

# **BRIEFING ON SERBIA FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 117th session (Jun/Jul 2016)**

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Global Initiative to  
**End All Corporal Punishment  
of Children**

**This briefing describes the legality of corporal punishment of children in Serbia. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, and the recommendations to Serbia by the Committee on the Rights of the Child, the Committee Against Torture and during the UPRs of Serbia in 2008 and 2013 (accepted by the Government), we hope the Human Rights Committee will:**

- **raise the issue of corporal punishment of children in its List of Issues for Serbia, in particular asking what progress has been made to ensure legislation is enacted which clearly prohibits all corporal punishment of children, including in the home, and**
- **recommend, in the concluding observations on the third state party report, that the Family Law be amended to explicitly prohibit all corporal punishment of children and ensure that no loopholes are created which would allow so-called “reasonable” or “appropriate” punishment.**

## **1 Serbia’s report to the Human Rights Committee**

1.1 Serbia’s third state party report to the Human Rights Committee (CCPR/C/SRB/3) provides extensive information relating to domestic violence and a very brief description of efforts to address child abuse and neglect but it is silent on the issue of corporal punishment, violence which may lawfully be inflicted on children in the guise of “discipline”. In fact, Serbia is committed to prohibiting corporal punishment of children and discussions are currently taking place on the development of legislation to achieve this in the context of the review/revision of family and civil law. We provide relevant details below.

**1.2 We hope the Committee will raise the issue of corporal punishment of children in its review of Serbia and recommend that the Family Law be amended to explicitly prohibit all corporal punishment of children and ensure that no loopholes are created which would allow so-called “reasonable” or “appropriate” punishment.**

## **2 The legality of corporal punishment of children in Serbia**

2.1 **Summary:** Corporal punishment of children in Serbia is unlawful in schools, some day care settings and the penal system, but it is not fully prohibited in the home and in all alternative care and day care settings.

- 2.2 **Home (lawful)**: Provisions against violence and abuse in the Criminal Code 2005, the Misdemeanours Act 2007 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.
- 2.3 **Alternative care settings (lawful)**: There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents. A 2011 law on social protection reportedly bans violence against beneficiaries of social protection services<sup>1</sup> but there is no indication that it explicitly prohibits all corporal punishment.
- 2.4 **Day care (partially prohibited)**: Corporal punishment is considered unlawful in all day care which forms part of the education system under education law (see below), 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:<sup>2</sup> we are seeking to verify this information.
- 2.5 **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.
- 2.6 **Penal institutions (unlawful)**: Corporal punishment is not among permitted disciplinary measures against juveniles in detention in the Law on Enforcement of Penal Sanctions. 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).
- 2.7 **Sentence for crime (unlawful)**: There is no provision for judicial corporal punishment in criminal law

### **3 Serbia’s commitment to prohibiting corporal punishment and immediate opportunities to achieve it**

- 3.1 The Serbian Government has been openly committed to prohibiting corporal punishment of children since 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, and plans were made for drafting amendments to the Family Act. In 2011, a Working Party developed a Draft Law on the Rights of the Child which included provisions to prohibit all corporal punishment. However, the draft law was subsequently dropped.
- 3.2 Amendments to the Family Law are currently under discussion, providing an immediate opportunity for clear prohibition of corporal punishment. There is also a project to draft a new Civil Code, which provides an opportunity in the longer term to confirm that children may not be subjected to corporal punishment by parents and those with parental authority. However, the draft

<sup>1</sup> Nataša Jović, Assistant Secretary General, Protector of Citizens (Ombudsman), correspondence with the Global Initiative, February 2016

<sup>2</sup> Nataša Jović, Assistant Secretary General, Protector of Citizens (Ombudsman), correspondence with the Global Initiative, February 2016

Civil Code which was issued for consultation and public debate in 2015, included protection for children from physical punishment but offered two versions of the relevant article – one prohibiting child abuse “especially physical punishment”, the other prohibiting child abuse but only “inappropriate” physical punishment (art. 2218).<sup>3</sup> We have yet to see proposed amendments to the Family Code. *We are concerned that proposals appear to have been made to provide for “reasonable” punishment in the new legislation. This would in effect enshrine in law a defence for the use of corporal punishment.*

**3.3 We hope the Committee will encourage Serbia to ensure that the new Civil Code and amendments to the Family law explicitly prohibit all corporal punishment and that no loopholes are created which would allow so-called “reasonable” or “appropriate” punishment of children.**

#### **4 Recommendations by human rights treaty bodies and during the UPR**

4.1 **CRC:** The Committee on the Rights of the Child recommended to Serbia in 2008 that corporal punishment be prohibited in the family by law.<sup>4</sup>

4.2 **CAT:** In 2009, the Committee Against Torture recommended to Serbia that legislation be adopted which prohibits corporal punishment in all settings, including the family.<sup>5</sup>

4.3 **UPR:** During the Universal Periodic Review of Serbia in 2008, a recommendation was made to prohibit corporal punishment of children which the Government accepted, stating that it was “undertaking activities toward changing the Family Law by introducing norms that clearly prohibit corporal punishment and protect children from all forms of physical punishment, including physical punishment in the family environment”.<sup>6</sup> At the second cycle UPR of Serbia in 2013, the Government accepted a number of recommendations to prohibit corporal punishment in all settings including the family.<sup>7</sup>

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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<sup>3</sup> <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed 29 February 2016

<sup>4</sup> 20 June 2008, CRC/C/SRB/CO/1, Concluding observations on initial report, paras. 46 and 47

<sup>5</sup> 19 January 2009, CAT/C/SRB/CO/1, Concluding observations on initial report, para. 20

<sup>6</sup> 18 March 2009, A/HRC/10/78/Add.1, Report of the working group: Addendum, paras. 20 and 21

<sup>7</sup> 22 March 2013, A/HRC/23/15, Report of the working group, paras. 144(27), 144(28) and 144(29)