



European
Social
Charter

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

9 May 2014

Case No. 6

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

FURTHER RESPONSE BY THE GOVERNMENT

Registered at the Secretariat on 7 May 2014

Response by the Government of the Czech Republic to the position of the Association for the Protection of All Children (APPROACH) on the Submissions of the Government of the Czech Republic to the merits of the collective complaint No. 96/2013 against the Czech Republic for violation of the European Social Charter due to the alleged lack of provisions explicitly prohibiting all corporal punishment of children in family, at school and in other institutions and settings

I.

The Czech Republic refuses the interpretation of the Czech legal provisions by APPROACH which declares that, in the Czech Republic, some degree of violent punishment is tolerated, children are assaulted with impunity for the offender and that such behaviour is widely approved and used by the Czech society. In its submission on the merits of the complaint, the Czech Republic submitted and explained the interpretation of the applicable national law by noting, among other, that – for the purpose of a broader protection of children – the legislative framework has been designed more generally, thus ensuring protection of children from both physical and mental punishment, including punishment caused by negligence, which has been supported by relevant judgments. The submitted materials do not imply, or make it possible to derive through any interpretation whatsoever, tolerance of violence and unpunished assaults against children.

The European Committee of Social Rights (“the ECSR”) itself confirmed that an explicit prohibition of corporal punishment does not necessarily have to be included in the relevant law provided that other effective protection is ensured. This has been evidenced by the Czech Republic through relevant judgments of the Supreme Court, which have been fully disregarded by APPROACH, asserting that the Government failed to submit any evidence.

II.

As regards the interpretation of the European Social Charter of 1961 (the “1961 Charter”), in the light of the revised European Social Charter (the “revised Charter”) and the application of a “teleological interpretation”, the Czech Republic is of the view that the arguments used by APPROACH are unacceptable in terms of public international law.

It follows from Article 31(3) of the Vienna Convention on the Law of Treaties (Vienna, 23 May 1969) that account may (or must, as the case may be) be taken of any subsequent agreement, practice or relevant rules of international law regarding the interpretation of an international treaty, but only if such were made between parties to the treaty. The Czech Republic has not ratified the revised Charter; consequently, it is not a party to the revised Charter and the revised Charter cannot be considered a subsequent agreement, practice or rule of international law “between the parties” in relation to the Czech Republic.

As regards the revised Charter, the Czech Republic is only obliged to refrain from acts which would defeat the object and purpose of a treaty, in accordance with Article 18 of the Vienna Convention on the Law of Treaties. However, this obligation concerns only the object and purpose of the revised Charter as a whole and cannot be interpreted as an obligation to comply with its particular provisions even before its ratification. Such a situation would already constitute provisional application of the revised Charter in accordance with Article 25 of the Vienna Convention on the Law of Treaties which would, however, be only possible if explicitly so provided in the revised Charter itself [Article 25(1)(a) of the Vienna Convention on the Law of Treaties], or if the negotiating States of the revised Charter (including the Czech Republic) have so agreed [Article 25(1)(b) of the Vienna Convention on the Law of Treaties]. Neither of these conditions is met in case of the revised Charter.

Furthermore, the Czech Republic points out that, pursuant to Article 31(1) of the Vienna Convention on the Law of Treaties, the basic principle for interpretation of international treaties is interpretation “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”. Even in a teleological interpretation, one can only build on the object and purpose of the treaty to be interpreted, rather than on a different treaty. For that matter, the 1961 Charter itself does not refer to protection from violence. It appears from its entire text that its object and purpose is, in particular, protection of labour law rights and rights related to labour law rights. The purpose of Article 17 itself of the 1961 Charter is directly provided for in that provision – “ensuring the effective exercise of the right of mothers and children to social and economic protection” (unlike Article 17 of the revised Charter which, according to the introductory sentence, aims at “ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities”).

III.

In addition, the Czech Republic cannot agree with the conclusion of APPROACH that the Government of the Czech Republic has failed to act with due diligence to eliminate corporal punishment in practice. Although not being a party to the revised Charter, the Czech Republic has demonstrated that it considers any violence against children to be absolutely inadmissible and uses all means and methods to combat it. This is one of the key priorities of the Government, the particular ministries and the society as a whole. In its submission, the Czech Republic listed a number of measures that have been taken, including the **National Strategy on Prevention of Violence against Children in the Czech Republic for the period 2008–2018**. The position of APPROACH also refers to the 2006 General Comment No. 8 of the UN Committee on the Rights of the Child on the right of the child to protection from corporal punishment and other forms of cruel or degrading punishment. The Czech Republic wish to emphasise that the quoted comment as well as previous comments of the Committee on the Rights of the Child were taken into account when approving the National Strategy on Prevention of Violence against Children in the Czech Republic for the period 2008–2018, which incorporates, among other, the definition of corporal punishment as adopted by the Committee on the Rights of the Child. In this

regard, the Czech Republic fully acts on its commitments arising under the UN Convention on the Rights of the Child, in particular from Article 19 thereof. At the occasion of the 25th anniversary of the adoption of the Convention on the Rights of the Child, the Ministry of Labour and Social Affairs will publish this year a collection of texts related to the Convention of the Rights, which will include some relevant comments from the Committee on the Rights of the Child, including its comment on the protection of children from corporal punishment.

Other implemented measures include, for instance, the **Government campaign called Stop Violence against Children, operation of child crisis centres, awareness raising and educational activities – such as the Positive Parenthood project – an educational programme focused on health care staff providing care to the child and family, the issue of the Methodological guideline concerning the procedure to be followed by primary care physicians in case of a suspected Child Abuse and Neglect syndrome, the Methodological guideline concerning the procedure to be followed by physicians when providing health care to persons at risk of domestic violence, establishment of a Task Force for Prevention of Violence against Children and the National Coordination Centre for Prevention of Injuries, Violence and Support to Children Safety** ensuring, among others, the development of a network of cooperating workplaces, education and cooperation at international level, **legislative amendments** (inter alia in Act No. 359/1999 Coll., regulating Social and Legal Protection of Children, Act No. 89/2012 Coll., the Civil Code, Act No. 404/2012 Coll., amending the Civil Procedure Code).

At the same time and in consistence with the affirmative statement of APPROACH on the prohibition of corporal punishment in institutions, *“corporal punishment is unlawful in schools, penal institutions, institutional care and preschool provision”* in the Czech Republic.

In the light of the above, the Czech Republic believes to have provided sufficient evidence as to the importance it attaches to the topic of protection of children and the intensive efforts made to address that issue. It reiterates that the conditions for the upbringing of children in the family and in substitute care are regulated in a much more rigorous manner than required under international instruments, and that violence against children is efficiently sanctioned, which has been demonstrably evidenced. Consequently, the Government of the Czech Republic have no intention to attenuate the legal protection of children. Since no basis was found to prove that the Czech Republic failed to ensure satisfactory implementation of the 1961 Charter, the Government of the Czech Republic considers the complaint unsubstantiated.

Given the above, the Government of the Czech Republic requests the ECSR to declare complaint No. 96/2013 submitted by APPROACH inadmissible as unjustified.

