

Corporal punishment of children in Slovenia

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Child population 361,000 (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. Law No. 542-08/16-9/2.6 Amending and Supplementing the Law on Prevention of Family Violence (ZPND-A) was passed by the National Assembly on 25 October 2016; it prohibits violence in the family and includes corporal punishment of children in the definition of violence (article 3). Article 4 explicitly prohibits corporal punishment of children, inserting a new article 3a into the existing law, which states (unofficial translation): “(1) Corporal punishment of children is prohibited. (2) Corporal punishment of children is any physical, cruel or degrading punishment of children or any other act with the intention to punish children, containing elements of physical, psychological or sexual violence or neglect as an educational method.” The law also requires funds to be allocated from the national budget for training in the field of violence, particularly violence against children, and to finance positive parenting programmes (article 14).

Prior to reform, the Law on Marriage and Family Relations 2004, obliged parents to ensure their children’s successful physical and mental development (art. 4) and to support, care for and educate their children (art. 103) – there was no confirmation of a “right” or “duty” to correct or punish children, but neither was there an explicit prohibition of corporal punishment in childrearing.

Provisions in the Law on Prevention of Domestic Violence 2008 were not interpreted as prohibiting all forms of corporal punishment. The Criminal Code 2008 introduced the new criminal offence of family violence (art. 191) – “whoever within a family mistreats another person, beats her/him, or in any other way treats her/him painfully or degradingly, threatens with direct attack on her/his life or limb to throw her/him out of the joint residence or in any other way limits her/his freedom of movement, stalks her/him, forces her/him to work or give up her/his work, or in any other way puts her/him in a subordinate position by aggressively limiting her/his equal rights shall be sentenced to imprisonment for up to five years”¹ – but this was also not interpreted as prohibiting all corporal punishment of children.

¹ 16 June 2014, CEDAW/C/SVN/5-6, Fifth/sixth state party report, para. 22

In 2004, the Government stated its intention to consider an explicit prohibition of corporal punishment of children within the family. In 2008, a number of government officials signed the Council of Europe petition against all corporal punishment of children. The National Programme on Family Violence Prevention 2009-2014 includes the prohibition and elimination of corporal punishment through law reform and other measures.² In 2012, a Family Code Bill, article 7 of which would have prohibited corporal punishment of children by parents and all other persons, was rejected by voters. A conservative group called the “Civil Initiative for the Family and the Rights of Children” opposed the provisions in the Bill relating to same-sex partnerships and gathered enough signatures to force a referendum on the law. The referendum was held on 25 March 2012: voter turnout was 30.31%, 54.55% of which voted against the law.

A complaint was brought against Slovenia by the Association for the Protection of All Children (APPROACH) Ltd, under the collective complaints procedure of the European Committee of Social rights.³ The complaint alleged that, in breach of the European Social Charter, there is no explicit and effective prohibition of all corporal punishment of children, in the family, schools and other settings, and that Slovenia has failed to act with due diligence to eliminate such punishment in practice. The complaint was registered by the Committee in February 2013; it was declared admissible on 2 July 2013. The Committee published its decision in May 2015: it found that the situation in Slovenia is not in conformity with article 17 of the Charter because there is no “express and comprehensive prohibition on all forms of corporal punishment of children”.⁴

In June 2013, the Government reported to the Committee on the Rights of the Child that the child protection parts of the Family Code Bill had not been contested – the Bill had been rejected because of the part concerning same sex marriages – and that the Government still hopes that the new Family Code, including prohibition of all corporal punishment, would be adopted soon.⁵ In September 2013, the Ombudsman reported that the intention is to draft a new family law in 2014.⁶ In reporting to the Universal Periodic Review in 2014, the Government stated that the Family Code due for adoption in 2015 would include a full ban on corporal punishment.⁷ In March 2015, the Government reported to the Human Rights Council that “prohibition will be part of the revision of the Family Code that is under preparation”.⁸

Alternative care settings

Corporal punishment is prohibited in all alternative care settings under Law No. 542-08/16-9/2.6 Amending and Supplementing the Law on Prevention of Family Violence (ZPND-A) (see under “Home”). The Ministry of Labour, Family and Social Affairs has confirmed that while the law relates specifically to family violence, article 3a which prohibits corporal punishment of children is general in its application to all settings, and so prohibition is absolute.

² ReNPPND0914, paras. 2.1, 2.2 and 2.3

³ Collective complaint No. 95/2013, *Association for the Protection of All Children (APPROACH) Ltd v Slovenia*

⁴ Collective Complaint No. 95/2013, *Association for the Protection of All Children (Approach) v Slovenia*, Decision on the Merits, Adoption 5 December 2014, Notification 26 January 2015, Publication 27 May 2015, para. 51

⁵ UNOG Summary of meeting, 6 June 2013

⁶ Correspondence with the Global Initiative, 20 September 2013

⁷ 10 December 2014, A/HRC/28/15, Report of the working group, para. 110

⁸ 4 March 2015, A/HRC/28/15/Add.1, Report of the working group: Addendum, para. 4; see also 31 December 2015, CCPR/C/SVN/Q/3/Add.1, Reply to list of issues, para. 84

Prior to this reform, there was no reference to corporal punishment or related matters in the Provision of Foster Care Act 2002 or in the Rules on the Conditions and Procedures for Implementing Foster Care 2003.

Day care

Corporal punishment is prohibited in all day care settings under Law No. 542-08/16-9/2.6 Amending and Supplementing the Law on Prevention of Family Violence (ZPND-A) (see under “Home”). The Ministry of Labour, Family and Social Affairs has confirmed that while the law relates specifically to family violence, article 3a which prohibits corporal punishment of children is general in its application to all settings, and so prohibition is absolute.

Prior to this reform, corporal punishment was considered unlawful in educational day care centres and residential school institutions under the rules relating to schools (see under “Schools”), but there was no explicit prohibition in other early childhood care and in day care for older children. The Kindergarten Act 1996 does not prohibit corporal punishment.

Schools

Corporal punishment is unlawful in schools. The Law on Primary Schools 1996 is silent on the issue of corporal punishment, stating only that the rights and duties of students and matters concerning discipline shall be determined by the Minister (art. 59). The Regulations on rights and responsibilities in primary school 2004⁹ explicitly state that corporal punishment is not allowed (art. 34).

With regard to secondary education, the Law on Gymnasiums 1996, which regulates general education and technical secondary schools, does not include corporal punishment among permitted measures for dealing with disciplinary violations (art. 27), though it does not explicitly prohibit it. Similarly, the Law on Vocational Education and Training 2006 makes no provision for corporal punishment among permitted disciplinary measures (art. 56). The Rules of behaviour for upper secondary schools 2004¹⁰ state that students have the right to protection from all forms of violence in school (art. 2) and do not include corporal punishment among the specified measures for dealing with violations of school rules (art. 32).

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions under the Constitution 1991 and the Criminal Code 2008 but there is no explicit prohibition. The Rules on the Implementation of Education Measures in the Juvenile Detention Centre 2000, the Rules on the Enforcement of the Sentence of Imprisonment 2000 and the Law Amending the Law on Enforcement of Penal Sanctions 2008 do not provide for corporal punishment as a disciplinary measure, though they do not explicitly prohibit it.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not a permitted sentence under the Criminal Code 2008 and the Act on Offences 2002.

⁹ Official Gazette 75/2004

¹⁰ Official Gazette, 82/2004

Universal Periodic Review of Slovenia's human rights record

Slovenia was examined in the first cycle of the Universal Periodic Review in 2010 (session 7). The following recommendations were made:¹¹

“To adopt the latest draft amendments to the Marriage and Family Relations Act that equalize same-sex unions and other family unions and ban the corporal punishment of children (Norway)

“To add a provision to the Marriage and Family Relations Act prohibiting other forms of the demeaning treatment of children, such as psychological violence (Norway)”

In accepting the recommendations, the Government stated that the draft Family Code adopted by the Government in December 2009 and submitted to the National Assembly prohibits corporal punishment and is binding on parents and other persons, state bodies, and public officials.¹² The mid-term report on the implementation of the recommendations, dated March 2012, notes that the Family Code Bill was adopted by the National Assembly in June 2011. (As noted above, this Bill was rejected by referendum in 2012.)

Examination in the second cycle took place in 2014 (session 20). In its report to the UPR, the Government stated that the Family Code due for adoption in 2015 would include a full ban on corporal punishment.¹³ During the review, the following recommendations were made:¹⁴

“Continue to strengthen normative frameworks for the protection of children from violence and abuse, and develop awareness-raising programs aimed at educating the public about the harmful effects of corporal punishment and enhancing capacities of educators and the media to promote good practices and more positive methods of child-rearing (Philippines);

“Ensure that legislation is drafted and enacted to prohibit all corporal punishment of children, including in the home (Sweden);

“Legally prohibit the abhorrent practice of corporal punishment against children, and adopt an Integral Law on Children, which compiles the provisions of the Convention on the Rights of the Child. (Venezuela (Bolivarian Republic of));

“Explicitly prohibit in national legislation corporal punishment in all settings, including at home (Austria)”

The Government accepted the recommendations, within the category of those it considers already implemented or in the process of implementation, and stated “prohibition will be part of the revision of the Family Code that is under preparation”.¹⁵

¹¹ 15 March 2010, A/HRC/14/15, Report of the working group, paras. 111(8) and 111(9)

¹² 23 March 2010, A/HRC/14/15/Add.1, Report of the working group: Addendum

¹³ 10 December 2014, A/HRC/28/15, Report of the working group, para. 110

¹⁴ 10 December 2014, A/HRC/28/15, Report of the working group, paras. 115(113), 115(114), 115(115) and 115(116)

¹⁵ 4 March 2015, A/HRC/28/15/Add.1, Report of the working group: Addendum, para. 4

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(8 July 2013, CRC/C/SVN/CO/3-4, Concluding observations on third/fourth report, paras. 37 and 38)

“The Committee reiterates its previous concern about the absence of a legal prohibition of corporal punishment within the home (CRC/C15/Add.230, para 40). While welcoming the enactment of the Family Violence Protection Act in 2008, the Committee regrets that the law prohibits only *physical* violence and only *within the family*. The Committee is also concerned that corporal punishment in penal institutions, although unlawful as a disciplinary measure under the Constitution and Criminal Code, is not explicitly prohibited. Similarly, the Committee notes with concern that, although corporal punishment is unlawful in educational day-care centres and residential school institutions, it is not explicitly prohibited in other forms of alternative care.

“The Committee recommends that the State party explicitly prohibit in its national legislation corporal punishment in all settings including at home and amend the Criminal Code as well as the Foster Care Act. This should be undertaken with the objective of prohibiting corporal punishment in penal institutions as well as in all forms of alternative care. It is recommended that the State party strengthen its efforts to address corporal punishment, in particular within the family, by launching awareness-raising programmes, including campaigns on positive, non-violent and participatory forms of child-rearing, and promote alternative non-violent forms of discipline to corporal punishment.”

Committee on the Rights of the Child

(26 February 2004, CRC/C/15/Add.230, Concluding observations on second report, paras. 40 and 41)

“The Committee is concerned that there is no legislation explicitly prohibiting corporal punishment within the home and that the latest draft amendments to the Marriage and Family Relations Act do not envisage such a prohibition.

“The Committee recommends that the State party strengthen its efforts to address ill-treatment of children in the family, including by raising awareness of alternative non-violent forms of discipline through public campaigns. The Committee also urges the State party to consider introducing an explicit prohibition on corporal punishment of children in the family, either in the draft amendments to the Marriage and Family Relations Act or in the special act on preventing violence in the family currently in preparation.”

Human Rights Committee

([April 2016], CCPR/C/SVN/CO/3 advance Unedited Version, Concluding observations on third report, paras. 29 and 30)

“The Committee notes that the proposed amendments to the Family Code to prohibit corporal punishment was rejected in a referendum in 2012, and expresses concern that corporal punishment is not explicitly prohibited in the State party (arts. 7 and 24).

“The State party should take practical steps, including through legislative measures, 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.”

Committee Against Torture

(20 June 2011, CAT/C/SVN/CO/3, Concluding observations on third report, para. 15)

“While noting the legal and administrative measures undertaken by the State party to combat gender-based violence and violence against children, the Committee remains concerned about the prevalence of violence against women and girls (see concluding CAT/C/SVN/CO/3 5 observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/SVN/CO/4, para. 23). The Committee is also concerned that corporal punishment of children remains lawful at home (arts. 2, 12 and 16).

The Committee recommends that the State party enhances its efforts to prevent, prosecute and punish all forms of violence against women and children, including domestic violence, and ensure effective and full implementation of the existing laws and the national strategies adopted to that end, including the National Programme of Family Violence Prevention for the period 2009–2014. The Committee also recommends that the State party accelerate the adoption of the draft Marriage and Family Act, which prohibits corporal punishment of children in the home (see concluding observations of the Committee on the Rights of the Child, CRC/C/15/Add.230, para. 40). Furthermore, the State party is encouraged to conduct broader awareness-raising campaigns and training on domestic violence for law enforcement agencies, judges, lawyers and social workers who are in direct contact with the victims and for the public at large.”

Committee on the Rights of Persons with Disabilities

(5 March 2018, CRPD/C/SVN/CO/1 Advance unedited version, Concluding observations on initial report, paras. 10 and 11)

“The Committee is concerned about:

(a) The lack of an explicit and comprehensive prohibition of corporal punishment of children in all settings in the State party and the absence of specific measures to address violence against children with disabilities; ...

“The Committee recalls the concluding observations adopted by the Committee on the Rights of the Child (see CRC/C/SVN/CO/3-4, para. 38), and recommends that the State party:

(a) Explicitly prohibit any kind of corporal punishment of children in all settings, including alternative care institutions, and adopt a strategy to monitor the situation of children with disabilities in alternative care aimed at identifying all instances of violence against children with disabilities. The State party should ensure non-violent and participatory forms of child-rearing that include families with children with disabilities;

(b) Ensure the effective coordination among different actors involved in child protection; ...”

European Committee of Social Rights

(October 2017, Follow-up to the Complaint No. 96/2013 - Association for the Protection of all Children (APPROACH) Ltd v. Slovenia)

“The Committee concluded that Article 17 of the Charter had been violated on the ground that not all forms of corporal punishment that was likely to affect the physical integrity, dignity, development or psychological well-being of a child were prohibited.

“The Government amended two Acts in 2016 and included the explicit prohibition of all forms of punishment of children in domestic and other settings in national legislation.

“The explicit prohibition of all corporal punishment of children in the domestic environment is included in the Act amending the Act on the prevention of domestic violence (Official Gazette of the Republic of Slovenia (Uradni list RS) No. 68/2016), which entered into force in November 2016. Article 3a of the Act provides that:

“1) Corporal punishment of children shall be strictly prohibited.

“2) Corporal punishment of children shall be considered as any physical, cruel or degrading punishment or any other act with the intention to punish children containing elements of physical, psychological or sexual violence or neglect as an educational method”.

“The explicit prohibition of all corporal punishment of children in other contexts is included in the Act amending the Act on the organisation and financing of education (Official Gazette of the Republic of Slovenia (Uradni list RS) No. 46/2016), which entered into force in July 2016.

“Article 2 of the Act provides that: “In accordance with the objectives set out in the preceding article, kindergartens, schools and other educational institutions for children and adolescents with special needs shall provide a safe and supportive learning environment where corporal punishment and any other form of violence against children or between children or any unequal treatment on grounds of gender, sexual orientation, social and cultural origin, religion, race, ethnic or national origin or physical or mental development shall be prohibited”.

“The government asserts that the violation of Article 17§1 of the Charter, as established in the decision on the collective complaint (No. 95/2013) and in the Committee’s conclusions has been remedied.

“In its decision, the Committee noted that the provisions of the impugned Family Violence Prevention Act and the Criminal Code referred to in the context of this complaint prohibited serious acts of violence against children, and that national courts sanctioned corporal punishment provided it reached a specific threshold of gravity. When corporal punishment failed to fulfil these criteria, it could nevertheless be dealt with as a minor offence. However, none of the legislation referred to by the Government set out an express and comprehensive prohibition on all forms of corporal punishment of children that was likely to affect their physical integrity, dignity, development or psychological well-being. Furthermore, there was nothing to establish that a clear prohibition of all corporal punishment of children had been set out in the case law of national courts.

“The Committee takes note of the positive developments and in particular of the two Acts, as amended in 2016, which explicitly prohibit all corporal punishment of children in all circumstances affecting the physical integrity, dignity, development or psychological well-being of a child, and therefore addressing the violation found by the Committee.

“The Committee finds that the situation has been brought into conformity with the Charter and decides to terminate the examination of the decision.”

European Committee of Social Rights

(October 2016, Follow-up to the Complaint No. 96/2013 - Association for the Protection of all Children (APPROACH) Ltd v. Slovenia)

“The Committee concluded that Article 17 of the Charter had been violated on the ground that not all forms of corporal punishment that is likely to affect the physical integrity, dignity, development or psychological well-being of a child, were prohibited.

“The Government stated in the information registered on 15 February 2016 that it intends to enact an explicit prohibition of corporal punishment of children within the family and other settings. In

2015, the Ministry of Labour, Family, Social Affairs and Equal Opportunities began drafting new legislation on the family and the protection of children's rights. An explicit prohibition of corporal punishment will be incorporated. This legislation will be submitted to Government during 2016.

"In addition, the Government intends to legislate to explicitly prohibit corporal punishment of children in educational and training settings. Amendments to the Organisation and Financing of Education Act have been prepared by the relevant Ministry and will be submitted to Government in 2016.

"The Committee notes the positive developments, however as the situation at present remains unchanged, the Committee finds that the situation has not yet been brought into conformity with the Charter.

"It will next assess the situation on the basis of the information to be submitted in October 2016."

European Committee of Social Rights

(January 2016, Conclusions 2015)

"In its decision on the merits of 5 December 2014 of the Complaint No. 95/2013 Association for the Protection of All Children (APPROACH) Ltd v. Slovenia, §51, the Committee noted that the provisions of the Family Violence Prevention Act and the Criminal Code prohibited serious acts of violence against children, and that national courts sanctioned corporal punishment provided it reaches a specific threshold of gravity. However, none of the legislation referred to by the Government set out an express and comprehensive prohibition on all forms of corporal punishment of children that is likely to affect their physical integrity, dignity, development or psychological well-being. Furthermore, there was nothing to establish that a clear prohibition of all corporal punishment of children had been set out in the case-law of national courts.

"The Committee notes in this regard from the report that the Slovenian Government is convinced that the national legislation in force protects children against violence, negligence or exploitation, as stipulated by Article 17 of the Charter. Corporal punishment of children is, according to the case law, one of the modes of committing the criminal offence of domestic violence.

"According to the report, the Government also believes that the explicit prohibition of corporal punishment in the national legislation alone does not and cannot provide children with adequate protection against violence. The system-wide regulation of the prevention of violence against children in Slovenia represents a much broader spectrum of the prohibition of violence against children, including a ban on corporal punishment, irrespective of the motive.

"The Committee further notes that at the request of international organisations (the United Nations, the Council of Europe), the Slovenian Government inserted an explicit ban on the corporal punishment of children in the proposed Family Code, which was adopted by the National Assembly on 16 June 2011. However, the Family Code was rejected at a referendum on 25 March 2012.

"The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, the Committee reiterates the previous finding of non-conformity on the ground that not all forms of corporal punishment are prohibited in the home.

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

European Committee of Social Rights

(January 2012, Conclusions 2011)

“In its previous conclusion the Committee held that the situation in Slovenia was not in conformity with the Charter as corporal punishment was not prohibited within the family. In this connection it notes from the report that the Family Violence Act (2008) defines various forms of family violence and contains provisions on the child victim of family violence. Social Work Centres are required to keep records of family violence to be able to take appropriate measures in a timely manner to protect those in need.

“The Committee notes from another source that corporal punishment is lawful in the home. Provisions against violence and abuse in the Criminal Code (1994), the Constitution (1991), the Marriage and Family Relations Act (1989) and the Family Violence Prevention Act (2008) are not interpreted as prohibiting all corporal punishment in childrearing.

“According to the same source, in October 2004, the Government stated its intention to consider an explicit prohibition of corporal punishment of children within the family. In 2008, a number of government officials signed the Council of Europe petition against all corporal punishment of children. As at November 2010, a Draft Family Code, Article 7 of which would prohibit corporal punishment of children by parents and all other persons, was under discussion and had passed its second reading in the National Assembly. The Committee wishes to be kept informed.

“The Committee recalls that according to its case law, to comply with Article 17 with respect to the corporal punishment of children, states' domestic law must prohibit and penalise 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 considers that the situation which it has previously held not to be in conformity has not changed in the reference period. Therefore, it reiterates its previous conclusion of nonconformity on this ground.

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

European Committee of Social Rights

(March 2005, Conclusions 2005)

“The Committee recalls that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It considers that this prohibition must be combined with adequate sanctions in penal or civil law.

“The Committee notes no change regarding the fact that no legislation exists prohibiting all forms of corporal punishment of children within the family. The Committee finds the situation not to be in conformity with the Revised Charter on this point.

...

“The Committee concludes that the situation in Slovenia is not in conformity with Article 17 of the Revised Charter on the grounds that:

- corporal punishment of children within the family is not prohibited....”

European Committee of Social Rights

(1 October 2003, Conclusions 2003 Vol. 1, page 511)

“According to additional information received from the authorities there is no particular legislation prohibiting the corporal punishment of children within the family. The Committee finds the situation not to be in conformity with the Revised Charter in this respect....

“The Committee concludes that the situation is not in conformity with the Charter as the corporal punishment of children within the family is not expressly prohibited....”

Prevalence/attitudinal research in the last ten years

None identified.