

Corporal punishment of children in the Republic of Kosovo

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Child population (0-14) 498,400
(Government of the Republic of Kosovo, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings and in all day care settings. A draft Law on Child Protection which would prohibit corporal punishment in all settings is under discussion.

There appears to be no confirmation in legislation of a “right” of parents and others to administer “reasonable” punishment for purposes of correction or discipline, but legal provisions against assault are not interpreted as prohibiting all corporal punishment of children. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no degree or kind of corporal punishment is acceptable or lawful. Explicit prohibition of all corporal punishment of children should be enacted in relation to all persons with parental authority over children.

Alternative care settings – Explicit prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Note: Kosovo unilaterally declared independence from Serbia on 17 February 2008. Although under the 1999 United Nations Security Council resolution no. 1244 Kosovo is officially administered by the United Nations Interim Administration Mission in Kosovo (UNMIK), by 2017 more than half of UN member states had recognised the Republic of Kosovo as a sovereign state. Kosovo is a full member of several international organisations such as the International Monetary Fund and the World Bank.

Current legality of corporal punishment

Home

It appears that law reform to date has not prohibited all corporal punishment in the home. The Constitution recognises the UN Convention on the Rights of the Child as “directly applicable” and as having “priority over provisions of laws” (art. 22). It also guarantees the right to equal legal protection without discrimination (art. 24), the right not to be subjected to “torture, cruel, inhuman or degrading treatment or punishment” (art. 27), and children’s right to be protected from “violence, maltreatment and exploitation” (art. 50). Article 125(6) of the Law on Family 2004 states that children “shall be protected from maltreatment and sexual violations”. However, the above provisions do not explicitly prohibit all corporal punishment in childrearing – the near universal acceptance of its use necessitates clarity in law that no degree or kind of corporal punishment is acceptable.

The Law on Protection Against Domestic Violence 2010 protects all family members from violence in the home, including children. Article 2.1.2 defines domestic violence as “one or more intentional acts or omissions when committed by a person against another person with whom he or she is or has been in a domestic relationship, but not limited to: 1.2.1 use of physical force or psychological pressure exercised towards another member of the family; 1.2.2 any other action of a family member, which may inflict or threaten to inflict physical pain or psychological suffering; 1.2.3 causing the feeling of fear, personal dangerousness or threat of dignity, 1.2.4 physical assault regardless of consequences....” The Law does not clarify whether or not it is to be interpreted as prohibiting all corporal punishment in childrearing.

The Criminal Code 2011 punishes assault, light bodily injury and grievous bodily injury (arts. 187, 188 and 189), as well as “a parent, adoptive parent, guardian or another person exercising parental authority over a child who mistreats such child using physical or mental measures” (art. 250), but it does not explicitly prohibit all corporal punishment in childrearing. A new Criminal Code is under discussion.¹

The Law on the Family 2004 is under review.² A draft Law on Child Protection was introduced in June 2016 – its article 24 would have prohibited all forms of corporal punishment in every setting. After a Governmental upheaval following the lack of a clear majority in the general elections of June 2017, draft Law no.06/L-084 on Child Protection was introduced to Parliament in June 2018. The draft Law defines corporal punishment as “any form of punishment in which physical force is used and intended to cause pain or discomfort to the child”; article 37 prohibits its use in “in any environment at home and families, educational institutions, care institutions, law enforcement and justice systems, working environments and community”. As of November 2018, the draft Law had passed first reading and was being discussed in Committee.³

¹ See <http://ligjet.assembly-kosova.org/LTS/DraftLawPhase?draftLawId=97&languageid=2>, accessed 10 August 2018

² Information provided by Save the Children Kosovo, October 2017

³ See the National Assembly’s website, <http://ligjet.assembly-kosova.org/LTS/DraftLawPhase?draftLawId=106&languageid=2>, accessed 12 December 2018

Alternative care settings

Corporal punishment appears to be lawful in alternative care settings as for parents – we have not been able to identify legal provisions explicitly prohibiting its use.

Day care

Corporal punishment and other humiliating punishment is prohibited in public and private educational day care settings for ages 5 and upwards (see under “Schools”). There is no explicit prohibition of corporal punishment in all other early childhood care or day care for older children.

Schools

Corporal punishment is prohibited in schools by article 4.2 of the Law on Pre-University Education 2011, which states: “Corporal punishment and any other form of humiliating punishment are prohibited in all educational and training institutions whether publicly funded or private.” Corporal punishment is defined in article 2.1.11 as “any form of striking or other non-accidental physical contact by a teacher or other staff member with a pupil other than obligatory intervention where a pupil imperils the safety of other pupils or staff”. Under article 9.1.1, the Law applies to pre-primary (ages 5-6), primary (6-11) and secondary education.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. The Law on Execution of Penal Sanctions 2012 lists permitted disciplinary punishments in correctional facilities (art. 102) and these do not include corporal punishment. According to articles 122 and 134 of the Juvenile Justice Code 2010, the Law on Execution of Penal Sanctions also applies to minors committed to educational-correctional institutions, except that minors may not be subjected to solitary confinement.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Juvenile Justice Code 2010, the Criminal Code 2011, the Criminal Procedure Code 2012 or the Law on Execution of Penal Sanctions 2012.

Universal Periodic Review

Kosovo is not a UN member state and as such does not undergo the Universal Periodic Review independently; rather it is examined with Serbia.

Recommendations by human rights treaty bodies

Although Kosovo’s Constitution integrates several international and regional human rights treaties as part of domestic law, Kosovo is not a signatory to any of the UN human rights treaties and is not a member of a regional organisation.

Prevalence/attitudinal research in the last ten years

Research carried out in 2012, which involved 660 10-14 year olds attending eight schools, 70 parents and 70 teachers, found a high level of acceptance of corporal punishment of children by parents and teachers. When asked whether parents hitting or beating children is justified, 80.5% said it is justified if a child steals, 70.6% if a child is in danger of harming themselves and 58.2% if a child leaves the house without telling their parent. Nearly six in ten children (59.7%) said that teachers hitting or beating a child is justified if a child steals, 37.7% if the child leaves class without permission and 35.5% if a child is disobedient towards a teacher. Fifty-nine per cent of children and 80% of parents said that teachers are violent towards children.

(Krasniqi, V. & Osmani, T. (2012), *Research on Violence Against Children in Schools in Kosovo: Draft*, Save the Children & Social Research Kosova)