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SPARE THE CHILD: CORPORAL PUNISHMENT OF CHILDREN IN CROATIA

Corporal punishment is defined by the UN Committee on the Rights of the Child (CRC) as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.”¹ In their adoption of international human rights, legislation and obligations under the sustainable development goals, governments are already responsible and committed to preventing and abolishing all forms of child physical punishment.² However, corporal punishment of children is still a serious issue across the world, and it is widespread in many states, especially in Croatia. Several studies done by different organizations, for instance, UNICEF and International Center for Research on Women (ICRW), highlight the fact that the practice of physical punishment at home, or in other contexts, is still ingrained in the thoughts of many parents who feel that abuse constitutes discipline. Corporal punishment can have unanticipated negative consequences and is linked to a higher prevalence of externalizing behaviour in youth, substance use, depression, juvenile delinquency, poor academic performance, and marital conflict as an adult. Reinforcing legal measures against this practice, combining awareness-raising and guidance must ensure that the law operates in the best interests of the affected children - in particular when parents or other close family members are the perpetrators. This article will analyse the existing legal framework regarding the protection of children against corporal punishment, concentrating on Criminal law, Family law and Law on Protection Against Family Violence, with a focus on the gaps that necessitate a review, and in conclusion recommend the way the state can enhance its protection for children against corporal punishment. The work aims to tackle the practices that combat corporal punishment to further educate, take the measurement, and protect children who experience this kind of abuse.

The use of corporal punishment of children in Croatia

According to a study published in the journal *Child Abuse and Neglect*, the most prevalent form of family violence against children in Croatia is psychological aggression, followed by corporal punishment and physical abuse. The research was carried out on children aged 11, 13 and 16 in the city of Zagreb. The results further show that parents are the most common perpetrators of psychological aggression and corporal punishment.³ A survey commissioned by UNICEF in 2013, of more than 1,700 parents of 0-6-year-olds found that 12% of parents believed corporal punishment was effective. More than 30% of parents of 3-year-olds said that in the past week they had “smacked” or pulled the hair of their child.⁴ In 2012, another study was performed to measure men's childhood experiences of violence. It was found that men who had experienced violence, including corporal punishment, during childhood, were more likely to perpetrate intimate partner violence, hold inequitable gender attitudes, be involved in fights outside the home or robberies,

¹ World health organization, Corporal punishment and health, 23 November 2021

² Commissioner For Human Rights Children And Corporal Punishment: “The Right Not To Be Hit, Also A Children’s Right” January 2008

³ Ajdukovic, M. "Epidemiological Research of Prevalence and Incidence of Family Violence on Children in Croatia", *Ljetopis Socijalnog Rada*, 19(3), 367-412)

⁴ UNICEF Croatia, 25 April 2013

pay for sex and experience low self-esteem and depression, and were less likely to participate in domestic duties, communicate openly with their partners, attend pre-natal visits when their partner is pregnant and/or take paternity leave.⁵ These findings showed a high level of tolerance toward using corporal punishment in the home because violence was not perceived as an act of violence but rather as a means to educate and raise children⁶.

WHAT IS MISSING IN CROATIAN LAW?

Criminal law

In 2000, with amendments to the Criminal Code from 1997, the criminal offence of violent behavior in the family was introduced into the Croatian criminal legislation for the first time⁷. More specifically, Article 215a states that “A family member who by his or her violent, abusive or particularly insolent conduct puts another member of the family into a humiliating position shall be punished by imprisonment for three months to three years”⁸, meanwhile Article 213 applies to some forms of corporal punishment of a child, prescribes a prison sentence of six months to three years for a parent, adoptive parent, guardian and another person who abuses a child or a minor, i.e. from one to five years if the criminal offence caused serious physical injury to the child or minor or their health was severely impaired.⁹ Domestic violence committed only to a child or a minor is a criminal offence as per Article 213 and does not coincide with the criminal offence of Article 215a, which in practice does not apply to children who are brought to a humiliating position in the family but only to adult family members. In relation to this issue, it should be noted that any behavior that has been carried out in any of the modalities of the criminal act of violent behavior in the family implies putting the victim in a humiliating position¹⁰. According to CRC, eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties¹¹ Thus, the law needs to be amended by including "putting them in a humiliating position" in Article 213, to avoid children discrimination against adults, and to align the threatened punishments in Articles 213 and 215.a.¹²

⁵ Contreras, M. et al (2012), *Bridges to Adulthood: Understanding the Lifelong Influence of Men's Childhood Experiences of Violence, Analyzing Data from the International Men and Gender Equality Survey*, Washington DC: International Center for Research on Women (ICRW) and Rio de Janeiro: Instituto Promundo)

⁶ UN Special Representative of the Secretary-General on Violence Against Children

⁷ Radic.I , Radina. A : Protection from domestic violence: family law, misdemeanor law and Proceedings of the Faculty of Law in Split, vol. 51, 3/2014, p. 727.- 754

⁸ Criminal Code in the year 2000 (Official Gazette No. 129/2000)

⁹ Ibid

¹⁰ V. Grozdanic, M. Škoric, I. Vinja: Violence in the family in the light of changes in the Criminal Code Croatian Yearbook of Criminal Law and Practice (Zagreb), vol. 17, number 2/2010, p. 669-698

¹¹ Convention on the Rights of the Child <https://www.ohchr.org/sites/default/files/crc.pdf>

¹² L. Vidovic: Corporal punishment of children in the family Croatian Chronicle of Criminal Law and Practice (Zagreb), vol. 15, number 1/2008, p. 303-320.

Act on Protection from Domestic Violence (APDV)

Violence in the family is defined in Art. 4. Of APDV as “any form of physical violence, regardless of the occurrence of physical injury, psychological, sexual or economic violence...Among the examples of behavior that are considered domestic violence are corporal punishment and other forms of humiliating treatment of children.”¹³ The vagueness of the provision on domestic violence in the existing Criminal Code and the fact that violence in the Republic of Croatia is criminalized both as a criminal offence and as a misdemeanor intervenes with the *ne bis in idem* principle. The legislator did not determine a clear line of demarcation between violent behavior in the family as a misdemeanor, and violent behavior in the family as a criminal offence.¹⁴ From the point of view of legal certainty, the distinction between a misdemeanor and a criminal offence is important because of the very large difference in the prescribed punishment.¹⁵ The only difference is that the criminal offence from Art. 215.a¹⁶ results in putting a family member in a humiliating position, while the other elements of this punishable behavior are mostly identical to the misdemeanor founded on the Act on Protection from Domestic Violence¹⁷. However, since there are no uniformities or standards regarding the interpretation of this element, it cannot help in distinguishing the criminal offence of violent behavior from the misdemeanor of the same name.¹⁸ According to the state report, police and the courts, overwhelmingly fail to qualify violence that takes place within a family as a criminal act, and the vast majority of such cases continue to be qualified as a misdemeanor.¹⁹

Explicitly corporal punishment

States must explicitly prohibit by law all forms of violence against children, including corporal punishment, in all settings....²⁰ In addition, explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in the civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or “smack” or “spank” a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless of whether it is termed “discipline” or “reasonable correction”.²¹ This may require an additional provision in the criminal code of the State. Corporal punishment in Croatia is unlawful in schools, but there are no details prohibiting legislation. Article 92(2) of the Family Act puts an obligation on parents to protect children from corporal punishment by other persons²², but this might leave

¹³ I.Radic , A.Radina: Protection from domestic violence: family law, misdemeanor law and Proceedings of the Faculty of Law in Split, vol. 51, 3/2014, p. 727.- 754

¹⁴ M. Škoric, D. Rittossa: New criminal acts of violence in the Criminal Code Croatian Yearbook of Criminal Law and Practice (Zagreb), vol. 22, number 2/2015, p. 483-521.

¹⁵ V. Grozdanic, M. Škoric, I. Vinja: Violence in the family in the light of changes in the Criminal Code Croatian Yearbook of Criminal Law and Practice (Zagreb), vol. 17, number 2/2010, p. 669-698.

¹⁶ http://www.vsrh.hr/custompages/static/hrv/files/legislation__criminal-code.pdf

¹⁷ . Proposal of the Criminal Code, Government of the Republic of Croatia, Zagreb, July 2011, p. 8.

¹⁸ V. Grozdanic, M. Škoric, I. Vinja: Violence in the family in the light of changes in the Criminal Code Croatian Yearbook of Criminal Law and Practice (Zagreb), vol. 17, number 2/2010, p. 669-698.

¹⁹Annual report 2018, Zagreb March 2019,

<https://arhiva.prs.hr/attachments/article/2732/Annual%20Report%202018%20-%20Summary.pdf>

²⁰ Ibid

²¹Convention on the Rights of the Child

²² Corporal punishment of children in Croatia, Country report. <https://endcorporalpunishment.org/>

room for interpretation. Language loopholes also can compromise prohibition. The language of the reform process must be explicit, unambiguous and leave no room for confusion. Prohibition of corporal punishment means all forms, from the mildest to the blatantly violent, and all occurrences, from the occasional to the repeated. If a provider does not explicitly refer to “corporal punishment and other humiliating and degrading treatment” – instead of prohibiting “all forms of violence” – it leaves room for doubt as to whether a “light smack” would be considered lawful.²³

Awareness reform

Although legal bans on corporal punishment are an important step in promoting children’s right to protection from abuse, bans alone may not be sufficient to change beliefs and behaviours unless combined with public awareness campaigns to publicize the bans and educational materials to provide parents with alternate means of discipline. In countries that have outlawed corporal punishment, public awareness campaigns regarding the change in laws have ranged from virtually nothing to extensive campaigns that continue even years after the bans²⁴. Several public awareness campaigns have been developed to promote awareness of laws involving corporal punishment, impart knowledge regarding the negative effects of corporal punishment, and build capacity in using non-violent forms of discipline. Social campaigns focusing on the negative effects of corporal punishment and alternative methods of childrearing do not produce immediate results but can be effective tools for implementing desirable changes. To have a successful ban it’s not only the legislation measures but also public information campaigns, intervention by the social authorities, track- keeping with data collection.

Corporal punishment violates internationally recognized human rights such as freedom from cruel, inhuman, and degrading treatment or punishment, and freedom from physical violence. In many instances, it violates the prohibition on discrimination and impinges on children's right to education. While corporal punishment seeks to stop a child from behaving in a certain way, positive discipline techniques can be used to make a child understand and learn desirable/acceptable behaviour without the fear of punishment. The analysis of practice and available data shows that, although there is a political determination to protect abused children in the best possible way and to prevent the occurrence of such behaviour, there is still room for improvement in some areas of law. If this issue is not handled firstly by laws, it will continue to have violated children who may develop into abusers, posing a risk for the future. The goal is to secure and explicitly say in laws that corporal punishment is banned and hitting children is illegal, and also to raise the level of personal and common responsibility for the healthy development of children.

²³ Concluding observations on the combined fifth and sixth reports of Croatia, 9 June 2022

²⁴ J. E. Lansford, C. Cappa, D.L. Putnick, M. H. Bornstein, K. Deater-Deckard, R. H. Bradley, Change over time in parents’ beliefs about and reported use of corporal punishment in eight countries with and without legal bans, *Child Abuse & Neglect*, Volume 71, 2017

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