

# Corporal punishment of children in Turkey

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Child population 24,240,000 (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 possibly penal institutions.

Legal recognition of parents' "right of correction" was removed from the Civil Code in 2002, but the Criminal Code 2004 recognises a person's "disciplinary power arising from the right of tutoring of a person under his/her care or to whom he/she has obligation to raise, educate, care, protect or teach an occupation or art". The near universal social and cultural acceptance of corporal punishment in childrearing necessitates clarity in law that no degree or form of such punishment is acceptable in disciplining children. All legal defences should be repealed and legislation should prohibit all forms of corporal punishment and other humiliating and degrading treatment, including by parents in the home and in all settings where adults have authority over children.

*Alternative care settings* – Prohibition of corporal punishment should be enacted in relation to disciplinary measures in all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

*Day care* – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

*Schools* – Prohibition of corporal punishment should be enacted in relation to all schools, public and private

*Penal institutions* – Legislation should explicitly prohibit corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. In 2002, the Civil Code was amended to remove parents' "right of correction", but the Criminal Code 2004 recognises the concept of "disciplinary power" (art. 232). It appears court cases relating to assault have been dismissed on the basis of this "disciplinary power".<sup>1</sup> Provisions against violence and abuse in the Criminal Code, the Law to Protect the Family and Prevent Violence against Women 2012 and the Juvenile Protection Law 2005 are not interpreted as prohibiting all corporal punishment in childrearing. In 2010, the Constitution was amended to state that "the State shall take measures for the protection of the children against all kinds of abuse and violence" (art. 41), but this is not interpreted as prohibiting all forms of corporal punishment.

Turkey is signed up to the Council of Europe campaign against corporal punishment of children. There appear to have been no moves towards law reform to achieve prohibition, but as at 2009 the Ministry of Justice, UNICEF and others had conducted a study of national legislation and recommendations were being drafted to ensure harmonisation with the Convention on the Rights of the Child. The Government had initially indicated its commitment to prohibiting all corporal punishment of children by clearly accepting recommendations to do so in the Universal Periodic Review of Turkey in 2010 and again in 2015.<sup>2</sup> However, the Global Initiative no longer considers Turkey committed to prohibiting all corporal punishment of children without delay, as no progress has been made on drafting and adopting prohibiting legislation. A new National Strategy Document and Action Plan on Children's Rights 2018-2023 was to be published in 2018,<sup>3</sup> but as of July 2019 this had not happened.<sup>4</sup>

### **Alternative care settings**

There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents (see under "Home").

### **Day care**

There is no explicit prohibition of corporal punishment in all early childhood care and in day care for older children.

### **Schools**

Corporal punishment has been considered unlawful in schools since 1923, but there is no explicit prohibition and there has been some controversy as to its legal status. The State Personnel Law No. 657 provides for punitive measures against teachers who use physical or psychological violence

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<sup>1</sup> Information provided to the Global Initiative, July 2019; see also <https://www.cnnturk.com/turkiye/kizina-tokat-atan-babaya-beraat-terbiye-etti>, accessed 12 July 2019

<sup>2</sup> 17 June 2010, A/HRC/15/13, Report of the working group, para. 101(4); 13 April 2015, A/HRC/29/15, Report of the working group, paras. 149(16) and 149(17)

<sup>3</sup> See <http://www.hurriyetdailynews.com/child-protection-councils-to-be-set-up-across-turkey-family-minister-129306>, accessed 29 June 2018

<sup>4</sup> Information provided to the Global Initiative, July 2019

against children. However, in April 2008, an investigation by the Education Ministry into the use of corporal punishment by a school principal reportedly concluded that corporal punishment has an educational value.<sup>5</sup> The investigator reportedly cited an Administrative Supreme Court ruling in 1978 which supported corporal punishment by teachers, but not a 2005 ruling against it.<sup>6</sup>

### **Penal institutions**

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but it is not explicitly prohibited in law. The Law on Enforcement of Punishment and Security Policies 2004 provides for the rights of children in detention, but it does not explicitly prohibit corporal punishment.

### **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Code 2004 or the Criminal Procedure Code 2004.

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

Turkey was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). The following recommendation was made and was accepted by the Government:<sup>7</sup>

“Take legislative and practical measures at preventing and combating violence against women and children, including prohibition of corporal punishment (Armenia)”

The second cycle review took place in 2015 (session 21). During the review, the following recommendations were made and were accepted by the Government, which stated that it considered them already implemented or in the process of implementation:<sup>8</sup>

“Consider the adoption of the specific legislation prohibiting all forms of corporal punishment of children (Poland);

“Prohibit all forms of violence against children, including corporal punishment (Slovenia)”

Third cycle examination took place in 2020 (session 35). The following recommendation was extended:<sup>9</sup>

“Adopt legislation prohibiting all forms of corporal punishment of children (Poland)”

The Government will examine the recommendation and respond by the 44<sup>th</sup> session of the Human Rights Council in June 2020.

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<sup>5</sup> “Officials sanction ‘harsh discipline’ on students”, *Turkish Daily News*, 21 April 2008

<sup>6</sup> “Officials sanction ‘harsh discipline’ on students”, *Turkish Daily News*, 21 April 2008

<sup>7</sup> 17 June 2010, A/HRC/15/13, Report of the working group, para. 101(4)

<sup>8</sup> 13 April 2015, A/HRC/29/15, Report of the working group, paras. 149(16) and 149(17)

<sup>9</sup> 6 February 2020, A/HRC/WG.6/35/L.11 Unedited version, Draft report of the Working Group, para. 49(262)

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

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

(20 July 2012, CRC/C/TUR/CO/2-3, Concluding observations on second/third report, paras. 6, 7, 44, 45, 58 and 59)

“The Committee welcomes efforts by the State party to implement the Committee’s concluding observations of 2001 on the State party’s initial report (CRC/C/15/Add.152). Nevertheless, the Committee notes with regret that several of these concluding observations have not been significantly addressed....

“The Committee urges the State party to take all necessary measures to address the recommendations in the concluding observations on the initial report that have not yet been implemented fully or sufficiently, including those on such issues ... corporal punishment....

“The Committee takes note of the amendment to the Civil Code (2002) to remove parents’ ‘right to correction of their children,’ as well as the amendments to the State party’s criminal legislation to prohibit corporal punishment as a sentence for a crime and as a disciplinary measure in penal institutions. The Committee however remains concerned that corporal punishment is still not explicitly prohibited in the home and in alternative care settings. The Committee is concerned at reports that corporal punishment is considered acceptable in homes and has, in some cases, been used in psychiatric facilities and rehabilitation centres. The Committee notes that while corporal punishment is prohibited in schools, reports indicate prevalence of the practice in addition to a continued perception among adults of its educational value, which raises grave concerns over the interpretation and implementation of the ban on corporal punishment in schools.

“The Committee reiterates its concerns, as expressed in previous concluding observations (CRC/C/THA/CO/2, paras. 40 and 41) and in line with its general comments No. 13 (2011) on the right of the child to freedom from all forms of violence and No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, with respect to measures to combat all forms of violence against children, and recommends that the State party:

- a) eliminate the practice of corporal punishment, including by explicitly prohibiting corporal punishment in the home and in alternative care settings;
- b) monitor the implementation of the prohibition of corporal punishment in schools, including by investigating and taking appropriate action against perpetrators;
- c) develop measures to raise awareness on the harmful effects of corporal punishment and promote alternative forms of discipline in families.

“The Committee welcomes the improvements in the education system since the State party’s previous report.... However, the Committee is concerned about: ...

- d) widespread prevalence of violence in schools, ranging from verbal to physical violence....

“The Committee recommends that the State party: ...

- d) strengthen its programmes on violence in schools, including strict adherence to the prohibition of corporal punishment and fostering a spirit of non-violence among children....”

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

(9 July 2001, CRC/C/15/Add.152, Concluding observations on initial report, paras. 47 and 48)

“The Committee expresses its deep concern that physical punishment in the home is culturally and legally accepted and that only ‘excessive punishment’ resulting in physical injury is prohibited by the Penal Code. It also notes with concern that, although prohibited, corporal punishment is used in schools and other institutions.

“In the light of articles 3, 19 and 28(2) of the Convention, the Committee encourages the State party to develop measures to raise awareness on the harmful effects of corporal punishment and promote alternative forms of discipline in families, to be administered in a manner consistent with the child’s dignity and in conformity with the Convention. It also recommends that the ban on corporal punishments in school and other institutions be enforced effectively.”

### ***Committee Against Torture***

(20 January 2011, CAT/C/TUR/CO/3, Concluding observations on third report, para. 22)

“The Committee, while noting the amendment to the Civil Code in 2002 which removed parents’ right of correction, is concerned at the lack of an explicit prohibition of corporal punishment in the home and in alternative settings in the domestic legislation, and reports that corporal punishment is widely used by parents and is still considered to have educational value in schools (art. 16).

The Committee should clarify beyond doubt the legal status of corporal punishment in schools and penal institutions and, as a matter of priority, prohibit it in the home, alternative settings and, if appropriate, schools and penal institutions.”

### ***Committee on Economic, Social and Cultural Rights***

(12 July 2011, E/C.12/TUR/CO/1/, Concluding observations on initial report, para. 24)

“The Committee is concerned that corporal punishment is not explicitly prohibited in the home and is practiced in schools (arts. 10 and 13).

The Committee urges the State party to adopt specific legislation prohibiting all forms of corporal punishment in the home. It further calls on the State party to raise public awareness against corporal punishment at home or in schools. In this respect, the Committee draws the attention of the State party to its recommendation on discipline in schools as contained in its general comment No. 13 (1999) on the right to education.”

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

(March 2020, Conclusions 2019)

“The Committee previously concluded that the situation was non-conformity on the ground that not all forms of corporal punishment of children are prohibited in the home, in schools and in institutions (Conclusions 2015).

“There has been no change to this situation therefore the Committee reiterates its previous conclusion.

...

“The Committee concludes that the situation in Turkey is not in conformity with Article 17§1 of the Charter on the ground that: • not all forms of corporal punishment are prohibited in all settings; • the maximum length of pre-trial detention is excessive; • the age of criminal responsibility is too low.”

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

(January 2016, Conclusions 2015)

“In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter as corporal punishment of children was not explicitly prohibited in the home.

“The Committee notes from the Global Initiative to End Corporal Punishment of Children that Turkey expressed its commitment to prohibiting all corporal punishment during the Universal Periodic Review of Turkey in 2010. However, prohibition is still to be achieved in the home, alternative care settings, day care and schools.

“According to the same source, legal recognition of parents’ right of correction was removed from the Civil Code in 2002, but the Criminal Code 2004 recognises a person’s disciplinary power arising from the right of tutoring of a person under his/her care or to whom he/she has obligation to raise, educate, care, protect or teach an occupation or art. Prohibition of corporal punishment should be enacted in relation to disciplinary measures in all alternative care settings (foster care, institutions, places of safety, emergency care, etc). Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc). Prohibition of corporal punishment should be enacted in relation to all schools, public and private.

“According to the report, Article 232 of the Law No. 5237 provides that the persons should have particular discipline competences because of the duty to discipline and to educate the persons who they are obliged to raise, educate, look after, protect or teach a profession or a skill. Furthermore, the limits of authorisation of discipline were drawn, stating that the limit of authorisation of discipline can be used at a degree not leading to breakdown both physically and mentally or subjecting to any hazard.

“The Committee notes from the report that according to both the legislation as well as the Supreme Court case law, harsh warnings or punishments that are not educational, incompatible with affection and leaving physical and psychological marks on the child shall constitute an offense. The offender shall be punished under Article 232 of the Law No. 5237 if the action has made an impact on the sufferer requiring simple medical intervention.

“Therefore, according to the report, the aim of including the regulation in Article 267 of the Civil Law No. 743 and also in the Civil Law No. 4721 is to prohibit the bodily sanctions, particularly beating the child which prevent physical and psychological development of the child. The lawmaker preferred to make regulations enabling the enjoyment of the right to discipline and the right to education within the limitations instead of fully rejecting the authorisation of discipline.

“The Committee recalls that in interpreting Article 17 of the Charter, the Committee has held that the prohibition of any form of corporal punishment of children is an important measure for the education of the population. It is a 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 Charter contains comprehensive provisions protecting the fundamental rights and human dignity of children – that is persons aged under 18 (Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 25-26). It enhances the European Convention on Human Rights in this regard. It also reflects the provisions of the United Nations Convention on the Rights of the Child, on which in particular Article 17 is based.

“The Committee has noted that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comments Nos. 8 and 13 of the Committee on the Rights of the Child (Complaint No 93/2013 Association for the Protection of All Children (APPROACH) v. Ireland , decision on the merits of 2 December 2014, §§45-47).

“The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not fully evolved towards the general and explicit prohibition of all forms of corporal punishment. Therefore, it reiterates its previous finding of non-conformity on the ground that not all forms of corporal punishment of children are prohibited in the home, in schools and in institutions.”

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

- not all forms of corporal punishment are prohibited in the home, in schools and in institutions...”

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

(January 2012, Conclusions 2011)

“In its previous conclusion (Conclusions XVII-2) the Committee held that the situation was not in conformity with the Charter as corporal punishment in the home was not prohibited. It notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2005) 24, §223) that the Criminal Code was replaced by a new Criminal Code, which entered into force on 1 June, 2005. Under Article 232, paragraph 1 of the new Code, under the heading “unfair treatment”, it is stipulated that any person mistreating any of the persons living in the same dwelling with him/her, shall be sentenced to a term of imprisonment ranging from two months to one year. This article also covers the children in the home. In its Article 232, paragraph 2, the new Criminal Code stipulates that a person who misuses his/her power of discipline on a person who is under his/her authority or who has been held responsible for the purpose of his/her raising, protecting or teaching him/her a profession or an art, shall be held liable for a term of imprisonment up to one year. According to the report of the Governmental Committee, this regulation shows the limits of his/her disciplinary authority and is of the nature of prohibiting corporal punishment in the home.

“The Committee however notes from another source that corporal punishment is lawful in the home. In 2002, the Civil Code was amended to remove parents’ ‘right of correction’, but the new Criminal Code recognizes the concept of ‘disciplinary power’ (Article 232). Provisions against violence and abuse in the Criminal Code, the Protection of the Family Act and the Child Protection Act (2005) are not interpreted as prohibiting all corporal punishment in childrearing.

“The Committee considers that the new Criminal Code does not explicitly prohibit all forms of corporal punishment of children in the home. Therefore, it holds that the situation which it has previously found not to be in conformity on this point has not changed.

“According to the above-mentioned source, corporal punishment has been considered unlawful in schools since 1923, but there is no explicit prohibition and there has been some controversy as to its legal status. Act No. 1702 punishes ill-treatment and beating (articles 20 and 22). According to the representative of the Turkish Government (TS-G (2005) 24, §224), this Law is indeed the exact law which prohibits the corporal punishment of children in schools. According to the same source, Promotion, Appreciation and Punishment for Primary School Teachers Act No. 4357 (Section 7), the Promotion and Punishment for Secondary School Teachers Act (Sections 20-22 and 27) and State Personnel Act No. 657 provide for punitive measures against teachers who use physical or psychological violence against children. However, in April 2008, an investigation by the Education Ministry into the use of corporal punishment by a school principal reportedly concluded that corporal punishment has an educational value. The investigator reportedly cited an Administrative Supreme Court ruling from 1978 which supported corporal punishment by teachers, but not a 2005 ruling against it. The Committee asks the Government to provide explanation and in the meantime it reserves its position on this point.

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

- there is no explicit prohibition of corporal punishment in the home....”

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

(March 2005, Conclusions XVII-2)

“The Committee notes that according to Article 6 of Law 4357 (13) and Articles 20 and 22 of Law 1702 (14), a teacher who commits a harmful act against a pupil may be sanctioned by *inter alia* the non payment of his/her salary and pursuant to Article 27 of the latter law, a teacher who commits sexual harassment against a pupil is sanctioned by dismissal. From another source the Committee notes that corporal punishment is used in schools and other institutions. Since the report is unclear on which legislation actually prohibits all forms of corporal punishment in schools and in institutions, the Committee asks that the next report contain this information. It asks also what measures have been taken to effectively enforce a ban on corporal punishment in schools and institutions. This situation is not in conformity with Article 17 of the Charter.



...

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

- corporal punishment in the home is not prohibited....”

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

(1 June 2001, Addendum to Conclusions XV-2, pages 271-274)

“The Turkish Penal and Civil Codes have provisions for the protection of children from physical and mental abuse, exploitation and other similar treatment by their parents. The Committee wishes to receive further information on these, especially national case law. In particular the Committee wishes to know whether legislation prohibits all forms of corporal punishment of children in the home, in institutions, in schools and elsewhere....”

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

The Turkish Statistical Institute’s 2016 Family Structure Survey, involving 20,580 households, reveals punishments used by parents with their children. According to the results of the survey, “scolding” is the most common punishment by parents (at 73%). A third of parents reported slapping their children (33%) and over a fifth reported beating them (21%).

(Turkish Statistical Institute (TurkStat) (2017), Family Structure Survey, 2016, Ankara: TurkStat)

In 2013, 4,100 parents primarily responsible for the care of children aged 0-8 years, were asked in face-to-face interviews how they behave in order to “teach the child what is right” and how they approach cases when “the child behaves in a way to force their limits of tolerance”. Whether for “educative” purposes or a reaction given after irritating behaviour by the child, 74% of children were found to be exposed to at least one form of violence (physical or emotional) within the last 12 months, with 23% resorting to “mild” physical violence (slapping, throwing things at the child, pushing, shaking or pulling by the ear/hair) and 1% using “high level” physical violence (punching, hitting with something, kicking, dragging, beating, choking, burning a part of the body, threatening to use or actually using things like a knife or firearm).

(Boğaziçi University, Humanist Bureau and Frekans Research (2014), Research on Domestic Violence against Children Aged 0-8 Years in Turkey, Istanbul: Bernard van Leer Foundation)

In a study involving 464 families, carried out by Hacettepe University Public Health Institute, 38.6% of parents thought corporal punishment could be used as a “last resort”; 14% said boys could be beaten but girls could not, 6.7% said it was OK to “smack” younger but not older children. Fifty-seven per cent of parents thought using physical force against children should be completely banned, 67.5% thought corporal punishment was “completely harmful” for children.

(Reported in *The Daily News*, 20 November 2013)

A 2010 study examined the prevalence of various types of family violence in the childhoods of 988 college students through anonymous questionnaires. The types of violence included being kicked, punched, thrown, bruised, burned, or caused to bleed, lose teeth, or have broken bones; 53.3% had experienced some of these types of violence in childhood (64% of males and 41.6% of females). The most common perpetrators were mothers and fathers, but siblings and other relatives also inflicted some violence. Over one in five (22.6%) of the victims of violence said the perpetrator had behaved violently to establish discipline, 15.9% said the perpetrator wanted to teach them a lesson, and 16.1%

said the perpetrator wanted to instil respect; 60.7% said the perpetrator was unable to control him or herself and 8.7% said the perpetrator was violent in order to release their anger; 35.4% reported feeling humiliated by the violence, 26.3% accepted it, and 10.4% felt hate for the perpetrator.

(Turla, A. et al (2010), "Prevalence of Childhood Physical Abuse in a Representative Sample of College Students in Samsun, Turkey", *Journal of Interpersonal Violence*, 25 (7), 1298–1308)