

Corporal punishment of children in France: Briefing for the Universal Periodic Review, 29th session, 2018

From the Global Initiative to End All Corporal Punishment of Children, June 2017



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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In France, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the European Committee of Social Rights, as well as those made during the 2nd cycle UPR of France in 2013 (which the Government accepted).

We hope the Working Group will note with concern the legality of corporal punishment of children in France. We hope states will raise the issue during the review in 2018 and make a specific recommendation that France clearly prohibit all corporal punishment of children, however light, in every setting of their lives and throughout its territories, as a matter of priority.

1 Review of France in the 2nd cycle UPR (2013) and progress since

- 1.1 France was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 15). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² The Government accepted three recommendations to prohibit all corporal punishment of children.³
- 1.2 Since the review in 2013, France was found in breach of the European Social Charter by the European Committee of Social Rights due to the lack of a clear legal ban on corporal punishment. Several Bills and Laws relevant to child protection have been discussed and/or enacted without a ban being achieved – most recently the 2016 Law on Child Protection. A ban on “corporal violence” was voted in December 2016, but later declared unconstitutional by the Constitutional Council on a legal technicality.
- 1.3 The 2016 mid-term report refers to the 2015 European Committee of Social Rights decision finding France in breach of the Charter and highlights the Government's disagreement with that

¹ 9 November 2012, A/HRC/WG.6/15/FRA/2, Compilation of UN information, para. 31

² 8 November 2012, A/HRC/WG.6/15/FRA/3, Summary of stakeholders' views, para. 43

³ 28 May 2013, A/HRC/23/3/Add.1, Report of the working group: Addendum, para. 10

outcome, stating that “the state of current legislation protects children against all violence” (unofficial translation).⁴

- 1.4 We hope the Working Group will note with concern the legality of corporal punishment of children in France. We hope states will raise the issue during the review in 2018 and make a specific recommendation that France clearly prohibit all corporal punishment of children, however light, in every setting of their lives and throughout its territories, as a matter of priority.**

2 Legality of corporal punishment in France

Summary of current law and opportunities for achieving prohibition

Corporal punishment in France is unlawful in the penal system and may be unlawful in schools. It is still lawful in the home and in alternative care and day care settings.

- 2.1 Home (lawful):** Corporal punishment is lawful in the home under the “right of correction” in customary law. For example, in 1819 the Supreme Court ruled that parents have this right;⁵ a ruling in 1967 stated that this right does not apply when the child’s health is placed at risk.⁶ Contemporary rulings still invoke the “right of correction” to convict or acquit parents, teachers, etc. accused of violence against a child. Provisions against violence and abuse in the Criminal Code 1994, the Civil Code, Act No. 2007-293 reforming child welfare and Act No. 2006-399 concerning domestic violence and violence against children are not interpreted as prohibiting all corporal punishment, without exception, in childrearing.
- 2.2** In 2013, a complaint was brought against France by the Association for the Protection of All Children (APPROACH) Ltd, under the collective complaints procedure of the European Committee of Social Rights.⁷ The complaint alleged that, in breach of the European Social Charter, there is no explicit and effective prohibition of all corporal punishment in the family, schools and other settings and that France has failed to act with due diligence to eliminate such punishment in practice. The complaint was registered by the Committee in February 2013; it was declared admissible on 2 July 2013. The Committee published its decision in March 2015. It found that the situation in France is in violation of article 17 of the Charter because “there is no sufficiently clear, binding and precise prohibition of corporal punishment set out in French law”.⁸
- 2.3** In its first report to the UN Committee on the Rights of the Child, the Office of the Defender of Rights, an independent constitutional authority, confirmed that many parents consider smacking and slapping children “harmless” and “a means of educating them”, and that such acts are “only punishable if their nature and consequences go beyond the limits of the ‘right to correct’”.⁹ The report calls for prohibition in all settings, including the home.

⁴ [2016], National mid-term report, pp. 69-70

⁵ Court de Cassation, Criminal Chamber, 17 December 1819, S. 1819-1821, chron., p. 152

⁶ Cour de Cassation, Criminal Chamber, 21 February 1967, Bull. Crim., No. 73

⁷ Collective complaint No. 92/2013, *Association for the Protection of All Children (APPROACH) Ltd v France*

⁸ Collective Complaint No. 92/2013, *Association for the Protection of All Children (Approach) v France*, Decision on the Merits, Adoption 12 September 2014, Notification 3 November 2014, Publicity 4 March 2015, para. 37

⁹ *Report by the Defender of Rights to the United Nations Committee on the Rights of Children – February 27, 2015*, para. 48

- 2.4 A draft amendment to a new Family Law which would prohibit all corporal punishment by persons with parental authority was under discussion in 2014 but failed to progress through Parliament. In November 2014, then Minister for Families Laurence Rossignol called for renewed debate on corporal punishment in the home and schools.¹⁰ However, the Law on Child Protection voted in March 2016 did not include prohibition of corporal punishment of children.
- 2.5 Article 222 of the Equality and Citizenship Law, which was voted on 22 December 2016, aimed to amend article 371-1 of the Civil Code to state that parental authority must be exercised (unofficial translation) “with all due respect owed to [the child] and excluding all cruel, degrading or humiliating treatment, including any use of corporal violence”. On 26 January 2017 the Constitutional Court annulled article 222 on a legal technicality, arguing that the amendment that had added article 222 to the Equality and Citizenship Bill had no link with the original text and thus was unconstitutional.
- 2.6 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under the customary “right of correction”. A 2017 guidance document (“Texte-cadre national pour l’accueil du jeune enfant”) on the care of children under three states that violence is not an educative method and should not be used; but this has not been transposed into law.
- 2.7 **Day care (lawful):** Corporal punishment is lawful in day care under the customary “right of correction”. In 2003 the Supreme Court confirmed that nannies and babysitters have this right.
- 2.8 **Schools (?unlawful):** Ministerial circulars state that corporal punishment should not be used in schools¹¹ but there is no explicit prohibition in law and “light correction” is tolerated in the same way as it is for parents. In 1908, the Supreme Court confirmed that teachers have a “right of correction”;¹² a ruling in 2000 stated that this did not apply to habitual and “non-educational” corporal punishment.¹³ A 2002 case found that a teacher did not have the right to habitually pull pupils’ hair, kick their behinds and slap their faces but did not rule out all corporal punishment.¹⁴
- 2.9 According to the national report to the European Committee of Social Rights in 2010, judicial decisions have acknowledged the “right of correction” by parents, teachers and educators and laid down the conditions that it must be (i) harmless, (ii) of moderate intensity (slaps, clothes seized, ears and hair pulled) and (iii) aimed at maintaining school order and discipline.¹⁵
- 2.10 In response to the collective complaint against France made to the European Committee of Social Rights in 2013, the Government referred to Circular No. 91-124 of 6 June 1991 (amended 1992 and 1994) which states that in primary school “all corporal punishment is strictly prohibited” (s3.2.2) and to Circular No. 2011-111 of 1 August 2011 on disciplinary measures in secondary schools which makes no provision for corporal punishment. According to the Education Code, the internal regulations of schools must be based on these circulars. The Government also reported that the Criminal Chamber no longer refers to a “right to smack” of parents and teachers. As noted above, the Committee concluded that there was no clear prohibition of corporal punishment in French law.
- 2.11 **Penal institutions (unlawful):** Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition in legislation. The Code of

¹⁰ Reported in *The Local*, 19 November 2014, <http://www.thelocal.fr/20141119/minister-calls-for-new-debate-over-spanking-in-france>, accessed 4 December 2014

¹¹ Circular No. 91-124 of 6 June 1991 regarding primary schools and Circular No. 2000-105 of 11 July 2000 for secondary schools

¹² Cour de Cassation, Criminal Chamber, 4 December 1908, Bull. Crim., No. 482

¹³ Court of Appeal, Nancy, 17th January 2000

¹⁴ Cour de Cassation, Criminal Chamber, November 26 2002, case n° 02-81727

¹⁵ 16 December 2010, RAP/RCh/FR/X(2010), pp. 54-55

Criminal Procedure 1994 provides for respect for human dignity (art. D.189) and prohibits violence towards detainees (art. D.220). A decree of 4 April 1996 and its implementing circular of 12 April 1996 prohibit cruel, inhuman or degrading punishment.

2.12 **Sentence for crime (unlawful)**: There is no provision for judicial corporal punishment in criminal law.

3 Legality of corporal punishment in France's overseas territories

3.1 France has eleven overseas territories: French Guiana, Guadeloupe, Martinique, Réunion, Mayotte, French Polynesia, St Barthelemy, St Martin, St Pierre et Miquelon, Wallis and Futuna Islands, and New Caledonia. Corporal punishment in these eleven territories is unlawful in the penal system, but it is lawful in the home, in alternative care and day care settings and in schools.

3.2 It is unclear whether the 1991 and 2001 Circulars on school discipline apply in France's overseas territories. However, there is no prohibition in law and "light correction" is tolerated in the same way as it is for parents (see above).

4 Recommendations by human rights treaty bodies

4.1 **CRC**: The Committee on the Rights of the Child has four times made recommendations to France concerning prohibition and elimination of corporal punishment – in 1994 in the concluding observations on the initial report, in 2004 on the second report, in 2009 on the third/fourth report and in 2016 on the fifth report.¹⁶

4.2 **ECSR**: The European Committee of Social Rights noted on three occasions that France was in breach of the Charter due to the continued legality of corporal punishment.¹⁷

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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

¹⁶ 25 April 1994, CRC/C/15/Add.20, Concluding observations on initial report, para. 24; 30 June 2004, CRC/C/15/Add.240, Concluding observations on second report, paras. 38 and 39; 22 June 2009, CRC/C/FRA/CO/4, Concluding observations on third/fourth report, paras. 6, 57 and 58; 29 January 2016, CRC/C/FRA/CO/5 Advance Unedited Version, Concluding observations on fifth report, paras. 6 and 44

¹⁷ 1 October 2003, Conclusions 2003 Vol. 1, page 173; March 2005, Conclusions 2005; January 2012, Conclusions 2011