



Persisting and emerging challenges in protecting children's rights in Europe: Progress and delay in achieving children's right to prohibition and elimination of violent punishment

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Global Initiative to End All Corporal Punishment

It is 13 years since the European Committee of Social Rights, in a General Observation, stated that the European Social Charter requires prohibition in legislation of all violent punishment of children, observing: "The Committee does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence".

And 10 years ago the Parliamentary Assembly of the Council called for a Europe-wide ban, noting: "Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended".

These quotes surely get across the fundamental rights-based importance of this issue. The persisting social and legal acceptance of violent punishment of children does not simply undermine and contradict child protection: it reflects very symbolically the low status of children as less than people and rights holders. It certainly undermines the achievement of all four strategic objectives of the Council's 2012 – 15 children's rights plan.

In 2008, also in Croatia (thank you, Croatia!), the Council launched its campaign for universal prohibition. The 2012-2015 Strategy notes: "Some forms of violence (such as corporal punishment) are still legally and socially tolerated and widespread"; the Strategy commits the Council to "Continue to facilitate a culture of zero tolerance of violence towards children, to promote the effective elimination of violent discipline and corporal punishment of children in all settings, including within the family/home, together with the development of positive parenting policies in member states".

So where have we got to? The good news first: the Council is now at last over halfway to the target of universal prohibition. At the end of last year the Former Yugoslav Republic of Macedonia joined the list of member states with a full ban, and Malta has just been added as the 25th of the 47 member states. Encouragingly, at least another 11 have made formal public commitments to achieve a ban. That leaves just 11 which have neither achieved a ban nor committed to one.

Globally, prohibition has accelerated from the pioneering ban in Sweden, in 1979, to 4 by 1990, 8 by 2000, 28 by 2010 and now 37. It sounds encouraging, but still only 6 per cent of the global child

population live in states where the law gives them equal protection from being hit and deliberately hurt. 39 states still allow their courts to sentence children as young as 10 to whipping or caning in their penal systems. More than 70 still authorise school corporal punishment.

The Council's explicit campaigning on this issue has been a model and has encouraged other inter-governmental organisations in other regions. It is only through explicit campaigns and explicit law reform that progress is made. Some, including some governments, suggest that general provisions prohibiting "violence" against children or "abuse", or protecting children's physical integrity or dignity are adequate, although they know perfectly well that given the overwhelming traditional social acceptance of physical punishment, such laws are not interpreted as prohibiting all forms of violent punishment, they do not send the essential clear message. As the European Committee on Social Rights stated in its decision on a collective complaint in 2006 (34/2006), the law "must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children".

Also, I still hear some suggesting that this change should be achieved by education, not legislation. But this denies children's right to full respect for their human dignity and physical integrity and to equal protection under the law. It also denies that the law is a most potent instrument for social change. Ensuring that the criminal law on assault applies equally to assaults on children, whether or not disguised as discipline, is the only safe and just foundation for child protection and for the promotion of positive, non-violent relationships with children. In many states now physical punishment of children is the only legalised form of inter-personal violence.

But of course clear law on its own will not achieve the necessary urgent change in the social norm: it has to be linked to sustained public and parent education on the law and on the child's right to full protection, awareness-raising of the dangers of corporal punishment and promotion of positive, non-violent discipline.

It is not expensive to change the law and the sustained educational process that needs to accompany that change does not have to be very expensive either – although it does have to be sustained over a long period - if the key simple messages are built into all the government services which impact on children and families, future parents and parents. And we must emphasise that this fundamental preventative and educational process will save states huge amounts of money. It is fundamental, as the Committee on the Rights of the Child emphasises in its General Comment No. 8 on the child's right to protection from corporal punishment, to reducing all other forms of violence against children and to building peaceful societies where the use of force is not considered an acceptable way of changing behaviour.

It is vital to keep this issue high on the agenda for the remaining period of the current strategy and maintain it in the next strategy, expressing real urgency in achieving the goal of universal prohibition.

I hope that those states which have reformed their laws to give children equal protection from being hit, together with those committed to achieving this reform soon can now work together to maintain the momentum and to increase the pressure on others.

The European Committee of Social Rights is currently considering seven collective complaints against member states which have not achieved a clear ban; a strong follow-up to the decisions on these complaints in the Committee of Ministers could increase human rights pressure.

Finally, I would like to just mention some other key justice issues demanding more attention, in relation to other strategic objectives:

The Strategy refers to children's right to "equal" access to health and other services: we all know that in times of recession it is children who suffer most from cutbacks. But this remains invisible unless there is rigorous, rights-based monitoring of the impact on children. Diminishing services are not child-friendly.

Then child-friendly justice: the very welcome Guidelines did not really address the central issue of the minimum age of criminal responsibility: both the European Children's Ombudspeople (ENOC) and Thomas Hammarberg as Commissioner for Human Rights have agreed that it is time to separate the concept of "responsibility" and stop criminalising children altogether in justice systems that have a genuinely complete, uncompromising focus on rehabilitation and re-integration and which discard retribution altogether. And it is surely shocking that recent research by the Child Rights International Network reveals that some member states still allow their courts to sentence children to what can still be a life sentence. The concept of proportionality in sentencing children is incompatible with a justice system focussed on rehabilitation and re-integration. Few states if any stick rigorously to the CRC's requirement that children's liberty should only be restricted as a last resort: I was encouraged by the Secretary-General's remarks this morning to hope that the Council may play a significant role in the proposal for a new UN study into the restriction of liberty of children in all its forms, which the Committee on the Rights of the Child has endorsed.

The Update on the current 2012/2015 Strategy notes how it – and the work of the incredibly productive and energetic children's rights division – has raised expectations. It is a hugely exciting process. But it has to be sustained, and we have to keep reminding all governments that fulfilling these expectations is an immediate obligation under international law, not a wish-list but a must-list for children. We should be emphatic about that in this 25th anniversary year of the CRC.