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

**17 January 2014**

**Case Document No. 5**

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

**RESPONSE BY APPROACH  
TO THE GOVERNMENT'S SUBMISSIONS  
ON THE MERITS**

**Registered at the Secretariat on 17 January 2014**



## APPROACH Ltd

### Response to the Submissions of the Government of the Czech Republic on the merits of Complaint No. 96/2013, Association for the Protection of All Children (APPROACH) Ltd v. Czech Republic

January 2014

#### I. Introduction

1. This is the response of APPROACH Ltd to the Submissions of the Government of the Czech Republic on the merits of Complaint No. 96/2013, dated 5 November 2013. We first discuss the lack of explicit prohibition of corporal punishment in Czech legislation. We go on to highlight the Czech Republic's obligation to prohibit all corporal punishment, and finally discuss its failure to act with due diligence to eliminate corporal punishment in practice.

#### II. The lack of effective prohibition of all corporal punishment of children in Czech legislation

2. The Czech Government maintains that:

*“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.”* (p. 1)

We do not dispute that corporal punishment is unlawful in schools, penal institutions, institutional care and preschool provision. But, as the Government acknowledges on p.1 of its Submissions, there is no explicit prohibition of corporal punishment in the family home, or in non-institutional forms of care for children. And despite its assertion quoted above, the Government's Submissions offer no evidence that the legal provisions against violence cited are interpreted as prohibiting all corporal punishment, however “light”. Indeed, statements made by the Government in contexts other than the current complaint suggest that it considers some degree of corporal punishment to be acceptable. As we noted in our Complaint, the Czech Republic's most recent report under Article 17 of the Charter (quoted in full on p. 4 of our Complaint), as well as indicating plainly that corporal punishment is not prohibited, refers twice to “excessive” corporal punishment – implying that some corporal punishment is not considered to be “excessive” and is therefore accepted.<sup>1</sup> Similarly, in rejecting recommendations to explicitly prohibit all corporal punishment in all settings made during the Universal Periodic Review of the Czech Republic in 2012, the Government stated that the law protects children from “inappropriate corporal punishment” in the family (quoted in the Government's Submission on the Complaint as “excessive corporal or other punishment”).<sup>2</sup> Reporting to the Human Rights Committee in 2013, the Government again confirmed that the law protects children only against “unproportionate corporal punishment”.<sup>3</sup>

3. In its Submissions on the merits of this Complaint, the Government quotes various legal provisions which contribute to children's protection from violence. But these provisions apply

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<sup>1</sup> 8th report, 10/12/2010 RAP/Cha/CZ/VIII(2010), Article 17, page 65

<sup>2</sup> 1 March 2013, A/HRC/22/3/Add.1, *Report of the working group: Addendum*, para. 4

<sup>3</sup> 27 June 2013, CCPR/C/CZE/Q/3/Add.1, *Reply to list of issues (HRC)*, para. 82

only to more severe forms of corporal punishment. As the Submissions make clear (p. 8), the Criminal Code sanctions only corporal punishment which reaches a certain degree of intensity. The Administrative Misdemeanour Act and Civil Procedure Code deal with sanctions for some violence, including in the family, but do not apply to all corporal punishment. The Submissions mention the prohibition of torture; while of course we do not dispute that torture is prohibited it is obvious that laws on torture do not protect children from all corporal punishment. Similarly, the general provisions on “the inviolability of person” in the old Civil Code do not explicitly prohibit corporal punishment.

4. The Government’s Submissions quote article 31(2) of the Family Act as stating that parents “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” (p. 8). The Government asserts that “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” (p. 8). But as the Committee recognises, the widespread acceptance of corporal punishment in childrearing means that laws prohibiting it must be clear and unambiguous: a law referring only to “appropriate means of education” cannot be said to clearly prohibit all corporal punishment. In any case, we understand that both the Family Act and the old Civil Code have now been entirely replaced by the new Civil Code.
5. The Government suggests that the new amendment to section 59(1)(h) of the Act on Social and Legal Protection of Children, in force since 1 January 2014, enhances children’s protection (emphases original):

*“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....** 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.**” (p. 7)*

However, removing the condition of “intention to degrade the child’s human dignity” does not change the condition that, to fall under this law, the “measures” inflicted on children must be “excessive” or “inappropriate”: it does not cover all corporal punishment, however “light”.

6. The Government also raises the new Civil Code, in force since 1 January 2014. The two sections which it mentions are (unofficial translation):

*“Section 884*

- a. *Parents have a crucial role in child upbringing. Parents should be universally an example for their children, especially if it is about their way of life and behavior in the family.*

- b. *Educational means can be used only in the form and extent as is reasonable under the circumstances, does not endanger health of the child or its development and does not affect the human dignity of the child.*

Section 857

- c. *The child is obliged to obey its parents.*
- d. *Until the child becomes legally competent (sui juris), its parents have the right to guide their child with educational measures, in keeping with its developing capacities, including restrictions on pursuing the protection of morals, health and rights of the child, as well as the rights of others and public order. The child is required to comply with these measures.”*

But neither section prohibits all corporal punishment – and in the absence of any explicit prohibition, the reference in section 884 to “reasonable” educational means could be understood as justifying some degree of violent punishment.

7. Other statements made by the Government during the drafting of the new Civil Code imply that it is not intended to prohibit all corporal punishment: reporting to the Committee on the Rights of the Child in 2011, it acknowledged the lack of explicit prohibition of corporal punishment in national legislation but confirmed that the Ministry of Justice, coordinator of the new Civil Code, “is not taking any new steps in the prohibition of corporal punishment”.<sup>4</sup> 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.<sup>5</sup>
8. The Government’s Submissions mention the National Strategy on Prevention of Violence Against Children 2008-2018. While the references in this strategy to the UN Committee on the Rights of the Child’s definition of corporal punishment and the recommendations of the World Report on Violence against Children are welcome, the document as a whole seems to confirm that prohibition is not planned: corporal punishment is not explicitly included in the objectives of the strategy and law reform is not mentioned. Other strategy documents show a similar lack of commitment to law reform: the National strategy for child rights refers briefly to prohibition of corporal punishment but does not suggest that it is a key activity; the emphasis is on research and public education. And the Action Plan 2012-2015 for the fulfilment of this strategy does not mention law reform.
9. The Submissions state that,

*“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 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*

<sup>4</sup> 10 May 2011, CRC/C/CZE/Q/3-4/Add.1, Reply to list of issues (CRC), Q7

<sup>5</sup> 30 May 2012, CAT/C/SR.1071, Summary record, para. 40

*health (physical), mental or emotional development and are adequate to the situation, offers a sufficiently broad scope for effective protection of children and youth.” (p. 3)*

10. This appears to conflict directly with the other statements of the Government, quoted above, which imply acceptance of some level of corporal punishment; it also conflicts directly with the jurisprudence of the European Committee of Social Rights, expressed most clearly in its Decision on Complaint No. 34/2006:

*“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. 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. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.”*  
(paras. 19-21)

11. Thus prohibition of all corporal punishment and other forms of violent punishment is essential in combating all violence against children: no country can claim to have an adequate child protection system while its law implies that some level or form of violent punishment by parents and others is acceptable. Reforming laws to ensure that they do not allow children, alone of all social groups, to be assaulted with impunity by family members and others is central in enhancing children’s status in society. It sends a clear message that children are not possessions of their parents, but are human beings and rights holders. The widespread acceptance of corporal punishment means that to send this message, clarity in law is required: all violent punishment, however “light”, must be explicitly prohibited, using, as the Committee’s jurisprudence makes clear, provisions which are sufficiently clear, binding and precise to preclude the courts from refusing to apply them to violence against children.

### **III. The Czech Republic’s obligation to prohibit and eliminate all corporal punishment of children**

12. Given the well-established consensus in international human rights law that corporal punishment must be prohibited and eliminated, and the Committee’s clear jurisprudence on the topic, it hardly seems necessary to show that the Czech Republic is required to prohibit and eliminate all corporal punishment. However, as the Government’s Submissions appear to dispute these obligations, here we briefly discuss them.

13. The Government argues that,

*“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.”* (p. 4)

It goes on to imply that the Committee is acting illegitimately in interpreting article 17 in both the 1961 Social Charter and the 1996 Revised Social Charter as requiring prohibition of corporal punishment, suggesting that the Committee’s interpretation of the two,

*“should be developed in a manner as not to render unclear the distinction between the two individual documents.... Such an extensive interpretation of the provisions in the different Articles ... 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.”* (p. 4-5)

14. The European Court of Human Rights has found some corporal punishment of children to constitute inhuman or degrading treatment, has referred to the European Convention as a “living instrument” and has increasingly taken account of standards set by other human rights treaties, including in particular the UN Convention on the Rights of the Child; successive judgments suggest that its jurisprudence on corporal punishment of children is developing.
15. Moreover, the Committee is not constrained by the jurisprudence of the Court, but has developed its own clear jurisprudence on the issue. Like the European Convention and other human rights instruments, the 1961 Charter is a living instrument, and it is entirely appropriate that the Committee interprets it consistently with the Revised Social Charter, which is designed progressively to take its place, and in light of other major international human rights instruments. In the Committee’s Decision No. 18/2003, in which it found that Ireland was not in conformity with the Charter because corporal punishment was not prohibited, it stressed that a “teleological approach” should be adopted when interpreting the Charter:

*“... it is necessary to seek the interpretation of the treaty that is most appropriate in order to realize the aim and achieve the object of the treaty, not that which would restrict to the greatest possible degree the obligations undertaken by the Parties.”*  
(para. 60)

16. In the same Decision, the Committee recalled “that when it stated the interpretation to be given to Article 17 in 2001... it was influenced by an emerging international consensus on the issue and notes that since this consensus is stronger” (para. 61). Today, of course, the consensus is stronger still. In the decade since that Decision, the Committee has further developed its case law on corporal punishment, in particular in its Decision on the merits in Complaint No. 34/2006 and in subsequent conclusions on reports under Article 17. The UN Committee on the Rights of the Child has issued General Comment No. 8 on the right of the child to protection from corporal punishment and other forms of cruel or degrading punishment<sup>6</sup> and General Comment No. 13 on the right of the child to freedom from all forms of violence<sup>7</sup> and has continued to recommend prohibition to all States whose reports it examines. The comprehensive UN Secretary General’s Study on Violence against Children, requested by the Committee on the Rights of the Child, included among its key recommendations (2006) the prohibition of all forms of violence including corporal punishment. There has also been

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<sup>6</sup> Committee on the Rights of the Child (2006), *General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment* (arts. 19; 28, para. 2; and 37, inter alia)

<sup>7</sup> Committee on the Rights of the Child (2011), *General comment No. 13: The right of the child to freedom from all forms of violence*

substantial coverage of the need for prohibition in the first two cycles of the Universal Periodic Review process in the Human Rights Council since 2008.

17. In any case, we would point out that the Committee's first findings of non-compliance relating to the legality of corporal punishment in the Czech Republic were in 2005. As our Complaint notes, the UN Committee on the Rights of the Child has three times expressed concern at the prevalence of corporal punishment and the lack of legislation explicitly prohibiting it, in 1997, 2003 and 2011. In 2012, the Committee Against Torture expressed similar concerns. And during its Universal Periodic Review in 2012, the Czech Republic rejected two recommendations to prohibit corporal punishment in all settings.

#### **IV. The failure of the Czech Republic to act with due diligence to eliminate corporal punishment in practice**

18. Research shows the widespread prevalence and acceptance of corporal punishment in the Czech Republic (see "Prevalence/attitudinal research" in our original Complaint). The Government claims that these studies are out of date but does not provide any more recent information. The Government's Submissions refer to various efforts to combat violence against children, but most of these do not appear to be directly relevant to corporal punishment. Of the two that are, one – the "Positive parenthood" programme – appears to be very small-scale and the other – the Stop Violence Against Children campaign – was implemented in 2009 and is no longer active. There is nothing in the Submissions on the merits to suggest that the Government has acted with due diligence to eliminate corporal punishment in practice. We respectfully submit to the Committee that the ongoing measures which the state should take to accompany prohibition would include widespread dissemination of information on the law and on children's right to protection, including at contact points such as birth registration, pre- and post-natal services, health services, school entry, the school curriculum and social and welfare services; the promotion of positive, non-violent forms of discipline, including to children, parents and the general public; initial and in-service training of all those working with and for families and children, including teachers and care workers; the provision of detailed guidance, for all involved, on how the law should be implemented in the best interests of children; and the integration of implementation/enforcement of the prohibition into the national and local child protection system. The impact of law reform and these measures should be evaluated through baseline and regular follow-up interview research involving children and parents. We see no evidence of any such measures in the Government's Submissions – and in any case, the effectiveness of such measures would necessarily be weakened by the lack of effective prohibition of all corporal punishment.

#### **V. Conclusion**

19. Nothing in the Government's Submissions contradicts our Complaint that there is no effective prohibition of all corporal punishment in the home and non-institutional forms of care. Our Complaint indicated (p. 10) that in previous years the Government of the Czech Republic had committed itself to explicitly and fully prohibiting all corporal punishment, in line with overall positive developments in Member States. We were therefore disappointed to find that



opportunities to introduce the necessary legislation in new laws which have very recently been enacted have not been taken. In addition, the Submissions provide no evidence of the Government acting with due diligence to ensure that violent punishment of children is eliminated in practice, while available research suggests that it remains widely socially approved and used. We therefore urge the Committee to find that the Czech Republic is in violation of the Charter.