

CZECH REPUBLIC

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 14th session, 2012

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

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

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 in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in the Czech Republic, despite repeated recommendations by the Committee on the Rights of the Child to prohibit it and repeated findings by the European Committee of Social Rights of non-conformity with the European Social Charter due to the lack of prohibition.

We hope the Human Rights Council will note with concern the repeated and unfulfilled treaty body recommendations. We hope states will raise the issue during the review in 2012 and recommend to the Czech Republic that legislation be enacted to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.

1 The initial review of Czech Republic by the Human Rights Council (2008)

1.1 The Czech Republic was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 1). No recommendations were made concerning corporal punishment of children, though the issue was raised in an advanced question by Italy and was included in the compilation of UN information¹ and the summary of stakeholders' information.²

1.2 Prohibiting corporal punishment is a key obligation under the Convention on the Rights of the Child and other international human rights instruments, though it is an obligation frequently ignored or evaded by governments. Specifically challenging the Czech Republic in this respect during its second UPR would reflect the seriousness with which the Human Rights Council views violations of the rights of all persons, including children.

1.3 The Czech Government confirmed its commitment to prohibiting all corporal punishment in 2007.³ 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 it was considering enacting explicit prohibition.⁴ Nevertheless, corporal punishment remains lawful in the home and in alternative care settings.

1.4 A new Civil Code is expected to come into force in January 2013 which would protect the dignity of the child but not explicitly prohibit corporal punishment. While acknowledging the lack of explicit prohibition of corporal punishment in national legislation, the Government confirmed that the Ministry of Justice, coordinator of the new Civil Code, "is 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 punishment:⁶ it seems clear from our research, however, that the current law is inadequate to achieve in reality prohibition of corporal punishment in the home.

2 Legality of corporal punishment in the Czech Republic

2.1 Corporal punishment is lawful in the **home**. 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", 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.

2.2 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.

¹ 1 April 2008, A/HRC/WG.6/1/CZE/2, Compilation of UN information, para. 24

² 6 March 2008, A/HRC/WG.6/1/CZE/3, Summary of stakeholders' information, para. 24

³ Commitment confirmed in a letter from Prime Minister Mirek Topolánek to the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, September 2007

⁴ 20 April 2010, CRC/C/CZE/3-4, para. 133

⁵ 10 May 2011, CRC/C/CZE/Q/3-4/Add.1, Written replies to the Committee on the Rights of the Child, Q7

⁶ 9 March 2012, CAT/C/CZE/Q/4-5/Add.1, Written replies to the Committee Against Torture, para. 106

2.3 In the **penal system**, corporal punishment is unlawful as a sentence for crime under the Criminal Code and the Juvenile Justice Act No. 218/2003. It 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).

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

2.5 As part of a Government-sponsored campaign on violence against children in 2009, research was undertaken into public tolerance of corporal punishment: 49.9% of those surveyed felt that corporal punishment may be necessary in some situations; 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.⁷ Studies in 1994 and 2004, each surveying 1,000 10-year-olds, revealed a high prevalence of corporal punishment by parents. In 1994, 90% had experienced some kind of corporal punishment at home, compared with 86% in 2004; in 1994, a third had been hit with an object, hit on a sensitive part of their body, or hit in a way that left visible marks, compared with a quarter in 2004.⁸

3 Recommendations by human rights treaty monitoring bodies

3.1 The **Committee on the Rights of the Child** first made recommendations concerning corporal punishment of children in the home and other settings in the Czech Republic in 1997.⁹ The Committee recommended law reform to prohibit corporal punishment in all settings, including the home, in 2003 and again in 2011.¹⁰

3.2 In 2011, the **European Committee of Social Rights** concluded that the situation in the Czech Republic is not in conformity with the European Social Charter because corporal punishment is not prohibited in all settings.¹¹ The Committee reached a similar conclusion in 2005.¹²

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⁷ Reported in 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

⁸ Reported by Child Abuse and Neglect in Eastern Europe, 24 May 2007, www.canee.net

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

¹⁰ 18 March 2003, CRC/C/15/Add.201, Concluding observations on second report, paras. 40 and 41; 4 August 2011, CRC/C/CZE/CO/3-4, Concluding observations on third/fourth report, paras. 39, 40, 41 and 42

¹¹ January 2012, Conclusions 2011

¹² July 2005, Conclusions XVII-2