

# Corporal punishment of children in St Barthelemy

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**Child population (0-14)** 1,387 (CIA World Factbook, 2011 est.)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

**Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.**

**Note:** St Barthelemy is an overseas collectivity of France. Previously a part of Guadeloupe (French overseas department), in 2003 the electorate voted for separation, and overseas collectivity status was achieved in 2007. Under article 74 of the French Constitution 1958, the status of the overseas collectivities is determined by an Institutional Act which specifies, among other things, the conditions in which French statutes and regulations apply. The Institutional Act of St Barthelemy provides for the automatic application of French law except with regard to taxes and immigration.

## Prohibition of corporal punishment

### Home

Corporal punishment is prohibited in the home. The Law on the prohibition of ordinary educational violence (*violences éducatives ordinaires*, which is the French term for corporal punishment), adopted unanimously by the Senate in July 2019, amends article 371-1 of the Civil Code to include (unofficial translation): “Parental authority is exercised without any physical or psychological violence”. This is interpreted as prohibiting all corporal punishment of children.

The Law also puts an obligation on the French Government to produce a report on the prevalence and attitudes towards corporal punishment in France which evaluates the needs and means necessary to strengthen awareness-raising campaigns, parenting support and training of professionals. A National Strategy on Child Protection 2018-2022 is being prepared.<sup>1</sup>

Prior to this reform, corporal punishment was lawful in the home under the “right of correction” in customary law. Provisions in the Criminal Code 1994, the Civil Code, Act No. 2007-293 reforming child

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<sup>1</sup> See “*Une stratégie nationale de protection de l'enfance présentée en mai*”, at <https://www.ouest-france.fr/education/parents-enfants/une-strategie-nationale-de-protection-de-l-enfance-presentee-en-mai-5502067>, accessed 15 February 2018

welfare and Act No. 2006-399 concerning domestic violence and violence against children protecting children from violence and abuse were not interpreted as prohibiting all corporal punishment.

In 2013, a complaint had been brought against France by the Association for the Protection of All Children (APPROACH) Ltd, under the collective complaints procedure of the European Committee of Social Rights.<sup>2</sup> The complaint alleged that, in breach of the European Social Charter, there was no explicit and effective prohibition of all corporal punishment in the family, schools and other settings and that France has failed to act with due diligence to eliminate such punishment in practice. The Committee published its decision in March 2015, which found that the situation in France was in violation of article 17 of the Charter because “there [was] no sufficiently clear, binding and precise prohibition of corporal punishment set out in French law”.<sup>3</sup> As detailed above, prohibition was finally achieved in 2019.

### **Alternative care settings**

Corporal punishment is considered unlawful in alternative care settings under article 371-1 of the Civil Code.

### **Day care**

Corporal punishment is considered unlawful in day care under article 371-1 of the Civil Code.

Article 2 of the Law on the prohibition of ordinary educational violence provides for training to be provided to day care providers (*assistant-e-s maternel-le-s*) on the prevention of corporal punishment.

### **Schools**

Corporal punishment is considered unlawful in schools under article 371-1 of the Civil Code. Circular No. 2014-088 of 9 July 2014 states that in primary school “all corporal punishment is strictly prohibited” (s3.2.2) and Circular No. 2011-111 of 1 August 2011 on disciplinary measures in secondary schools makes no provision for corporal punishment. According to the Education Code, the internal regulations of schools must be based on these circulars.

### **Penal institutions**

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions under article 371-1 of the Civil Code. The Code of Criminal Procedure 1994 provides for respect for human dignity (art. D.189) and prohibits violence towards detainees (art. D.220). A decree of 4 April 1996 and its implementing circular of 12 April 1996 prohibit cruel, inhuman or degrading punishment.

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<sup>2</sup> Collective complaint No. 92/2013, *Association for the Protection of All Children (APPROACH) Ltd v France*

<sup>3</sup> Collective Complaint No. 92/2013, *Association for the Protection of All Children (Approach) v France*, Decision on the Merits, Adoption 12 September 2014, Notification 3 November 2014, Publicity 4 March 2015, para. 37

## **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in criminal law.

## **Universal Periodic Review of France's human rights record**

France was examined in the first cycle of the Universal Periodic Review in 2008 (session 2). No recommendations were made concerning corporal punishment of children.

Review in the second cycle took place in 2013 (session 15). The following recommendations were made:<sup>4</sup>

“Take all the necessary legal measures to explicitly ban the corporal punishment of children in all settings, including the family, schools and institutions (Uruguay);

“Introduce legislation to explicitly prohibit all corporal punishment of children as recommended by the Committee on the Rights of the Child (Finland);

“Consider introducing provisions explicitly prohibiting corporal punishment against children (Poland)”

The Government accepted the recommendations.<sup>5</sup> France's 2016 mid-term report refers to the 2015 European Committee of Social Rights decision finding France in breach of the Charter and highlights the Government's disagreement with that outcome, stating that “the state of current legislation protects children against all violence” (unofficial translation).<sup>6</sup>

Third cycle examination took place in 2018 (session 29). The following recommendations were extended:<sup>7</sup>

“Prohibit explicitly corporal punishment in all settings, including in the family and in care settings (Liechtenstein);

“Adopt legislation explicitly prohibiting all forms of corporal punishment of children and to sanction perpetrators of such violence against children (Sweden);

“Prohibit clearly and explicitly corporal punishment of children in any setting, including at home (Uruguay);

“Prohibit expressly all corporal punishment of children in all settings (Andorra);

“Prohibit explicitly corporal punishment in all settings in order to further strengthen the protection of children (Denmark);

“Prohibit explicitly corporal punishment of children in all settings, including in the home (Estonia)”

The Government partially accepted all of the above recommendations, stating that it generally accepted “the wording and intention” of the recommendations it had partially accepted but could

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<sup>4</sup> 21 March 2013, A/HRC/23/3, Report of the working group, paras. 120(116), 120(117) and 120(118)

<sup>5</sup> 28 May 2013, A/HRC/23/3/Add.1, Report of the working group: Addendum, para. 10

<sup>6</sup> [2016], National mid-term report, pp. 69-70

<sup>7</sup> 11 April 2018, A/HRC/38/4, Report of the working group, paras. 145(236), 145(237), 145(238), 145(239), 145(240) and 145(241)

not fully implement them, “either because it does not agree with part of the recommendation, although it could implement the other part, or because of legal or constitutional obstacles that prevent the full implementation of the recommendation”.<sup>8</sup> In relation to the recommendations on corporal punishment, France declared it already had enacted (unofficial translation) “domestic criminal legislation which criminalised and severely punished all forms of violence against children” and highlighted that, for parents who have used corporal punishment, “it is not a solution to send them in front of a judge (...) To promote an education without violence is first and foremost about convictions and growing as a society”.<sup>9</sup> Additionally, France committed to submitting a mid-term implementation report by 2021.<sup>10</sup>

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

**Note:** It appears the Convention on the Rights of the Child, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities and the European Social Charter all apply in St Barthelemy, as they do in France.

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

(29 January 2016, CRC/C/FRA/CO/5 Advance Unedited Version, Concluding observations on fifth report, paras. 6 and 44)

“The Committee recommends that the State party adopt all the measures necessary to address those previous recommendations that have been partly, insufficiently, or not implemented at all (CRC/C/FRA/CO/4), such as those relating to corporal punishment, minimum age of responsibility, the juvenile justice system, and unaccompanied migrant children, and regrets in particular that the State party has not withdrawn its reservation to article 30 and its two declarations to articles 6 and 40.

“The Committee reiterates its recommendation to the State party to explicitly prohibit corporal punishment in all settings, including in the family, in schools, day cares and in alternative care (CRC/C/FRA/CO/4, para. 58). In the light of its general comment no. 8 (2006) on the right of the child to protection from corporal punishment, the Committee reminds the State party that no violence against children is justifiable and that corporal punishment is a form of violence, invariably degrading and preventable, and urges the State party to promote positive, non-violent and participatory forms of child-rearing and discipline, including through public education campaigns.”

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

(22 June 2009, CRC/C/FRA/CO/4, Concluding observations on third/fourth report of France, paras. 6, 57 and 58)

“The Committee regrets that some of the concerns and recommendations it made upon consideration of the second periodic report have been insufficiently addressed, particularly those relating to ... corporal punishment....

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<sup>8</sup> 10 May 2018, A/HRC/38/4/Add.1, Report of the working group: Addendum, paras. 5 and 28

<sup>9</sup> March 2018, Annex to the Addendum: France’s responses to UPR recommendations

<sup>10</sup> 10 May 2018, A/HRC/38/4/Add.1, Report of the working group: Addendum, para. 36

“While taking note of the assertion by the State party that all forms of physical corporal punishment are prohibited in the French Penal Code, the Committee reiterates its concern that corporal punishment, in particular in the home, as well as in schools, remains widespread, especially in the Overseas Departments and Territories, and that a specific provision to prohibit explicitly corporal punishment against children is still missing.

“Reiterating its previous recommendation and in accordance with its general comment No. 8 (2006), the Committee recommends that the State party explicitly prohibit corporal punishment in all settings, including in the family, in schools, in institutions and other childcare settings, increase awareness-raising in this respect and promote the value of education without violence according to article 28, paragraph 2, of the Convention. In this endeavour, the Committee further recommends that the State party follow-up on the campaign of the Council of Europe to achieve full prohibition of all forms of corporal punishment which it has signed up for.”

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

(30 June 2004, CRC/C/15/Add.240, Concluding observations on second report of France, paras. 38 and 39)

“The Committee welcomes the fact that the State party considers corporal punishment totally unacceptable and inadmissible, however it remains concerned that corporal punishment is not explicitly prohibited in the family, in schools, in institutions and in other childcare settings.

“The Committee encourages the State party to expressly prohibit corporal punishment by law in the family, in schools, in institutions and in other childcare settings. It further recommends awareness-raising and promotion of positive, non-violent forms of discipline, especially in families, schools and care institutions in light of article 28, paragraph 2, of the Convention.”

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

(25 April 1994, CRC/C/15/Add.20, Concluding observations on initial report of France, para. 24)

“The Committee would also like to suggest that further awareness-raising and educational measures be undertaken to prevent child abuse and the physical punishment of children.”

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

(March 2020, Conclusions 2019)

“In its previous conclusion (Conclusions 2011) the Committee held that the situation was not in conformity with the Charter as all forms of corporal punishment of children were not prohibited. It recalls that it found in the follow up to APPROACH v. France, Complaint no.92/20113, decision on the merits of 4 December 2014, Findings 2018 that the situation had not been brought into conformity with the Charter.

“The Committee notes that the Law on the prohibition of ordinary educational violence (violences éducatives ordinaires) was adopted unanimously by the Senate in July 2019. It amends article 371-1 of the Civil Code and provides that: “Parental authority is exercised without any physical or psychological violence”. However, as this development took place outside the reference period the Committee will review it next time it examines Article 17.1 of the Charter.

“The Committee notes that there was no change to the situation during the reference period which it had previously found not to be in conformity with the Charter. Therefore, it reiterates its previous findings of non-conformity on this ground.

...

“The Committee concludes that the situation in France is not in conformity with Article 17§1 of the Charter on the grounds that:

- not all forms of corporal punishment of children were prohibited in all settings during the reference period;
- the maximum length of pre-trial detention is excessive;
- bone testing is used to determine the age of unaccompanied children;
- migrant children unaccompanied minors may be detained in inappropriate settings”

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

(January 2012, Conclusions 2011)

“In its previous conclusion (Conclusions 2005) the Committee held that the situation was not in conformity with the Charter as all forms of corporal punishment of children were not prohibited. In this connection the Committee notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2005) 25, §78) that there is no specific prohibition of corporal punishment but under the Criminal Code any act of violence is prohibited. The French authorities consider that there is no need for further legislation.

“In its previous conclusion the Committee asked what were the implications of the 2000 judicial ruling which stated that corporal punishment which is repetitive and not educational is not covered by the ‘right to correction’ for teachers and for parents. According to the report some judicial decisions in fact acknowledged the use of ‘right of correction’ by parents, teachers and educators, provided that it is harmless, moderate (spank, clothes seized, ears and hair pulled) and aims at maintaining school order and discipline. However, if the objective is to humiliate the student, if the correction causes physical damage or if it is too degrading, courts tend to convict the adult.

“The Committee notes from another source that a survey by the Union of Families in Europe (UFE) of 2,000 grandparents, parents and children found that 96% of children have been smacked; 84% of grandparents and 87% of parents have administered the corporal punishment. One in ten parents admitted to punishing their children with a ‘martinet’ (a small whip); 30% of children said they had been punished with a martinet. Corporal punishment is lawful in alternative care settings under the customary ‘right of correction’. In 2003 the Court of Cassation confirmed that nannies and babysitters have this right.

“According to the report a draft law to include the prohibition of corporal punishment, including spanking, in the Civil Code has been brought to the National Assembly in 2010. The Committee wishes to be informed about the outcome.

“The Committee recalls that 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 holds that there has been no change to the situation which it has previously found not to be in conformity with the Charter. Therefore it reiterates its previous finding of non-conformity on this ground....

“The Committee concludes that the situation in France is not in conformity with Article 17§1 of the Charter on the grounds that:

- all forms of corporal punishment of children are not prohibited....”

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

(March 2005, Conclusions 2005)

“In the previous conclusion the Committee noted that the Penal Code prohibits violence against the person and provides for increased penalties where the victim is under 15 years of age or where the perpetrator is related to the child or has authority over the child, but does not necessarily cover all forms of corporal punishment which it found not to be in conformity with the Revised Charter. The Committee finds no information in the report that the situation has changed. The Committee notes therefore that corporal punishment is not prohibited in the home or in institutions and other childcare settings and that this situation is not in conformity with the Revised Charter.

“The Committee notes from another source that High Court ruling of 1889 allowed a ‘right to correction’ for teachers and for parents. A 2000 judicial ruling stated that corporal punishment which is repetitive and not educational is not covered by this right. The Committee asks the next report to explain the implications of the 2000 judicial ruling with regard to the use of corporal punishment in the home.

...

“The Committee concludes that the situation in France is not in conformity with Article 17.1 of the Revised Charter on the grounds that:

- corporal punishment of children is not prohibited....”

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

(1 October 2003, Conclusions 2003 Vol. 1, page 173)

“As regards corporal punishment of children, the Committee notes that according to the report corporal punishment of children is not explicitly prohibited in the home, in school or in other institutions. Although the Penal Code prohibits violence against the person and provides for increased penalties where the victim is under 15 years of age or where the perpetrator is related to the child or has authority over the child. The Committee notes that these provisions of the Penal Code do not necessarily cover all forms of corporal punishment and therefore finds that the situation is not in conformity with the Revised Charter....

“The Committee concludes that the situation in France is not in conformity with Article 17.1 of the Revised Charter as the corporal punishment of children is not prohibited.”

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

(1 January 2001, Conclusions XV-2 vol. 1, pages 220-225)

“The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere....”

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

None identified.