



## **Background paper**

**on state accountability and legal frameworks  
for challenging all forms of violence**



**Making Europe and Central Asia Fit for Children**

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This background paper has been prepared by Peter Newell,  
in collaboration with the United Nations Children's Fund (UNICEF),  
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Its contents do not necessarily reflect the policies or the views of UNICEF.

## **VIOLENCE AGAINST CHILDREN**

### **1. Introduction**

Children – developmentally the most vulnerable of people – are the most frequent victims of all forms of violence in most societies, in this and other regions. Children suffer physical violence and sexual abuse in their homes, where infants are in many states frequent victims of homicide by their parents, and where violence disguised as discipline remains lawful, common and socially approved.

Children suffer violence in schools, from both adults and other students, and on the streets, in their neighbourhoods and communities. Recent decades have revealed the extent of physical and sexual abuse of children in all kinds of institutions managed both by the state and by private authorities. Sexual exploitation of children and young people through prostitution and child pornography, including through the Internet, is rife and crosses borders. Children are trafficked and abducted. The aftermath of armed conflict, including inter- and intrastate conflicts in the region, continues to impact on children in particular. Some forms of violence against children are linked particularly with alcohol and drug abuse.

This paper reviews the obligations under international law which require all states in Europe and Central Asia to provide effective protection of children from all forms of violence; to abstain from committing any act of state violence against children and to provide a framework of law and other measures which protects children in the home and in all other environments. In most countries of Europe and Central Asia, various forms of violence against children still remain lawful and socially approved. For this reason, this paper focuses on state responsibilities to eliminate violence from its own institutions and to take all measures to prevent and address violence committed by third parties. Much violence against children remains invisible, and the paper also highlights the need for systematic monitoring of children's experiences of violence.

The UN Convention on the Rights of the Child underlines children's equal status as holders of human rights and the obligation to ensure that children have a right to express their views, and have them taken seriously, on all matters that affect them. Thus children's own experiences and views should inform all action to challenge violence against them; the paper highlights how their active involvement should be encouraged. In particular, child protection systems need to be designed in collaboration with children, to ensure that interventions do not add further abuse to children.

Finally, it must be emphasized that what happens to children in the early years, in the family and in schools, is most influential in determining attitudes to violence. So a focus on protecting children comprehensively and effectively from violence can and should be seen as a key strategy for preventing all forms of violence throughout society.

### **2. States' responsibilities under international law to protect children from all forms of violence**

All violence against children is a violation of their human rights. States have obligations under international law to protect children from all forms of violence, to prevent and deter it whether it occurs in the "private" sphere of the family, on the street or in state institutions. They also have positive obligations to provide children and their families with appropriate assistance and support and an adequate standard of living, with special protection for children deprived of their family environment.

### **The Berlin Commitment and violence against children**

The statement committed governments to: *“Take all necessary measures in order to end all forms of violence against children, such as sexual abuse and exploitation and corporal punishment; combat all violence in schools; protect children from violence and pornography in the media and on the Internet; end trafficking of children without criminalizing child victims and ensure comprehensive rehabilitation and social reintegration of affected children; implement policies and rehabilitation programmes that take fully into account the rights and special needs of children affected by armed conflict, including refugee children, asylum-seeking and displaced children as well as those deprived of parental care.”* (para. 14)

### **UN General Assembly Special Session on Children**

The Outcome Document of the Special Session, *A world Fit for Children*, includes a substantial section on ‘Protecting against abuse, exploitation and violence’ in which states commit themselves to *“Encourage all countries to adopt and enforce laws and improve the implementation of policies and programmes to protect children from all forms of violence, neglect, abuse and exploitation, whether at home, in school or other institutions, in the workplace or in the community”* (see para. 44.2 et seq).

## **a) The UN Convention on the Rights of the Child**

All states in Europe and Central Asia have ratified the UN Convention on the Rights of the Child (CRC). The Convention requires States to protect children from “all forms of physical and mental violence” while in the care of parents and others. Many other articles of the Convention require protection from specific forms of violence and exploitation, augmented by the two Optional Protocols to the Convention (on Sale of Children, Child Prostitution and Child Pornography and on Children Involved in Armed Conflict).<sup>1</sup>

The Committee on the Rights of the Child, the Treaty Body for the Convention, in reviewing reports from States parties to the CRC, has paid particular attention to protection from all forms of violence. It held two days of General Discussion in 2000 and 2001, on state violence against children and on violence against children in schools and the family. In the recommendations following these discussions, in concluding observations on States’ reports and in General Comments, the Committee has recommended prohibition of all forms of violence, including all corporal punishment, and stressed the importance of awareness-raising and public education.<sup>2</sup>

### **UN Study on Violence against Children**

Among the recommendations adopted after General Discussion on violence, the Committee on the Rights of the Child proposed a comprehensive UN Study on Violence against Children. In a resolution, in 2001, the UN General Assembly requested the Secretary General to carry out such a Study. Professor Sergio Paulo Pinheiro has been appointed as the Independent Expert to lead the Study and a secretariat is being established in Geneva.<sup>3</sup> UNICEF, the World Health Organization and the Office of the High Commissioner for Human Rights are the lead agencies for the Study. UNICEF is taking lead responsibility for organizing regional consultations for the Study: a Regional Consultation for Europe and Central Asia will be held during 2005, in collaboration with the Council of Europe. A detailed questionnaire (available to participants) has been circulated to all governments by the Secretariat and provides a valuable and comprehensive basis for national studies and action.

## b) Regional human rights standards

The European Convention on Human Rights and Fundamental Freedoms of the Council of Europe guarantees the rights of 'everyone' to life, to protection from torture and inhuman or degrading punishment or treatment and to protection of their physical integrity. Individual applications to the European Court of Human Rights have led to judgments asserting states' obligations to provide 'adequate protection' of children in public and private institutions and in the family, including 'effective deterrence' of violence. In its deliberations, the Court refers to the UN Convention on the Rights of the Child and to the jurisprudence of the Committee on the Rights of the Child. Recent judgments of the Court have emphasized the active duties of the state to intervene and protect children, when state authorities are or should be aware of threats to the child; also the requirement to hold a public and independent inquiry into cases in which the state may bear some responsibility for a child's death or a child suffering inhuman or degrading treatment or punishment. The Court also ruled in 2003 that the State's positive obligations require the establishment and effective application of a criminal law system which punishes all forms of sexual abuse and rape.<sup>4</sup>

The jurisprudence of the European Court of Human Rights has progressively condemned corporal punishment of children, in a series of decisions and judgments against the UK, first in penal systems and schools both state and private and more recently in the home; other decisions have emphasized that banning all corporal punishment does not breach family privacy or religious rights.<sup>5</sup>

The European Committee of Social Rights monitors compliance of member-states with the European Social Charter and Revised Social Charter. Within the scope of the Charters, the Committee reviews child protection systems and the situation of children in all forms of alternative care and in juvenile justice systems. It observed in 2001 that the Charters require all member-states to reform their law to prohibit all corporal punishment and all other degrading treatment or punishment of children and to take other measures to recognize and realize children's rights to protection.<sup>6</sup> The Committee has found a number of countries to be not in conformity with the Charters because of a failure to effectively prohibit all corporal punishment and all other degrading treatment of children. Collective complaints, made under the Charters against five member-states on the same grounds, are currently (2004) under investigation by the Committee.<sup>7</sup>

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Committee for the Prevention of Torture (CPT) are intended to strengthen the protection from torture, etc. of people, including children, who are deprived of their liberty, by visits and reporting. The CPT has issued standards, including on treatment of juveniles deprived of their liberty, covering safeguards to prevent ill-treatment.<sup>8</sup>

The Committee of Ministers of the Council of Europe has condemned corporal punishment and other forms of violence and exploitation and proposed prohibition and other measures in a series of recommendations dating back to 1985. The Parliamentary Assembly has also issued many relevant resolutions and recommendations, including on abuse and neglect, sexual exploitation and trafficking.<sup>9</sup>



### Discussion point

- **How can the human rights standards established internationally and in the region be effectively disseminated to adults and children?**

### 3. Making violence against children visible

Statistics of convictions for violence against children, or of reports and investigations of violence, only represent a tiny proportion of the violence suffered by children. Much violence against children, including in particular in the family home, remains unreported and invisible.

Deaths from child maltreatment have been used as an indicator of the extent of maltreatment and as the basis for international comparisons. But any close study of this data shows the inadequacies of recording and reporting. A recent report from UNICEF's Innocenti Research Centre emphasizes that "more vigorous investigation and more consistent reporting is needed in all nations". It also highlights "that maltreatment deaths are but the tiny, tragic tip of a very large iceberg of abuse".<sup>10</sup>

Building an accurate picture of the range and extent of violence against children requires interview research in conditions of trust and confidentiality with children and with parents. As UNICEF's report emphasizes, "If a consistent method and approach to such interviews were to be adopted, then national statistics would become more refined and reliable, and international comparisons would become more possible. Such data are needed to inform the debate and guide child protection policies. And their lack demonstrates the low priority so far afforded to this issue..."

Confidential questionnaires on violent victimization of children can cover violence and abuse experienced in all environments – within the home, on the street, in schools and other institutions and can be used with children, and with parents to cover their experiences of the early years. The methodology now exists, but has not been applied in many countries; it would be valuable to develop model questionnaires and research methodology for application in as many countries in the region as possible, to enable constructive comparisons.

Periodic research of this kind, together with careful collection of statistics of reporting and investigation and an effective system of inquiries into child deaths and other child protection failures, will enable states to monitor progress towards the elimination of violence against children.



#### Discussion point

- **How can we achieve visibility of all forms of violence against children, including in the family and in institutions, in all states in the region, in the context of the UN Study on Violence against Children?**

### 4. Children's role in exposing and challenging violence

Implementation of the Convention on the Rights of the Child and a focus on children's right to express their views freely and have them taken seriously (article 12) has led to more attention being paid to children's own accounts of their experiences, concerns and complaints. The Committee on the Rights of the Child proposes that "In conceptualizing violence ... the critical starting point and frame of reference [should] be the experience of children themselves. Therefore children and young people must be meaningfully involved in promoting and strategizing action on violence against children."<sup>11</sup>

While it is of course adults' responsibility to protect children from all forms of violence, adults need to hear children's views and ideas on the structure and development of a child

protection service which children feel confident in using. Protection must not involve further abuse. Children should be involved, with their consent and with appropriate safeguards, in debates on law and policy development, in the design of training and services and in research. They may be engaged as active researchers with their peers as well as being the respected objects of research into their experiences of violence and of the child protection system.



### Discussion point

- **How can we work directly with children to develop child protection systems which effectively protect them from violence?**

## 5. The legal framework: ensuring consistent prohibition of all violence – the example of corporal punishment

All states in the region have general laws criminalizing assault; many have constitutions or statutes prohibiting torture and all other forms of inhuman or degrading treatment or punishment and child protection laws prohibiting cruelty or abuse. But none of these has proved adequate to protect children from all forms of violence. Just as in previous centuries in many states the law condoned violence against women and servants, traditional attitudes to children as the property of their parents have persisted and with them assumptions that parental authority includes the right to use violent punishments. Teachers and carers, acting *in loco parentis*, have been assumed to have similar ‘rights’ over children.

So, challenging corporal punishment is not simply challenging a particular category of violence, but challenging traditional attitudes and laws which approve some arbitrary degree of violence against children, when disguised as discipline, punishment or control. Ensuring there are no legal justifications or defences for any form of violence against children and implementing explicit prohibition of all corporal punishment and all other degrading punishment or treatment of children is a human rights imperative. This is clear from the jurisprudence of the Committee on the Rights of the Child and from the standards developed by Europe’s own human rights mechanisms, as detailed above. Explicit law reform and other measures are required to guarantee children respect for their human dignity and physical integrity and equal protection under the law. This is as fundamental as anything can be to improving children’s status and gaining recognition and respect for children as holders of human rights.

The idea that breaching a child’s human dignity and physical integrity is acceptable, normal, or even as some still suggest “in their best interests”, perpetuates their status as objects or property. This makes every other sort of extreme abuse and exploitation, including sexual exploitation and trafficking and forced labour, more likely and easier. Ending the legality and social acceptance of any deliberate violence against children is an absolute priority if all states in the region are to challenge effectively all forms of violence and exploitation.

As yet only a minority of states in the region has explicitly prohibited all corporal punishment and all other humiliating treatment, linking prohibition to comprehensive awareness-raising and public and parent education (see table in *Annex*). The process of law reform to prohibit all violence against children in the family began in the 1950s in the Nordic countries.<sup>12</sup> But in 2004, legislation in some states in the region still includes defences explicitly justifying corporal punishment (parents’ ‘right of correction’ or right to use ‘reasonable chastisement’). In all countries in Europe and Central Asia, violent punishment of children in the home has been the norm until actively challenged. Research over the last decade in a small number of

states has found very high prevalence of corporal punishment, including of babies and very young children, and including severe punishment causing injury.<sup>13</sup> Corporal punishment in schools is now prohibited in all countries in the region – in some more than two centuries ago, in others only in the last decade. But enforcement is inconsistent. In other institutions and forms of care there is systematic prohibition and enforcement in some but by no means all states (see *Annex*).

The Deputy Secretary-General of the Council of Europe, Maud de Boer-Buquicchio, in a series of recent speeches has called for action, on the basis of the region's established human rights standards, towards creating a Europe free of corporal punishment; she has likened the process to that which has effectively eliminated the death penalty across the 45 member-states of the Council.

## **5.1 Essential legislative and other measures to eliminate corporal punishment**

### **5.1.1 Law reforms**

- Ensuring there are no existing defences, in statute or common law, that justify corporal punishment by parents or others;
- Ensuring that the criminal law on assault applies equally to punitive assaults on children;
- Enacting an explicit prohibition of all corporal punishment and all other degrading or humiliating treatment or punishment of children, normally in civil law;
- Providing guidance on appropriate enforcement of these laws which focuses on protection and promotion of the human rights of children in general and on the best interests of affected children in particular.

### **5.1.2 Educational and other measures**

- Ensuring comprehensive awareness-raising of the prohibition of all corporal punishment and other inhuman or degrading treatment of children among children and all who live and work with them and among the general public;
- Ensuring comprehensive awareness-raising of children's human rights, including the right to respect for their human dignity and physical integrity;
- Promoting positive, non-violent forms of child-rearing, conflict resolution and education to future parents, parents and other carers and to the general public;
- Ensuring that children and young people have the opportunity to express their views and participate in planning and in actions to eliminate corporal punishment;
- Ensuring that advice and appropriate support is available for all parents and in particular for those who are finding child-rearing stressful;
- Ensuring that children have access to confidential advice and counselling as well as advocacy to challenge violence against them;
- Ensuring effective and appropriate forms of protection for children who may be particularly vulnerable to harmful and humiliating punishment – for example disabled children;
- Ensuring that corporal punishment and other harmful and humiliating forms of discipline of children come within the definition of domestic or family violence and that strategies to eliminate punitive violence against children are built into strategies challenging domestic or family violence;
- Monitoring the effectiveness of abolition by regular research into: children's experience of violence in their homes, schools and other activities; children's experience of child protection services; parents' experience of and attitudes to violence against children.



## Discussion points

- **How can we accelerate the process of law reform to prohibit all corporal punishment and all other forms of degrading punishment or treatment of children in the family and elsewhere, throughout the region?**
- **How can we support law reform with awareness-raising of children's right to protection and promotion of positive, non-violent forms of discipline?**

## 6. Protecting children from violence in institutions

It is only in the last decade that the scale and severity of physical violence and sexual abuse of children in the wide range of state and private residential schools and other institutions that exist in every state has begun to come to light. Special attention needs to be given to asking children in institutions, including schools and detention facilities, about their experience of violence (from adults and from other children), recognizing that they may feel intimidated and silenced by fear of inappropriate interventions or – particularly children in detention – fear of reprisals.

The state's obligation to protect children against violence extends equally to all institutional settings and all forms of alternative care whether state managed or private. The CRC demands consistent standards, including in the number and suitability of staff and their supervision (article 3(3)). It also requires regular reviews of all placements of children, which must involve children and ascertaining their views (article 25).

Training of all staff in institutions dealing with children, including awareness-raising on children's rights to protection and participation, is required. Rigorous independent inspection of all institutions, including talking to children and staff in private, is an essential safeguard. Movement of children out of residential care institutions and into foster-care does not diminish the need for rigorous regulation and supervision.

Criminal record checks are a basic but not sufficient safeguard to prevent the employment of people who pose a risk to children in positions which give them direct access to children. In addition, detailed procedures for selection, for taking up confidential references and above all for supervision of all those working in contact with children are essential.

Children need to know to whom they can go for immediate protection and also for independent, confidential advice and to make complaints (see below, page 10).

A particularly valuable additional safeguard can be confidential 'exit interviews' with children when they leave institutions or forms of alternative care. At that point they may have more confidence to talk freely about violence and other concerns, which may help to improve procedures and to protect other children.

Bullying in schools is another recently 'discovered' and, it appears, universal phenomenon. It is not just confined to schools, but is found in all forms of residential institution and in places of detention and imprisonment. Schools and other institutions should be required to develop anti-bullying policies in conjunction with residents or students and staff or parents and constantly monitor children's reports of bullying. Tackling bullying has to involve addressing its causes, which in part are linked to aspects of school institution ethos, organization and environment. Children who are suffering violent and humiliating forms of discipline at home are more likely to be involved in bullying in other settings.

Up to date, only one state in the region (Norway) has adopted an ambitious deadline to eliminate all bullying in schools, with a joint commitment from government, local authorities and teachers, brought together by the Children's Ombudsman.



### Discussion points

- **How can we achieve appropriate enforcement of child protection in all State institutions and forms of alternative care for children?**
- **How can we eliminate bullying in schools and other institutions?**

## 7. Developing advice and advocacy services that children will use

Retrospective studies of childhood, interviewing young adults, have demonstrated that very high proportions – two thirds or more - of large samples of children have suffered physical and sexual abuse during their childhood without reporting it. If more children are to seek help and gain the confidence to challenge the violence they are currently suffering in silence, they need to be offered confidential advice and advocacy services; that is, services which will not breach a child's confidence unless the child or others are judged to be at immediate risk of death or serious injury, or the child is manifestly unable to understand the issues.

Such services are not of course an alternative to conventional child protection services in which there is an obligation to investigate if information is received suggesting that a child is at risk of significant harm. Confidential services are complementary and need to be clearly advertised as such, and freed from any mandatory reporting duties that they would otherwise be under. States need to provide or support both forms of services. Children's reported concerns about child protection systems are generally about the pace and form of interventions and the lack of consideration of their views. While they want the violence to stop, they do not want to be separated from their family or to have to suffer repeated intrusive interviews or examinations or, for example, to lose the family bread-winner. The best interests of affected children should be the paramount consideration throughout the child protection process; currently the demands of the criminal justice system can over-ride the child's interests. Children's views should be ascertained and given due consideration at every stage.



### Discussion point

- **How can we seek to ensure that children who are suffering violence feel the confidence to seek support in challenging and preventing it?**

## 8. Effective remedies when protection fails

Every state must ask itself whether children have an effective remedy when their right to protection from all forms of violence is breached. Do all children, in families, schools and other institutions and in detention, know where they can go for confidential advice and support and to report violence? Are there independent, child-friendly complaints procedures? Mechanisms for identification, reporting and referral of cases of all forms of violence and exploitation need to be established (noting, as above, the need for parallel confidential services). There needs to be clarification and articulation of the roles of all those involved in child protection, with clear lines of responsibility reflecting the state's obligations.

Children and their representatives need to have ultimate access to the courts to challenge violations when protection has failed, with sensitive and appropriate arrangements for child witnesses. And when national systems and courts fail to uphold human rights standards, the regional human rights mechanisms, including the European Court of Human Rights, need to be accessible to children and their representatives.



#### **Discussion point**

- **How can we ensure effective local, national and regional remedies for children whose right to protection from all forms of violence is breached?**

## Annex: Legal status of corporal punishment of children in Council of Europe member-states

Country	Explicit prohibition (with date of implementation)	Removal of legal defence for parental 'disciplinary' assaults	Unlawful in the home	Unlawful in schools	Unlawful in the penal system	Unlawful in institutions and other childcare settings
Albania	NO	NO	NO	YES	YES	NO <sup>1</sup>
Andorra	NO	NO	NO	YES	YES	??
Armenia	NO	NO	NO <sup>2</sup>	YES	YES	NO <sup>3</sup>
<b>Austria</b>	<b>YES (1989)</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
Azerbaijan	NO	NO?	NO?	YES	YES	??
Belgium	NO <sup>4</sup>	no defence exists	NO <sup>5</sup>	YES	YES	YES
Bosnia & Herz.	NO	NO	NO	YES	YES	NO <sup>6</sup>
<b>Bulgaria</b>	<b>YES (2000)</b>	<b>YES</b>	<b>YES<sup>7</sup></b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
<b>Croatia</b>	<b>YES (1999)</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
<b>Cyprus</b>	<b>YES (1994)</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
Czech Republic	NO	no defence exists	NO <sup>8</sup>	YES	YES	YES
<b>Denmark</b>	<b>YES (1997)</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
Estonia	NO	no defence exists	NO <sup>9</sup>	YES	YES	YES
<b>Finland</b>	<b>YES (1984)</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
France	NO	NO	NO	YES <sup>10</sup>	YES	NO <sup>11</sup>
Georgia	NO	no defence exists	NO <sup>12</sup>	YES	YES	YES
<b>Germany</b>	<b>YES (2000)</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
Greece	NO	NO	NO	YES	YES	NO <sup>13</sup>
Hungary	NO	NO	NO	YES	YES	YES
<b>Iceland</b>	<b>YES (2003)</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
Ireland	NO	NO	NO <sup>14</sup>	YES	YES	YES

<sup>1</sup> No explicit prohibition, but serious abuse covered by the Criminal Code and the Constitution.

<sup>2</sup> 1996 Rights of the Child Act states that every child has the right to protection from any form of violence, but not interpreted as prohibiting all parental corporal punishment.

<sup>3</sup> No explicit prohibition, but serious abuse covered by the Criminal Code and the Rights of the Child Act.

<sup>4</sup> Constitutional amendment of 2000 requires respect for physical integrity but not interpreted as prohibiting all corporal punishment.

<sup>5</sup> While no explicit defence is available, the law is not interpreted as prohibiting corporal punishment by parents.

<sup>6</sup> No explicit prohibition, but serious abuse covered by the Criminal Code.

<sup>7</sup> But complexities of procedure for 'trivial' bodily injury limit the legal protection of children from corporal punishment.

<sup>8</sup> Law silent but physical punishment by parents tolerated in society.

<sup>9</sup> 1992 Child Protection Act makes it unlawful to 'humiliate, frighten or punish the child in any way which abuses the child, causes bodily harm or otherwise endangers his or her mental or physical health', but not interpreted as prohibiting all corporal punishment.

<sup>10</sup> High Court ruling in 1889 allowed a 'right to correction' for teachers, as for parents. A 2000 judicial ruling stated that corporal punishment which is repetitive and not educational is not covered by this right.

<sup>11</sup> No explicit prohibition, but serious abuse covered by the Criminal Code.

<sup>12</sup> Law is silent but corporal punishment widely accepted.

<sup>13</sup> No explicit prohibition, but serious abuse covered by the Criminal Code.

<sup>14</sup> But Government committed to law reform following public education.

Country	Explicit prohibition (with date of implementation)	Removal of legal defence for parental 'disciplinary' assaults	Unlawful in the home	Unlawful in schools	Unlawful in the penal system	Unlawful in institutions and other childcare settings
Italy	NO	YES <sup>15</sup>	YES <sup>16</sup>	YES	YES	YES
<b>Latvia</b>	<b>YES (1998)</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
Liechtenstein	NO	NO	NO	YES	YES	YES
Lithuania	NO	NO	NO	YES	YES	YES
Luxembourg	NO	NO	NO	YES	YES	SOME
Malta	NO	NO	NO	YES	YES	NO <sup>17</sup>
Moldova, Rep.	NO	NO	NO	YES	YES	NO
Netherlands	NO	NO	NO <sup>18</sup>	YES	YES	SOME <sup>19</sup>
<b>Norway</b>	<b>YES (1987)</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
Poland	NO <sup>20</sup>	YES	NO <sup>21</sup>	YES	YES	YES
Portugal	NO	NO <sup>22</sup>	NO <sup>23</sup>	YES	YES	YES
Romania	NO	NO	NO	YES	YES	YES
Russian Federation	NO	NO	NO	YES	YES	NO
San Marino	NO	NO	NO	YES	YES	NO <sup>24</sup>
Serbia & Montenegro	NO	NO?	NO?	YES	YES	??
Slovak Republic	NO <sup>25</sup>	no defence exists	NO <sup>26</sup>	YES	YES	YES
Slovenia	NO	NO	NO	YES	YES	SOME <sup>27</sup>
Spain	NO	NO	NO	YES	YES	YES
<b>Sweden</b>	<b>YES (1979)</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
Switzerland	NO	YES <sup>28</sup>	NO <sup>29</sup>	YES <sup>30</sup>	YES	YES

<sup>15</sup> 1996 judgment of the Supreme Court in Rome stated that corporal punishment was not a legitimate means of correction and outlawed all violence in childrearing (Supreme Court of Cassation, 6th Penal Section, March 18 1996).

<sup>16</sup> 1996 Supreme Court judgment applies, but has not yet been confirmed in legislation.

<sup>17</sup> No explicit prohibition, but serious abuse covered by the Criminal Code.

<sup>18</sup> Government considering reform; has commissioned a study on experiences of abolition in other European countries.

<sup>19</sup> Prohibited in residential care institutions. Non-severe corporal punishment apparently lawful in other forms of care.

<sup>20</sup> 1997 Constitution states that "... The application of corporal punishment shall be prohibited" but also upholds right of parents "to rear their children in accordance with their own convictions" and parental corporal punishment traditionally accepted.

<sup>21</sup> While there is no defence for parental corporal punishment, law is not consistently respected and enforced by the judicial system, and Constitutional prohibition not confirmed in family law.

<sup>22</sup> There is a concept of 'paternal power' under which parents should direct their child's education and the child should be obedient to parents. A 1994 Supreme Court decision (Supremo Tribunal de Justiça, February 9, 1994) ruled that this does not give parents the right to raise children through physical aggression, but this has not been confirmed in legislation.

<sup>23</sup> 1994 Supreme Court judgement applies but has not been confirmed in legislation.

<sup>24</sup> No explicit prohibition, but serious abuse covered by the Criminal Code.

<sup>25</sup> 2002 amendment to Penal Code outlaws hitting and other forms of violence within close relationships which cause physical or mental suffering but does not explicitly prohibit corporal punishment.

<sup>26</sup> Law is silent but corporal punishment by parents tolerated in society.

<sup>27</sup> Prohibited in day care centres and residential schools, but permitted in foster care.

<sup>28</sup> Explicit confirmation of parents' punishment rights was deleted from the Civil Code in 1978, but under Swiss case law, parental authority has been interpreted as including a right to correct ('droit de correction'). A 2003 Swiss Federal Court judgement ruled that corporal punishment can no longer be considered an acceptable form of discipline and that repeated or habitual corporal punishment is a punishable offence.

<sup>29</sup> 2003 Federal Court judgement applies but has yet to be confirmed in legislation.

<sup>30</sup> Prohibited by federal law in all schools, but certain cantons allow it in certain circumstances.

Country	Explicit prohibition (with date of implementation)	Removal of legal defence for parental 'disciplinary' assaults	Unlawful in the home	Unlawful in schools	Unlawful in the penal system	Unlawful in institutions and other childcare settings
TFYR Macedonia	NO	no defence exists	NO <sup>31</sup>	YES	YES	YES
Turkey	NO	in civil law only <sup>32</sup>	NO	YES	YES	NO <sup>33</sup>
Ukraine	NO	NO	NO	YES	YES	??
United Kingdom	NO	NO	NO	YES	YES	SOME <sup>34</sup>

*Extract from Council of Europe Forum for Children and Families Document CS-Forum (2003) 5 rev; draft prepared for December 2003 meeting of the Forum from information collected by the Council of Europe and the Global Initiative to End All Corporal Punishment of Children.*

<sup>31</sup> 2000 Law on Protection of Children prohibits corporal maltreatment, punishment and other inhuman treatment and abuse, but these terms not defined and law not interpreted as prohibiting parental corporal punishment.

<sup>32</sup> Amendment to Civil Code, in force from January 2002, removed parents' 'right of correction', but similar defences still exist in Criminal Code.

<sup>33</sup> No explicit prohibition, but serious abuse covered by the Criminal Code.

<sup>34</sup> Remains lawful in privately-arranged foster-care (discouraged in guidance). All corporal punishment is prohibited in day care institutions and childminding in England (since 2003), Wales and Scotland (since 2002). In Northern Ireland guidance states that it should not be used in day care and childminding.

## Endnotes

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- <sup>1</sup> Convention articles directly relevant to protection from violence and exploitation include: protection from all forms of physical or mental violence while in the care of parents or others (article 19); protection from torture, inhuman or degrading treatment and punishment (article 37); special protection for: children without families (article 18); adoption (article 21); refugee children (article 22); disabled children (article 23); children of minority or indigenous peoples (article 30). Special protection: from information and material injurious to children's well-being (article 17); from hazardous or harmful work and economic exploitation (article 32); drug abuse and involvement in production and trafficking of drugs (article 33); sexual exploitation (article 34 and Optional Protocol); sale, trafficking and abduction (article 35 and Optional Protocol; also parental abduction (article 11)); other forms of exploitation (article 36); children involved in armed conflict (article 38 and Optional Protocol); children in conflict with the law (articles 37, 40).
- <sup>2</sup> for Committee's recommendations and other documents, see <http://www.unhcr.ch/html/menu2/6/crc/>
- <sup>3</sup> for Professor Pinheiro's Concept Paper for the Study and other details, see <http://www.unhcr.ch/html/menu2/6/crc/study.htm>
- <sup>4</sup> All the European Court's judgements can be found at <http://www.echr.coe.int/>
- <sup>5</sup> see Tyrer v UK, 1973; Campbell and Cosans v UK, 1982; Costello-Roberts v UK, 1993; A v UK, 1998; European Commission on Human Rights, admissibility decision on application 8811/79, "Seven Individuals v Sweden", 13 May 1982; European Court of Human Rights, application no. 55211/00, Philip Williamson and Others v UK, admissibility decision, 7 September 2000.
- <sup>6</sup> European Committee of Social Rights, Conclusions XV 2, Volume 1, General Introduction, 2001.
- <sup>7</sup> for details see [http://www.coe.int/T/E/Human\\_Rights/Esc/5\\_Collective\\_complaints/Index.asp#TopOfPage](http://www.coe.int/T/E/Human_Rights/Esc/5_Collective_complaints/Index.asp#TopOfPage)
- <sup>8</sup> for details, see <http://www.cpt.coe.int/en/>
- <sup>9</sup> For details of Committee of Ministers and Parliamentary Assembly recommendations, resolutions, etc, see <http://www.coe.int/DefaultEN.asp>
- <sup>10</sup> Innocenti Report Card, Issue No. 5, *A league table of child maltreatment deaths in rich nations*, September 2003.
- <sup>11</sup> Committee on the Rights of the Child General Discussion on violence against children in families and schools, 2001; recommendations.
- <sup>12</sup> For details of abolition of all corporal punishment and of research into the effects of abolition in Sweden, the first country to implement an explicit ban in 1979, see [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org), website of the Global Initiative to End All Corporal Punishment of Children, which is supported by UNICEF, UNESCO, successive UN High Commissioners for Human Rights and a wide range of human rights institutions, INGOs and NGOs.
- <sup>13</sup> See Council of Europe, Forum for Children and Families, document CS-Forum (2003) 5 Rev; draft prepared for December 2003 meeting of Forum; includes summary of research findings on prevalence from some member states.