

# Corporal punishment of children in Serbia

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Child population 1,774,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Serbia's commitment to prohibiting corporal punishment

Serbia expressed its commitment to prohibiting all corporal punishment of children by accepting the recommendation to do so made during the Universal Periodic Review of Serbia in 2008. The commitment was reaffirmed through accepting similar recommendations in 2013 and again in 2018.

## Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings and some day care settings.

There is no defence for the use of corporal punishment enshrined in legislation but there is no explicit prohibition. In theory, the prohibition of “humiliating actions and punishments which insult the child’s human dignity” in article 69 of the Serbian Family Act 2005 would prohibit corporal punishment by parents, which invariably violates a child’s dignity, but the law is not interpreted in this way – and the potential for such an interpretation is undermined by the near universal social acceptance and use of corporal punishment in childrearing. Realisation of children’s rights to equal protection from assault under the law and to protection from all forms of violence requires clarity in law that no degree or form of corporal punishment is acceptable or lawful, without exception. Prohibition should be enacted of all corporal punishment and other humiliating and degrading treatment, in the home and all other settings where adults exercise authority over children.

*Alternative care settings* – Prohibition of corporal punishment should be enacted in legislation relating to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

*Day care* – Corporal punishment is considered unlawful in day care which forms part of the education system. Legislation should now be enacted which prohibits it in all early childhood care (nurseries, crèches, family centres, etc) and all day care for older children (day centres, childminding, etc).

## Current legality of corporal punishment

### Home

Corporal punishment is lawful in the home. Provisions against violence and abuse in the Criminal Code 2005, the Misdemeanours Act 2007, the Law on the Prevention of Domestic Violence 2016 and the Constitution 2006 are not interpreted as prohibiting all corporal punishment in childrearing. The Serbian Family Law 2005 states (art. 69(2)): “Parents may not subject the child to humiliating actions and punishments which insult the child’s human dignity and have the duty to protect the child from such actions taken by other persons.” But there is no explicit prohibition of all corporal punishment.

The Government stated its commitment to prohibition in 2007. In 2008, the Ministry of Social Policy and the Council for Child Rights adopted a National Strategy for the Prevention and Protection of Children Against Violence which included the aim of abolishing corporal punishment of children; plans were made for drafting amendments to the Family Law, and Minister for Education Mr Zarko Obradovic signed the Council of Europe petition against all corporal punishment of children. In accepting the recommendations at the Universal Periodic Review (UPR) in the same year, the Government again stated its intention to prohibit corporal punishment of children.<sup>1</sup> In 2010, the Action Plan for the implementation of the National Strategy was adopted and in 2011, a Working Party developed a Draft Law on the Rights of the Child which includes provisions to prohibit all corporal punishment. In reporting to the second UPR in 2013, the Government confirmed that the Draft Law would prohibit corporal punishment in all settings.<sup>2</sup> The Government accepted the recommendations to prohibit all corporal punishment made during the review.<sup>3</sup> The Government reported to the Committee Against Torture in 2014 that the draft law would be presented in the National Assembly by the Ombudsman.<sup>4</sup> However, the draft law was subsequently dropped and in response to a question about prohibition from the Committee on Economic, Social and Cultural Rights in 2014, the Government drew attention to the Criminal Code and stated that current law “completely prohibits and sanctions every type of violence against the child”.<sup>5</sup> In December 2014, the Government reported to the Committee on the Rights of the Child that a preliminary law on child rights had been drafted which would prohibit corporal punishment in all settings.<sup>6</sup> The Serbia delegation reported to the Committee on the Rights of the Child in January 2017 that the drafting process would resume within the year;<sup>7</sup> however it later appeared the process might not be finalised before 2020.<sup>8</sup> In November 2017, a working group was reportedly established by the Ministry of Social Welfare to draft the new Law on the Rights of the Child;<sup>9</sup> but Serbia’s national report to the UPR also reported that the Ministry for family protection did not think it “necessary to adopt a special law on the rights of the child”.<sup>10</sup> In June 2019, a consultative process was organised around

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<sup>1</sup> 9 November 2009, A/HRC/10/29, Report of the Human Rights Council on its tenth session, para. 519

<sup>2</sup> 8 November 2012, A/HRC/WG.6/15/SRB/1, National report to the UPR, para. 73

<sup>3</sup> 22 March 2013, A/HRC/23/15, Report of the working group, paras. 144(27), 144(28) and 144(29)

<sup>4</sup> 13 February 2014, CAT/C/SRB/2, Second state party report, para. 154

<sup>5</sup> 6 May 2014, E/C.12/SRB/Q/2/Add.1, Reply to list of issues, para. 242

<sup>6</sup> [December 2014], CRC/C/SRB/2-3 Unedited Version, Second/third state party report, para. 74

<sup>7</sup> 30 January 2017, CRC/C/SR.2176, Summary records of the 2176<sup>th</sup> meeting, para. 28

<sup>8</sup> Information provided to the Global Initiative, May 2017

<sup>9</sup> Information provided by the Coalition for Monitoring Child Rights, November 2017

<sup>10</sup> 13 November 2017, A/HRC/WG.6/29/SRB/1, National report, para. 95

the draft Law on the Rights of the Child and the Ombudsman for Children which reportedly includes explicit prohibition of corporal punishment.<sup>11</sup>

A new Civil Code is being drafted. The draft Civil Code which was issued for consultation and public debate in 2015, included protection for children from physical punishment but offered two versions of the relevant article – one prohibiting child abuse “especially physical punishment”, the other prohibiting child abuse but only “inappropriate” physical punishment (art. 2218).<sup>12</sup> Earlier in 2017, the draft Civil Code was still being consulted upon,<sup>13</sup> and as of April 2019 it has not yet been introduced to Parliament<sup>14</sup> as the Commission on Drafting the Civil Code is still finalising the text.<sup>15</sup> It seems responses to the consultation were mainly favourable to a complete prohibition of all physical punishment<sup>16</sup> and that the final version of the relevant article prohibits all corporal punishment.<sup>17</sup>

Amendments to the Family Law are under discussion: we have yet to see the proposed amendments, but in February 2016 the Government confirmed to the Committee on the Rights of Persons with Disabilities that the draft Law on Amendments to the Family Law “will contain explicit prohibition of physical punishment of minors and use of physical force as a tool for correcting behaviour”.<sup>18</sup> A similar statement was made to the Human Rights Committee in January 2017.<sup>19</sup> It appears the governmental delegation to the Committee on the Rights of the Child reported that the amendments were expected to be adopted by June 2017.<sup>20</sup> However the process has been delayed following the April 2017 presidential elections.<sup>21</sup> In November 2017, it was reported that the Ministry in charge of family protection had started work on a draft Bill amending the Family Law “which, among other things, provides for a ban on corporal punishment of children and on the use of physical force as a means of upbringing the child”.<sup>22</sup> In June 2018, the Government accepted recommendations to explicitly prohibit corporal punishment of children in all settings.<sup>23</sup> In March 2019, the Government reported that amending the Family Law was underway and that one of the amendments would regulate “chastisement i.e. corporal punishment of a child” and define “the rule that parents are not allowed to chastise the child, or to subject it to degrading treatment and punishment that are offensive for the human dignity and integrity of the child”.<sup>24</sup> As of October 2019, a Working Group on amending the Family Law had been established and proposed amendments reportedly included explicit prohibition of corporal punishment.<sup>25</sup> We have no further information.

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<sup>11</sup> Information provided by the Child Rights Centre, October 2019

<sup>12</sup> <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed 29 February 2016

<sup>13</sup> 30 January 2017, CRC/C/SR.2176, Summary records of the 2176<sup>th</sup> meeting, para. 9

<sup>14</sup> Website of the National Assembly of Serbia, <http://www.parlament.gov.rs>, accessed 24 April 2019

<sup>15</sup> See <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:754977-IZRADA-GRADJANSKOG-ZAKONIKA-Koja-prava-dobijaju-gej-osobe>, accessed 31 October 2018

<sup>16</sup> See [https://aks.org.rs/sr\\_lat/nacrt-gradanskog-zakonika/](https://aks.org.rs/sr_lat/nacrt-gradanskog-zakonika/), accessed 23 November 2017

<sup>17</sup> Information provided to the Global Initiative, October 2019

<sup>18</sup> 16 February 2016, CRPD/C/SRB/Q/1/Add.1, Reply to list of issues, para. 69

<sup>19</sup> 17 January 2017, CCPR/C/SRB/Q/3/Add.1, Reply to the list of issues, paras. 76 and 77

<sup>20</sup> 3 February 2017, CRC/C/SRB/CO/2-3, Concluding observations on second-third report, Advance unedited version, paras. 36 and 37

<sup>21</sup> Communication with the Office of the Ombudsperson, June 2017

<sup>22</sup> 13 November 2017, A/HRC/WG.6/29/SRB/1, National report, para. 96; see also 18 April 2018, A/HRC/38/17, Report of the working group, para. 23

<sup>23</sup> 8 June 2018, A/HRC/38/17/Add.1 Advance unedited version, Report of the working group: Addendum

<sup>24</sup> 8 March 2019, RAP/RCha/SRB/8(2019), National report to the European Committee of Social Rights, page 60

<sup>25</sup> Communication with MODS, October 2019

## **Alternative care settings**

There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents (see under “Home”). A 2011 law on social protection reportedly bans violence against beneficiaries of social protection services<sup>26</sup> but there is no indication that it explicitly prohibits all corporal punishment.

## **Day care**

Corporal punishment is considered unlawful in all day care which forms part of the education system under education law (see under “Schools”), including nurseries, kindergartens, preschools, after school care, workshops and additional education activities. But it is lawful in other day care, such as childminding etc. A regulation reportedly prohibits corporal punishment in care facilities:<sup>27</sup> we are seeking to verify this information.

## **Schools**

Corporal punishment was first explicitly prohibited in schools in article 67 of the Law on Public Schools 1929 (Yugoslavia). It is now unlawful under the Law on Secondary Schools 1992, the Law on Elementary Schools 1992 and the Law on the Foundations of Education and Upbringing 2003/2009.

## **Penal institutions**

Corporal punishment is unlawful as a disciplinary measure in penal institutions. It is not among permitted disciplinary measures against juveniles in detention in the Law on Enforcement of Penal Sanctions, but this Law does not explicitly prohibit it. The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles does not include corporal punishment among permitted disciplinary measures and states that force may only be used exceptionally and to prevent a physical attack on others or self-injury (art. 132). A draft new Law on Juvenile Offenders and Protection of Juveniles in Criminal Proceedings is under discussion.<sup>28</sup> The Serbia delegation to the Committee on the Rights of the Child reported in January 2017 that the new juvenile justice law was expected to be adopted within the year.<sup>29</sup>

## **Sentence for crime**

Corporal punishment as a sentence for crime was abolished in 1873. It is not a permitted sentence for crime under the Criminal Code or the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles 2005.

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<sup>26</sup> Nataša Jović, Assistant Secretary General, Protector of Citizens (Ombudsman), correspondence with the Global Initiative, February 2016

<sup>27</sup> Nataša Jović, Assistant Secretary General, Protector of Citizens (Ombudsman), correspondence with the Global Initiative, February 2016

<sup>28</sup> <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed 29 February 2016

<sup>29</sup> 30 January 2017, CRC/C/SR.2177, Summary records of 2177<sup>th</sup> meeting, para. 35

## Universal Periodic Review of Serbia's human rights record

Serbia was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). The following recommendation was made:<sup>30</sup>

“To prohibit corporal punishment, including in the family, in line with the recent recommendation of the Committee on the Rights of the Child (Austria)”

The Government accepted the recommendation, stating that it was “undertaking activities toward changing the Family Law by introducing norms that clearly prohibit corporal punishment and protect children from all forms of physical punishment, including physical punishment in the family environment”.<sup>31</sup>

The second cycle review took place in 2013 (session 15). In its national report, under the heading “Prohibition of corporal punishment”, the Government noted children’s protection under the Family Law and the Law on the Foundations of Education and Upbringing, and stated that in the Draft Law on the Rights of the Child “corporal punishment and humiliating acts against a child for the purpose of disciplining it are prohibited in all circumstances”.<sup>32</sup>

The following recommendations were made and were accepted by the Government:<sup>33</sup>

“That the draft child rights law forbid corporal punishment of children in all settings (Portugal);

“Expedite necessary legislative measures to expressly prohibit corporal punishment in all settings, including the family and alternative care settings (Uruguay);

“Prohibit by law the corporal punishment of children, including in the family (Austria).”

Third cycle examination took place in 2018 (session 29). The following recommendations were extended:<sup>34</sup>

“Enact legislation to explicitly prohibit corporal punishment of children in all settings, including at home (Montenegro);

“Explicitly prohibit corporal punishment of children in legislation (Portugal);

“Prohibit by law corporal punishment of children, including in the family (Austria);

“Adopt all necessary measures to eradicate corporal punishment towards boys and girls (Chile);

“Consider seriously prohibiting in its legislation any type of corporal punishment, promoting non-violent disciplinary alternatives and generating public awareness of the harmful effects of this practice, in line with the recommendations made by Uruguay during the second cycle and accepted by Serbia (Uruguay);

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<sup>30</sup> 8 January 2009, A/HRC/10/78, Report of the working group, para. 57(11)

<sup>31</sup> 18 March 2009, A/HRC/10/78/Add.1, Report of the working group: Addendum, paras. 20 and 21

<sup>32</sup> 8 November 2012, A/HRC/WG.6/15/SRB/1, National report to the UPR, paras. 71, 72 and 73

<sup>33</sup> 22 March 2013, A/HRC/23/15, Report of the working group, paras. 144(27), 144(28) and 144(29)

<sup>34</sup> 18 April 2018, A/HRC/38/17, Report of the working group, paras. 114(91), 114(92), 114(93), 114(94), 114(95) and 114(96)

“Adopt the envisaged legislative amendments to explicitly prohibit all corporal punishment of children, in all settings (Slovenia)”

The Government supported the recommendations.<sup>35</sup>

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

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

(7 March 2017, CRC/C/SRB/CO/2-3, Concluding observations on second-third report, paras. 36 and 37)

“While the Committee welcomes the information provided by the State party during the dialogue that amendments to the Family Law would ban corporal punishment in all settings by June 2017, it remains concerned that the practice is currently permitted in the home, continues to be widely accepted in society as a means of disciplining children and is not explicitly prohibited in legislation to date.

“In the light of general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to:

- (a) Explicitly prohibit corporal punishment in legislation;
- (b) Ensure that the prohibition of corporal punishment is adequately monitored and enforced in all settings;
- (c) Promote positive, non-violent and participatory forms of child-rearing and discipline through awareness campaigns;
- (d) Ensure that offenders are brought before the competent administrative and judicial authorities.”

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

(20 June 2008, CRC/C/SRB/CO/1, Concluding observations on initial report, paras. 46 and 47)

“The Committee is particularly concerned that corporal punishment in the family remains lawful and continues to be a widely used disciplinary method.

“The Committee urges the State party to expressly prohibit and enforce by law all corporal punishment in the family. The State party is further encouraged to undertake awareness-raising campaigns and education programmes on non-violent forms of discipline, to conduct research into the prevalence of corporal punishment of children in the family and other settings, and to enforce the law.”

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

(19 January 2009, CAT/C/SRB/CO/1, Concluding observations on initial report, para. 20)

“The Committee notes that corporal punishment of children is not explicitly prohibited in all settings and that it is a common and accepted means of childrearing (art. 16).

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<sup>35</sup> 8 June 2018, A/HRC/38/17/Add.1 Advance unedited version, Report of the working group: Addendum

The State party, taking into account the recommendation in the United Nations Secretary General's Study on Violence Against Children, should adopt and implement legislation prohibiting corporal punishment in all settings, including the family, supported by the necessary awareness-raising and public education measures."

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

(March 2020, Conclusions 2019)

"The Committee previously considered that the situation was not in conformity with the Charter as corporal punishment is not prohibited in the home and in institutions (Conclusions 2015).

"The Committee notes that there has been no change to the situation.

"The Committee notes, however, that the report states that proposed amendments to the Family Law would prohibit all forms of corporal punishment in the family context. The Committee asks to be kept informed of all developments in this respect, as well as in relation to the prohibition of corporal punishment of children in institutions. Meanwhile it reiterates its previous conclusion of non-conformity.

...

"The Committee concludes that the situation in Serbia is not in conformity with Article 17§1 of the Charter on the ground that not all forms of corporal punishment are prohibited in all settings."

### ***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 (2001)). 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 prohibition is still to be achieved in the home and in institutions.

“Corporal punishment is lawful in the home. Provisions against violence and abuse in the Criminal Code 2005, the Misdemeanours Act 2007 and the Constitution 2006 are not interpreted as prohibiting all corporal punishment in childrearing. Section 72 of the Family Law 2005 states that parents may not subject the child to humiliating actions and punishments which insult the child’s human dignity and have the duty to protect the child from such actions taken by other persons. However, there is no explicit prohibition of all corporal punishment.

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

“As regards schools, corporal punishment was first explicitly prohibited in schools in Section 67 of the Law on Public Schools 1929. It is now unlawful under the Law on Secondary Schools 1992 and the Law on the Foundations of Education and Upbringing 2003/2009.

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

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

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

In a 2014 UNICEF study, 43.1% of children age 1-14 years reported being subjected to some form of violent “discipline” by household members: 39% experienced psychological aggression and about 17% experienced physical punishment. This was notably higher for younger children (25% of 1-2 year-olds) than older children (8% of 10-14 year-olds), and in households where the head of the household has no education (24%) compared to those where the head of household has higher education (13%). Physical punishment is considered necessary to properly raise a child by 7% of respondents; this figure rose to 11% for respondents in Roma settlements. The prevalence of corporal punishment is also higher in Roma settlements, with 66% of children age 1-14 years subjected to some form of violent punishment by household members; 63% of children experienced psychological aggression and about 35% experienced physical punishment.

(Statistical Office of the Republic of Serbia and UNICEF (2014), *Serbia Multiple Indicator Cluster Survey and Serbia Roma Settlements Multiple Indicator Cluster Survey, 2014, Final Reports*, Belgrade, Serbia: Statistical Office of the Republic of Serbia and UNICEF)

In research with young people carried out in 2012 by the Youth Advisors Panel of the Deputy Ombudsperson for Children, more than 80% of participants thought children can be taught how to behave without beatings and beating can harm both the body and the personality of a child; 63% thought corporal punishment makes children afraid rather than teaching them to understand. Eighty per cent said they would learn better from their parents explaining to them why something should not be done than from being beaten; 82% said that if they become parents, they would not physically punish their own children.

(Youth Advisors Panel of the Deputy Ombudsperson for Children (2012), *The attitudes of children and youth towards corporal punishment and positive parenting practices*, Ombudsman Office of the Republic of Serbia)

According to statistics collected in 2010 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), 67.1% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. More than a third (37.4%) experienced physical punishment, while a much smaller percentage (7.2%) of mothers and caregivers thought physical punishment was necessary in childrearing. Sixty per cent of children experienced psychological aggression (being shouted at, yelled at, screamed at or insulted),

1.6% experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement).

(Statistical Office of the Republic of Serbia (2011), *Republic of Serbia Multiple Indicator Cluster Survey 2011, Final Report*, Belgrade: Statistical Office of the Republic of Serbia)

A report on institutions in Serbia found that, as there are no enforceable laws or regulations regulating the use of physical restraints and no oversight, children with disabilities were kept in restraints for days, weeks or years. Restraint was used for the convenience of staff and included being tied to beds, chairs and cribs.

(Ahern, L. et al (2007), *Torment not Treatment: Serbia's Segregation and Abuse of Children and Adults with Disabilities*, Mental Disability Rights International)

In a study of children in six state residential care institutions, 26% of children reported experiencing physical violence at least once from a member of staff; 17% of adults working in these institutions reported that some of their colleagues were violent towards the children.

(Plut, D. & Popadić, D. (2007), *U lavirintu nasilja – istraživanje nasilja u ustanovama za decu bez roditeljskog staranja u Srbiji*, Beograd: Save the Children UK & Institut za psihologiju, reported in Srna, J. & Stevanović, I. (2011), "Serbia: Moving Towards the Abolition of Physical Punishment of Children", in Durrant, J. E. & Smith, A. B. (eds) (2011), *Global Pathways to Abolishing Physical Punishment: Realizing Children's Rights*, New York: Routledge, pp. 222-233)