

Corporal punishment of children in Andorra

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Child population 12,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

Prohibition of corporal punishment

Home

Corporal punishment is unlawful in the home. The Criminal Code 2005 punishes domestic violence and physical ill-treatment, including physical assault which does not cause injury (arts. 114 and 476). In December 2014, article 476 of the Code was amended to clarify that it applies to corporal punishment, so that it now states (unofficial translation): “Whoever corporally mistreats mildly or harm physically, a person, shall be punished by imprisonment or a fine up to 6.000 euros. If the mistreatment consists of a corporal punishment, a sentence of imprisonment shall be imposed.” The amendment was included in Qualified Act No. 40/2014 of 11 December, on the modification of the Qualified Act No. 2005 of 21 February, of the Andorran Criminal Code, and was published in the Andorran Official Journal No. 2 of 14 January 2015. In March 2015, the Government confirmed that “with this reform, the legislator has aimed at introducing the word ‘punishment’ together with the word ‘corporal’ [into the Criminal Code], thus eliminating any shadow of doubt about the criminalisation of corporal punishment in Andorra”.¹

In October 2018, the Government reported that a draft Law on the rights of the child would include an explicit prohibition of corporal punishment as well as prevention and protection measures.²

Alternative care settings

Corporal punishment is unlawful in all alternative care settings under article 476 of the Criminal Code 2005, as amended in 2014 (see under “Home”).

Day care

Corporal punishment is unlawful in early childhood care and in day care for older children under article 276 of the Criminal Code 2005, as amended in 2014 (see under “Home”).

¹ Correspondence from Cristina Rodriguez Galan, Acting Minister of Health and Welfare, 12 March 2015

² 31 October 2018, RAP/Cha/AND/12(2019), National report to the European Committee of Social Rights, page 28

Schools

Corporal punishment is unlawful in schools under article 476 of the Criminal Code 2005, as amended in 2014 (see under “Home”). Prior to this reform, it was considered unlawful – but was not explicitly prohibited – under the provisions for the respect of freedom and basic rights including the dignity of the person in Qualified Law 1993 on Education, the Law Regulating the Andorran Educational System 1994, the Regulations for Private Teaching Centres 1994, the Regulations for Safety in Schools 2000 and the Law Guaranteeing the Rights of the Disabled 2002.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. Qualified Act No. 4/2007 on Prisons states that prisoners have “the right to decent and respectful treatment by prison staff, without prejudice to any disciplinary measures and punishments that may be administered as provided for in the prison regulations”. The Act also states that prisoners “may not be subjected to torture, ill-treatment or physical or verbal harassment” and “may not be subjected to degrading treatment, or to an over-rigorous or disproportionate application of the prison regulations” (art. 6). There is no provision in the Act for corporal punishment as a disciplinary measure. Article 476 of the Criminal Code 2005 as amended in 2014 is also applicable (see under “Home”).

The Prison Service Act No. 3/2007 states that “the life and physical integrity of prisoners shall be protected and their rights, honour and dignity respected” and that “coercion may only be used to fulfil a legitimate function and with due regard for the principles of proportionality, necessity and the security of those in prison, and in order to prevent escapes or prisoner violence and to avoid prisoners inflicting harm on themselves or others” (art. 7). Article 5 of Qualified Act No. 8/2004 on the Police states that with regard to persons in detention police officers must “protect the life and physical integrity of prisoners or others under their supervision and respect their rights, honour and dignity”. Qualified Act 1999 on Juvenile Justice also applies: we have no details of its provisions.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Code 2005.

Universal Periodic Review of Andorra’s human rights record

Andorra was examined in the first cycle of the Universal Periodic Review process in 2010 (session 9). During and following the review, the Government stated that corporal punishment is unlawful in the home and punishable under criminal law.³ Nevertheless, the following recommendations were made and were accepted by the Government:⁴

“Enact and implement legislation that unambiguously prohibits all corporal punishment in the home (Netherlands);

³ 4 January 2011, A/HRC/16/8, Report of the working group, paras. 49, 50 and 68; 6 April 2011, A/HRC/16/L.41, Report of the Human Rights Council on its sixteenth session, para. 492

⁴ 4 January 2011, A/HRC/16/8, Report of the working group, paras. 30, 56, 83(2), 83(7) and 83(10)

“Take all necessary measures to fully implement the Convention on the Rights of the Child, including by prohibiting corporal punishment of children in all settings (Sweden);

“Continue to develop measures against domestic violence, maltreatment and abuse, including sexual abuse, and, as recommended by the Committee on the Rights of the Child, explicitly prohibit corporal punishment, not only in schools, but also in the family (Spain)”

Examination in the second cycle took place in 2015 (session 22). The following recommendation was made:⁵

“Prohibit and sanction appropriately corporal punishment (Chile)”

The Government “noted” the recommendation, confirming that prohibition has been achieved: “Andorra noted the recommendation contained in paragraph 85.2 regarding the prohibition of corporal punishment of children, based on the legal framework already in force in Andorra. It stated that article 476 of the Criminal Code Qualifying Law 4/2005, as amended by article 40 of Law 40/2014 of 11 December 2014, clearly prohibits all forms of corporal punishment of children, including teenagers, in all settings in Andorra.”⁶

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(30 November 2012, CRC/C/AND/CO/2, Concluding observations on second report, paras. 7, 8, 30 and 31)

“The Committee, while welcoming the State party’s efforts to implement the Committee’s concluding observations of 2002 on the State party’s initial report (CRC/C/61/Add.3), notes with regret that some of the recommendations contained therein have not been fully addressed.

“The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations on the initial report under the Convention that have not been implemented or sufficiently implemented, particularly those related to a national plan of action, coordination, data collection, definition of the child and violence against children, including corporal punishment.

“The Committee notes that the State party accepted the recommendation to prohibit all corporal punishment of children during the universal periodic review in 2010, and the amendment of the Criminal Code by Law 91/2010 to include a specific provision regarding maltreatment at home. However, the Committee is concerned that the amended provision does not specifically refer to corporal punishment or explicitly prohibit such forms of punishment in all settings, such as private or public educational or alternative care institutions or the penal system.

“In light of its general comment No. 8 (2007), the Committee recalls its previous recommendation (CRC/C/15/Add.176, para. 40), and urges the State party to:

- a) enact legislation that explicitly prohibits all forms of corporal punishment in the family, schools and alternative care settings and penal institutions;
- b) ensure that laws prohibiting corporal punishment are effectively implemented and that legal proceedings are systematically initiated against those responsible for violence against children;

⁵ 15 July 2015, A/HRC/30/9, Report of the working group, para. 85(2)

⁶ 15 July 2015, A/HRC/30/9, Report of the working group, para. 87

c) introduce sustained public education, awareness-raising and social mobilization programmes, involving children and families, on the harmful effects, both physical and psychological, of corporal punishment, with a view to changing the attitude towards this practice, and to promote positive, non-violent and participatory forms of child-rearing and discipline;

d) ensure the involvement and participation of the whole society, including children, in the design and implementation of preventive strategies against violence and other forms of abuse.”

Committee on the Rights of the Child

(7 February 2002, CRC/C/15/Add.176, Concluding observations on initial report, paras. 39 and 40)

“...while noting that corporal punishment in school is prohibited under law, [the Committee] remains concerned that corporal punishment in the family is not expressly prohibited. It also notes with concern reports about episodes of bullying in schools.

“In light of article 19, the Committee recommends that the State party:

e) prohibit the practice of corporal punishment in the family and conduct information campaigns targeting, among others, parents, children, law enforcement and judicial officials and teachers, explaining children’s rights in this regard and encouraging the use of alternative forms of discipline in a manner consistent with the child’s human dignity and in conformity with the Convention, especially articles 19 and 28.2.”

Committee Against Torture

(20 December 2013, CAT/C/AND/CO/1, Concluding observations on initial report, para. 20)

“In light of the State party’s commitment under the universal periodic review to enact and implement legislation that prohibits all corporal punishment of children, the Committee is concerned that corporal punishment is not yet explicitly prohibited in all settings (art. 16).

The Committee recommends that the State party enact and implement legislation that explicitly prohibits corporal punishment of children in all settings.”

European Committee of Social Rights

(January 2016, Conclusions 2015)

“In its previous conclusion the Committee found that corporal punishment of children was not explicitly prohibited in the home, in schools and in institutions.

“According to the report, corporal punishment of minors is explicitly prohibited in the home, as provided in Article 114 of the Penal Code which concerns abuse in the home. The report states that the Penal Code in this respect is totally clear and prohibits all forms of physical or psychological violence against people in general, including child abuse and acts causing bodily harm.

“However, the report further states that several international organisations have repeatedly reported that the legislation of Andorra does not expressly prohibit corporal punishment (especially of children), despite the efforts to explain that the conduct constituting a criminal offense under Andorran Penal Code which prohibits any kind of bad bodily treatment (in all environments, institutional, family, school, professional, etc.), includes corporal punishment.

“The Committee notes from another source (Global Initiative to End Corporal Punishment of Children) that the law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

“In December 2014, Article 476 of the Penal Code was amended to clarify that it applies to corporal punishment, so that it now states: “Whoever mistreats mildly or harms physically, a person, shall be punished by imprisonment or a fine. If the mistreatment consists of a corporal punishment, a sentence of imprisonment shall be imposed.”

“Corporal punishment is therefore now unlawful in all alternative care settings and in the home under Article 476 of the Penal Code 2005, as amended in 2014.

“The Committee notes that with these legislative amendments the situation has been brought into conformity, but outside the reference period. Accordingly, the Committee considers that during the reference period the situation was not in conformity with the Charter as corporal punishment was not prohibited in the home in schools and in institutions.”

“The Committee concludes that during the reference period the situation in Andorra was not in conformity with Article 17§1 of the Charter on the ground that corporal punishment was not prohibited in the home in schools and in institutions.”

European Committee of Social Rights

(January 2012, Conclusions 2011)

“The Committee recalls that under Article 17 of the Charter States' domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. There will be no sufficient prohibition in law unless a state can demonstrate that legislation is interpreted as prohibiting corporal punishment and effectively applied as such.

“According to the report, Law of 21 February 2005 on the Penal Code prohibits all forms of physical and psychological violence against persons in general, including corporal punishment. Even if no legal text deals with corporal punishment, it is forbidden in the family and educational establishments.

“The Committee notes from another source that corporal punishment is lawful in the home. The *Llei qualificada* on adoption and other forms of protection of abandoned minors states that the purpose of parental authority is to protect the child's safety, health and morals, and parents have a right and duty to care for, watch over, maintain and educate the child (Sections 27-28). The Criminal Code (2005) punishes habitual and repeated domestic violence and physical ill-treatment, including physical assault which does not cause injury (Articles 114 and 476), but this is not interpreted as prohibiting all corporal punishment in childrearing. The Government accepted the recommendations on the issue during the Universal Periodic Review.

“According to the same source, there is no explicit prohibition of corporal punishment in schools, but the qualified law on education (1993), the law regulating the Andorran educational system (1994), the regulations for private teaching centres (1994), the regulations for safety in schools (2000) and the law guaranteeing the rights of the disabled (2002) provide for the respect of freedom and basic rights, including the dignity of the person.

“The Committee notes from the same source that there is no explicit prohibition of corporal punishment in alternative care settings.

“The Committee considers that the Andorran legislation lacks explicit prohibition of corporal punishment in the home, in schools and in institutions. Therefore, the situation is not in conformity with the Charter on this ground.

“The Committee concludes that the situation in Andorra is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment is not explicitly prohibited in the home, in schools and in institutions.”

Prevalence/attitudinal research in the last ten years

None identified.