Corporal punishment of children in the Russian Federation

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Child population 31,173,000 (UNICEF, 2020)

Summary of necessary legal reform to achieve full prohibition

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

There appears to be no defence of "reasonable chastisement" or similar in existing legislation but the near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. Prohibition should be enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

Alternative care settings – Prohibition should be enacted in legislation applicable to 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).

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. The Family Code 1995 provides for the protection of children's human dignity by their parents (art. 54) and protection from abuse by parents (arts. 56 and 69). It states that parents have a right and duty to educate their children and must care for their children's "health, physical, mental, spiritual and moral development" (art. 63) and that "methods of parenting should not include neglectful, cruel or degrading treatment, abuse or exploitation of children" (art. 65). The Criminal Code 1996 punishes intentional serious, less serious and minor harm to health (arts. 111 to 115) and "beating or other violent acts which cause physical pain but not the consequences in article 115" (art. 116 and 116-1). In 2010, the Ministry of Justice stated that provisions in the Family and Criminal Codes amount to prohibition of corporal punishment of children.[1] However, in the absence of explicit prohibition it is not clear that they effectively prohibit all forms of physical punishment in childrearing.

There is no explicit prohibition of corporal punishment of children in the Law on Guarantees of the Rights of the Child 1998, the Law on Guardianship and Custody 2008, the Criminal Code 1996, the Code on Administrative Offences 2001 or the Constitution 1993. President's decree No. 761 dated 1 June 2012 "On the national strategy of activities in the interests of children for 2012-2017" states that one of the measures focused on the formation of a safe and comfortable family environment is the creation and adoption of a programme promoting intolerance to any forms of violence and corporal punishment of children. However, no such programme appears to exist.[2]

The Council of Europe's petition against all corporal punishment, part of its campaign to achieve prohibition in all member states, was supported by Russian officials but to our knowledge there have been no moves towards law reform on the issue. A Law on Domestic Violence is being drafted[3] - in 2017, it was "pending adoption".[4] Draft amendments to the Code of Administrative Offences[5] have been submitted to the State Duma: the aim of the bill is to prohibit insulting harassment, vulgar language and other intentional behaviour disturbing the public order or peace of citizens conducted at home.

In December 2014, the member of the Federation Council proposed amendments to the Criminal Code introducing higher liability for intentional minor harm to health (art. 115), beating (art. 116) and torture (art. 117) committed against relatives or former relatives.[6] Amendments to the Criminal Code were voted in July 2016 to criminalise family violence by modifying article 116 to include having a family relationship with the victim as an aggravating factor of battery. A new article 116-1 made the first occurrence of battery without an aggravating factor an administrative offence.[7] Both articles 116 and 116-1 referred to battery that does not cause "substantial bodily harm", but neither explicitly prohibited corporal punishment of children. The criminalisation of family violence was overturned in January 2017 when the Criminal Code was again amended[8] to remove from article 116 the mention of the family relationship as an aggravating factor, making the first occurrence of domestic violence an administrative offence under article 116-1. Repeat offenses within a year can still result in criminal prosecution.

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[1] 10 November 2010, Letter to Council of Europe Commissioner for Human Rights Mr Thomas Hammarberg
[2] Latham & Watkins (UK) in correspondence with the Global Initiative, 18 May 2015
[3] 22 August 2014, CEDAW/C/RUS/8, Eighth state party report, para. 105
[4] 28 September 2017, E/C.12/2017/SR.60, Summary records of 60th meeting, para. 31; see also 12 June 2018, A/HRC/39/13, Report of the Working Group, para. 12
[5] The draft law No. 545442-6 "On introducing the amendments to the article 20.1 of the Code of Administrative Offences of the Russian Federation (regarding amendments of the disposition of article 20.1 of the Code and harsher punishment for the violations established by this article)"
[6] The draft law No. 665512-6 "On introducing the amendments to the Criminal Code of the Russian Federation (regarding establishing the higher criminal responsibility for the crimes, envisaged by articles 115-117 of the CC RF, committed against relatives or former relatives)"
[7] See https://meduza.io/en/news/2016/06/28/russian-senator-says-special-criminal-punishment-for-domestic-violence-is-anti-family, accessed 13 January 2017; Federal law 323-FZ of 7 March 2016, http://kremlin.ru/acts/bank/41057/page/1
[8] See https://www.ft.com/content/e523d036-e482-11e6-9645-c9357a75844a, accessed 31 January 2017

In December 2018, Russian Commissioner for human rights Tatyana Moskalkova declared that decriminalising family violence had been a mistake and called for a new law to be enacted.[9]

Alternative care settings

Corporal punishment is lawful in alternative care settings as in the home. There is no explicit prohibition of corporal punishment in all alternative care settings (foster care, institutions, places of safety, emergency care, etc). Children are legally protected from some but not all physical punishment under the Family Code 1995 and the Criminal Code 1996 (see under "Home").

Day care

Corporal punishment is considered unlawful in pre-school day care settings under the Law on Education 2012 (see under "Schools", below). There is no prohibition of all forms of corporal punishment in other early childhood care and in day care for older children. Act No. 3185-1 on Psychiatric Care and Guarantees for the Rights of Citizens Receiving Such Care 1992 states that the provision of care must be humane and must respect human and civil rights but it does not explicitly prohibit corporal punishment. Children are legally protected from some but not all physical punishment under the Family Code 1995 and the Criminal Code 1996 (see under "Home").

Schools

Corporal punishment is considered unlawful in schools, though it is not explicitly prohibited. Article 34 of the Law on Education 2012 states that students have the right to "(9) respect for human dignity, protection from all forms of physical or mental violence, injury personality, the protection of life and health"; article 43(3) states that "discipline in educational activities is provided on the basis of respect for human dignity of students and teachers" and "application of physical and mental violence to students is not allowed" (unofficial translation). The Code on Administrative Offences 2001 punishes violations of the right to education (art. 5(57)).

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, though there appears to be no explicit prohibition. Article 12(2) of the Criminal and Executive Code 1997 states (unofficial translation): "Prisoners are entitled to courteous treatment by staff of penal institutions. They should not be subjected to cruel, inhuman or degrading treatment or recovery. Coercive measures to convicts can be applied not only as to the law." There is no provision for corporal punishment in correctional institutions (arts. 115 and 136). Article 8(1)(4) of the Law on the Fundamentals of the System of Prevention of Neglect and Offences of Minors 1999 states that in the case of minors "the use of physical and psychological violence" and "the application of measures with an anti-pedagogical nature, degrading human dignity" are prohibited. The provisions against beating and intentional causing of harm in the Criminal Code 1996 (arts. 111 to 116) are also applicable.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in criminal law. Article 7 of the Criminal Code 1996 states that punishment and other measures applied to a convicted person "cannot have the purpose of causing physical suffering or humiliation of human dignity". The Code sets out the sentences which may be given to minors and these do not include corporal punishment (art. 88).

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[9] See https://www.independent.co.uk/news/world/europe/russia-domestic-violence-decriminalised-law-victims-human-rights-putin-a8666901.html, accessed 17 December 2018

Universal Periodic Review of the Russian Federation's human rights record

The Russian Federation was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 4). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:[10]

> "Continue its efforts in ensuring the respect and promotion of human rights principles despite all existing challenges and obstacles (Palestine);
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> "Continue to refine its domestic legislation in the field of human rights and freedoms (Zimbabwe);
>
> "Continue with its current positive efforts for furtherance of the human rights protection (Democratic People's Republic of Korea);
>
> "Develop and carry out the whole range of measures for the practical implementation of provisions of the Convention on the Rights of the Child and its two Optional Protocols (Belarus);
>
> "Pursue its action plans to protect the rights of the child and of the family (Saudi Arabia)"

The second cycle review took place in 2013 (session 16). No recommendations were made specifically on corporal punishment of children but the following recommendations were made and were accepted by the Government:[11]

> "Further strengthen the legal and policy frameworks for the protection of the rights of women, children, persons with disabilities and elderly persons (Ethiopia);
>
> "Continue its measures with regard to the promotion and protection of children's rights and combating violence against women (Azerbaijan);
>
> "Keep on taking efforts in favour of the promotion and protection of the rights of women and children (Senegal);
>
> "Continue working on children's rights taking into account its international obligations on this area (Nicaragua)"

Third cycle examination took place in 2018 (session 30). The following recommendations were extended:[12]

> "Draft and enact a legislation that would clearly prohibit all corporal punishment of children in all settings (Zambia)"
>
> "Put an end to corporal punishment towards children in any form and in any area of society, as well as promote non-violent alternatives as disciplinary measures (Uruguay)
>
> "Enact legislation in order to explicitly prohibit corporal punishment of children in all settings, including at home (Montenegro)"

The Government supported the recommendations.[13]

Fourth cycle examination took place in 2023 (session 44). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made[14] and were supported by the Government:

"Take steps to further strengthen the protection of the rights of persons in vulnerable situations, including children, women, persons with disabilities, migrants and older persons (Kazakhstan);

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[10] 3 March 2009, A/HRC/11/19, Report of the working group, paras. 85(15), 85(17), 85(19), 85(33) and 85(39)
[11] 8 July 2013, A/HRC/24/14, Report of the working group, paras. 140(31), 140(43), 140(44) and 140(46)
[12] 12 June 2018, A/HRC/39/13, Report of the Working Group, paras. 147(58), 147(279) and 147(280)
[13] 3 September 2018, A/HRC/39/13/Add.1 Advance unedited version, Report of the Working Group: Addendum, paras. 15 and 16
[14] 21 December 2023 /A/HRC/55/14, Report of the Working Group, paras. 35(277), 35(290) and 35(307)

Continue to strengthen protection measures for women, children and older persons (Malaysia);

Implement comprehensive child protection frameworks emphasizing the prevention of all forms of violence against children (Gambia)"[15]

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 February 2024, CRC/C/RUS/CO/6-7, Advance Unedited Version, Concluding observations on sixth and seventh state party report, para. 25)

"While noting the State party's information that physical violence against children is an administrative and criminal offence and that the crime committed by a parent or other legal representative, as well as by a teacher or other person working with children is an aggravating circumstance, the Committee recalls its general comment No. 8 (2006) on corporal punishment, and recommends that the State party:
(a) Explicitly prohibit corporal punishment in law in all settings, including in the home, alternative care settings and day care;
(b) Promote positive, non-violent and participatory forms of child-rearing and discipline;
(c) Conduct awareness-raising campaigns for parents and professionals working with and for children to promote attitudinal change, within the family and the community, with regard to corporal punishment."

Committee on the Rights of the Child

(31 January 2014, CRC/C/RUS/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth state party report, paras. 32 and 33)

"The Committee notes that corporal punishment is unlawful as a sentence for crime and is considered unlawful in schools and penal institutions, but regrets that it is not explicitly prohibited in those settings. The Committee is also concerned that corporal punishment remains lawful in the home and in alternative care settings.

"The Committee draws the attention of the State party to its General Comment No 8 (2008) 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 legally prohibit the use of all forms of corporal punishment in all settings, in particular in the home and alternative care institutions and provide for enforcement mechanisms under its legislation, including appropriate sanctions in cases of violation. It further recommends that the State party strengthen and expand awareness-raising and education programmes and campaigns, in order to promote positive, non-violent and participatory forms of child rearing and discipline."

Committee on the Rights of the Child

(23 November 2005, CRC/C/RUS/CO/3, Concluding observations on third report, paras. 7, 36, 37, 46 and 47)

"The Committee regrets that some of the concerns it expressed and the recommendations it made (CRC/C/15/Add.110) after its consideration of the State party's second periodic report (CRC/C/65/Add.5) have not been sufficiently addressed, inter alia those concerning ... protection from torture and corporal punishment....

"The Committee is concerned that corporal punishment is not prohibited in the family and in alternative care settings. It is also concerned that corporal punishment of children remains socially acceptable in

[15] 19 December 2023 /A/HRC/55/14/Add.1, Report of the Working Group: Addendum

the State party and it is still practised in families and in places where it has been formally prohibited, such as schools.

“The Committee urges the State party to:

a) to explicitly prohibit by law all forms of corporal punishment in the family and in alternative care settings;

b) to prevent and combat the practice of corporal punishment of children in the family, in schools and other institutions by effectively implementing legislation;

c) to conduct awareness-raising and public education campaigns against corporal punishment and promote non-violent, participatory forms of discipline.

“The Committee is concerned at reports that a large number of children in institutions are subject to abuse by their educators. The Committee is also concerned that abused children who are exposed to violence within the family and in institutions do not always receive sufficient care and assistance and that not enough is being done with regard to prevention (and prevention interventions) and awareness arising in this area.

“The Committee recommends that the State Party continue to strengthen its efforts to provide adequate assistance to children who are exposed to violence within the family and in institutions, including through:

f) public education campaigns about the negative consequences of ill-treatment and preventive programmes, including family development programmes, promoting positive, non-violent forms of discipline.”

Committee on the Rights of the Child

(10 November 1999, CRC/C/15/Add.110, Concluding observations on second report, paras. 28, 29 and 30)

“The Committee is concerned at allegations of widespread practice of torture and ill-treatment, and conditions amounting to inhuman or degrading treatment, of children living in institutions in general and in places of detention or imprisonment in particular - including acts committed by law enforcement officials involving corporal punishment.

“The Committee recommends that the State party take appropriate measures to bring to an end and prevent these practices and to duly investigate allegations and punish perpetrators of such acts. The Committee also endorses the implementation of the recommendations made by the Committee against Torture and the Special Rapporteur on torture with regard to these concerns.

“Further, the Committee recommends that the State party monitor and bring to an end corporal punishment practices in institutions.”

European Committee of Social Rights

(March 2020, Conclusions 2019)

“The Committee previously considered that the situation was not in conformity with the Charter as not all forms of corporal punishment were explicitly prohibited in the home and in institutions (Conclusions 2015).

“The Committee notes that there has been no change to this situation, therefore it reiterates its previous conclusion of non conformity.”

European Committee of Social Rights

(January 2016, Conclusions 2015)

“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 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 notes from the another source (Global Initiative to End Corporal Punishment, Russia) that Article 54 of the Family Code of 1995 provides for the protection of children’s human dignity by their parents and protection from abuse by parents (Articles 56 and 69). It states that parents have a right and duty to educate their children and must care for their children’s “health, physical, mental, spiritual and moral development” (Article 63) and that “methods of parenting should not include neglectful, cruel or degrading treatment, abuse or exploitation of children” (Article 65). The Criminal Code 1996 punishes intentional serious, less serious and minor harm to health (Articles 111 to 115) and beating or other violent acts which cause physical pain.

“According to the same source, in 2010, the Ministry of Justice stated that these provisions in the Family and Criminal Codes amount to prohibition of corporal punishment of children. However, in the absence of an explicit prohibition it is not clear that they effectively prohibit all forms of physical punishment in childrearing.

“As regards children in institutions, according to the same source there is no explicit prohibition of corporal punishment (foster care, institutions, places of safety, emergency care, etc). Children are legally protected from some but not all physical punishment under the Family Code 1995 and Criminal Code 1996.

“As regards schools, section 34 of the Law on Education 2012 states that students have the right to respect for human dignity, protection from all forms of physical or mental violence, injury personality, the protection of life and health. Section 43(3) states that discipline in educational activities is provided on the basis of respect for human dignity of students and teachers and application of physical and mental violence to students is not allowed.

“The Committee considers that not all forms of corporal punishment are explicitly prohibited in the home and in institutions. Therefore, the situation is not in conformity with the Charter.”

“The Committee concludes that the situation in Russian Federation is not in conformity with Article 17§1 of the Charter on the ground that not all forms of corporal punishment are prohibited in the home and in institutions.”

Prevalence/attitudinal research in the last ten years

A Human Rights Watch report based on visits to 10 orphanages and more than 200 interviews, including with children and young people with disabilities currently and formerly living in institutions, documented severe violent punishment of children by staff. Punishments included beating children; pouring cold water over children’s heads; the use of physical restraints, including binding children to cribs or wheelchairs; the frequent use of sedatives to control children; forced psychiatric hospitalization

as punishment; forced isolation; denial of contact with family members; threats of death, beatings, or psychiatric hospitalization; insults; and humiliation.

(Human Rights Watch (2014), Abandoned by the State: Violence, Neglect, and Isolation for Children with Disabilities in Russian Orphanages, NY: Human Rights Watch)

In a poll of 1,600 people in 138 areas, conducted by the All-Russian Center for the Study of Public Opinion, 27% approved of flogging as a sentence for crime.

(Reported in The Voice of Russia, 28 September 2012)

End Corporal Punishment acts as a catalyst for progress towards universal prohibition and elimination of corporal punishment of children. We support and analyse national progress, monitor legality and implementation worldwide, partner with organisations at all levels, and engage with human rights treaty body systems. End Corporal Punishment is hosted by the World Health Organization and supported by a multi-partner Advisory Committee.