

**BRIEFING ON SLOVAKIA 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 Slovakia. 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 Slovakia during the UPR in 2009 and 2014 (which the Government accepted), as well as by the Committee on the Rights of the Child in 2000, 2007 and 2016, the Human Rights Committee in 2011 and 2016, the Committee on the Elimination of Discrimination Against Women in 2008 and the European Committee of Social Rights in 2003 and 2011, 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 Slovakia, in particular asking what progress is being made on ensuring that explicit prohibition of all corporal punishment in the home is included in the amendments to the Civil Code, and**
* **recommend, in the concluding observations on the fourth state party report, that Slovakia enact legislation explicitly prohibiting all corporal punishment of children in the home, as a matter of priority.**

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

1.1 ***Summary:***Corporal punishment of children in Slovakia is lawful in the home. It is unlawful in all other settings.

1.2 ***Home (******lawful):*** Law reform to date has not yet fully prohibited corporal punishment in the home. Article 7(3) of Act No. 305/2005 Coll. On Social-Legal Protection of Children and Social Guardianship, as amended by Act No. 27/2009, states (unofficial translation): “By implementing measures according to this law, it is forbidden to use any form of corporal punishment of the child and other cruel or degrading forms of treatment and forms of chastisement of the child, which cause or may cause the child the physical or mental harm.” This law is regarded by some as a “zero tolerance” approach to corporal punishment;[[1]](#footnote-1) others question this.[[2]](#footnote-2) In any case, it provides for state intervention only when corporal punishment reaches some degree of severity. In reporting to the Committee on the Elimination of Discrimination Against Women, the Government confirmed that corporal punishment is prohibited except with regard to the family, stating that family law “is governed by the principle that parents have the right and also the duty to choose reasonable forms of discipline in bringing up their children”.[[3]](#footnote-3) The same confirmation was provided to the Committee on the Rights of the Child in 2015.[[4]](#footnote-4)

1.3 The Family Act 2005 does not explicitly prohibit corporal punishment. Rather, it authorises the use of “adequate” childrearing methods, stating in article 30(3) that in exercising their parental rights and duties, parents “may use adequate upbringing measures in such a way that the child’s health, dignity and mental, physical and emotional development are not endangered”. The Government has argued that this provision necessarily means that corporal punishment is not tolerated – “given the fact that corporal punishment in an ordinary sense may induce threat to health, dignity, mental, physical and emotional development of the child”[[5]](#footnote-5) – but this fails to take account of the near universal acceptance of some degree of physical punishment in childhood and the fact that those who advocate its use do not perceive it as harmful. Law reform to clearly prohibit corporal punishment in childrearing is essential.

1.4 Provisions against violence and abuse in the Penal Code 2005, the Civil Code 2002 and the Constitution 1992 are not interpreted as prohibiting all corporal punishment in childrearing.

1.5 ***Alternative care settings (unlawful):***Corporal punishment is unlawful in all alternative care settings under article 7(3) of the Act No. 305/2005 Coll. as amended by Act No. 27/2009.

1.6 ***Day care (unlawful):***Corporal punishment is unlawful in early childhood care and in day care for older children under article 7(3) of the Act No. 305/2005 Coll. as amended by Act No. 27/2009.

1.7 ***Schools (unlawful):***Corporal punishment is explicitly prohibited in schools in article 3 of Act No. 245/2008 Coll. on Upbringing and Education (the Education Act): “Education and training under this Act are based on the principles of … (r) prohibiting the use of all forms of corporal punishment and sanctions in education”.

1.8 ***Penal institutions (unlawful):*** Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 3(1) of the Act No. 475/2005 Coll. on the exercise of the confinement penalty, which prohibits cruel, inhuman or degrading forms of punishment or treatment.

1.9 ***Sentence for crime (unlawful):*** Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in criminal law.

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

2.1 In 2009, the Government signalled its commitment to reform in accepting the recommendations to prohibit made during the Universal Periodic Review of Slovakia.[[6]](#footnote-6) In reporting to the Universal Periodic Review of Slovakia in 2014, the Government stated that the Civil Code is being prepared and there are proposals to include in it “the ban of physical punishment in exercising parental rights and obligations”.[[7]](#footnote-7) A similar statement was made by the Government to the Committee Against Torture in 2015.[[8]](#footnote-8)

2.2 We were informed in May 2015 that drafting was still under way.[[9]](#footnote-9) The Government reported in September 2016 to the Human Rights Committee that the “re-codification of the Civil Code … will be completed during this parliamentary term”.[[10]](#footnote-10) We have no further information.

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

3.1 ***CRC:*** The Committee on the Rights of the Child has on three occasions recommended to Slovakia that corporal punishment be explicitly prohibited in the home.[[11]](#footnote-11)

3.2 ***HRC:*** In 2016 and 2011, the Human Rights Committee expressed concern at the legality of corporal punishment of children in the home and recommended that Slovakia put an end to corporal punishment in all settings.[[12]](#footnote-12)

3.3 ***CEDAW:*** The Committee on the Elimination of Discrimination Against Women recommended to Slovakia that it enact legislation prohibiting all corporal punishment in the home, in 2008.[[13]](#footnote-13)

3.4 ***ESCR:*** The European Committee of Social Rights has twice found the situation in Slovakia to be not in conformity with the European Social Charter because all corporal punishment is not prohibited (2012, 2003).[[14]](#footnote-14)

3.5 ***UPR***: The Government accepted recommendations to prohibit all corporal punishment made during the Universal Periodic Reviews of Slovakia in 2009 and 2014.[[15]](#footnote-15)

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1. Information provided to the Global Initiative from Detsky Fond Slovenskej Republiky, July 2013; see also 8 November 2013, A/HRC/WG.6/18/SVK/1, National report to the UPR, para. 25; 23 September 2014, CAT/C/SVK/3/Rev.1, Third state party report, para. 96; 14 July 2014, CEDAW/C/SVK/5-6, Fifth/sixth state party report, para. 266 [↑](#footnote-ref-1)
2. Coalition for Children Slovakia, correspondence with the Global Initiative, 24 June 2015 [↑](#footnote-ref-2)
3. 14 July 2014, CEDAW/C/SVK/5-6, Fifth/sixth state party report, para. 266 [↑](#footnote-ref-3)
4. 16 September 2015, CRC/C/SVK/3-5, Third-fifth state party report, para. 73 [↑](#footnote-ref-4)
5. 12 May 2016, CRC/C/SVK/Q/3-5/Add.1, Reply to list of issues, para. 35 [↑](#footnote-ref-5)
6. 5 June 2009, A/HRC/12/17, Report of the working group, paras. 89(40) and 89(42) [↑](#footnote-ref-6)
7. 8 November 2013, A/HRC/WG.6/18/SVK/1, National report to the UPR, para. 25 [↑](#footnote-ref-7)
8. 3 June 2015, CAT/C/SVK/Q/3/Add.2, Reply to list of issues, para. 148 [↑](#footnote-ref-8)
9. Slovakia Ministry of Foreign Affairs, correspondence with the Global Initiative, 13 May 2015 [↑](#footnote-ref-9)
10. 15 September 2016, CCPR/C/SVK/Q/4/Add.1, Reply to the list of issues, para. 52 [↑](#footnote-ref-10)
11. 3 June 2016, CRC/C/SVK/CO/3-5, Concluding observations on third-fifth report, paras. 26 and 27; 10 July 2007, CRC/C/SVK/CO/2, Concluding observations on second report, paras. 36 and 37; 23 October 2000, CRC/C/15/Add.140, Concluding observations on initial report, para. 32 [↑](#footnote-ref-11)
12. 22 November 2016, CCPR/C/SVK/CO/4, Concluding observations on fourth report, paras. 34 and 35; 20 April 2011, CCPR/C/SVK/CO/3, Concluding observations on third report, para. 12 [↑](#footnote-ref-12)
13. 18 July 2008, Part of A/63/38, Concluding observations on second-fourth report, paras. 34 and 35 [↑](#footnote-ref-13)
14. January 2012, Conclusions 2011; 30 September 2003, Conclusions XVI-2, page 804 [↑](#footnote-ref-14)
15. 5 June 2009, A/HRC/12/17, Report of the working group, paras. 89(40) and 89(42); 26 March 2014, A/HRC/26/12, Report of the working group, paras. 110(72) and 110(73) [↑](#footnote-ref-15)