1 The human rights obligation to prohibit corporal punishment

1.1 The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments.

This briefing describes the legality of corporal punishment of children in the Czech Republic. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the repeated recommendations to the Czech Republic by the Committee on the Rights of the Child and other treaty monitoring bodies, the recommendations made during the Universal Periodic Review in 2012 and the Government’s stated commitment to prohibition, we hope the Human Rights Committee will:

- raise the issue of corporal punishment of children in its List of Issues for the Czech Republic, in particular asking what measures have been taken to ensure the law explicitly prohibits corporal punishment in all settings, including the home, and
- recommend to the Czech Republic, following its examination of the state party’s third report, that legislation is enacted and enforced which explicitly prohibits corporal punishment in all settings, including the home, as a matter of priority, together with appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.
2 Legality of corporal punishment of children in the Czech Republic

2.1 Corporal punishment of children in the Czech Republic is unlawful in schools, in some forms of care and possibly in penal institutions, but it is lawful in the home and other care settings.

2.2 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.

2.3 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.

2.4 In the penal system, corporal punishment was abolished as a sentence for crime by 1867, and is not a permitted sanction under the Criminal Code and the Juvenile Justice Act No. 218/2003. 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).

2.5 With regard to alternative care settings, corporal punishment is unlawful in institutions under the Act on Institutional Care (Act 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. The Act on Social Services (Act No. 108, 2006) states that services shall be provided in a way which preserves human dignity and “in manners always strictly ensuring compliance with human rights and fundamental freedoms of persons” (article 2) but it does not explicitly prohibit corporal punishment. Corporal punishment is lawful in non-institutional forms of care.

3 The Government’s commitment to law reform

3.1 The Government has long been publicly committed to law reform to prohibit corporal punishment of children. However, this commitment has not been accompanied by action: there has been no change in the legality of corporal punishment in recent years.

3.2 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.¹ However, the new Civil Code expected to come into force in January 2013 will protect the dignity of the child but

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¹ 20 April 2010, CRC/C/CZE/3-4, para. 133
it does 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”.  The Government has also indicated that it considers existing legislation offers adequate protection from corporal punishment. More recently, 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.

4 Prevalence of and attitudes towards corporal punishment of children in the Czech Republic

4.1 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.

4.2 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.

5 Recommendations by human rights treaty monitoring bodies and during the Universal Periodic Review

5.1 The Committee on the Rights of the Child first expressed concern at corporal punishment in the Czech Republic in 1997, following examination of the state party’s initial report. The concerns were reiterated and recommendations made to prohibit corporal punishment in all settings, including the home, in 2003 and again in 2011.

5.2 In July 2012, the Committee Against Torture recommended that the Czech Family Act and the new Civil Code be amended to explicitly prohibit corporal punishment in all settings.

5.3 The European Committee of Social Rights has twice concluded that the situation in the Czech Republic is not in conformity with the article 17 of the European Social Charter because corporal punishment is not explicitly prohibited in the home and in institutions – in 2005 and in 2012.

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2 10 May 2011, CRC/C/CZE/Q/3-4/Add.1, Written replies to the Committee on the Rights of the Child, Q7
3 9 March 2012, CAT/C/CZE/Q/4-5/Add.1, Written replies to the Committee Against Torture, para. 106
4 30 May 2012, CAT/C/SR.1071, Summary record, para. 40
5 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
7 27 October 1997, CRC/C/15/Add.81, Concluding observations on initial report, paras. 18 and 35
8 18 March 2003, CRC/C/15/Add.201, Concluding observations on second report, paras. 40 and 41
9 4 August 2011, CRC/C/CZE/CO/3-4, Concluding observations on third/fourth report, paras. 39, 40 and 41
10 13 July 2012, CAT/C/CZE/CO/4-5, Concluding observations on fourth/fifth report, para. 22
11 18 May 2012, Conclusions XVII-2
12 January 2012, Conclusions 2011
5.4 During the Universal Periodic Review of the Czech Republic in 2012, a number of recommendations were made to prohibit corporal punishment in all settings, including the home. The Government’s response is due by March 2013.

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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