances, takes care of a child, i.e. not only parents, but also other persons responsible for the child's upbringing and education, staff in school and pre-school facilities, staff in institutional and protective educational facilities, staff in facilities for children requiring immediate assistance etc.

5. Sanctions for Corporal Punishment of Children under Criminal Law

Under the criminal law, this concerns primarily the **facts constituting the crime of abuse of an entrusted person** pursuant to the provisions of Section 198 of the Criminal Code. Behaviour that fulfils the facts constituting this crime includes ill-treatment of the entrusted person characterized by a higher degree of rudeness and heartlessness and by certain permanence, which the person concerned experiences as harsh sufferings. At the same time, the permanence of the offender's behaviour must be examined depending on the intensity of the ill-treatment. It is not required for the behaviour to be systematic or lasting over a longer period of time. It is not required for the entrusted person to suffer any health consequences.

The possibility of a criminal sanction was also confirmed by the Supreme Court of the Czech Republic in its Decision Ref. No. 4 Tdo 170/2012 where it concluded that: *"In accordance with the provisions of Section 201(1) (d) of the Criminal Code, the offence of endangering a child's education is committed by any person who, even if due to own negligence, jeopardizes the child's intellectual, emotional or ethical development by seriously violating their duty to take care of the child or another important duty arising from the parental responsibility. Care for a child represents one of the most important parental duties in relation to the child and is, along with other duties arising from parental care, defined in Section 31 of the Family Act."*

The Supreme Court also confirmed the interpretation and legal opinion of the lower-instance general courts (i.e. district and regional courts) holding that the concept of "ill-treatment" covers not only physical abuse, but also ill-treatment in the mental field, which does not necessarily have to result in health consequences suffered by the person abused but, nevertheless, is characterized by a higher degree of rudeness and heartlessness experienced as harsh sufferings or where a relatively lower intensity of rudeness is compensated by a longer duration in time. Examples of such behaviour, which fulfils the facts constituting the crime of abuse of an entrusted person pursuant to Section 198 of the Criminal Code or ill-treatment pursuant to Section 199 of the Criminal Code, may include beating with open hand or fist punch, kicking, painful hair pulling, leaving the abused person in cold without the necessary clothes, forcing the person to do heavy work that is not in proportion to the age and

constitution of the abused person, movement control, long-lasting refusal of sufficient food, repeated sleep disturbance, etc. (Decisions Ref. No. Tdo 389/2009, 3 Tdo 1431/2006).

In case of health consequences, state of facts can constitute the crime of bodily harm pursuant to Section 146 of the Criminal Code which, on such merits, presumes a stricter punishment for an offender who commits such crime against a child below 15 years of age. In order for corporal punishment to constitute any of the above-mentioned crimes, it must reach certain intensity. In accordance with the principle of subsidiarity of criminal repression, such behaviour must be harmful to the society and, at the same time, it is not sufficient to apply liability under a different legal regulation. A different legal regulation can include, for instance, the Misdemeanour Act, providing for in Section 49 the facts constituting a misdemeanour against citizens' coexistence, which is committed by a person who by negligence causes bodily harm to another person.

6. Prohibition of corporal punishment as part of provisions governing parental rights and duties in the upbringing of a child under the Family Act and the Civil Code

The prohibition of corporal punishment of any human being is implied, in general terms, by the provisions of Section 11 of the Civil Code, which further elaborates and specifies the regulatory ideas enshrined in the Constitution and the Charter of Fundamental Rights and Freedoms², more specifically the inviolability of person and protection of integrity of every individual as natural person. Focussing solely on the protection of children against corporal punishment and the prohibition of such punishment both within and outside of the family, the second sentence of Section 31(2) of the Family Act must be read and interpreted in its entirety. The second sentence of Section 31(2) of the Family Act provides that the parents (and persons in a similar position) "shall have the right to use *appropriate means of education* so as to avoid affecting the child's dignity or jeopardizing his/her health or his/her physical, emotional, intellectual and ethical development in any way." In addition, it is essential to bear in mind that, while exercising their parental responsibility, the parents are obliged to consequently protect the child's interest, in consistence with the first sentence of the cited provisions.

The words "*appropriate means of education*" as used in the provisions cannot in any case be considered equal to the parent's possibility to apply corporal punishment for the children, because corporal punishment in general jeopardizes the child's dignity, health and possibly also physical, emotional, intellectual and ethical development³.

In fact, the Explanatory Note to Act No. 91/1998 Coll., modifying and amending the Family Act (this amendment, among others, introduced the current wording of Section 31(2)) indicates that the proposed modifications are primarily based on the

² Article 1 of the Constitution and Articles 3, 4, 5, 6, 7, 8, 10, as well as Articles 11, 12, 13, 14, 17 and 35 of the Charter of Fundamental Rights and Freedoms.

³ Cf. the comments on Family Act, Hrušáková M. et al. (2009) Family Act, C.H.Beck, Prague, p. 123: "*however, the parent's right [to use appropriate means of education] is restricted by the fact that the parent(s) may not affect the child's dignity or jeopardize his/her health or his/her physical, emotional, intellectual and ethical development in any way.*"

provisions of the Convention on the Rights of the Child (published under No. 104/1991 Coll.), which is binding for the Czech Republic⁴.

In particular, the provisions of Section 31 (2) transposed Articles 16 a 19 of the Convention to the Czech law⁵. Article 16(1) of the Convention on the Rights of the Child states that no child shall be subjected to arbitrary interference with his or her privacy, family, home, or correspondence, nor to unlawful attacks on his or her honour and reputation.

Article 19 of the Convention on the Rights of the Child provides protection to children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The above-indicated inadmissibility of corporal punishment as included in the Civil Code is also reflected in the law of civil procedure (Act No. 99/1963 Coll., Civil Procedure Code). The procedural protection of children against corporal punishment in the family and outside of the family considers the possibility for the court to issue, in cases of serious threat or impairment of the child's favourable development, a preliminary ruling to place the child into a suitable environment for a period of time as deemed necessary or to place the child at risk into foster care for a transitional period (Section 76a of the Civil Procedure Code).

The Czech legal provisions also protect children against domestic violence where, in accordance with the provision of Section 76b of the Civil Procedure Code, again on the basis of a preliminary ruling, it is possible to evict a violent person from common dwelling and its immediate vicinity. Both institutes referred to above, i.e. placing the child into a suitable environment or foster care and evicting a violent person from the common dwelling, are ordered by court with a preliminary ruling in order to protect the child's interests as much as possible and to reduce the period required for the decision.

In order to achieve the best possible efficiency in the enforcement of a preliminary ruling, the decision on the preliminary ruling is only delivered at the time of its enforcement, with a subsequent delivery of the decision to the parties that were not present during the enforcement, without jeopardizing the enforceability of the preliminary ruling in question. In addition, Act No. 404/2012 Coll., amending the Civil Procedure Code, reduced the period for the decision on an appeal against a preliminary ruling pursuant to Section 76(1)b, Sections 76a and 76b of the Civil Procedure Code from 15 days to 7 days, effective as of 1 January 2013.

7. Prohibition of Corporal Punishment of Children as part of Provisions concerning Parental Rights and Duties in the Upbringing of Children under the New Civil Code

The new provisions concerning a misdemeanour pursuant to Section 59(1)(h) of Act on Social and Legal Protection of Children follow the legal regulation governing the parental rights and duties in the upbringing of children **in the new Civil Code No.**

⁴ For more details see paragraph 6 in the general section of the Explanatory Note to Act No. 91/1998 Coll.

⁵ However, one cannot exclude that, when defining the concept of "appropriate means of education", the Court would restrict itself solely to the Convention on the Rights of the Child, leaving out other international treaties, which the Czech Republic is a party to, i.e. (for instance) also the European Social Charter of 1961 (published under No. 14/2000 Coll. of International Treaties.).

89/2012 Coll. (hereinafter referred as “NCC”), which provides that any **means of education** may be used by the parents in the form and extent which are adequate to the circumstances, do not jeopardize the child’s health or development and do not affect the child’s human dignity (**Section 884(2) of NCC**).

In addition, Section 857(2) of NCC provides that, until the child has a full legal capacity, the parents shall have the right to guide their child with educational measures, which correspond to his/her evolving capabilities, including restrictions aimed at protecting the child’s ethics, health and rights, as well as the rights of third parties and public order. The Government would like to note that, once again, “educational measures” should not be understood as corporal punishment, but as a set of means of education.

NCC enters into effect on 1 January 2014. The Family Act shall be repealed on that date; consequently, the new Civil Code has incorporated provisions governing family law in Part Two.

B. Conclusion

Given the facts stated above, it is apparent that the Government has been dealing with the issue of combating child punishment, including corporal punishment, intensely, in the long term and with due care. As a result, the Government strongly rejects the conclusion of the complainant to have failed to act and make adequate efforts to eliminate corporal punishment of children in practice.

The Government considers the three studies and surveys mentioned in the complaint to be out of date and not reflecting the current situation in the Czech Republic.

The Government is convinced that the Czech legal provisions do not show any ambiguities regarding the unlawfulness of corporal punishment. As mentioned above, the state defends the rights of individuals at the level of the Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms as well as by a number of laws. Means that are permitted to be used for educational purposes in institutions are explicitly and beyond any doubt stipulated in the national legislation. The conditions for upbringing of children in the family and in substitute care are regulated in a much rigorous manner than required under international instruments, and violence against children is efficiently sanctioned in several fields of law, such as criminal and civil law, which is documented, among other, by the decisions of the Supreme Court of the Czech Republic referred to above. The amendment of the Act on Social and Legal Protection of Children efficiently protects children as one of the most vulnerable groups by clearly sanctioning anybody, who would use – even by negligence – inappropriate means of education or restrictions against a child.

Legislative experts together with experts in the different legal fields of both private and public law concluded that separate provision(s) on prohibition of corporal punishment would narrow the protection of children, which is in a direct conflict with our preventive programmes, the Government's policy as well as with the strategy of the international organizations. Particularly in a situation where the legal system includes provisions protecting children against undignified treatment, which are interpreted by the competent authorities in light of the Government's programming documents, it is not warranted and necessary to include an explicit prohibition of corporal punishment.

The goal of the Government is to ensure a healthy development, above-standard educational system, safe environment and a happy home for the children, and to prevent that violence is considered a natural part of the social life. In order to achieve this goal, it is not sufficient to just literally put a specific phrase into the national legal system; it can be achieved, in particular, by adopting further and much more comprehensive measures, which are intensively supported by the Government in the long term, including their active participation at the international level.

With reference to the above facts, the Government considers the complaint submitted by APPROACH inadmissible.

Prague, September 25, 2013

Overview of national legislation governing relationships in family and in institutions:

- Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms, as amended
- Act No. 94/1963 Coll., Family Act [Section 31(2)], as amended
- Act No. 40/1964 Coll., Civil Code (Section 11), as amended
- Act No. 99/1963 Coll., Civil Procedure Code, as amended
- Act No. 89/2012 Coll., Civil Code, effective as of 1 January 2014 [Section 857(2) and Section 884(2)], as amended
- Act No. 359/1999 Coll., to regulate Social - Legal Protection of Children, as amended
- Act No. 200/1990 Coll., Misdemeanour Act (Section 49), as amended
- Act No. 40/2009 Coll., Criminal Code (Sections 146 and 198), as amended
- Act No. 561/2004 Coll., regulating Pre-school, Basic, Secondary, Tertiary Professional and Other Education (Education Act), as amended
- Act No. 109/2002 Coll., regulating Institutional Education or Protective Care in Educational Facilities and on Preventive Educational Care in Educational Facilities and on the amendment of certain acts, as amended

Enclosure:

In its complaint, APPROACH indicates the following:

“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.”