

Corporal punishment of children in Serbia: Briefing for the Universal Periodic Review, 43rd session, April/May 2023



*From the Global Partnership to End Violence Against Children,
September 2022*

This submission provides an update on the legality of corporal punishment of children in Serbia since its review in the third cycle UPR in 2018. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings and some day care settings.

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 recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies, and during the 1st, 2nd and 3rd cycle UPR of Serbia, respectively in 2008, 2013 and 2018.

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 next year and make a specific recommendation that Serbia adopts the Law on Amendments to the Family Law which aims to explicitly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Serbia in the 3rd cycle UPR (2018) and progress since

1.1 Serbia was reviewed in the third cycle of the Universal Periodic Review in 2018 (session 29). Recommendations to prohibit corporal punishment in all settings were made¹ and accepted by the Government.²

¹ 18 April 2018, A/HRC/38/17, Report of the working group, paras. 114(91), 114(92), 114(93), 114(94), 114(95) and 114(96)

² 8 June 2018, A/HRC/38/17/Add.1 Advance unedited version, Report of the working group: Addendum

1.2 Following the review, in March 2019, the Government reported that the Family Law was being amended to regulate the “chastisement i.e. corporal punishment of a child”.³ In October 2019, a Working Group on amending the Family Law had been established and proposed amendments reportedly included explicit prohibition of corporal punishment.⁴ We have no further information to date.

1.3 **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 2023 and make a specific recommendation that Serbia intensify its efforts to enact a law to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.**

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 settings and some day care settings.

There is no defence for the use of corporal punishment enshrined in legislation but there is no explicit prohibition. In theory, the prohibition of “humiliating actions and punishments which insult the child’s human dignity” in article 69 of the Serbian Family Act 2005 would prohibit corporal punishment by parents, which invariably violates a child’s dignity, but the law is not interpreted in this way – and the potential for such an interpretation is undermined by the near universal social acceptance and use of corporal punishment in childrearing. Realisation of children’s rights to equal protection from assault under the law and to protection from all forms of violence requires clarity in law that no degree or form of corporal punishment is acceptable or lawful, without exception. Prohibition should be enacted of all corporal punishment and other humiliating and degrading treatment, in the home and all other settings where adults exercise authority over children.

2.1 **Home (lawful):** 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.

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 Law, and Minister for Education Mr Zarko Obradovic signed the Council of Europe petition against all corporal punishment of children. In December 2014, the Government reported to the

³ 8 March 2019, RAP/RCha/SRB/8(2019), National report to the European Committee of Social Rights, page 60

⁴ Communication with MODS, October 2019

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.⁵ 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.⁶ In June 2019, a consultative process was organised around the draft Law on the Rights of the Child and the Ombudsman for Children which reportedly includes explicit prohibition of corporal punishment.⁷

2.3 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”.⁸ A similar statement was made to the Human Rights Committee in January 2017.⁹ In October 2019, a Working Group on amending the Family Law had been established and proposed amendments reportedly included explicit prohibition of corporal punishment.¹⁰

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 (see under “Home”). A 2011 law on social protection reportedly bans violence against beneficiaries of social protection services¹¹ 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 under “Schools”), 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:¹² 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 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 was under discussion in February 2016. The Serbia delegation to the Committee

⁵ [December 2014], CRC/C/SRB/2-3 Unedited Version, Second/third state party report, para. 74

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

⁷ Information provided by the Child Rights Centre, October 2019

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

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

¹⁰ Communication with MODS, October 2019

¹¹ Nataša Jović, Assistant Secretary General, Protector of Citizens (Ombudsman), correspondence with the Global Initiative, February 2016

¹² Nataša Jović, Assistant Secretary General, Protector of Citizens (Ombudsman), correspondence with the Global Initiative, February 2016

on the Rights of the Child reported in January 2017 that the new juvenile justice law was expected to be adopted within the year.¹³

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:** On two occasions, the Committee on the Rights of the Child has recommended to Serbia that legislation be enacted to explicitly prohibit corporal punishment in all settings: in its concluding observations on the state party's initial report in 2008¹⁴ and on the second-third report in 2017.¹⁵

3.2 **CAT:** In its 2009 concluding observations on the state party's initial report, the Committee Against Torture recommended that legislation be enacted to explicitly prohibit corporal punishment in all settings.¹⁶

3.3 **ESCR:** On two occasions, the European Committee on Social Rights recommended that the Government prohibit corporal punishment in all settings: in January 2016 (Conclusions 2015) and in March 2020 (Conclusions 2019).

Briefing prepared by End Corporal Punishment on behalf of the Global Partnership to End Violence Against Children

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

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

¹⁵ 7 March 2017, CRC/C/SRB/CO/2-3, Concluding observations on second-third report, paras. 36 and 37

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