

Corporal punishment of children in Estonia



Global Initiative to
End All Corporal Punishment
of Children

Report prepared by the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), last updated November 2014

Child population

241,600 (UNICEF, 2012)

Summary of necessary legal reform to achieve full prohibition

Law reform has been achieved. Corporal punishment is prohibited in all settings, including the home.

Detailed country report

Prohibition of corporal punishment

Home

Corporal punishment is prohibited in the home. In November 2014, Parliament passed the Child Welfare Act 2014, article 24 of which states (unofficial translation): “(1) It is prohibited to neglect a child, to mentally, emotionally, physically or sexually abuse a child, including to humiliate, frighten or physically punish a child, and also to punish a child in any other way that endangers the mental, emotional or physical health of a child.... (4) The use of physical force is only permissible for the purpose of this Act to restrict the movement or movements of a child to the extent that is proportionate and necessary to avert the danger either threatening the child or coming from the child. It is not permitted to use physical force for the purpose of punishment.” The new Act comes into force on 1 January 2016.

Until the new law comes into effect, the Child Protection Act 1992 remains in force, article 31(1) of which prohibits only corporal punishment considered to cause harm: “Every child shall at all times be treated as an individual with consideration for his or her character, age and sex. It is prohibited 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.” The Family Law Act 2010 states in article 113: “A parent and a child are required to support and respect each other and take each other’s interests and rights into account.” Article 124(2) states: “Physical, mental and emotional abuse and application of other degrading educational measures with respect to a child is prohibited.”

Alternative care settings

Corporal punishment is unlawful in alternative care settings under the Child Welfare Act 2014, which comes into force in 2016. Until then, children are legally protected under the Child Protection Act 1992 from corporal punishment which is perceived to cause harm.

Day care

Corporal punishment is unlawful in early childhood care and in day care for older children under the Child Welfare Act 2014, which comes into force in 2016. Until then, children are legally protected

under the Child Protection Act 1992 from corporal punishment which is perceived to cause harm. Corporal punishment is possibly considered unlawful in preschool provision under education law (see under “Schools”).

Schools

Corporal punishment is unlawful in schools. According to the Primary and Secondary Schools Act 2010, the school must ensure the mental and physical safety and health protection of the student (art. 44): the Government has stated that this includes protection from corporal punishment.¹ Article 58 of the Act states (unofficial translation): “(1) In order to influence students in a school under the Rules of behaviour and respect for others and to prevent the occurrence of threatening the security of the school, the student may be subjected to reasonable, appropriate and proportionate supportive action measures”. Permitted measures are specified and do not include corporal punishment. Article 40.1 of the Child Protection Act 1992 states: “Instruction shall not involve physical violence or mental abuse.” The explicit prohibition of corporal punishment in the Child Welfare Act 2014, which comes into effect in 2016, is applicable in all settings, including schools.

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions. Article 37 of the Child Protection Act states: “(1) A child whose liberty is restricted or who is detained shall be treated in a manner appropriate for a child, without harm to his or her dignity.” Other provisions protecting detainees’ dignity are found in the Police Act 1991 (art. 4), the Penal Code (art. 324), and the Code of Criminal Procedure 2004 (art. 9(3)). The Imprisonment Act 2000 specifies permitted disciplinary sanctions (art. 63): these do not include corporal punishment, though they do allow “commitment to a punishment cell” for young prisoners (art. 63). The explicit prohibition of corporal punishment in the Child Welfare Act 2014, which comes into effect in 2016, is applicable in all settings, including penal institutions.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not a permitted punishment under the Penal Code 2002, the Juvenile Sanctions Act 1998, the Imprisonment Act 2000 and the Child Protection Act 1992. It is explicitly prohibited in the Child Welfare Act 2014, in force from January 2016.

Universal Periodic Review of Estonia’s human rights record

Estonia was examined in the first cycle of the Universal Periodic Review in 2011 (session 10). During the review, the Government stated that the Ministry of Social Affairs “was in the process of amending the Child Protection Act, and the amendments would ban corporal punishment explicitly”.² The following recommendation was made and was accepted by the Government:³

“Adopt the necessary legislation, and prohibit any kind of violence against children, including corporal punishment (Finland)”

Examination in the second cycle is scheduled for 2016.

¹ 14 March 2011, RAP/RCh/ES/VI(2011), National report to the European Committee of Social Rights, p. 93

² 28 March 2011, A/HRC/17/17, Report of the working group, para. 73

³ 28 March 2011, A/HRC/17/17, Report of the working group, para. 77(58)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(17 March 2003, CRC/C/15/Add.196, Concluding observations on initial report, paras. 30 and 31)

“...The Committee also notes that all violence against children is prohibited. However, it remains concerned that there is still insufficient information on and awareness of the ill-treatment and abuse of children within the family, in schools and in institutions, as well as of domestic violence and its impact on children. Moreover, it is concerned that current efforts in this regard may have limited impact because of a lack of a comprehensive strategy and the inadequate allocation of resources.

“The Committee recommends that the State party:

b) explicitly prohibit corporal punishment and take all measures to prevent all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, in schools and in institutions;

c) continue to carry out public education campaigns on the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment....

j) take into account the Committee’s recommendations adopted at its day of general discussion on ‘Violence against children within the family and in schools’ (CRC/C/111).”

Committee Against Torture

(17 June 2013, CAT/C/EST/CO/5, Concluding observations on fifth report, para. 21)

“While taking note that corporal punishment is unlawful in schools and in the penal system, the Committee is concerned by the absence of legislation which explicitly prohibits corporal punishment in all settings (arts. 2 and 16).

The Committee recommends that the Child Protection Act be amended to prohibit explicitly corporal punishment of children in all settings, including at home and in alternative care settings, as an offence under the law.”

European Committee of Social Rights

(January 2012, Conclusions 2011)

“In its previous conclusion the Committee held that the situation was not in conformity with the Charter as there was no explicit prohibition of corporal punishment in the home. In this connection the report states that a provision about the obligation of mutual support and respect has been added to the new Family Law Act in addition to Section 121 of the Penal Code that prescribes a penalty for physical abuse.

“The Committee notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2005) 24, § 74) that the proposed new Child Protection Act will seek to explicitly prohibit physical punishment of children. The Committee notes that the report does not provide any information regarding the new Act.

“The Committee notes from another source that corporal punishment is lawful in the home. There is no legal defence for its use enshrined in law, but it is widely socially and legally accepted. Section 31(1) of the Child Protection Act (1992) prohibits only corporal punishment which is considered to cause harm: “Every child shall at all times be treated as an individual with consideration for his or her character, age and sex. It is prohibited 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.”

According to this source, provisions against violence and abuse in the Child Protection Act, the Family Law (1994), the Code of Administrative Offences and the Penal Code (2002) are not interpreted as prohibiting all corporal punishment in childrearing. However, according to the same source, the Government is committed to prohibition, as at November 2010 there were plans to draft a new Child Protection Act. Nevertheless, the Committee notes that the situation which it has previously held not to be in conformity has not changed during the reference period. Therefore it reiterates its previous finding of non-conformity.

“In its previous conclusion the Committee asked whether Section 40 of the Child Protection Act required that corporal punishment was indeed prohibited in schools. It notes from the report that Section 44 of the Basic Schools and Upper Secondary Schools Act provides that the schools have to ensure the mental and physical safety and health protection of the student while he or she is at school, which involves protection against corporal punishment.

“The Committee notes from the above mentioned source that there is no explicit prohibition of corporal punishment in schools, but it is considered unlawful under article 40.1 of the Child Protection Act, which states “Instruction shall not involve physical violence or mental abuse”, and the Basic Schools and Upper Secondary Schools Act (1993) which obligates the school to guarantee the student’s mental and physical security and the protection of his/her health.

“The Committee considers that despite the provisions in the legislation relating to protection of children from ill treatment, there is no explicit prohibition of corporal punishment in schools, thus amounting to a violation of the Charter.

“The Committee takes note of various initiatives, including training events which were implemented with a view to preventing the abuse of children....

“The Committee concludes that the situation in Estonia is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment is not explicitly prohibited in schools and in the home.”

European Committee of Social Rights

(March 2005, Conclusions 2005)

“The Constitution establishes that no one shall be subjected to torture or to cruel or degrading treatment or punishment. The Child Protection Act establishes that it is prohibited to humiliate, frighten or punish a child in any way which abuses him or her, causes bodily harm or otherwise endangers his or her mental or physical health.

“Furthermore, Section 40 of the Act, under the heading Education, stipulates that instruction may not involve physical violence or mental abuse. The Committee asks that the next report confirm that this entails that corporal punishment is indeed prohibited in all schools. It asks that the next report provide information on the prohibition of corporal punishment in institutions.

“The Committee recalls that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It considers that this prohibition must be combined with adequate sanctions in penal or civil law. Therefore, it considers that since there is no prohibition in legislation of corporal punishment in the home, the situation in Estonia cannot be considered to be in conformity with Article 17 of the Charter.

...

“The Committee concludes that the situation in Estonia is not in conformity with Article 17.1 of the Revised Charter on the ground that corporal punishment of children is not prohibited within the family.”

Prevalence/attitudinal research in the last ten years

A 2012 survey of 1,000 adults and 1,000 10-17 year olds found that 25% of parents did not consider physical punishment of children a form of violence. One third (33%) of parents agreed that “in some circumstances corporal punishment of children is necessary and justified”, 65% disagreed; 38% of parents thought “in some circumstances corporal punishment of children is understandable”.

(Karu, M. et al (2012), *Monitoring of the Rights of the Child and Parenting*, Praxis Centre for Policy Studies)

The 2009 annual report of the National Preventive Mechanism of Estonia found that children in a special school and in a children’s shelter were punished by being locked in an isolation room, sometimes wearing only their underwear. The 2008 and 2010 reports had similar findings.

(Chancellor of Justice (2010), *2009 Overview of the Chancellor of Justice activities for the prevention of torture and other cruel, inhuman or degrading treatment or punishment: statistics of proceedings*)

In a survey of 475 parents of children under 18, 60% disagreed that “in some circumstances corporal punishment of children is necessary and justified”, 20% agreed, and 20% were in the middle (tending to agree or tending to disagree). Sixty-one per cent agreed that “corporal punishment of children is violence and not a method”, 23% disagreed and 16% were in the middle. More than half (56%) disagreed that “in some circumstances corporal punishment of children is reasonable”, 20% agreed and 24% were in the middle. A large majority (84%) disagreed that “in some circumstances, solving problems between grown-ups with physical action is acceptable”, 4% agreed and 11% were in the middle. Overall, 47% agreed or tended to agree that “corporal punishment of a child is sometimes inevitable”.

(European Social Survey (2010), *Additional Module about Estonia*)

In a survey of a nationally representative sample of 1,517 people aged 15-74, 14% totally agreed and 33% agreed that “corporal punishment of children is sometimes inevitable”, 49% disagreed or totally disagreed. Eighty-nine per cent totally disagreed or disagreed that “physical reprimanding of a spouse or partner is sometimes inevitable”. Sixty-three per cent agreed or totally agreed that “people should interfere if they see or hear a violent domestic quarrel”, 23% disagreed or totally disagreed.

(Järviste, L. (2010), *Gender Equality and Inequality: Attitudes and Situation in Estonia in 2009*, Policy Analysis: Series of the Ministry of Social Affairs No 3/2010)

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