

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



Information for the Committee on the Elimination of Discrimination Against Women's 67th session, from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), June 2017

Introduction: violence against children in their homes in Montenegro and CEDAW's examination of the second state party report

Violent punishment of boys and girls may be lawful in Montenegro. Law reform in July 2016 prohibited "corporal punishment": we are trying to ascertain whether the aim was to prohibit all forms of corporal punishment of children, however light.

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 Montenegro. In particular, we hope the Committee will, in its concluding observations on the second state party report, recommend that Montenegro ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children.

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Montenegro.
 2. Treaty body and UPR recommendations on the issue made to Montenegro to date.
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1 Laws on the use of force in “correcting” children in Montenegro

Summary

1.1 In Montenegro, violent punishment of girls and boys might still be lawful. A new Family Law was passed by the Parliament in July 2016 which prohibits “corporal punishment” – as the legislation does not define this term we are trying to ascertain whether the intention was to ban all forms of corporal punishment of children, however light.

Detail

1.2 There is no legal defence for its use enshrined in law but provisions against violence and abuse in the Criminal Code 2004, the Family Act 2007, the Charter on Human and Minority Rights and Civil Liberties 2003 and the Law on Family Violence Protection 2010 do not include explicit prohibition of all corporal punishment in childrearing.

1.3 In reporting to the Committee Against Torture (CAT) in December 2012, the Government stated that corporal punishment is prohibited under articles 70 and 87 of the Family Law.¹ Article 70 of the Family Law 2007 states that “parents must not subject the child to humiliating actions and penalties that offend human dignity of the child and they are under an obligation to protect the child from such actions of other persons”. However, this does not give a clear message that all forms of corporal punishment, without exception, are prohibited in childrearing. Article 87 addresses abuse of parental rights, stating that such abuse is present if a parent “abuses the child in a physical, sexual or emotional manner”, but there is no indication that this is interpreted as prohibiting all corporal punishment. The Law on Prevention of Family Violence 2010 protects family members, including children, from physical force inflicted by other family members, whether or not it results in bodily injury. There is no indication that this applies to the use of force in “disciplining” children.

1.4 Despite the Government’s 2012 statement to CAT on this issue, it subsequently accepted recommendations to prohibit corporal punishment in all settings made during the Universal Periodic Review of Montenegro in 2013,² making a clear commitment to enacting prohibiting legislation: “Montenegro will embark on legal amendments to explicitly prohibit corporal punishment of children in all settings...”³ In March 2014, the Government confirmed that it was preparing “legal amendments to explicitly prohibit corporal punishment of children in all settings”.⁴ In reporting to the Human Rights Committee in October 2014, the Government again stated that corporal punishment is prohibited in all settings.⁵ However, it also reported that the National Plan of Action for Children 2013-2017 “envisages the implementation of at least three national campaigns to raise public awareness about the negative impact of corporal punishment of children in all settings” and that “there are plans for legislative amendments in order to explicitly define the prohibition of all forms of corporal punishment of children within the family, alternative forms of protection, schools, and institutions of children’s and social welfare”.⁶

1.5 In July 2016 a new Family Law was passed by the Parliament. Its article 9a states: “(1) Child shall not be subjected to corporal punishment or any other cruel, inhuman or degrading treatment. (2) The prohibition referred to in para 1 above shall pertain to parents, guardians and all other persons

¹ 14 March 2013, CAT/C/MNE/2, Second state party report, para. 174

² 21 March 2013, A/HRC/23/12, Report of the working group, para. 118(5); 18 April 2013, A/HRC/23/12, Report of the working group: Addendum, para. 21

³ 18 April 2013, A/HRC/23/12/Add.1, Report of the working group: Addendum, para. 21

⁴ Statement by the Special Representative-Ambassador to the UN Human Rights Council, Ambassador Ms Maric-Dordevic, 25th session of the Human Rights Council, March 2014

⁵ 22 October 2014, CCPR/C/MNE/Q/1/Add.1, Reply to list of issues, para. 30

⁶ 22 October 2014, CCPR/C/MNE/Q/1/Add.1, Reply to list of issues, para. 34

taking care of or coming into contact with the child. (3) The persons referred to in para 2 above are obliged to protect the child from any treatment referred to in para 1 above.” As the Law does not contain a definition of the term “corporal punishment”, we are trying to ascertain whether the intention of article 9a was to prohibit all corporal punishment, however light, in all settings.

1.6 We hope the Committee will confirm the intention of the state party in regards to the prohibition of all violent punishment of girls and boys, however light, and recommend that prohibition is implemented as a matter of priority.

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

- 2.1 **CRC:** The Committee on the Rights of the Child examined the initial state party report of Montenegro in 2010 and recommended prohibition of corporal punishment of children in all settings.⁷
- 2.2 **HRC:** In 2014, the Human Rights Committee recommended to Montenegro that steps be taken – including legislative measures – to end corporal punishment of children in all settings.⁸
- 2.3 **CAT:** The Committee Against Torture has twice recommended to Montenegro that corporal punishment of children be explicitly prohibited in all settings – in its concluding observations on the initial state party report in 2009⁹ and on the second report in 2014.¹⁰
- 2.4 **UPR:** At the second cycle Universal Periodic Review of Montenegro in 2013, the Government accepted recommendations to explicitly prohibit corporal punishment of children in all settings, stating: “Montenegro will embark on legal amendments to explicitly prohibit corporal punishment of children in all settings; a media campaign will be launched on the consequences of corporal punishment of children.”¹¹

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⁷ 21 October 2010, CRC/C/MNE/CO/1, Concluding observations on initial report, paras. 36 and 37

⁸ 21 November 2014, CCPR/C/MNE/CO/1, Concluding observations on initial report, para. 13

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

¹⁰ 17 June 2014, CAT/C/MNE/CO/2, Concluding observations on second report, para. 21

¹¹ 18 April 2013, A/HRC/23/12/Add.1, Report of the working group: Addendum, para. 21