

Corporal punishment of children in The Former Yugoslav Republic of Macedonia

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Child population 433,000 (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 unlawful in the home. Article 12(2) of the Law on Child Protection 2013 prohibits all forms of corporal punishment (unofficial translation): “All forms of sexual exploitation and sexual child abuse (harassment, child pornography, child prostitution), forced procuring, selling or trafficking children, psychological or physical violence and harassment, punishment or other inhuman treatment, all kinds of exploitation, commercial exploitation and abuse of children that violates basic human freedoms and rights and rights of the child, are prohibited.” Article 12(6) states that children are to be protected in all settings: “The state and institutions are obliged to take all necessary measures to ensure the right of the children and prevent any form of discrimination or abuse regardless of the place where they are committed, the severity, intensity and duration.” In reporting to the Universal Periodic Review in 2013, the Government confirmed that the Law prohibits all corporal punishment of children.¹ Similar confirmation was made to the Committee Against Torture in 2014.²

Alternative care settings

Corporal punishment is prohibited in alternative care settings (foster care, institutions, places of safety, emergency care, etc) under article 12 of the Law on Child Protection 2013 (see under “Home”).

¹ 8 November 2013, A/HRC/WG.6/18/MKD/1, National report to the UPR, para. 88

² 24 January 2014, CAT/C/MKD/3, Third state party report, para. 160

Day care

Corporal punishment is prohibited in early childhood care (nurseries, crèches, preschools, family centres, etc) and in day care for older children (day centres, after-school childcare, childminding, etc) under article 12 of the Law on Child Protection 2013 (see under “Home”).

Schools

Corporal punishment is prohibited in all education settings under article 12 of the Law on Child Protection 2013 (see under “Home”). The Law on Elementary Education 1995 makes no provision for corporal punishment, though does not explicitly prohibit it. The Law on Secondary Education prohibits corporal punishment in article 64 (unofficial translation): “Physical punishment and mental maltreatment of students is forbidden.” Article 128 of the Law punishes the breach of this prohibition with a fine.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions under the prohibition of corporal punishment in article 12 of the Law on Child Protection 2013 (see under “Home”). Corporal punishment is not among permitted disciplinary measures in the Law on Execution of Sanctions 2006, and the Law on Juvenile Justice 2007 protects the rights of children in conflict with the law.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not available as a sentence under the Criminal Code 2004, the Law on Criminal Procedure 2013, the Law on Execution of Sanctions 2006, the Law on Misdemeanours 2006, the Law on Offences 2006 or the Law on Juvenile Justice 2007.

Universal Periodic Review of Macedonia’s human rights record

The Former Yugoslav Republic of Macedonia was examined in the first cycle of the Universal Periodic Review in 2009 (session 5). The following recommendations were made:³

“Adopt and implement legislation prohibiting corporal punishment under all circumstances and accompany this with a public awareness-raising campaign (Austria); adopt appropriate measures, consistent with international standards, to avoid corporal punishment of children in all areas and to carry out education and awareness-raising campaigns in schools and in society at large (Argentina)”

The Government accepted the recommendations.⁴ In its Mid-term report, dated February 2012, the Government confirmed its acceptance of the recommendations and drew attention to the Law Amending the Law on Protection of Children 2009.

The second cycle review took place in 2014 (session 18). In its nation report to the UPR, the Government confirmed that the law prohibits corporal punishment: “The legislation prohibits

³ 5 June 2009, A/HRC/12/15, Report of the working group, para. 77(23)

⁴ 5 June 2009, A/HRC/12/15, Report of the working group, paras. 34 and 77(23); 25 February 2010, A/HRC/12/50, Report of the Human Rights Council on its twelfth session, para. 595

corporal punishment of children. Article 9 of the Law on Child Protection prohibits psychological and physical ill-treatment, punishment or other inhuman treatment or abuse of children. Chapter XV of this Law contains misdemeanour provisions. Corporal punishment of children amounts to domestic violence, according to the Law on the Family and a crime according to the Criminal Code. The Laws on Primary and on Secondary Education prohibit physical and psychological ill-treatment of students.”⁵ The following recommendation was made during the review:⁶

“Implement legislation prohibiting corporal punishment of children in the home and conduct awareness-raising campaigns on the harmful effect of corporal punishment and on the use of alternative and non-violent forms of discipline in a manner consistent with the child’s dignity (Liechtenstein)”

The Government accepted the recommendation.⁷

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(23 June 2010, CRC/C/MKD/CO/2, Concluding observations on second report, paras. 38, 39, 40 and 41)

“While welcoming the strengthening of anti-torture provisions through amendments of the Criminal Code and the amending of the Law on the Ombudsman in 2009 to bring the institution into line with the Optional Protocol to the Convention against Torture, the Committee is deeply concerned about allegations of solitary confinement, corporal punishment and use of batons in the Educational-Correctional Institution.

“The Committee recommends that the State party take immediate measures to remove batons and to abolish the use of corporal punishment in the Educational-Correctional Institution. In line with article 37 (c), the State party should review or limit as far as possible the use of solitary confinement in the institution.

“While noting the prohibition of corporal punishment in schools and the penal system, the Committee is concerned that applicable law is not interpreted as prohibiting corporal punishment in the home and is further concerned about the high prevalence of physical punishment and aggression in the family.

“The Committee recommends that the State party:

- a) prohibit corporal punishment in the home as a matter of urgency;
- b) undertake a review of current legislation with a view to identifying protection gaps and ending the use of corporal punishment in all areas, including in schools, in the home, in the penal system, and in alternative care settings;
- c) take due account of the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8).”

⁵ 8 November 2013, A/HRC/WG.6/18/MKD/1, National report to the UPR, para. 88

⁶ 26 March 2014, A/HRC/26/10, Report of the working group, para. 101(56)

⁷ 16 June 2014, A/HRC/26/10/Add.1, Report of the working group: Addendum

Committee on the Rights of the Child

(23 February 2000, CRC/C/15/Add.118, Concluding observations on initial report, paras. 23 and 24)

“Recognising the State party’s efforts to end corporal punishment practices in schools, the Committee is nevertheless concerned that such practices have not been entirely ended in schools and also continue outside of the school context.

“The Committee urges the State party to continue its efforts to end corporal punishment practices in schools, to monitor and record the use of corporal punishment against children in all contexts, and to make every effort to prevent the practice of corporal punishment including through its prohibition by law. The Committee further encourages the State party to undertake campaigns to raise the awareness of parents, in particular, of the harmful effects of corporal punishment.”

Committee Against Torture

(21 May 2008, CAT/C/MKD/CO/5, Concluding observations on second report, para. 21)

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

The State party, taking also 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, supported by the necessary awareness-raising and public education measures.”

Committee on the Rights of Persons with Disabilities

(21 September 2018, CRPD/C/MKD/CO/1 Advance unedited version, Concluding observations on initial report, paras. 15 and 16)

“The Committee is concerned about:

(b) The lack of criminalization of violence against children with disabilities, including corporal punishment and sexual violence, in all settings;

“The Committee recommends that the State party:

(a) Adopt specific legislation in regards to the rights of children with disabilities;

(b) Criminalize violence against children with disabilities, including corporal punishment and sexual violence, in all settings and adopt and implement measures for sanctioning the perpetrators”

European Committee of Social Rights

(January 2016, Conclusions 2015)

“In its previous conclusion the Committee held that the situation was not in conformity with the Charter as corporal punishment was not prohibited in the home and in institutions.

“According to the report, the Child Protection Act foresees protection of children against any form of discrimination, sexual exploitation and sexual abuse, abduction, sale or trafficking, physical or psychological violence or inhuman treatment, exploitation and commercial exploitation.

“The Family Act regulates the protection of children from neglect, abuse and violence by establishing measures of protection and supervision over the parental rights as well as by the introduction of provisions on domestic violence.

“The Committee notes from the Global Initiative to End Corporal Punishment of Children that Corporal punishment is unlawful in the home. Section 12(2) of the Child Protection Act of 2013 prohibits all forms of corporal punishment. Section 12(6) states that children are to be protected in all settings: the state and institutions are obliged to take all necessary measures to ensure the right of the children and prevent any form of discrimination or abuse regardless of the place where they are committed, the severity, intensity and duration.

“Corporal punishment is prohibited in alternative care settings (foster care, institutions, places of safety, emergency care, etc) under Section 12 of the Child Protection Act of 2013.

“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). 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 asks the next report to indicate the precise legal provisions and the case law which explicitly prohibit all forms of corporal punishment of children (including the mildest forms) in the home and in institutions. In the meantime, the Committee reserves its position on this issue.”

“Pending receipt of the information requested, the Committee defers its conclusion.”

European Committee of Social Rights

(January 2012, Conclusions 2011)

“The Committee recalls that under Article 17 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 prohibiting corporal punishment must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. There will be no sufficient prohibition of corporal punishment in law unless a state can demonstrate that legislation is interpreted as prohibiting corporal punishment and effectively applied as such.

“The Committee notes from another source that corporal punishment is lawful in the home. Provisions against violence and abuse in the Law on Protection of Children (2000), the Criminal Code (2004), the Family Law (2004) and the Constitution (1991) are not interpreted as prohibiting all corporal punishment in childrearing. Corporal punishment is prohibited in schools in the Law on Elementary Education (1995) and Articles 64 and 128 of the Law on Secondary Education (1995). There is no explicit prohibition of corporal punishment in alternative care settings.

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

“The Committee concludes that the situation in ‘the former Yugoslav Republic of Macedonia’ is not in conformity with Article 17 of the Charter of 1961 on the ground that corporal punishment is not explicitly prohibited in the home and in institutions.”

Prevalence/attitudinal research in the last ten years

According to UNICEF statistics collected in 2011, 69% 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 half (52%) experienced physical punishment and 56% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A much smaller percentage (3%) of mothers and caregivers thought that physical punishment was necessary in childrearing.

(UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF)

The 2011 report of the Ombudsman, acting as National Preventive Mechanism under the Optional Protocol to the Convention Against Torture, documented the use of solitary confinement as a punishment and of insults and physical violence by guards against juveniles in penitentiary-correctional and educational-correctional institutions.

(Ombudsman: National Preventive Mechanism (2012), *Annual Report*, Skopje: Ombudsman)

A 2009 report by the office of the Ombudsman of the Republic of Macedonia found that corporal punishment was very common in institutions. Fifty-three children living in three institutions took part in the research. Of these, 21% said physical violence occurred often in institutions, 21% said it occurred rarely; 17% said they were often psychologically abused, 11% rarely. Only about half the children had never experienced physical violence, and half had never experienced psychological violence. Children were afraid to report experiencing corporal punishment, and did not know where to report it.

(First Children’s Embassy in the World Megjashi (2009), *Overview of the situation of children in institutions in Republic of Macedonia*, www.childresembassy.org.mk)

Almost two thirds (65.3%) of respondents to a 2009 survey of 662 adults believed corporal punishment should never be used. This was a significant increase compared to a similar 2005 survey of 519 adults, when 42.8% said corporal punishment should never be used; 1.5% of respondents in 2009 said corporal punishment was acceptable “if the parent believes that it will be effective”, compared to 14.5% in 2005. The studies in 2005 and 2009 also examined adults’ perceptions of the prevalence of corporal punishment.

(BRIMA (2009), *Overview of the perception about the corporal punishment of the children in Republic of Macedonia and comparative analysis between the research results from 2005 and 2009 year*, www.canee.net/files/Omnibus%20research%20Macedonia%202009.pdf. Part of the Childhood Without Abuse project, which includes studies carried out in Bulgaria, Lithuania, Latvia, Macedonia, Moldova, Poland, and Ukraine in 2005 and 2009)

A 2009 survey of 208 teachers in primary schools in Skopje found that 73% believed corporal punishment is humiliating for the child and 70% believed it meant “the parents are not good at rearing children”; 68% felt the use of “spanking” as a punishment would justify intervention by a third party. In an identical survey of a similar sample in 2005, 62% believed this. On average, respondents

in 2009 estimated that 30% of children in Macedonia experience spanking as punishment, compared to an average estimate of 52% in 2005.

(Nobody's Children Foundation et al (2009), *Skopje teachers' attitudes toward child abuse*, www.canee.net/files/Teachers%20studies%20Macedonia%202009.pdf. Part of the Childhood Without Abuse project, which includes studies carried out in Bulgaria, Lithuania, Latvia, Macedonia, Moldova, Poland, and Ukraine in 2005 and 2009)

The First Children's Embassy in the world-Megjashi, carried out research on children's rights, discrimination and violence in 2009, involving over 2,200 students. According to the report, 56% of children named hitting/beating as a form of violence that happens in schools, and 57% said they knew a child who had been beaten by a teacher or headteacher, including being slapped (63%), caned (34%), and kicked (15%).

(First Children's Embassy in the world-Megjashi (2009), *Perception of Children's Rights, Discrimination and Children's Exposure to Violence*, www.childresembassy.org.mk/default-en.asp?ItemID=BDE30F4995F6E24A8495ABB7F7C731A1)