

**BRIEFING ON SERBIA FOR THE COMMITTEE AGAINST TORTURE PRESESSIONAL WORKING GROUP, 62nd session (Nov/Dec 2017)**

*From the Global Initiative to End All Corporal Punishment of Children,* [*June*](mailto:info@endcorporalpunishment.org) *2017*

**This briefing describes the legality of corporal punishment of children in Serbia. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the relevant recommendations made to Serbia during the UPR in 2008 and 2013 (which the Government accepted), as well as by the Committee Against Torture in 2009 and by the Committee on the Rights of the Child in 2008 and 2017, and the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee Against Torture will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Serbia, in particular asking what measures are being taken to ensure explicit prohibition of all corporal punishment of children, however light, is included in the amendments to the Family Law and the draft Civil Code, and**
* **recommend, in the concluding observations on the third state party report, that Serbia enact the amendments to the Family Law and the Civil Code as a matter of priority to clearly prohibit all corporal punishment, however light, in the home and in all other settings.**

**1 The legality of corporal punishment of children in Serbia**

1.1 ***Summary:***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.

1.2 ***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.

1.3 ***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 services[[1]](#footnote-1) but there is no indication that it explicitly prohibits all corporal punishment.

1.4 ***Day care (partially unlawful):***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:[[2]](#footnote-2) we are seeking to verify this information.

1.5 ***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.

1.6 ***Penal institutions (unlawful):*** Corporal punishment is unlawful as a disciplinary measure in penal institutions. It 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.[[3]](#footnote-3) The Serbia delegation to the Committee on the Rights of the Child reported in January 2017 that the new juvenile justice law was expected to be adopted within the year.[[4]](#footnote-4)

1.7 ***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.

**2 Serbia’s commitment to prohibit corporal punishment and progress to date**

2.1 The Serbian Government has been openly committed to prohibiting corporal punishment of children since 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, and plans were made for drafting amendments to the Family Law. In 2011, a Working Party developed a Draft Law on the Rights of the Child which included provisions to prohibit all corporal punishment. 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”.[[5]](#footnote-5) 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.[[6]](#footnote-6) The Serbia delegation reported to the Committee on the Rights of the Child in January 2017 that the drafting process would resume within the year;[[7]](#footnote-7) however it appears the process might not be finalised before 2020.[[8]](#footnote-8)

2.2 Amendments to the Family Law are currently under discussion, providing an immediate opportunity for clear prohibition of corporal punishment. There is also a project to draft a new Civil Code, which provides an opportunity in the longer term to confirm that children may not be subjected to corporal punishment by parents and those with parental authority. However, 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).[[9]](#footnote-9) We have yet to see proposed amendments to the Family Law 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”.[[10]](#footnote-10) 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.[[11]](#footnote-11) *We are concerned that proposals appear to have been made to provide for “reasonable” punishment in the new Civil Code. This would in effect enshrine in law a defence for the use of corporal punishment.*

2.3 **We hope the Committee will encourage Serbia to ensure that the new Civil Code and the amendments to the Family law explicitly prohibit all corporal punishment and that no loopholes are created which would allow so-called “reasonable” or “appropriate” punishment of children.**

**3 Recommendations by human rights treaty bodies and during the UPR**

3.1 ***CAT:*** In 2009, the Committee Against Torture recommended to Serbia that legislation be adopted which prohibits corporal punishment in all settings, including the family.[[12]](#footnote-12)

3.2 ***CRC:*** The Committee on the Rights of the Child recommended to Serbia in 2008 that corporal punishment be prohibited in the family by law,[[13]](#footnote-13) and again in 2017. [[14]](#footnote-14)

3.3 ***UPR***: During the Universal Periodic Review of Serbia in 2008, a recommendation was made to prohibit corporal punishment of children which the Government accepted, stating that it was “undertaking activities toward changing the Family Law by introducing norms that clearly prohibit corporal punishment and protect children from all forms of physical punishment, including physical punishment in the family environment”.[[15]](#footnote-15) At the second cycle UPR of Serbia in 2013, the Government accepted a number of recommendations to prohibit corporal punishment in all settings including the family.[[16]](#footnote-16)

*Briefing* *prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. Nataša Jović, Assistant Secretary General, Protector of Citizens (Ombudsman), correspondence with the Global Initiative, February 2016 [↑](#footnote-ref-1)
2. Nataša Jović, Assistant Secretary General, Protector of Citizens (Ombudsman), correspondence with the Global Initiative, February 2016 [↑](#footnote-ref-2)
3. <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed 29 February 2016 [↑](#footnote-ref-3)
4. 30 January 2017, CRC/C/SR.2177, Summary records of 2177th meeting, para. 35 [↑](#footnote-ref-4)
5. 6 May 2014, E/C.12/SRB/Q/2/Add.1, Reply to list of issues, para. 242 [↑](#footnote-ref-5)
6. [December 2014], CRC/C/SRB/2-3 Unedited Version, Second/third state party report, para. 74 [↑](#footnote-ref-6)
7. 30 January 2017, CRC/C/SR.2176, Summary records of the 2176th meeting, para. 28 [↑](#footnote-ref-7)
8. Information provided to the Global Initiative, May 2017 [↑](#footnote-ref-8)
9. <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed 29 February 2016 [↑](#footnote-ref-9)
10. 16 February 2016, CRPD/C/SRB/Q/1/Add.1, Reply to list of issues, para. 69 [↑](#footnote-ref-10)
11. 3 February 2017, CRC/C/SRB/CO/2-3, Concluding observations on second-third report, Advance unedited version, paras. 36 and 37 [↑](#footnote-ref-11)
12. 19 January 2009, CAT/C/SRB/CO/1, Concluding observations on initial report, para. 20 [↑](#footnote-ref-12)
13. 20 June 2008, CRC/C/SRB/CO/1, Concluding observations on initial report, paras. 46 and 47 [↑](#footnote-ref-13)
14. 3 February 2017, CRC/C/SRB/CO/2-3, Concluding observations on second-third report, Advance unedited version, paras. 36 and 37 [↑](#footnote-ref-14)
15. 18 March 2009, A/HRC/10/78/Add.1, Report of the working group: Addendum, paras. 20 and 21 [↑](#footnote-ref-15)
16. 22 March 2013, A/HRC/23/15, Report of the working group, paras. 144(27), 144(28) and 144(29) [↑](#footnote-ref-16)