

Corporal punishment of children in Montenegro

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Child population 142,000 (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. Amendments to the Family Law 2007 were voted in July 2016 which made substantial changes to the Law. Article 9a was inserted to state: “(1) Child [sic] shall not be subjected to corporal punishment or any other cruel, inhuman or degrading treatment. (2) The prohibition referred to in para 1 above shall pertain to parents, guardians and all other persons taking care of or coming into contact with the child. (3) The persons referred to in para 2 above are obliged to protect the child from any treatment referred to in para 1 above.”

In reporting to the Human Rights Committee in October 2014, the Government had reported that the National Plan of Action for Children 2013–2017 envisaged “the implementation of at least three national campaigns to raise public awareness about the negative impact of corporal punishment of children in all settings” and that “there are plans for legislative amendments in order to explicitly define the prohibition of all forms of corporal punishment of children within the family, alternative forms of protection, schools, and institutions of children’s and social welfare”.¹

Montenegro is a Pathfinder country with the Global Partnership to End Violence Against Children, which was established in 2016. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals. The Strategy for the Prevention and Protection of Children from Violence 2017– 2021 has reportedly been adopted.² A National Action Plan for Children for the period 2018–2022 is to be adopted by the end of 2018.³

¹ 22 October 2014, CCPR/C/MNE/Q/1/Add.1, Reply to list of issues, para. 34

² 6 November 2017, A/HRC/WG.6/29/MNE/1, National report, para. 98

³ 18 April 2018, A/HRC/38/13, Report of the working group, para. 10; 5 June 2018, A/HRC/38/13/Add.1, Report of the working group: Addendum, para. 23

Alternative care settings

Corporal punishment in alternative care settings is prohibited under article 9a of the Family Law 2007 (amended 2016, see under “Home”).

Day care

Corporal punishment in early childhood care (nurseries, crèches, etc) and in day care for older children (day centres, after-school childcare, childminding, etc) is prohibited under article 9a of the Family Law 2007 (amended 2016, see under “Home”). It is also prohibited in the provision of preschool education under article 111 of the General Law on Education (see under “Schools”).

Schools

Corporal punishment is prohibited in schools in article 111 of the General Law on Education – “the employment of a teacher who ... (9) humiliates, insults, or punishes students physically ... shall be ceased” – and article 9a of the Family Law 2007 (amended 2016, see under “Home”). The Law on Primary Education (art. 66) and the Law on High School (art. 49) do not include corporal punishment among permitted disciplinary measures.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institution under article 9a of the Family Law 2007 (amended 2016, see under “Home”). Acceptable disciplinary measures in juvenile prisons listed in the Law on the Treatment of Juveniles in Criminal Procedure 2011 do not include corporal punishment (art. 175), but there is no explicit prohibition.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under the Criminal Code and the Law on Juvenile Perpetrators of Criminal Acts and on Criminal Legal Protection of Minors, which make no provision for judicial corporal punishment. Under the Law on Execution of Criminal Sanctions any actions which involve subjecting a convicted person to ill-treatment or against human dignity are prohibited.

Universal Periodic Review of Montenegro’s human rights record

Montenegro was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). No specific recommendations on corporal punishment were made. However, the following recommendation was made and was accepted by the Government:⁴

“Incorporate international human rights treaties into national law (Croatia)”

The second cycle review took place in 2013 (session 15). The following recommendations were made:⁵

⁴ 9 January 2009, A/HRC/10/74, Report of the working group, para. 66(5); 9 November 2009, A/HRC/10/29, Report of the Human Rights Council on its tenth session, para. 411

⁵ 21 March 2013, A/HRC/23/12, Report of the working group, paras. 117(17), 118(5) and 119(9)

“Take measures to raise the public’s awareness of the negative impacts of corporal punishment on children (Liechtenstein);

“Explicitly prohibit corporal punishment in all settings, including the home, schools and alternative care facilities, and establish appropriate complaints mechanism for children (Liechtenstein);

“Enact legislation to prohibit explicitly corporal punishment of children in all settings, including at home and by members of their family (Germany)”

The Government immediately accepted the first of these recommendations, stating that the second is already implemented.⁶ The Government later accepted the remaining recommendation, stating: “Montenegro will embark on legal amendments to explicitly prohibit corporal punishment of children in all settings; a media campaign will be launched on the consequences of corporal punishment of children.”⁷

Third cycle examination took place in 2018 (session 29). The Government supported the following recommendation as “already implemented or in the process of implementation”:⁸

“Adopt measures to generate public conscience in order to ensure that the legal prohibition of corporal punishment is effectively complied with (Uruguay)”

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(1 June 2018, CRC/C/MNE/CO/2-3 Advance unedited version, Concluding observations on second/third report, paras. 33 and 34)

“The Committee welcomes the prohibition of corporal punishment in all settings and related public education campaigns, but is concerned that the legislation does not provide a clear definition of corporal punishment or specific sanctions for those inflicting corporal punishment. It is also concerned about the persistence of the practice as a widely accepted form of discipline, the lack of enforcement mechanisms and limited protection and assistance for victims.

“The Committee recommends that the State party:

- (a) Ensure that the prohibition of corporal punishment is adequately monitored and enforced in all settings, including by explicitly defining corporal punishment in legislation, initiating legal proceedings against those who inflict corporal punishment and ensuring commensurate sanctions;
- (b) Raise awareness about the prohibition of violence against children among all professionals working with and for children, and develop a code of conduct for teachers and provide relevant training;
- (c) Establish a complaints mechanism in schools so that children can confidentially report teachers who use corporal punishment, and provide training to professionals working with and for children on identifying and providing adequate support for victims;
- (d) Strengthen and expand awareness-raising programmes, including campaigns among parents, teachers and relevant professional groups, to promote positive, non-violent and participatory forms

⁶ 21 March 2013, A/HRC/23/12, Report of the working group, paras. 117(17) and 118(5)

⁷ 18 April 2013, A/HRC/23/12/Add.1, Report of the working group: Addendum, para. 21

⁸ 18 April 2018, A/HRC/38/13, Report of the working group, para. 105(125)

of child-rearing and discipline and to promote a change in the mindset on corporal punishment in all settings.”

Committee on the Rights of the Child

(21 October 2010, CRC/C/MNE/CO/1, Concluding observations on initial report, paras. 36 and 37)

“The Committee is concerned at the lack of information provided by the State party on the prohibition of corporal punishment. Furthermore, the Committee is concerned that corporal punishment is widely practiced in the family, in schools, in institutions, in the juvenile justice system and in other settings. Furthermore, the Committee is deeply concerned at the high prevalence of use of corporal punishment against children with disabilities.

“The Committee urges the State party, by taking into account its general comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/GC/2006/8), to:

- a) amend all relevant laws to ensure that corporal punishment is explicitly prohibited in all settings, including the family and alternative care settings, and ensure the effective implementation of these laws;
- b) conduct awareness-raising campaigns to inform the public about the negative impact of corporal punishment on children and actively involve children and the media in the process;
- c) promote non-violent, positive, participatory methods of childrearing and education and reinforcing knowledge among children of their right to protection from all forms of corporal punishment; and
- d) bring offenders before the competent administrative and judicial authorities.”

Committee Against Torture

(17 June 2014, CAT/C/MNE/CO/2, Concluding observations on second report, para. 21)

“While welcoming the commitment made by the State party during the universal periodic review to explicitly prohibit corporal punishment of children in all settings (A/HRC/23/12/Add.1, para. 21), the Committee notes that corporal punishment of children is not explicitly prohibited in the home or in alternative care settings and that corporal punishment is still widely practised in society and accepted as a form of discipline in Montenegro. (art. 16)

The State party should adopt and implement legislation explicitly prohibiting corporal punishment in all settings, supported by the necessary awareness-raising and educational campaigns about the negative impact of corporal punishment on children.”

Committee Against Torture

(19 January 2009, CAT/C/MNE/CO/1, Concluding observations on initial report, para. 22)

“The Committee notes that corporal punishment of children is not explicitly prohibited in the home and in alternative care settings (art. 16).

Taking into account the recommendation in the United Nations Secretary General’s Study on Violence Against Children (A/61/299), the State party should adopt and implement legislation prohibiting corporal punishment in all settings, supported by the necessary awareness-raising and educational campaigns.”

Human Rights Committee

(21 November 2014, CCPR/C/MNE/CO/1, Concluding observations on initial report, para. 13)

“While taking note that violence against children and corporal punishment is legally prohibited in schools and some institutional settings, the Committee notes that corporal punishment remains a concern especially in the home where it traditionally continues to be accepted and practised as a form of discipline by parents and guardians (arts. 7 and 24).

The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.”

European Committee of Social Rights

(January 2016, Conclusions 2015)

“The Committee recalls that under Article 17 of the Charter, the prohibition of any form of corporal punishment of children is an important measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2). The Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in *World Organisation against Torture (OMCT) v. Portugal* (Complaint No. 34/2006, decision on the merits of 5 December 2006; §§19-21):

“To comply with Article 17, states’ domestic law must prohibit and penalize 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.

Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.”

“The Committee has noted that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comments Nos. 8 and 13 of the Committee on the Rights of the Child (*Complaint No 93/2013 Association for the Protection of All Children (APPROACH) v. Ireland*, decision on the merits of 2 December 2014, §§45-47).

“The Committee notes from the Global Initiative to End Corporal Punishment of Children that corporal punishment in Montenegro is lawful in the home. There is no legal defence for its use enshrined in law and provisions against violence and abuse in the Criminal Code 2004, the Family Act 2007, the Charter on Human and Minority Rights and Civil Liberties 2003 and the Law on Family Violence Protection 2010 do not include explicit prohibition of all corporal punishment in childrearing.

“There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents.

“Corporal punishment is prohibited in schools according to Section 111 of the General Law on Education. The Law on Primary Education (art. 66) and the Law on High School (art. 49) do not

include corporal punishment among permitted disciplinary measures.

“The Committee considers that the situation is not in conformity with the Charter as corporal punishment of children is not explicitly prohibited in the home and in institutions.”

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

Prevalence/attitudinal research in the last ten years

According to a 2013 survey, 31% of children age 1–14 were subjected to physical punishment during the month preceding the survey, with 2% of children subjected to severe physical punishment. In contrast, only 6% of respondents believed that physical punishment is needed to bring up, raise, or educate a child properly. Boys were subjected to physical discipline (36%) more than girls (26%). In terms of wealth status, 44% of children in the poorest households were subjected to physical punishment compared to 20% of children in the richest households. In total, 69% of children were subjected to at least one form of psychological or physical punishment by their parents or other adult household members.

(Statistical Office of Montenegro (MONSTAT) and UNICEF (2014), *Monitoring the situation of children and women: Multiple Indicator Cluster Survey 2013, Final Report*, Podgorica, Montenegro: Statistical Office of Montenegro (MONSTAT) and UNICEF)

In June 2009, a survey of 1,000 mothers and others primary carers of children under 6 found that 55% had hit their child in the past week, although a smaller percentage (9%) believed physical punishment was necessary in childrearing. The survey also included 200 mothers and others primary carers living in Roma settlements: of these, 78% said they had hit their child in the past week and 32% thought physical punishment was necessary in childrearing. Following an awareness-raising campaign about early childhood development, including alternatives to physical punishment, a similar survey, carried out in November 2009, found that a smaller percentage (22%) of parents had physically punished their children in the past week.

(Strategic Marketing Research (2009), *Early childhood development for UNICEF, June 2009*, StrategicPuls Group; Ipsos Strategic Marketing (2009), *Early childhood development – 2nd phase: Testing of campaign for UNICEF, November 2009*, Ipsos)