

Ending family violence in Serbia – challenging physical punishment of girls and boys



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 72nd session,
from the Global Initiative to End All Corporal Punishment of Children
(www.endcorporalpunishment.org), June 2018

Introduction: family violence in Serbia and CEDAW's examination of the fourth state party report

The Law on the Prevention of Domestic Violence 2016 provides some protection from family violence to women and girls, but those provisions and others in domestic legislation are not interpreted as prohibiting all corporal punishment of children. Several legislative projects which could achieve a full prohibition have been under discussion for an extended period of time: the draft Civil Code, draft amendments to the Family Law and a draft Law on the Rights of the Child.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Serbia. In particular, we hope the Committee will:

- **in its list of issues for Serbia, ask what progress is being made on enacting a legal ban of all physical punishment of children as a matter of priority, and**
- **in its concluding observations on the fourth state party report, recommend that Serbia ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation currently under discussion is enacted to prohibit domestic violence against all family members, including the violent punishment of girls and boys.**

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Serbia.
 2. Treaty body and UPR recommendations on the issue made to Serbia to date.
-

1 Laws on domestic violence and corporal punishment of children in Serbia

Summary

1.1 Provisions in the Law on the Prevention of Domestic Violence 2016 provide some protection from family violence, but the law is not interpreted as prohibiting all forms of physical punishment of children. The draft Civil Code, draft amendments to the Family Law and a draft Law on the Rights of the Child all provide opportunities for Serbia to fulfil its long-standing commitment to provide children with equal protection from violence in the home.

Detail

1.2 Corporal punishment is lawful in the home. 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 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 Law, 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.¹ 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.² The Government accepted the recommendations to prohibit all corporal punishment made during the review.³ The Government reported to the Committee Against Torture in 2014 that the draft law would be presented in the National Assembly by the Ombudsman.⁴ However, the draft law was subsequently dropped and in response to a question about prohibition from the Committee on Economic, Social and Cultural Rights later 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 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 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 however it appears the process might not be finalised before 2020.⁸ In November 2017, a working group was reportedly established by the Ministry of Social Welfare to draft the new Law on the Rights of the Child;⁹ but Serbia's national report to the UPR also reported that the Ministry for family protection

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

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

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

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

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

⁶ [December 2014], CRC/C/SRB/2-3 Unedited Version, Second/third state party report, para. 74

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

⁸ Information provided to the Global Initiative, May 2017

⁹ Information provided by the Coalition for Monitoring Child Rights, November 2017

did not think it “necessary to adopt a special law on the rights of the child”.¹⁰

1.4 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).¹¹ Earlier in 2017, the draft Civil Code was still being consulted upon,¹² and as of November 2017 it has not yet been introduced to Parliament¹³ as the Commission on Drafting the Civil Code is still finalising the text. It seems responses to the consultation were mainly favourable to a complete prohibition of all physical punishment.¹⁴

1.5 Amendments to the Family Law are under discussion: we have yet to see the proposed amendments, 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”.¹⁵ A similar statement was made to the Human Rights Committee in January 2017.¹⁶ 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;¹⁷ however the process was delayed following the April 2017 presidential elections.¹⁸ In November 2017, it was reported that the Ministry in charge of family protection had started work on a draft Bill amending the Family Law “which, among other things, provides for a ban on corporal punishment of children and on the use of physical force as a means of upbringing the child”.¹⁹

1.6 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of Serbia to enact legislation as a matter of urgency to clearly prohibit all corporal punishment of girls and boys.

2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review

2.1 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 did so again in 2017.²¹

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

2.3 In 2016, the *European Committee of Social Rights* concluded that Serbia was not in conformity with the Charter due to the continued legality of corporal punishment of children in the home and in

¹⁰ 13 November 2017, A/HRC/WG.6/29/SRB/1, National report, para. 95

¹¹ <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed 29 February 2016

¹² 30 January 2017, CRC/C/SR.2176, Summary records of the 2176th meeting, para. 9

¹³ Website of the National Assembly of Serbia, <http://www.parlament.gov.rs>, accessed 23 November 2017

¹⁴ See https://aks.org.rs/sr_lat/nacrt-gradanskog-zakonika/, accessed 23 November 2017

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

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

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

¹⁸ Communication with the Office of the Ombudsperson, June 2017

¹⁹ 13 November 2017, A/HRC/WG.6/29/SRB/1, National report, para. 96

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

institutions.²³

2.4 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”.²⁴ 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.²⁵ In 2018, several recommendations were again extended to Serbia on the prohibition of corporal punishment of children – the Government is yet to respond.²⁶

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org

²³ January 2016, Conclusions 2015

²⁴ 18 March 2009, A/HRC/10/78/Add.1, Report of the working group: Addendum, paras. 20 and 21

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

²⁶ 26 January 2018, A/HRC/WG.6/29/L.14 Unedited version, Draft report of the Working Group, paras. 7(91), 7(92), 7(93), 7(94), 7(95) and 7(96)