

Corporal punishment of children in Switzerland

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Child population 1,479,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

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

Although explicit confirmation of parents' right to punish children has been removed from the Civil Code, case law confirms a "right of correction". The near universal acceptance of a degree of violence in childrearing necessitates clarity that no kind or degree of corporal punishment is acceptable or lawful, however light and however frequently or infrequently it occurs. Prohibition of all corporal punishment by parent and others with authority over children should be enacted in law, in addition to explicit repeal of all legal defences for the use of such punishment, including under case law.

Alternative care settings – Legislation should prohibit corporal punishment in all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – The law should clearly prohibit corporal punishment in early childhood care settings and in all day care for older children.

Schools – Legislation should prohibit corporal punishment in all education settings, public and private.

Penal institutions – Prohibition should be enacted in relation to all disciplinary measures in all institutions accommodating children in conflict with the law.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home under the parental “right of correction”. According to the Civil Code 1907 as amended, parents must take care of their child “with his or her best interests in mind” (art. 301) and must “safeguard the child’s physical, mental and moral development” (art. 302). The Code provides for the intervention of the child protection authority where a child’s best interests is threatened, including “to remind parents, foster parents or the child of their duties, issue specific instructions regarding care, upbringing or education” (art. 307); when such measures fail, parental responsibility may be withdrawn (art. 311). In 2014, article 311 of the Civil Code was amended to specify violence as one of the reasons for the withdrawal of parental authority. The Penal Code 1937 punishes the causing of physical injury (arts. 122, 123 and 125) and assault (art. 126) and specifies that repeated assault of a child (or other specified vulnerable person) by a person having care of that child (or other specified vulnerable person), will automatically lead to prosecution (art. 126). But neither of these Codes explicitly prohibits all corporal punishment in childrearing. In reporting to the Committee on the Rights of the Child in 2013, the Government stated that “assault” in the Penal Code “means any act inflicted on a human being that does not cause bodily harm or harm to health but that nonetheless *exceeds what is generally tolerated by society*” and that “slaps, punches, kicks, violent shoves and the throwing of projectiles *should* be classified as assault” (emphasis added).¹ In 2017, the Government reported that the “Civil Code currently in effect does not expressly prohibit the corporal punishment of children” and that explicit prohibition was not necessary as “repeated acts of violence against dependants, including children, have been prosecuted automatically since 1990, while bodily harm inflicted intentionally is always prosecuted automatically”.² This is not a clear message that all corporal punishment, however light, is prohibited.

In the 1970s, article 278 of the Civil Code 1907 which provided for parents’ “right of correction” (“droit de correction”) over their children was removed from the law. The purpose of this law reform was not to prohibit corporal punishment but was because it was considered unnecessary to explicitly provide for this right in the legislation. In its message on the reform of the Civil Code, issued in 1974, the Federal Council confirmed (unofficial translation): “Parental authority includes the right to correct the child to the extent that his/her education requires. However, there is no need to mention this right expressly in the law.”³

When the Penal Code was amended in 1985 to strengthen children’s protection from abuse, the message of the Federal Council again referred to the right of correction. The Council confirmed that the “right of correction” did not provide a defence in cases when bodily harm had been inflicted on a child (“the education of a child never justifies inflicting bodily harm”).⁴ The amendments included new provisions against repeated assault in article 126 of the Penal Code, intended to protect children from the damage caused by repeated assault even when the harmful effects are not immediately visible. The Council reported that it had received many requests to expressly confirm parents’ right of correction, but believed this was “superfluous” because “the right is deduced in particular in article

¹ 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, para. 159

² 11 July 2017, A/HRC/WG.6/28/CHE/1, National report to the UPR, para. 22

³ “Message du Conseil fédéral à l’Assemblée fédérale concernant la modification du code civil Suisse (Filiation) (Du 5 juin 1974)”, *Feuille Fédérale*, 8 July 1974, II, No. 27, p. 78

⁴ “Message concernant la modification du code pénal et du code pénal militaire (Infractions contre la vie et l’intégrité corporelle, les mœurs et la famille) du 26 juin 1985”, *Feuille Fédérale*, 10 September 1985, II, p. 1042

302 of the Civil Code”.⁵ The Council sought to “dispel the doubts expressed by those who fear a pair of slaps already constitutes assault prosecuted ex officio. As we have explained, the term ‘repeated occasions’ requires much more than that”.⁶

Subsequent case law has confirmed the “right of correction”. For example, a 2003 Federal Court judgment ruled that repeated and habitual corporal punishment is unacceptable but did not rule out the right of parents to use corporal punishment, stating that “the perpetrator, who struck his girlfriend’s children a dozen times in the space of three years and who regularly boxed their ears was committing repeated assault under article 126, paragraph 2, of the Criminal Code and was thereby exceeding what was admissible in accordance with the possible right to inflict corporal punishment”.⁷

In October 2007, Parliamentary initiative 06.419 to prohibit all corporal punishment was adopted by the Committee for Legal Affairs; in May 2008, the Government accepted a recommendation made during the Universal Periodic Review (UPR) of Switzerland to “consider the explicit prohibition of all practices of corporal punishment of children”. However, the Parliamentary initiative was defeated, and proposed new legislation was rejected by Parliament in December 2008 on the grounds that it was considered that the law already prohibited all corporal punishment.⁸ Since then, the Government has repeatedly asserted, to human rights treaty monitoring bodies as well as during the second UPR of Switzerland in 2012, that existing legislation on bodily injury and assault adequately protects children from all corporal punishment.⁹ The Government rejected the recommendation made during the 2012 UPR to prohibit corporal punishment in the home.¹⁰ During the UPR in 2017, the Government had a mixed response to recommendations on corporal punishment, supporting one to “prohibit all practices of corporal punishment” and noting another to enact legislation explicitly prohibiting corporal punishment in all settings, including the home.¹¹

Following a motion in 2012 “Violence in the family. Protection of children and young people (Motion 07.3725), the National Council ruled that existing law adequately protected children from corporal punishment.¹² Similarly, a parliamentary request in 2013 “In support of upbringing without violence” (Motion 13.3156)¹³ was rejected by the National Council in June 2014 on the grounds that existing Penal Code provisions adequately protect children from corporal punishment.¹⁴ The Government reported to the Committee Against Torture in 2014 that efforts are under way to raise awareness of “the unlawfulness of using force” and promoting non-violent education.¹⁵ Most recently (in May

⁵ “Message concernant la modification du code penal et du code penal militaire (Infractions contre la vie et l’intégrité corporelle, les mœurs et la famille) du 26 juin 1985”, *Feuille Fédérale*, 10 September 1985, II, p. 1045

⁶ “Message concernant la modification du code penal et du code penal militaire (Infractions contre la vie et l’intégrité corporelle, les mœurs et la famille) du 26 juin 1985”, *Feuille Fédérale*, 10 September 1985, II, p. 1046

⁷ 5 June 2003, ATF 129 IV 216ss, quoted in 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, para. 161

⁸ 5 March 2013, A/HRC/22/11/Add.1, Report of the working group: Addendum, para. 123(81)

⁹ For example, see 3 March 2010, CAT/C/CHE/Q/6/Add.1, Reply to list of issues, para. 135; 6 August 2012, A/HRC/WG.6/14/CHE/1, National report to the UPR, para. 28; 28 May 2008, A/HRC/8/41, Report of the working group, paras. 8 and 55; 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, para. 159; 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, paras. 159ff; 29 August 2014, CAT/C/CHE/7, Seventh state party report, para. 140

¹⁰ 5 March 2013, A/HRC/22/11/Add.1, Report of the working group: Addendum, para. 123(81)

¹¹ 29 December 2017, A/HRC/37/12, Report of the working group, paras. 146(103) and 148(61)

¹² 29 August 2014, CAT/C/CHE/7, Seventh state party report, para. 140

¹³ http://www.parlament.ch/e/suche/pages/geschaefte.aspx?gesch_id=20133156 and http://www.parlament.ch/ab/frameset/d/n/4914/440929/d_n_4914_440929_441221.htm, accessed 20 February 2015

¹⁴ 14 November 2014, CRC/C/CHE/Q/2-4/Add.1, Reply to list of issues, para. 51

¹⁵ 29 August 2014, CAT/C/CHE/7, Seventh state party report, paras. 142 and 143

2017), parliamentary motion Galladé “Abolition of corporal punishment” (motion 15.3639) which was tabled for discussion in June 2015¹⁶ was rejected by the National Council after the Federal Council argued against it, stating that the “right of correction” had disappeared in the 1970’s and that the current legislation was sufficient.¹⁷ Motion Marchand Ballet on the prohibition of corporal punishment (motion 18.3603) was introduced in June 2018 and is awaiting deliberation at the National Council.¹⁸

While there have been amendments to criminal and civil legislation which strengthen the protection of children from assault, including from corporal punishment, the “right of correction” has not been explicitly repealed and some level of corporal punishment in childrearing remains legally and socially acceptable in Switzerland.

Alternative care settings

Corporal punishment is considered unlawful in alternative care settings under Federal Court judgement BGE 117 IV 14 (see under “Schools”), but there is no explicit prohibition in law. Corporal punishment is possibly lawful as for parents in alternative care provision involving family placements.

Day care

Corporal punishment is considered unlawful in early childhood care and in day care for older children under Federal Court judgement BGE 117 IV 14 (see under “Schools”), though it is not explicitly prohibited.

Schools

Corporal punishment is considered unlawful in schools but there is no explicit prohibition. In 1991, the Federal Court ruled that corporal punishment may be permissible in some cantons in certain circumstances if it does not exceed the level generally accepted by society.¹⁹ A ruling in 1991 stated there can be no customary law that would allow teachers or other persons taking care of children to exercise corporal punishment against them.²⁰ In some of the 26 cantons, corporal punishment is explicitly prohibited in school laws; in others it is prohibited in regulations, and in others there are school rules which state that it should not be used. The Government has acknowledged the fragmented nature of legislation relating to corporal punishment in schools.²¹

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions but there appears to be no explicit prohibition. The Federal Act on Juvenile Criminal Procedure 2009 and the Juvenile Criminal Code 2003 do not explicitly prohibit corporal punishment.

¹⁶ 16 June 2016, CEDAW/C/CHE/Q/4-5/Add.1, Reply to the list of issues on fourth/fifth report, para. 11.2

¹⁷ <https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20153639>, in French, accessed 12 May 2017

¹⁸ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20183603>, accessed 26 June 2019

¹⁹ Cited in 3 June 2002, CRC/C/SR.791, Summary record of 791st meeting, para. 66

²⁰ BGE 117 IV 14

²¹ 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, para. 160

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not available as a sentence under the Criminal Code, the Criminal Procedure Code (in force 2011), the Federal Act on the criminal status of minors (in force 2007) or the Constitution.

Universal Periodic Review of Switzerland's human rights record

Switzerland was examined in the first cycle of the Universal Periodic Review in 2008 (session 2). The following recommendation was made and was accepted by the Government:²²

“To consider the explicit prohibition of all practices of corporal punishment of children (Italy)”

In accepting the recommendation, the Government stated: “The Federal Constitution specifically protects the corporal integrity of children and young people. In Switzerland, degrading treatment of children and any corrective methods that harm the child’s physical, psychological or spiritual integrity are prohibited by judgement of the Federal Tribunal. The Criminal Code punishes assault in general and also stipulates that repeated assault against children by their guardians or supervisors is automatically prosecuted.”²³

Examination in the second cycle took place in 2012 (session 14). During the review the following recommendations were made:²⁴

“Increase its efforts to carry out public-awareness campaigns on the negative effects of violence against children, especially corporal punishment (Iran (Islamic Republic of));

“Establish an explicit legal ban on corporal punishment of children in the home (Liechtenstein)”

The Government accepted the recommendation concerning awareness raising. However, the recommendation to prohibit corporal punishment in the home was rejected: “Rejected. Corporal punishment is explicitly prohibited by the rules and regulations of schools and institutions. Likewise, assault and, by extension, bodily harm, are punishable under criminal law. For this reason, in 2008, Parliament decided not to follow up a proposal to enact specific legislation to this effect. This matter has been re-examined in the Report of the Federal Council last year, which did not lead to a different conclusion.”²⁵

Third cycle examination took place in 2017 (session 28). The national report stated “The Civil Code currently in effect does not expressly prohibit the corporal punishment of children, but it is in conformity with the widespread view that corporal punishment is no longer a method of upbringing compatible with the well-being of the child. Switzerland therefore believes that it is not necessary to explicitly incorporate this principle in the Civil Code or to amend the criminal law, since repeated acts of violence against dependants, including children, have been prosecuted automatically since 1990, while bodily harm inflicted intentionally is always prosecuted automatically. The parliament has

²² 28 May 2008, A/HRC/8/41, Report of the working group, para. 57(23)

²³ 25 August 2008, A/HRC/8/41/Add.1, Report of the working group: Addendum, para. 25

²⁴ 7 December 2012, A/HRC/22/11, Report of the working group, paras. 122(44) and 123(81)

²⁵ 5 March 2013, A/HRC/22/11/Add.1, Report of the working group: Addendum, para. 123(81)

consistently rejected attempts to introduce such a prohibition.”²⁶ The following recommendations were extended:

“Prohibit all practices of corporal punishment (Kyrgyzstan)”

“Adopt legislation which explicitly prohibits corporal punishment of children in all settings, including in the home (Sweden)”

The Government supported the first of the recommendations but “noted” the second one.²⁷

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(4 February 2015, CRC/C/CHE/CO/2-4 Advance Unedited Version, Concluding observations on second-fourth report, paras. 38 and 39)

“While noting that there have been amendments to criminal and civil legislation which strengthen the protection of children from assault, the Committee regrets that corporal punishment is still not considered as physical violence if it does not exceed the level generally accepted by society, and that it is not explicitly prohibited in all settings.

“The Committee draws the attention of the State party 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 urges the State party to explicitly prohibit all practices of corporal punishment in all settings and strengthen its efforts to promote positive, non-violent and participatory forms of child-rearing and discipline.”

Committee on the Rights of the Child

(7 June 2002, CRC/C/15/Add.182, Concluding observations on initial report, paras. 32 and 33)

“While noting that corporal punishment is prohibited in schools, the Committee is concerned that according to the jurisprudence of the Federal Tribunal, corporal punishment is not considered as physical violence if it does not exceed the level generally accepted by society. In addition, the Committee is concerned that corporal punishment within the family is not prohibited under law.

“The Committee recommends that the State party explicitly prohibit all practices of corporal punishment in the family, schools and in institutions and conduct information campaigns targeting, among others, parents, children, law enforcement and judicial officials and teachers, explaining children’s rights in this regard and encouraging the use of alternative forms of discipline in a manner consistent with the child’s human dignity and in conformity with the Convention, especially articles 19 and 28, paragraph 2.”

Committee Against Torture

(25 May 2010, CAT/C/CHE/CO/6, Concluding observations on sixth report, para. 23)

“While taking note of information supplied by the State party, according to which the jurisprudence of the Federal Tribunal confirms the ban on corporal punishment, including for educational purposes,

²⁶ 11 July 2017, A/HRC/WG.6/28/CHE/1, National report, para. 22

²⁷ 29 December 2017, A/HRC/37/12, Report of the working group, paras. 146(103) and 148(61)

and that corporal punishment is also covered by article 126 (2) of the Criminal Code, the Committee notes with concern that corporal punishment is not specifically prohibited under the legislation of the State party (art. 16).

The State party should specifically prohibit corporal punishment in its legislation. To that end, the Committee urges the State party to relaunch the 06.419 Vermont-Mangold parliamentary initiative, aimed at enacting legislation to protect children from corporal punishment and other affronts to their dignity, which was shelved by Parliament. The Committee also calls upon the State party to carry out public-awareness campaigns on the negative effects of violence against children, especially corporal punishment.”

Prevalence/attitudinal research in the last ten years

In a 2007 survey of 1,028 people, 68.1% said slapping a child or “smacking” their bottom was a legitimate educational measure (61.8% of 15-34 year olds, 67.7% of 35-5 year olds and 76.8% of 55-74 year olds).

(ISOPUBLIC Institut für Markt- und Meinungsforschung (2007), *Jugendkriminalität: GALLUP TELEOmnibus: Befragung vom 11.7-14.7.2007*, Schwerzenbach: ISOPUBLIC Institut für Markt- und Meinungsforschung)