

Corporal punishment of children in the Czech Republic: Briefing for the Universal Periodic Review, 28th session, 2017

From the Global Initiative to End All Corporal Punishment of Children, March 2017



Global Initiative to
**End All Corporal Punishment
of Children**

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In the Czech Republic, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Human Rights Committee, the Committee Against Torture and the European Committee of Social Rights, and the recommendations made during the 2nd cycle UPR of the Czech Republic in 2012.

We hope the Working Group will note with concern the legality of corporal punishment of children in the Czech Republic. We hope states will raise the issue during the review in 2017 and make a specific recommendation that the Czech Republic clearly prohibit all corporal punishment of children, however light, in all settings including the home.

1 Review of the Czech Republic in the 2nd cycle UPR (2012) and progress since

- 1.1 The Czech Republic was reviewed in the second cycle of the Universal Periodic Review in 2012 (session 14). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² The Government accepted a recommendation to take measures to combat the use of corporal punishment but rejected recommendations to explicitly prohibit it,³ in contradiction with its international obligations.
- 1.2 Since the second cycle review in 2012, a new Civil Code came into effect which does not prohibit corporal punishment of children. Despite the Czech Republic being found in violation of the European Social Charter in 2013, no further legal reform was undertaken. The mid-term report published in 2015 refers to "proportionate" and "reasonable" discipline – this provides parents and individuals caring for children with the right to inflict "light" corporal punishment on children.

¹ 13 August 2012, A/HRC/WG.6/14/CZE/2, Compilation of UN information, para. 32

² 24 July 2012, A/HRC/WG.6/14/CZE/3, Summary of stakeholders' views, para. 27

³ 1 March 2013, A/HRC/22/3/Add.1, Addendum to the report of the working group, para. 4

- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in the Czech Republic. We hope states will raise the issue during the review in 2017 and make a specific recommendation that the Czech Republic clearly prohibit all corporal punishment of children, however light.**

2 Legality of corporal punishment in the Czech Republic

Summary of current law and opportunities for achieving prohibition

In the Czech Republic, corporal punishment is unlawful in schools and as a sentence for a crime, but it is not fully prohibited in the home, in all forms of alternative care and day care settings, and in penal institutions.

- 2.1 **Home (lawful):** A new Civil Code came into effect in January 2014 which includes provisions relating to parental discipline but does not prohibit all corporal punishment. Rather, it states that “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” (art. 884(2), unofficial translation) and that “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” (art. 857(2)). The Act on Social and Legal Protection of Children 1999 states that a person is guilty of an administrative offence when he or she “uses an inadequate [excessive] measure against the child with the intention of humiliating his or her human dignity” (art. 59(1)(h)). This provision was amended in 2013 (with effect from January 2014) to take out the requirement of intentionality, but no clear prohibition of all corporal punishment was introduced. Provisions against violence and abuse in 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 as prohibiting all corporal punishment in childrearing.
- 2.2 The Government confirmed its commitment to enacting 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, and in the state party report to the Committee on the Rights of the Child the Government stated that it was considering enacting explicit prohibition.⁴ But in 2011, while acknowledging the lack of explicit prohibition of corporal punishment in national legislation, the Government confirmed that the Ministry of Justice was “not taking any new steps in the prohibition of corporal punishment”.⁵ The Government has also indicated that it considers existing legislation offers adequate protection from corporal punishment⁶ – yet confirmed that the law protects children only against “unproportionate” corporal punishment.⁷ Under examination by the Committee on the Rights of Persons with Disabilities in 2015 the Government stated that corporal punishment

⁴ 20 April 2010, CRC/C/CZE/3-4, Third/fourth state party report, para. 133

⁵ 10 May 2011, CRC/C/CZE/Q/3-4/Add.1, Reply to list of issues, Q7

⁶ 9 March 2012, CAT/C/CZE/Q/4-5/Add.1, Reply to list of issues, para. 106; 27 June 2013, CCPR/C/CZE/Q/3/Add.1, Reply to list of issues, paras.77-80

⁷ 27 June 2013, CCPR/C/CZE/Q/3/Add.1, Reply to list of issues, para. 82

is prohibited in the family by the Civil Code and the Family Act and that the National Strategy for Prevention of Violence against Children included the definition of corporal punishment as adopted by the Committee on the Rights of the Child.⁸ But as noted above, our research indicates that there is no clear prohibition in law of all corporal punishment in childrearing.

2.3 In 2013, a complaint was brought against the Czech Republic by the Association for the Protection of All Children (APPROACH) Ltd, under the collective complaints procedure of the European Committee of Social Rights.⁹ The complaint alleged that there is no explicit prohibition of corporal punishment in the family, in all forms of alternative care and in schools and that the Czech Republic has not acted with due diligence to eliminate such violent punishment of children in practice. The complaint was registered by the Committee in February 2013; it was declared admissible on 2 July 2013. The Committee published its decision on 29 May 2015. The Committee concluded that the situation in the Czech Republic is in violation of the Charter because the law does not prohibit all corporal punishment.¹⁰

2.4 **Alternative care settings (partially lawful):** Corporal punishment is unlawful in institutions under the Act on Institutional Care 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.

2.5 **Day care (partially lawful):** Corporal punishment is prohibited in preschool provision in article 31 of the Education Act (see below). It is lawful in other early childhood care and in day care for older children.

2.6 **Schools (unlawful):** Corporal punishment in schools is unlawful under article 31 of the Education Act, which states that “specially rude verbal or intentional physical assault of a pupil or student” is “a serious wilful violation of duties”. The Education Act and the Act on execution of institutional upbringing or protective upbringing at school facilities and on preventive upbringing care at school facilities do not include corporal punishment among permitted disciplinary measures.

2.7 **Penal institutions (lawful):** Corporal punishment is considered unlawful as a disciplinary measure in penal institutions but there is no explicit prohibition. There is no provision for corporal punishment in the Imprisonment Act 1999.

2.8 **Sentence for crime (unlawful):** Corporal punishment was abolished as a sentence for crime by 1867. It is not a permitted sanction under the Criminal Code and the Juvenile Justice Act No. 218/2003.

⁸ Committee on the Rights of Persons with Disabilities considers initial report of the Czech Republic, 1 April 2015, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15788&LangID=E#sthash.eWBQhgFg.rVZNS3zG.dpuf, accessed 29 April 2015

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15788&LangID=E#sthash.eWBQhgFg.dpuf>

⁹ Collective complaint No. 96/2013, *Association for the Protection of All Children (APPROACH) Ltd v Czech Republic*

¹⁰ Collective Complaint No. 96/2013, *Association for the Protection of All Children (Approach) v Czech Republic*, Decision on the Merits, Adoption 20 January 2015, Notification 28 January 2015, Publication 29 May 2015

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child recommended on three occasions¹¹ that the Czech Republic prohibit and eliminate all corporal punishment of children including in the family.
- 3.2 **HRC:** In 2013, the Human Rights Committee expressed concern that corporal punishment was still not prohibited in all settings and recommended that the Government put an end to its practice.¹²
- 3.3 **CAT:** The Committee Against Torture recommended in 2012 that the Czech Republic amend its legislation to explicitly prohibit corporal punishment in all settings and carry out awareness-raising campaigns on the harmful effects of corporal punishment.¹³
- 3.4 **ECSCR:** The European Committee of Social Rights has repeatedly found the situation in the Czech Republic to be in breach of the European Social Charter because corporal punishment is not clearly prohibited in law (2012, 2005).¹⁴ Most recently (May 2015) the Committee published its decision on a collective complaint brought against the Czech Republic by the Association for the Protection of All Children (APPROACH) Ltd, concluding again that the situation in the Czech Republic is violating the Charter because the law does not prohibit all corporal punishment.¹⁵
- 3.5 **UPR:** At the Universal Periodic Review of the Czech Republic in 2012, the Government accepted a recommendation to “combat domestic violence, in particular against children, including the usage of corporal punishment”, but paradoxically rejected other recommendations to prohibit in all settings.¹⁶

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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

¹¹ 4 August 2011, CRC/C/CZE/CO/3-4, Concluding observations on third/fourth report, paras. 39, 40 and 41; 18 March 2003, CRC/C/15/Add.201, Concluding observations on second report, paras. 40 and 41; 27 October 1997, CRC/C/15/Add.81, Concluding observations on initial report, paras. 18 and 35

¹² 22 August 2013, CCPR/C/CZE/CO/3, Concluding observations on third report, para. 19

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

¹⁴ January 2012, Conclusions 2011; July 2005, Conclusions XVII-2

¹⁵ Collective Complaint No. 96/2013, *Association for the Protection of All Children (Approach) v Czech Republic*, Decision on the Merits, Adoption 20 January 2015, Notification 28 January 2015, Publication 29 May 2015

¹⁶ 26 December 2012, A/HRC/22/3, Report of the working group, paras. 94(88), 94(89) and 94(90); 1 March 2013, A/HRC/22/3/Add.1, Report of the working group: Addendum, para. 4