

Corporal punishment of children in Austria

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Child population 1,481,000 (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 prohibited in the home. The defence of “reasonable” punishment was removed from the law on assault in 1977. Article 146a of the General Civil Code 1989 states: “The minor child must follow the parents’ orders. In their orders and in the implementation thereof, parents must consider the age, development and personality of the child; the use of force and infliction of physical or psychological suffering are not permitted.” The Federal Constitutional Act on the Rights of Children 2011 confirms the prohibition in article 5(1): “Every child has the right to non-violent upbringing. Corporal punishment, the infliction of mental suffering, sexual abuse and other abuses are prohibited....”

According to the Government’s report to the Committee Against Torture, corporal punishment is penalised under the Criminal Code provisions on intentional injury or harm to a person (art. 83); if no injury/harm is caused, and if the punishment is inflicted in public or before several people, the penalty is that for the offence of insult (art. 115).¹

During the Universal Periodic Review of Austria in 2015, the Government confirmed that protection of children from violence was a core priority, that corporal punishment is prohibited by law, that all relevant agencies, teachers and health officials have a legal obligation to report any violence against children, and that the Government is hosting a high-level global conference on the theme “towards a childhood free from corporal punishment” in June 2016, at which it would present findings from its monitoring of changes in public attitudes and awareness.²

Alternative care settings

Corporal punishment is prohibited in alternative care settings. The provisions prohibiting corporal punishment in article 146a of the General Civil Code 1989 and article 5 of the Federal Constitutional

¹ 29 September 2014, CAT/C/AUT/6, Sixth state party report, para. 151

² 22 December 2015, A/HRC/31/12, Report of the working group, paras. 69, 132 and 133

Act on the Rights of Children 2011 (see under “Home”) apply to all persons with parental authority over children.

Day care

Corporal punishment is prohibited in early childhood care and in day care for older children. The provisions prohibiting corporal punishment in article 146a of the General Civil Code 1989 and article 5 of the Federal Constitutional Act on the Rights of Children 2011 (see under “Home”) apply to all persons with parental authority over children.

Schools

Corporal punishment was banned in all schools in 1974. Article 47(3) of the School Education Act states: “In order to maintain discipline in schools, teachers may not have recourse to means that would injure the human dignity of pupils, such as corporal punishment or insulting remarks or collective punishments.” The prohibition of corporal punishment in article 5 of the Federal Constitutional Act on the Rights of Children 2011 also applies (see under “Home”).

The Government has since 2008 implemented nation-wide the project “Weisse Feder — together for fairness and against violence”, an initiative of the Federal Ministry for Education and Women. Awareness raising and training also takes place through the education programmes of the Austrian Teachers’ College, and violence prevention programmes are conducted at school level.³

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. Article 109 of the Penal Service Act sets out disciplinary measures for penal institutions and makes no provision for corporal punishment.⁴

The prohibition of corporal punishment in article 5 of the Federal Constitutional Act on the Rights of Children 2011 (see under “Home”) is applicable in all settings.

Sentence for crime

Corporal punishment was abolished as a sentence for crime by 1867 and is not available as a sanction under the Penal Code, the Penal Execution Act, the Code of Criminal Procedure Reform Act 2004 or the Juvenile Court Act 1988.

Universal Periodic Review of Austria’s human rights record

Austria was examined in the first cycle of the Universal Periodic Review in 2011 (session 10). No recommendations were made concerning corporal punishment of children.

Examination in the second cycle took place in 2015 (session 23). No recommendations were made specifically concerning corporal punishment of children.

³ 29 September 2014, CAT/C/AUT/6, Sixth state party report, para. 154; see also www.schulpsychologie.at/gewaltpraevention, accessed 7 September 2015

⁴ 29 September 2014, CAT/C/AUT/6, Sixth state party report, para. 153

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(March 2020, CRC/C/AUT/CO/5-6, Concluding observations on fifth/sixth report, para. 22)

“While the Committee notes with appreciation that the abolition of corporal punishment has generated a shift in public attitudes on violence against children, it remains concerned that the legal prohibition of certain forms of violence is still unknown to a considerable part of the population. It is further concerned about reports that mental violence is increasing and with reference to its general comment No. 8 (2006) on corporal punishment and other cruel or degrading forms of punishment, the Committee recommends that the State party increase its efforts to raise awareness among children, parents, caregivers, teachers and staff working with and for children regarding the existence, content and sanctions contained in the legal ban on violence, including mental violence.”

Committee on the Rights of the Child

(3 December 2012, CRC/C/AUT/CO/3-4, Concluding observations on third-fourth report, paras. 33 and 34)

“The Committee notes that the State party has taken measures to raise awareness about non-violent forms of child-rearing, including financial support to institutions that are educating parents on such forms of child-rearing. However, it remains concerned by the continued use of corporal punishment by many parents and by the fact that parts of the population are still unaware of the prohibition of all forms of corporal punishment in the State party.

“The Committee recommends that the State party strengthen and expand awareness-raising programmes and education campaigns in order to promote positive and alternative forms of discipline and respect for children's rights, with the involvement of children, in line with its general comment No. 8 (2006) . It also recommends that the State party continue educating teachers and parents on the immediate and long-term negative impact, including the psychological and physical impact, of corporal punishment on children.”

Committee on the Rights of the Child

(31 March 2005, CRC/C/15/Add.251, Concluding observations on second report, paras. 39 and 40)

“The Committee appreciates that corporal punishment has been prohibited by law in all settings, including in the family, the penal system and institutions of childcare. However, the Committee is concerned that corporal punishment may still be practised in the family.

“The Committee recommends that the State party continue its public education and awareness raising campaigns on non-violent forms of discipline and child-rearing. The Committee also recommends that the State party undertake studies on the prevalence of violence in children’s experiences and the negative effects of corporal punishment on the development of children.”

Committee on the Rights of the Child

(7 May 1999, CRC/C/15/Add.98, Concluding observations on initial report, para.3)

“The Committee commends the State party on its prohibition of all forms of corporal punishment through its 1989 ban on ‘any type of physical or psychological abuse of children as means of education’ (CRC/C/11/Add.14, para. 256). It also notes additional efforts to increase the protection of

children against abuse, including the adoption of a comprehensive list of measures against violence in family and society and of an Action Plan against Child Abuse and against Child Pornography in the Internet....”

European Committee of Social Rights

(March 2020, Conclusions 2019)

“The Committee notes that the situation previously found to be in conformity has not changed (Conclusions 2015. It recalls that that all forms of corporal punishment are prohibited in all settings, including in the home.”

European Committee of Social Rights

(January 2016, Conclusions 2015)

“The Committee notes that corporal punishment is prohibited in all settings, including the home.”

European Committee of Social Rights

(January 2012, Conclusions 2011)

“The Committee notes from another source that corporal punishment is prohibited in the home. Article 146a of the General Civil Code (1989) states: ‘The minor child must follow the parents’ orders. In their orders and in the implementation thereof, parents must consider the age, development and personality of the child; the use of force and infliction of physical or psychological suffering are not permitted.’ The defence of ‘reasonable’ punishment was removed from the law on assault in 1977.

“Corporal punishment was banned in all schools in 1974. Section 47.3 of the School Education Act states: ‘In order to maintain discipline in schools, teachers may not have recourse to means that would injure the human dignity of pupils, such as corporal punishment or insulting remarks or collective punishments.’”

European Committee of Social Rights

(2001, Conclusions XV-2, page 67)

“The Act No.162/1989 on Parents and Children (Amendment) prohibits the use of force and the infliction of physical and mental suffering on children. Section 146a of the General Civil Code states, ‘the application of violence and the infliction of physical or mental harm are unlawful’.”

Prevalence/attitudinal research in the last ten years

A 2014 study presented 1,000 representatives of the Austrian population over the age of 15 with the same statements presented in a similar study in 1977, in order to identify changes in attitudes to methods of child-rearing and the broader impact of legal prohibition of violence. *“A little slap now and again never harmed a child”* received the highest approval rating in 1977 with 85% deeming it a valid means of child-rearing; only 4% thought it was wrong. By 2014, only 16% approved; almost every second interviewee (48%) disapproved. The most likely group to agree were men over 50, while women between 40 and 49 had the highest disapproval rate. *“One must physically punish children if they misbehave, lest they turn soft or run wild”* met with 89% disapproval in 2014; only 1%

agreed. In 1977, 13% had agreed and a further 23% had partially agreed with physical “discipline”. “*It’s no big deal to lose one’s temper and deal a slap here or there when a child is misbehaving*” – the belittlement of hitting has seen a considerable drop in approval, from 57% in 1977 to only 3% in 2014; disapproval for this statement increased dramatically from 10% in 1977 to 77% in 2014, clearly illustrating a shift in attitude towards the significance of hitting a child. “*When adults are speaking, children should remain quiet*” attracted 64% approval in 1997, while a further 28% partially approved. In 2014, only 16% of respondents agreed with the statement and 66% partially agreed. This suggests a move away from a relatively dominant authoritarian viewpoint to children’s participation, towards a more inclusive role for children.

(Federal Ministry for Youth and Family (BMFJ) (2014), *The Right to an Upbringing Free of Violence. 25 years of prohibition of violence by law – an interim review*, Vienna: Federal Ministry for Youth and Family (BMFJ))

A 2013 study found that 18-29 year olds, who grew up mostly after prohibition, were less likely to have been slapped or smacked on the bottom by their parents than people over 30.

(Spectra Marktforschung (2013), *Gewaltverbot in der Erziehung: trendmessung zu 2009*)

A study involving focus groups and interviews with 104 13-22 year olds with experience of youth custody in Austria, Cyprus, England, the Netherlands and Romania found that in Austria, young people in custody experienced solitary confinement and imprisonment in dark, dirty basement rooms for up to two weeks as punishment. Young people in pre-trial detention described a group of prison guards who were considered to be particularly violent, the “Emergency Squad”, who used special grips on young people and carried batons.

(Children’s Rights Alliance for England (2013), *Speaking Freely: Children and Young People in Europe Talk about Ending Violence Against Children in Custody – Research Report*, London: CRAE)

A study carried out in 2008 examined the prevalence of corporal punishment and attitudes towards it through interviews with 1,054 Austrian 12-18 year olds, 1,049 Austrian parents and 614 immigrant parents (from Turkey, the former Yugoslavia and Eastern Europe) living in Austria. Compared to a similar study in 1991, which involved 380 parents of children aged under 6, the study found that the prevalence of corporal punishment had fallen: in 2008, 31.4% of Austrian mothers of children under 6 never used corporal punishment, compared to 8.5% in 1991; 4.1% used “light” corporal punishment such as slapping and spanking “often”, compared to 30.5% in 1991. A large majority of all the groups interviewed agreed that “a non-violent upbringing is ideal”: 88.3% of young people, 86.2% of Austrian parents and 81.1% of immigrant parents. Ninety-six per cent of young people believed they had legally defined rights, 78.1% of boys and 84.6% of girls were “sure” they had a right to an upbringing without violence, and 41.2% of boys and 42.1% of girls were aware of the law prohibiting corporal punishment. Of those who were aware of the law, 62.4% of young people had heard about it at school or other facilities for children, and 70.8% of Austrian and 66.7% of immigrant parents had heard about it in the media (TV, newspapers, radio and cinema).

(Bundesministerium für Wirtschaft, Familie und Jugend (2009) *Familie - kein Platz für Gewalt!(!): 20 Jahre gesetzliches Gewaltverbot in Österreich*, Vienna: Bundesministerium für Wirtschaft, Familie und Jugend)

A study carried out in 2007 examined five European countries, Sweden, Austria, Germany, France and Spain. Five thousand parents (1,000 in each nation) were interviewed about their use of and attitude towards corporal punishment, their own experiences of violence and their knowledge and beliefs about the law. Half (50%) of Austrian parents said they had “mildly” slapped their child on the face, 62% on the bottom; 18% had given their child a “resounding” slap on the face, 4.4% had beaten their child with an object. Around a third (30%) of Austrian parents never used corporal punishment; 89% agreed that “one should try to use as little corporal punishment as possible”, and 86% agreed that “non-violent child-rearing is the ideal”.

(Busmann, K. D. (2009), *The Effect of Banning Corporal Punishment in Europe: A Five-Nation Comparison*, Martin-Luther-Universität Halle-Wittenberg)