

Committee of Experts on the Council of Europe Strategy for the Rights of the Child (DECS-ENF) 2nd meeting – Strasbourg May 12 and 13 2015

No violence against children – May 13 11.30 am

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I looked back at the presentation I made at the Dubrovnik conference on implementation of the Strategy, in March 2014. I don't like to be repetitive, but it seems to be my job. It is 14 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". It's 11 years since the Parliamentary Assembly 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". And it is seven years since the launch of the Council's campaign for universal prohibition in 2008 in Croatia.

In March, in its decision on a collective complaint, finding France in violation of the Social Charter because it has not clearly and effectively banned all corporal punishment of children, the Committee confirmed "that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers in particular in this respect to General Comment Nos. 8 and 13 of the Committee on the Rights of the Child". And this statement was duly quoted in the Committee of Ministers resolution on the France decision.

Last year in Dubrovnik I reported that 25 of the member states had achieved full prohibition; since then another three, San Marino, Estonia and Andorra have been added to the list, making 28 out of 47. Another eight states have publicly committed to achieve prohibition, mostly by clearly accepting UPR recommendations, but some of these commitments were made almost five years ago and begin to sound a little hollow.

It was in 2000 that the first non-European states achieved prohibition. Since then, 17 states in Europe and 16 outside have achieved prohibition. Globally, 46 states have achieved a full ban and an additional 47 are committed to do so. We cannot any longer pretend that Europe is moving faster than other regions on this. Indeed it now looks quite likely that Latin America will become the first region with universal prohibition.

Sweden, who were the pioneers in explicitly banning corporal punishment in the home 36 years ago, held a ground-breaking inter-governmental conference last June, bringing together high-level representatives of states in all regions to discuss how to work collaboratively to achieve universal prohibition. We need this collaboration globally, but also within the Council and within the EU to assert the immediate human rights imperative to build irresistible pressure on states like mine which are still defending “reasonable” violence, “justifiable assault” on children and attempting to trivialize and delay. The Council claims with good reason to have the strongest regional human rights mechanisms, yet they are failing to achieve this most fundamental and symbolic human right for children - their right to full respect for their human dignity and physical integrity and to equal protection under the law.

The draft new Strategy notes in its introduction that 25 years after the entry into force of the UNCRC, the idea that children are autonomous right holders is still challenged systematically, including by the fact that in almost half of Council of Europe member States it is still legal or tolerated to hit a child while hitting an adult is illegal”.

In fact, surely there is no more symbolic and potent reflection of the low status of children? The draft commitment in section 3.3 – “The Council of Europe will promote the effective elimination of corporal punishment of children in all settings, including within the home, both in law and in practice” surely lacks the necessary urgency and emphasis on the established strong commitment to achieve universal prohibition, on the immediate human rights obligations of all member states. There is no suggested performance indicator suggested, but surely there is an obvious one to insert on making more rapid progress towards universal prohibition?

3.3 also commits to supporting “alternatives” to corporal punishment. While we may all understand what is meant by this, it is inappropriate language. We would not talk about looking for “alternatives” to domestic violence against women. Confusion about the relationship between law reform to ban all violent punishment and the promotion of positive, non-violent forms of discipline is now delaying progress. Governments of some states, including mine and France seem to believe that you can achieve children’s rights simply through attempting to educate parents. Nobody would make similar suggestions about ending violence against women simply by educating men.

Of course, to achieve the necessary changes in traditional acceptance of violence against children, as with violence against women, demands widespread public and parent education. But the foundation must be absolutely clear law

providing equal protection for children from being hit or hurt deliberately. The recent announcement of EU Daphne funding for speeding the path from prohibition to elimination of violent punishment in EU member states which have prohibited is welcome and appropriate.

I hope the Strategy can explicitly encourage those member 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. And wouldn't it be valuable for the new Strategy to propose an explicit review of the current failure of the Council's human rights mechanisms, together with its component institutions, to fulfil rather than simply re-state the commitment to achieve this very basic equality of protection in all member states.

The Council's explicit commitment to children's rights and the productivity of its children's rights division remains a model for inter-governmental organisations in all regions. Exploring openly how to overcome the particular challenges that this issue poses might also be useful to others?