

Corporal punishment of children in Germany

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Child population 12,769,000 (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. In 2000, article 1631(2) of the Civil Code was amended by the Act to Prohibit Violence in the Upbringing of the Child to state: “Children have the right to a non-violent upbringing. Corporal punishment, psychological injuries and other humiliating measures are prohibited.” German childcare law was amended to place a duty on authorities to “promote ways in which families can resolve conflict without resort to force”. Article 16(1) of the Social Welfare Code Book VIII was amended to provide for the promotion of non-violent conflict resolution within families: “[Family support measures] should help to ensure that mothers, fathers and other guardians carry out their parental responsibilities better. They should also identify ways in which conflict situations in the family can be resolved without violence.” Prosecution may be pursued through the Criminal Code provisions on offences relating to bodily harm (arts. 223ff).

Alternative care settings

Corporal punishment is unlawful in alternative care settings under the Civil Code (see under “Home”).

Day care

Corporal punishment is unlawful in early childhood care and in day care for older children under the Civil Code (see under “Home”).

Schools

Corporal punishment has been prohibited in schools since the 1970s, but we have no details of current prohibiting legislation other than the Civil Code (see under “Home”).

Penal institutions

Corporal punishment is not a permitted disciplinary measure in penal institutions under the national administrative regulations on juvenile punishment, the Act on the Execution of Sentences, the Juvenile Detention Execution Order, the Act on the Execution of Remand Detention, the Juvenile Courts Act and the Youth Prison Act. The Basic Law states that “human dignity shall be inviolable” (art. 1(1)) and that “persons in custody may not be subjected to mental or physical mistreatment” (art. 104(1)).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under the Juvenile Courts Act, the Criminal Code and the Criminal Procedure Code.

Universal Periodic Review of Germany’s human rights record

Germany was examined in the first cycle of the Universal Periodic Review in 2009 (session 4). No recommendations were made specifically concerning corporal punishment of children.

The second cycle review of Germany took place in 2013 (session 16). No recommendations were made on corporal punishment of children.

Third cycle examination took place in 2018 (session 30). No recommendations were extended on the issue of corporal punishment of children.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(31 January 2014, CRC/C/DEU/C0/3-4 Advance Unedited Version, Concluding observations on third/fourth state party report, paras. 32 and 33)

“The Committee notes with appreciation that children have a statutory right to violence-free upbringing. Nevertheless, the Committee remains concerned that a significant number of children experience different forms of violence in their homes.

“The Committee recommends that the State party take all necessary effort to ensure that the right to a violence-free upbringing be more effectively implemented. Furthermore, the Committee recommends that the State party develop and strengthen already existing awareness-raising programmes aimed at promoting positive, non-violent and participatory forms of child-rearing and discipline to replace corporal punishment.”

Committee on the Rights of the Child

(26 February 2004, CRC/C/15/Add.226, Concluding observations on second report, para. 40)

“The Committee welcomes the introduction in 2000 of the law to prohibit violence in the upbringing of children, which prohibits corporal punishment within the family, and of various other legal instruments to fight against domestic violence (e.g. 2002 Act for Further Improving Children’s Rights) but remains concerned that there is a lack of comprehensive data and information on the impact of the new legislation....”

Committee on the Rights of the Child

(27 November 1995, CRC/C/15/Add.43, Concluding observations on initial report, para. 30)

“...The Committee encourages the State party to pursue its efforts towards changing attitudes with a view to eradicating all forms of violence against children, including the use of corporal punishment within the family. In this regard, it further encourages that, in the ongoing process of reform of the Civil Code, consideration be given to the incorporation of an absolute ban on corporal punishment.”

Committee Against Torture

(12 December 2011, CAT/C/DEU/CO/5, Concluding observations on fifth report, para. 32)

“While taking note that corporal punishment is prohibited in all circumstances in the German legal system (sect. 163 of the Code of Civil Law), the Committee expresses concern at the absence of information on the efforts to provide appropriate and ongoing public education and professional training on the prohibition of corporal punishment in all settings (art. 16).

The Committee recommends that the State party actively promote positive, participatory and non-violent forms of education and child-rearing as an alternative to corporal punishment.”

European Committee of Social Rights

(March 2020, Conclusions 2019)

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter (Conclusions 2015). The Committee recalls that all forms of corporal punishment are prohibited in all settings.

European Committee of Social Rights

(January 2016, Conclusions 2015)

“The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.”

European Committee of Social Rights

(January 2012, Conclusions 2011)

“The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.”

European Committee of Social Rights

(2005, Conclusions XVII-2, vol. 1, pages 282-283)

“The Committee notes that a number of provisions in the German Penal Code ensure the prohibition of personal injury. Article 223 et seq. of the German Penal Code stipulates that it is a punishable offence to physically maltreat a person and to endanger a person’s health. This prohibition applies regardless of the place of the offence. The Committee notes from another source that the law to

prohibit violence in the upbringing of children of 2 November 2000 grants children the right to an upbringing free of violence and prohibits all forms of violence against children, including the application of physical punishment for the purposes of upbringing.”

European Committee of Social Rights

(1 June 2001, Addendum to Conclusions XV-2, pages 59-61)

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

Prevalence/attitudinal research in the last ten years

In a survey carried out in 2012 by the opinion research centre Forsa, four out of ten parents said they “gave their children the odd smack on the bottom”; 10% had slapped their children in the face.

(Reported in *dw.de*, 13 March 2012)

A 2011 study that involved 9,500 16-40 year olds found that 52% had not been physically punished in childhood. This proportion had doubled since a similar study in 1992, when the figure was 26%. Younger people were most likely to have never been physically punished: 63% of 16-20 year olds reported this. The proportion of people who had experienced “light” violence in childhood decreased significantly, from 58% in 1992 to 36% in 2011.

(Pfeiffer, C. (2012), “Weniger Hiebe, mehr Liebe. Der Wandel familiärer Erziehung in Deutschland”, *Centaur*, 11(2), 14-17, cited in Pfeiffer, C. (2013), *Parallel Justice – Why Do We Need Stronger Support for the Victim in Society?*, address at the closing plenary session of the 18th German Congress on Crime Prevention, April 23, 2013)

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. In Germany, 43% said they had “mildly” slapped their child on the face, 68% on the bottom; 13% had given their child a “resounding” slap on the face, and 5.2% had beaten their child with an object. Twenty-eight per cent of German parents never used corporal punishment; 88% agreed that “one should try to use as little corporal punishment as possible”, and 87% 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)