

Corporal punishment of children in Spain

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Child population 8,119,000 (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. The First Schedule to Law No. 54/2007 on International Adoption amended the Civil Code to remove the “right” of parents and guardians to use “reasonable and moderate” forms of “correction” from articles 154 and 268 of the Civil Code. These articles of the Code now state that parents/guardians must exercise their authority with respect for the child’s physical and psychological integrity. The explanatory memorandum to the law clarifies that the purpose of the amendment is to address the concerns of the UN Committee on the Rights of the Child that the “power to correct” breaches article 19 of the Convention on the Rights of the Child.

Extensive amendments to the child protection system in 2015 included in the Organic Act on the Legal Protection of Minors an obligation on public administrations to protect children from all forms of violence, including physical and humiliating punishment (art. 11.2(i)).

A comprehensive law on the protection of children against violence is being drafted.¹ A consultation document on the draft law published in August 2018 highlighted that one of the objective of the law will be to equip families with positive parenting tools.² The draft law is to be sent to Parliament in spring 2019.³ As of February 2020, work was still underway.⁴ A Code on Minors is also being drafted.⁵

Alternative care settings

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

¹ 7 November 2017, CRC/C/ESP/Q/5-6/Add.1, Reply to list of issues, paras. 2 and 44

² See dossier on the Ministry of Health website,

https://www.msrebs.gov.es/normativa/docs/18.08.28_CONSULTA_PREVIA_LEY_VIOLENCIA.pdf, accessed 31 October 2018

³ See <https://www.savethechildren.es/actualidad/estamos-cerca-de-conseguir-la-ley>, accessed 31 October 2018

⁴ 5 February 2020, A/HRC/WG.6/35/L.4 Unedited version, Draft report of the Working Group, para. 144

⁵ 12 November 2019, A/HRC/WG.6/35/ESP/1, National report to the UPR, para. 61

Day care

Corporal punishment is unlawful in day care settings under the 2007 amendments to the Civil Code (see under “Home”).

Schools

Corporal punishment in schools has been unlawful since 1985, under article 6 of the Right to Education (Organization) Act 8/1985. Article 17 of Royal Decree 732/1995, the statutory framework regulating social relations in schools, states that “all pupils have the right to respect for their physical and moral integrity, and may in no circumstances be subjected to humiliating or degrading treatment”. Article 43.2 prohibits “punishments inconsistent with the physical integrity and personal dignity of the pupil”. Under Organic Law 10/2002 on the Quality of Education, students have the right to be shown respect for their personal integrity and dignity and are protected against all physical or moral aggression (art. 2.2).

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions under the Criminal Code, Organic Law 5/2000 regulating minor criminal liability and the 2007 amendments to the Civil Code (see under “Home”).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under the Criminal Code and article 15 of the Constitution 1978.

Universal Periodic Review of Spain’s human rights record

Spain was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). No recommendations were made specifically concerning corporal punishment of children.

The second cycle review took place in 2015 (session 21). No recommendations were made specifically on corporal punishment.

Third cycle examination took place in 2020 (session 35). No recommendations were made specifically on the issue of corporal punishment, but the following recommendations were made:⁶

“Continue to protect the rights of children and continue to work on a draft bill for the protection of children from violence (Bosnia and Herzegovina);

“Expedite the adoption of the legislation guaranteeing comprehensive protection of children against violence and ensuring its application at all levels (Maldives)”

“Adopt a legislation guaranteeing comprehensive protection of children against violence and ensuring its application at all levels (State of Palestine);

⁶ 5 February 2020, A/HRC/WG.6/35/L.4 Unedited version, Draft report of the Working Group, paras. 150(199), 150(200), 150(202), 150(203), 150(205) and 150(206)

“Achieve the prompt adoption of the general law for the protection and elimination of violence against children, as recommended by the Committee on the Rights of the Child in its concluding observations of 2018 (Uruguay)”

“Continue to reform the special laws for the comprehensive protection in cases of violence against children (Libya);

“Expedite the adoption of legislation guaranteeing comprehensive protection of children against violence (Ukraine)”

The Government will examine the recommendations and respond by the 44th session of the Human Rights Council in June 2020.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 February 2018, CRC/C/ESP/CO/5-6 Advance unedited version, Concluding observations on fifth/sixth report, para. 21)

“While noting with appreciation that corporal punishment is prohibited in all settings, the Committee notes with concern that corporal punishment, particularly in the home, persists. Recalling its previous recommendation (CRC/C/ESP/CO/3-4, para. 35) the Committee draws the State party’s attention to its General comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and recommends that the State party:

- (a) Continue to raise awareness about the unlawfulness of corporal punishment and its negative effects on child development and to promote positive, nonviolent and participatory forms of child-rearing and discipline;
- (b) Adequately monitor and enforce the prohibition of corporal punishment.”

Committee on the Rights of the Child

(3 November 2010, CRC/C/ESP/CO/3-4, Concluding observations on third/fourth report, paras. 34 and 35)

“The Committee highly welcomes the amendment of article 154 of the Civil Code on corporal punishment, in line with the Committee’s previous recommendations (CRC/C/15/Add. 185), which deletes the provision stipulating that parents could reasonably and moderately correct their children, and includes the provision stipulating that parental authority shall always be exercised for the benefit of children, according to their personality ‘and with respect for their physical and psychological integrity.’ It further welcomes the efforts made through sensitization campaigns such as ‘Corregir no es Pegar’ to promote positive, non-violent forms of discipline, but reiterates its concern that corporal punishment, in particular in the home, continues to be socially accepted.

“The Committee recommends that the State party continue its efforts through awareness-raising campaigns and parenting education programmes to ensure that positive, non-violent forms of discipline are used in a manner consistent with the child’s human dignity, in conformity to the Convention, especially article 28, paragraph 2, and taking due account of general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel and degrading forms of punishment.”

Committee on the Rights of the Child

(13 June 2002, CRC/C/15/Add.185, Concluding observations on second report, paras. 30 and 31)

“... the Committee deeply regrets that article 154 of the Civil Code, stating that parents ‘may administer punishment to their children reasonably and in moderation’, has not yet been revised....

“The Committee reiterates its previous recommendation to amend article 154 in order to delete the reference to reasonable chastisement. It further recommends that the State party:

a) prohibit all forms of violence, including corporal punishment, in the upbringing of children, in conformity with article 19 of the Convention;

b) conduct awareness campaigns and promote alternative forms of discipline in families.”

Committee on the Rights of the Child

(24 October 1994, CRC/C/15/Add.28, Concluding observations on initial report, paras. 10 and 18)

“Furthermore, the Committee expresses concern at the wording of article 154 of the Spanish Civil Code which provides that parents ‘may administer punishment to their children reasonably and in moderation’, which may be interpreted to allow for actions in contradiction with article 19 of the Convention....

“Furthermore, the Committee encourages the Spanish authorities to pursue the law reform to ensure full compliance of the domestic legislation with the provisions of the Convention. In this regard, the Committee recommends that the law reform include the review of the language used in legal provisions and, in particular, the revision of article 154 of the Spanish Civil Code stating that parents ‘may administer punishment to their children reasonably and in moderation’, in order to bring it into full conformity with article 19.”

European Committee of Social Rights

(March 2020, Conclusions 2019)

“The Committee notes that corporal punishment continues to be prohibited in all settings, including in the home.”

European Committee of Social Rights

(January 2016, Conclusions 2015)

“The Committee notes that corporal punishment continues to be prohibited in all settings, including in the home.”

European Committee of Social Rights

(January 2012, Conclusions 2011)

“In its previous conclusion (Conclusions 2005) the Committee held that the situation in Spain was not in conformity with the Charter as corporal punishment was not prohibited in the home. The Committee notes that the report does not provide any information on this point.

“However, the Committee notes from another source that corporal punishment is now prohibited in the home. The First Schedule to Law No. 54/2007 on International Adoption amended the Civil Code

to remove the 'right' of parents and guardians to use 'reasonable and moderate' forms of 'correction' from Articles 154 and 268 of the Civil Code. These Articles of the Code now state that parents/guardians must exercise their authority with respect for the child's physical and psychological integrity. The explanatory memorandum to the law clarifies that the purpose of the amendment is to address the concerns of the UN Committee on the Rights of the Child that the 'power to correct' breaches Article 19 of the Convention on the Rights of the Child.

"The Committee considers that the amendments have brought the situation into conformity with the Charter."

European Committee of Social Rights

(March 2005, Conclusions XVII-2)

"With regard to corporal punishment in schools and educational institutions, the 1985 Organic Law regulating the right to education grants pupils the right to their personal integrity and dignity. Pupils are also protected against all physical or moral aggression as a basic right. The Committee asks whether legislation prohibits corporal punishment of children in other institutions.

"The Committee notes that there has been no amendment to Article 154 of the Spanish Civil Code which reads that parents 'may administer punishment to their children reasonably and in moderation'.

"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. Therefore, it considers that since there is no prohibition in legislation of corporal punishment in the home, the situation in Spain is not in conformity with Article 17 of the Charter.

...

"The Committee concludes that the situation in Spain is not in conformity with Article 17 of the Charter on the ground that corporal punishment in the home is not prohibited."

European Committee of Social Rights

(1 January 2001, Conclusions XV-2 vol. 2, pages 536-538)

"The Committee notes from the Concluding Observations of the Committee on the Rights of the Child in respect of Spain's first report under the Convention on the Rights of the Child, that Article 154 of the Spanish Civil Code provides that parents 'may administer punishment to their children reasonably and in moderation'. The Committee notes that this would permit the corporal punishment of children, which is in breach of Article 17 of the Charter and it refers to its general observations on Article 17 in the General introduction. The Committee wishes to know whether this provision of the Civil Code has been amended, and further whether legislation prohibits the corporal punishment of children in schools, institutions and elsewhere. Meanwhile, it defers its conclusion....

...

"Pending receipt of information on the corporal punishment of children, the Committee defers its conclusion."

Prevalence/attitudinal research in the last ten years

A 2009 study by the Defensor del Pueblo (ombudsman) of centres for children without parental care found that “disciplinary regimes” varied widely between centres. While some centres applied positive disciplinary techniques, others relied more on punitive sanctions. In some centres, punishments included tying two children together, preventing children from attending school and isolating children. The report recommends increased regulation at a regional level and states that regulations must not directly or indirectly provide for corporal punishment or other types of punishment which violate children’s rights.

(Defensor del Pueblo (2009), *Centros de Protección de Menores con Trastornos de Conducta y en Situación de Dificultad Social*)

A study carried out in 2007 examined five European countries: Sweden, Austria, Germany, France and Spain. Five thousand parents (1,000 in each nation) were interviewed about their use of and attitude towards corporal punishment, their own experiences of violence and their knowledge and beliefs about the law. More than half (55%) the Spanish parents said they had “mildly” slapped their child on the face, 80% on the bottom; 31% had given their child a “resounding” slap on the face, 6.7% had beaten their child with an object. Sixteen per cent of Spanish parents never used corporal punishment; 84% agreed “one should try to use as little corporal punishment as possible”, and 85% agreed that “non-violent child-rearing is the ideal”.

(Bussmann, K. D. (2009), *The Effect of Banning Corporal Punishment in Europe: A Five-Nation Comparison*, Martin-Luther-Universität Halle-Wittenberg)