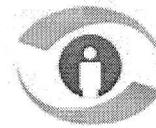




THE REPUBLIC OF SERBIA
Belgrade



Protector of Citizens
Ombudsman

POSITION PAPER BY THE OMBUDSMAN ON CORPORAL PUNISHMENT OF CHILDREN

In recent years, there has been a growing intensity in discussions among experts and the general public as to whether corporal punishment of children by their parents should be forbidden by law or whether it is a necessary disciplinary measure in the upbringing of children which parents in Serbia are reluctant to relinquish, especially if such a ban is imposed by law.

A similar process has taken place at global level. Following the results of the global research published in the 2006 Study of the United Nations Secretary-General on violence against children, the Committee on the Rights of the Child, an expert body of the United Nations, adopted that same year General Comment no. 8, "The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment," in which it defined corporal punishment as any punishment which utilizes physical force and the purpose of which is to inflict a certain degree of pain and discomfort. Thus, the elimination of all forms of physical, degrading and cruel punishment of children, including that which takes place in families, has become not only a regional, European goal but also a global one. The Committee has requested the states which are signatories to the Convention on the Rights of the Child to introduce an unequivocal ban on corporal punishment of children in all settings, as well as to implement actions aimed at raising awareness and spreading knowledge on good parental practice.

This is why similar discussions have been and are taking place with more or less fervour around the world, though Europe is the leader in advocating models for removing corporal punishment of children from the family setting, since it has already been banished from public institutions (from schools above all). The Council of Europe in 2006 ambitiously proclaimed the goal of having a Europe without corporate punishment by the year 2009. Until this day, of the 33 countries that have adopted a legal prohibition on children being brought up by the administration of physical punishment, 23 are from Europe. The governments in 22 more countries around the world have expressed a commitment to regulate this issue by the law. Although this goal has not been fully achieved yet, the process is unstoppable. To hit people is wrong - and children are people, too.

In addition to the Republic of Serbia's commitment to respect the rights of children and enhance the position of children, and in particular to prevent and protect children against any form of violence, our country, through its ratification of the Convention on the Rights of the Child and its membership of the Council of Europe, has also undertaken to implement all concrete measures in this regard - starting from the harmonization of domestic legislation with international norms and standards, through the setting up of institutional mechanisms for the protection of children, to the initiation of preventive programmes, campaigns and actions aimed at raising awareness about the harmfulness and ineffectiveness of using corporal punishment on children, and spreading knowledge on positive parental skills and practices in the upbringing and disciplining of children.

In our country, every form of physical violence is prohibited and punishable, including the punishment of adults in all situations and settings, the family setting included. Few are aware of the fact that, as far back as 1929, the Law on Public Schools of the Kingdom of Yugoslavia expressly prohibited corporal punishment as a measure of tutoring pupils and students. Today, it is clear that any teacher who used corporal punishment on a child pupil would have to answer for a misdemeanour (a criminal act, offence or disciplinary misdemeanour under the law which regulates education). Such punishment is also explicitly prohibited in penal establishments for children who have committed a crime, as well as in social protection institutions housing children without parental care or those with disabilities. Only in the family, in which the upbringing of children takes place to a high degree with the help of spankings and other forms of physical, degrading or cruel punishment (according to a UNICEF MICS survey done in 2010, 37% of respondents use spanking to solve problems with children), the use of corporal punishment is not explicitly prohibited, even though the 2005 Law on the Family took a step forward to a ban on such punishment, by prohibiting parents from using "degrading conduct and punishments which affront the human dignity of the child".

Respect for and enjoyment of human rights and freedoms should be ensured for everybody, hence also for all children, and in all settings equally. A society which prohibits any form of violence among adults, cannot at the same time accept or even express approval when children are subjected to some form of physical attack or assault, injury or intimidation, even if that is for the purpose of upbringing and disciplining by those responsible for the child growing up.

There are many other reasons to ban corporal or physical punishment of children in all settings, including the family, which are supported by scientific findings, research and experience of experts on the harmfulness and inefficacy of meting out corporal punishment to a child for purposes of upbringing and disciplining. The most significant results concern the harmful consequences of corporal punishment on children: such punishment may harm the body (muscles, bones, nervous system and brain), and such injuries are more serious and far-reaching the younger the organism; it creates feelings of fear, humiliation, worthlessness, mistrust and loss of self-confidence in children; the absence of explanation and reasons as to why a child's behaviour has been impermissible and unacceptable does not stimulate his or her moral development; and corporal punishment teaches the child that violence is an effective way of resolving conflicts and of leading others on for his own ends, or it sends a message that one should adopt the role of victim when dealing with individuals stronger than oneself; etc.

The prohibition of corporal punishment is based on the principle that no physical punishment exists which is reasonable and which is of benefit to children. The European Court of Human Rights was very clear on that in 1998 when it unanimously proclaimed the United Kingdom accountable for legal tolerance of the "reasonable punishment" to which a boy was exposed on the part of his step-father.

Corporal punishment has only a momentary effect and although it brings to an end unacceptable or dangerous behaviour by the child, in a long run it produces a counter-effect. This was *inter alia* the reason why spanking or beating has long been banned in schools, because it has been confirmed that physical punishment does not help the process of learning but rather hinders it, while over a longer period of time it also creates resistance to any further acquisition of knowledge and progress and can also influence the abandonment of education.

Certain cases involving serious injury to a young child ("shaking the baby" and others) have destroyed the myth that better results in upbringing are achieved if physical punishment starts early, i.e. that corporal punishment is more effective when used on a younger child than an older one, when the child still does not understand the verbally expressed messages, instructions and explanations of its parents. The special nature of a young child, its greater degree of dependency,

vulnerability and susceptibility to risks and injuries, and its development which is ongoing, make the consequences of any inappropriate and dangerous actions and conditions harder on children at an early age than when older, which means that, in its earliest years (0 - 6), a child in fact requires more, not less, protection.

The Ombudsman considers that a legal ban on punishing children with a blow against a part of the body (with a hand, belt, stick or similar instrument) or on using other forms of physical force is precisely the right way to banish an ugly practice both from the family and from parent-child relations. Without this explicit legal ban, corporal punishment is considered to be allowed - despite all the facts as to its harmfulness and appeals by experts - and without a legal hurdle, parents will much more easily go for this method of upbringing.

Apart from activities aimed at providing an appropriate standard of living, support and resources in the general social environment, which the state must provide for parents (such as measures to prevent child poverty, employment measures, various services intended for the day-care of children of employed and unemployed parents...), it is necessary to have campaigns and actions to spread knowledge and education about parenthood - above all on positive parental practice, and also advisory centres, psychological support services for parental couples and similar services, which will provide them with the necessary information and data on proper and healthy child development, the child's needs and age-level characteristics, as well as the possibility of adopting efficient parenthood skills and non-violent methods of upbringing.

There is also a need for constant education of professionals who work with children and thereby indirectly also with parents, above all with young mothers and fathers, on desirable models for rearing children that do not entail corporal punishment as a method of upbringing. Precisely because of this, the Ombudsman has prepared brochures with educational messages intended for mothers and fathers of newly-born babies and for the parents of children entering primary school. The brochures will, in cooperation with UNICEF, be distributed in maternity hospitals and schools where they will be given to parents by paediatric nurses or health visitors, or by teachers.

One of the child's needs is, certainly, discipline, based on knowing the boundaries and rules of behaviour and responsibilities. The foundation of good parenthood is to accept and understand the child's characteristics, the adjustment of pedagogical methods to his or her character, clear and non-violent establishment of boundaries, and the awareness that upbringing and the inculcation of discipline is a process of learning and insight to which parents also contribute by setting an example. A good knowledge of the child and an adequate meeting of the child's needs are essential preconditions for a pedagogical impact on the child, because this is the way to develop the bond between a child and its parents: this is the most powerful means for influencing the child and it is in the parents' hands.

Hitting adults is an assault.
Hitting animals is cruelty.
Hitting children is NOT "for their own good."

DEPUTY OMBUDSMAN
FOR THE RIGHTS OF THE CHILD

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Belgrade, 25. 10. 2012. god.