



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

PORTUGAL – COUNTRY REPORT

Summary of necessary legal reform to achieve full prohibition

Corporal punishment is prohibited in all settings, including the home.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is prohibited in the home. Article 152 of the Penal Code was amended in 2007 (by Law 59/2007) to state: “Whoever repeatedly, or not, inflicts physical or psychological ill-treatment, including corporal punishment, deprivation of liberty and sexual offences, is punished with 1 to 5 years of imprisonment.”

The prohibition followed a 2006 finding by the European Committee of Social Rights (ECSR) under the Collective Complaints procedure of the European Social Charter that Portugal was in violation of article 17 of the Charter because all corporal punishment was not prohibited.¹

Schools

Corporal punishment is prohibited in schools under Decree 679/77 (1977), which does not include corporal punishment among permitted sanctions, and Education Law No. 166/99 of 14 September 1999 (section 188), which prohibits cruel, inhuman or degrading treatment.

Penal system

Corporal punishment is unlawful as a **sentence for crime** under the Criminal Code and the Law on Educational Guardianship.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions. Article 188 (2) of the Law on Educational Guardianship states that “the application of a disciplinary measure may not, in any case, translate, directly or indirectly, into the application of a corporal punishment”, and the permitted disciplinary measures in article 194 do not include corporal punishment. Decree Law 323-D/2000 states that only these measures may be applied in Educational Centres (article 99) and establishes limited conditions for the use of force (article 90).

Alternative care

Corporal punishment is prohibited in alternative care settings under the 2007 amendments to the Penal Code (see above).

Prevalence research

Telephone interviews with 809 adults aged 18 years and over in April 2004, revealed that 83% believe it is acceptable for parents to smack their children, including one in six (16%) who believe it is always

¹ World Organisation Against Torture (OMCT) v. Portugal Complaint No. 34/2006, Decision on the merits, 5 December 2006 (see also Resolution ResChS(2008)4 on 27 February 2008). This was the second time the Committee had considered the issue. Following an earlier complaint brought by the same organisation (OMCT), the Committee had concluded that case law, including Supreme Court decisions, had established that corporal punishment in childrearing was unlawful. However, in April 2006 the Supreme Court ruled that slaps and spankings are “legal” and “acceptable”, and that failure to use these methods of punishment could even amount to “educational neglect”. The OMCT issued a second complaint, and the ECSR issued a finding of non-conformity.

acceptable and a further two thirds (67%) who believe there are some circumstances in which it is acceptable. Just over one in ten (13%) believe it is unacceptable in any circumstances.²

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(6 November 2001, CRC/C/15/Add.162, Concluding observations on second report, paras. 26 and 27)

“Noting its 1995 concluding observations, the Committee is concerned that corporal punishment continues to be practiced within the family, there is a lack of legislation prohibiting such punishment, and that insufficient measures have been adopted to prevent corporal punishment in this context.

“The Committee recommends that the State party:

- a) adopt legislation prohibiting corporal punishment in the family and in any other contexts not covered by existing legislation;
- b) develop mechanisms to end the practice of corporal punishment, including the use of information campaigns targeting parents, teachers and children;
- c) promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society;
- d) develop mandatory reporting systems for professionals working with children who detect the use of corporal punishment in the family.”

Committee on the Rights of the Child

(27 November 1995, CRC/C/15/Add.45, Concluding observations on initial report, paras. 15 and 23)

“The Committee is worried about the insufficient measures adopted to prevent and fight abuse and corporal punishment, in particular within the family....

“The Committee recommends that the authorities take the necessary measures, including the implementation of a national policy, to prevent abuse and corporal punishment of children, including within the family.”

European Committee of Social Rights

(March 2005, Conclusions XVII-2)

“The Committee notes that the protection of children against all forms of violence, including corporal punishment, is based on the Constitution. The report states that pursuant to Section 188 of the Education Law No. 166/99 of 14 September 1999 it is prohibited to apply any measure which results in cruel, inhuman or degrading treatment or which can compromise the physical or psychological health of the child and in addition, the application of a disciplinary measure shall in no case result in corporal punishment. Furthermore, the Supreme Court in a decision of 1994, interpreted Article 143 of the Criminal Code as prohibiting the use of any form of physical violence against children likely to pose a threat to their physical integrity, their personal dignity or their physical or psychological development. The Committee asks that the next report explain how the Supreme Court decision effectively prohibits the corporal punishment of children in the home. It also asks that the next report provide any information on whether and when this ruling has been confirmed in legislation.”

² Market & Opinion Research International (2004), “Attitudes towards smacking children: Portugal”, Research conducted for the Association for the Protection of All Children

European Committee of Social Rights

(1 January 2001, Conclusions XV-2 vol. 2, pages 504-506)

“The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere....”

European Committee of Social Rights

(1 January 1996, Conclusions XIII-3, pages 310-311)

“The Committee nevertheless recalled that this provision of the Charter was intended to guarantee children and young people a wide measure of protection, outside the workplace, which required general protection against all the physical and moral dangers to which they were exposed. It therefore wished to receive information in the next report in:

...

- the measures and the supervisory system to eliminate corporal punishment and abuse of children....

Pending receipt of the requested information, the Committee deferred its conclusion.”

Committee Against Torture

(19 February 2008, CAT/C/PRT/CO/4, Concluding observations on fourth report, para. 15)

“The Committee is concerned about reports received of numerous cases of domestic violence affecting women and children, as well as a high number of deaths among women due to such violence. Moreover, the Committee is deeply concerned at the Supreme Court decision of 5 April 2006, according to which “moderate corporal punishment of a minor by a duly entitled person for solely appropriate educational purposes is not illegal” in the family context (art. 16).

The State party should strengthen its efforts to establish a national strategy to prevent and combat domestic violence against women and children. It should take the necessary legislative measures to prohibit corporal punishment of children in the family. The State party should: guarantee that women and children who have been victims of violence have access to complaints mechanisms; punish the perpetrators of these acts in an appropriate manner; and facilitate the physical and psychological rehabilitation of the victims.

The State party should also ensure that public law enforcement agents receive ongoing and targeted training on the issue of violence against women and children.”

Universal Periodic Review

Portugal was examined under the Universal Periodic Review process in 2009. Full prohibition of corporal punishment was achieved in 2007.

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

www.endcorporalpunishment.org; info@endcorporalpunishment.org

January 2011