

Corporal punishment of children in Serbia: Briefing for the Universal Periodic Review, 29th session, 2018

From the Global Initiative to End All Corporal Punishment of Children, June 2017



Global Initiative to
**End All Corporal Punishment
of Children**

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Serbia, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Committee Against Torture, as well as those made during the 2nd cycle UPR of Serbia in 2013.

We hope the Working Group will note with concern the legality of corporal punishment of children in Serbia. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Serbia clearly prohibit all corporal punishment of children, however light, in all settings.

1 Review of Serbia in the 2nd cycle UPR (2013) and progress since

1.1 Serbia was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 15).

The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² The Government accepted several recommendations to prohibit corporal punishment in all settings.³

1.2 Since the review in 2013, the Law on the Prevention of Domestic Violence 2016 was enacted without addressing the issue of corporal punishment. The draft Law on the Rights of the Child which was dropped in 2014 is now being considered again. Amendments to the Family Law are under discussion and were expected to be enacted within the year – the Government has reported the amendments would prohibit the use of physical punishment. However recent elections seem to have delayed the legislative process.

1.3 A new Civil Code is also under discussion. *We are concerned that proposals appear to have been made to provide for “reasonable” punishment in the new legislation. This would in effect enshrine in law a defence for the use of corporal punishment.*

¹ 9 November 2012, A/HRC/WG.6/15/SRB/2, Compilation of UN information, para. 38

² 29 October 2012, A/HRC/WG.6/15/SRB/3, Summary of stakeholders' views, paras. 26 and 27

³ 22 March 2013, A/HRC/23/15, Report of the working group, paras. 144(27), 144(28) and 144(29)

- 1.4 **We hope the Working Group will note with concern the legality of corporal punishment of children in Serbia. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Serbia clearly prohibit all corporal punishment of children, however light, in every setting of their lives.**

2 Legality of corporal punishment in Serbia

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Serbia is lawful in the home, alternative care and non-educational day care settings. It is unlawful in the penal system and schools.

- 2.1 **Home (lawful):** Provisions against violence and abuse in the Criminal Code 2005, the Misdemeanours Act 2007, the Law on the Prevention of Domestic Violence 2016 and the Constitution 2006 are not interpreted as prohibiting all corporal punishment in childrearing. The Serbian Family Law 2005 states (art. 69(2)): “Parents may not subject the child to humiliating actions and punishments which insult the child’s human dignity and have the duty to protect the child from such actions taken by other persons.” But there is no explicit prohibition of all corporal punishment.
- 2.2 The Government stated its commitment to prohibition in 2007. In 2008, the Ministry of Social Policy and the Council for Child Rights adopted a National Strategy for the Prevention and Protection of Children Against Violence which included the aim of abolishing corporal punishment of children; plans were made for drafting amendments to the Family Act, and Minister for Education Mr Zarko Obradovic signed the Council of Europe petition against all corporal punishment of children. In accepting the recommendations at the Universal Periodic Review (UPR) in the same year, the Government again stated its intention to prohibit corporal punishment of children.⁴ In 2010, the Action Plan for the implementation of the National Strategy was adopted and in 2011, a Working Party developed a Draft Law on the Rights of the Child which includes provisions to prohibit all corporal punishment. In reporting to the second UPR in 2013, the Government confirmed that the Draft Law would prohibit corporal punishment in all settings,⁵ and then went on to accept the recommendations to prohibit all corporal punishment made during the review.⁶ The Government reported to the Committee Against Torture in 2014 that the draft law would be presented in the National Assembly by the Ombudsman.⁷ However, the draft law was subsequently dropped and in response to a question about prohibition from the Committee on Economic, Social and Cultural Rights in 2014, the Government drew attention to the Criminal Code and stated that current law “completely prohibits and sanctions every type of violence against the child”.⁸ In December 2014, the Government reported to the Committee on the Rights of the Child that a preliminary law on child rights had been drafted which would prohibit corporal punishment in all settings.⁹ The Serbia delegation reported to the Committee on the Rights of the Child in January 2017 that the

⁴ 9 November 2009, A/HRC/10/29, Report of the Human Rights Council on its tenth session, para. 519

⁵ 8 November 2012, A/HRC/WG.6/15/SRB/1, National report to the UPR, para. 73

⁶ 22 March 2013, A/HRC/23/15, Report of the working group, paras. 144(27), 144(28) and 144(29)

⁷ 13 February 2014, CAT/C/SRB/2, Second state party report, para. 154

⁸ 6 May 2014, E/C.12/SRB/Q/2/Add.1, Reply to list of issues, para. 242

⁹ [December 2014], CRC/C/SRB/2-3 Unedited Version, Second/third state party report, para. 74

drafting process would resume within the year;¹⁰ however it appears the process might not be finalised before 2020.¹¹

2.3 Amendments to the Family Law are under discussion, and a new Civil Code is being drafted. The draft Civil Code which was issued for consultation and public debate in 2015, included protection for children from physical punishment but offered two versions of the relevant article – one prohibiting child abuse “especially physical punishment”, the other prohibiting child abuse but only “inappropriate” physical punishment (art. 2218).¹² We have yet to see proposed amendments to the Family Code, but in February 2016 the Government confirmed to the Committee on the Rights of Persons with Disabilities that the draft Law on Amendments to the Family Law “will contain explicit prohibition of physical punishment of minors and use of physical force as a tool for correcting behaviour”.¹³ A similar statement was made to the Human Rights Committee in January 2017.¹⁴ It appears the governmental delegation to the Committee on the Rights of the Child reported that the amendments were expected to be adopted by June 2017.¹⁵ However, recent presidential elections seem to have delayed the process.

2.4 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents. A 2011 law on social protection reportedly bans violence against beneficiaries of social protection services¹⁶ but there is no indication that it explicitly prohibits all corporal punishment.

2.5 **Day care (partially lawful):** Corporal punishment is considered unlawful in all day care which forms part of the education system under education law (see below), including nurseries, kindergartens, preschools, after school care, workshops and additional education activities. But it is lawful in other day care, such as childminding etc. A regulation reportedly prohibits corporal punishment in care facilities:¹⁷ we are seeking to verify this information.

2.6 **Schools (unlawful):** Corporal punishment was first explicitly prohibited in schools in article 67 of the Law on Public Schools 1929 (Yugoslavia). It is now unlawful under the Law on Secondary Schools 1992, the Law on Elementary Schools 1992 and the Law on the Foundations of Education and Upbringing 2003/2009.

2.7 **Penal institutions (unlawful):** Corporal punishment is not among permitted disciplinary measures against juveniles in detention in the Law on Enforcement of Penal Sanctions, but this Law does not explicitly prohibit it. The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles does not include corporal punishment among permitted disciplinary measures and states that force may only be used exceptionally and to prevent a physical attack on others or self-injury (art. 132). A draft new Law on Juvenile Offenders and Protection of Juveniles in Criminal Proceedings is under discussion.¹⁸ The Serbia delegation to the Committee on the

¹⁰ 30 January 2017, CRC/C/SR.2176, Summary records of the 2176th meeting, para. 28

¹¹ Information provided to the Global Initiative, May 2017

¹² <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed 29 February 2016

¹³ 16 February 2016, CRPD/C/SRB/Q/1/Add.1, Reply to list of issues, para. 69

¹⁴ 17 January 2017, CCPR/C/SRB/Q/3/Add.1, Reply to the list of issues, paras. 76 and 77

¹⁵ 3 February 2017, CRC/C/SRB/CO/2-3, Concluding observations on second-third report, Advance unedited version, paras. 36 and 37

¹⁶ Nataša Jović, Assistant Secretary General, Protector of Citizens (Ombudsman), correspondence with the Global Initiative, February 2016

¹⁷ Nataša Jović, Assistant Secretary General, Protector of Citizens (Ombudsman), correspondence with the Global Initiative, February 2016

¹⁸ <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed 29 February 2016

Rights of the Child reported in January 2017 that the new juvenile justice law was expected to be adopted within the year.¹⁹

2.8 **Sentence for crime (unlawful):** Corporal punishment as a sentence for crime was abolished in 1873. It is not a permitted sentence for crime under the Criminal Code or the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles 2005.

3 Recommendations by human rights treaty bodies

3.1 **CRC:** The Committee on the Rights of the Child recommended to Serbia in 2008 that corporal punishment be prohibited in the family by law,²⁰ and again in 2017.²¹

3.2 **CAT:** In 2009, the Committee Against Torture recommended to Serbia that legislation be adopted which prohibits corporal punishment in all settings, including the family.²²

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

¹⁹ 30 January 2017, CRC/C/SR.2177, Summary records of 2177th meeting, para. 35

²⁰ 20 June 2008, CRC/C/SRB/CO/1, Concluding observations on initial report, paras. 46 and 47

²¹ 3 February 2017, CRC/C/SRB/CO/2-3, Concluding observations on second-third report, Advance unedited version, paras. 36 and 37

²² 19 January 2009, CAT/C/SRB/CO/1, Concluding observations on initial report, para. 20