

# Corporal punishment of children in Portugal

LAST UPDATED August 2017

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Child population 1,782,000 (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. 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 right of parents to “moderately correct” their children was removed from the Civil Code 1966 in 1977.<sup>1</sup>

The prohibition followed a 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.<sup>2</sup> 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 (see under “Recommendations by human rights treaty bodies”, below). Law reform followed shortly afterwards.

### Alternative care settings

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

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<sup>1</sup> Madeira, L. F. (2015), *Guinea-Bissau: Analysis on Corporal Punishment of Children*, prepared for the Global Initiative

<sup>2</sup> 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

## **Day care**

Corporal punishment is prohibited in early childhood care and in day care for older children under the 2007 amendments to the Penal Code (see under “Home”).

## **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 (s188), which prohibits cruel, inhuman or degrading treatment.

## **Penal institutions**

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 (art. 99) and establishes limited conditions for the use of force (art. 90).

## **Sentence for crime**

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

## **Universal Periodic Review of Portugal’s human rights record**

Portugal was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). No recommendations were made concerning corporal punishment of children.

Examination in the second cycle took place in 2014 (session 19). No recommendations were made on corporal punishment of children.

## **Recommendations by human rights treaty bodies**

### ***Committee on the Rights of the Child***

(31 January 2014, CRC/C/PRT/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth state party report, paras. 3, 33 and 34)

“The Committee welcomes the adoption of numerous legislative measures, including: ...

f) Decree Law 59/2007 amending the Penal Code criminalizing all forms of corporal punishment of children and making domestic violence an autonomous crime....

“While noting the revision of the Penal Code in 2007 to prohibit corporal punishment against children, including within the family, and other measures to combat this practice, such as the Raise Your Hand Against Smacking Campaign, the Committee is concerned that corporal punishment continues to be practiced within the family and is widely accepted in society.

“In line with general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel and degrading forms of punishment, and general comment No. 13 (2011)

on the right of the child to freedom from all forms of violence, the Committee recommends that the State party continue its efforts through awareness-raising campaigns and parenting education programmes to end the practice of corporal punishment in all settings, including in the home. The Committee also urges the State party to promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment.”

### ***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.”

### ***Committee Against Torture***

(23 December 2013, CAT/C/PRT/CO/5-6, Concluding observations on fifth/sixth report, para. 17)

“The Committee welcomes the legislative and other measures aimed at preventing and combating domestic violence (para. 5 (e) above), including the criminalization of domestic violence and corporal punishment of children under article 152 of the Criminal Code and the adoption of the Fourth National Action Plan against Domestic Violence (2011–2013)...”

### ***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.”

### ***Human Rights Committee***

(23 November 2012, CCPR/C/PRT/CO/4, Concluding observations on fourth report, para. 3)

“The Committee welcomes: ...

c) the amendment to the Penal Code in 2007, criminalizing all forms of corporal punishment of children and making domestic violence an autonomous crime....”

### ***European Committee of Social Rights***

(January 2012, Conclusions 2011)

“The Committee notes from another source<sup>1</sup> that 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.” Corporal punishment is prohibited in schools under Decree 679/77 (1977) and Education Law No. 166/99 of 14 September 1999 (section 188).

*Follow up to the Complaint No 34/2006, the World Organisation against Torture (OMCT) against Portugal*

“In its decision on the merits of 5 December 2006 of the Complaint No 34/2006, the World Organisation against Torture (OMCT) against Portugal, the Committee concluded unanimously that there was a violation of Article 17 of the Charter as corporal punishment was not explicitly prohibited.

“The Committee considers that with the above mentioned amendment to Article 152 of the Penal Code introduced in 2007, the violation has been remedied. The Committee concludes that the situation is now in conformity with the Charter.”

### ***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.”

### ***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.”

### **Prevalence/attitudinal research in the last ten years**

None identified.