

Corporal punishment of children in Turkey: Briefing for the Universal Periodic Review, 35th session, January 2020



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

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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 Turkey, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture, the Committee on Economic, Social and Cultural Rights and the European Committee of Social Rights.

We hope the Working Group will note with concern the legality of corporal punishment of children in Turkey. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Turkey draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home.

Turkey's commitment to prohibiting corporal punishment

Turkey expressed its commitment to prohibiting all corporal punishment in accepting clearly the recommendation to do so made during the Universal Periodic Review of Turkey in 2010. The Government reiterated its commitment in accepting similar recommendations made during the review in 2015.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools and possibly penal institutions.

Legal recognition of parents' "right of correction" was removed from the Civil Code in 2002, but the Criminal Code 2004 recognises a person's "disciplinary power arising from the right of tutoring of a person under his/her care or to whom he/she has obligation to raise, educate, care, protect or teach an occupation or art". The near universal social and cultural acceptance of corporal punishment in childrearing necessitates clarity in law that no degree or form of such punishment is acceptable in disciplining children. All legal defences should be repealed and legislation should prohibit all forms of corporal punishment and other humiliating and degrading treatment, including by parents in the home and in all settings where adults have authority over children.

Alternative care settings – Prohibition of corporal punishment should be enacted in relation to disciplinary measures in all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition of corporal punishment should be enacted in relation to all schools, public and private

Penal institutions – Legislation should explicitly prohibit corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. In 2002, the Civil Code was amended to remove parents' "right of correction", but the Criminal Code 2004 recognises the concept of "disciplinary power" (art. 232). It appears court cases relating to assault have been dismissed on the basis of this "disciplinary power".¹ Provisions against violence and abuse in the Criminal Code, the Law to Protect the Family and Prevent Violence against Women 2012 and the Juvenile Protection Law 2005 are not interpreted as prohibiting all corporal punishment in childrearing. In 2010, the Constitution was amended to state that "the State shall take measures for the protection of the children against all kinds of abuse and violence" (art. 41), but this is not interpreted as prohibiting all forms of corporal punishment.

¹ Information provided to the Global Initiative, July 2019; see also <https://www.cnnturk.com/turkiye/kizina-tokat-atan-babay-beraat-terbiye-etti>, accessed 12 July 2019

Turkey is signed up to the Council of Europe campaign against corporal punishment of children. There appear to have been no moves towards law reform to achieve prohibition, but as at 2009 the Ministry of Justice, UNICEF and others had conducted a study of national legislation and recommendations were being drafted to ensure harmonisation with the Convention on the Rights of the Child. The Government indicated its commitment to prohibiting all corporal punishment of children by clearly accepting recommendations to do so in the Universal Periodic Review of Turkey in 2010 and again in 2015.² A new National Strategy Document and Action Plan on Children's Rights 2018-2023 was to be published in 2018,³ but as of July 2019 this had not happened.⁴

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents (see under "Home").

Day care

There is no explicit prohibition of corporal punishment in all early childhood care and in day care for older children.

Schools

Corporal punishment has been considered unlawful in schools since 1923, but there is no explicit prohibition and there has been some controversy as to its legal status. The State Personnel Law No. 657 provides for punitive measures against teachers who use physical or psychological violence against children. However, in April 2008, an investigation by the Education Ministry into the use of corporal punishment by a school principal reportedly concluded that corporal punishment has an educational value.⁵ The investigator reportedly cited an Administrative Supreme Court ruling in 1978 which supported corporal punishment by teachers, but not a 2005 ruling against it.⁶

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but it is not explicitly prohibited in law. The Law on Enforcement of Punishment and Security Policies 2004 provides for the rights of children in detention, but it does not explicitly prohibit corporal punishment.

² 17 June 2010, A/HRC/15/13, Report of the working group, para. 101(4); 13 April 2015, A/HRC/29/15, Report of the working group, paras. 149(16) and 149(17)

³ See <http://www.hurriyetdailynews.com/child-protection-councils-to-be-set-up-across-turkey-family-minister-129306>, accessed 29 June 2018

⁴ Information provided to the Global Initiative, July 2019

⁵ "Officials sanction 'harsh discipline' on students", *Turkish Daily News*, 21 April 2008

⁶ "Officials sanction 'harsh discipline' on students", *Turkish Daily News*, 21 April 2008

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Code 2004 or the Criminal Procedure Code 2004.

Universal Periodic Review of Turkey's human rights record

Turkey was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). The following recommendation was made and was accepted by the Government:⁷

“Take legislative and practical measures at preventing and combating violence against women and children, including prohibition of corporal punishment (Armenia)”

The second cycle review took place in 2015 (session 21). During the review, the following recommendations were made and were accepted by the Government, which stated that it considered them already implemented or in the process of implementation:⁸

“Consider the adoption of the specific legislation prohibiting all forms of corporal punishment of children (Poland);

“Prohibit all forms of violence against children, including corporal punishment (Slovenia)”

Recommendations by human rights treaty bodies

The Committee on the Rights of the Child first expressed concern at corporal punishment of children in Turkey in 2001, in its concluding observations on the state party's initial report.⁹ In 2012, the Committee again raised the issue and recommended that corporal punishment be explicitly prohibited in the home and in alternative care settings.¹⁰

In 2011 the Committee Against Torture recommended that the legal status of corporal punishment in schools in Turkey be clarified and corporal punishment prohibited in the home and other settings.¹¹

In 2011, the Committee on Economic, Social and Cultural Rights recommended that legislation be adopted in Turkey to prohibit all forms of corporal punishment in the home.¹²

In 2005, the European Committee of Social Rights concluded that the situation in Turkey was not in conformity with the European Social charter because corporal punishment was not prohibited in the home.¹³ In 2012 and 2016, after re-examining the situation, the Committee reiterated its conclusion.¹⁴

Prevalence/attitudinal research in the last ten years

In 2013, 4,100 parents primarily responsible for the care of children aged 0-8 years, were asked in face-to-face interviews how they behave in order to “teach the child what is right” and how they

⁷ 17 June 2010, A/HRC/15/13, Report of the working group, para. 101(4)

⁸ 13 April 2015, A/HRC/29/15, Report of the working group, paras. 149(16) and 149(17)

⁹ 9 July 2001, CRC/C/15/Add.152, Concluding observations on initial report, paras. 47 and 48

¹⁰ 20 July 2012, CRC/C/TUR/CO/2-3, Concluding observations on second/third report, paras. 6, 7, 44, 45, 58 and 59

¹¹ 20 January 2011, CAT/C/TUR/CO/3, Concluding observations on third report, para. 22

¹² 12 July 2011, E/C.12/TUR/CO/1/, Concluding observations on initial report, para. 24

¹³ March 2005, Conclusions XVII-2

¹⁴ January 2012, Conclusions 2011; (January 2016, Conclusions 2015)

approach cases when “the child behaves in a way to force their limits of tolerance”. Whether for “educative” purposes or a reaction given after irritating behaviour by the child, 74% of children were found to be exposed to at least one form of violence (physical or emotional) within the last 12 months, with 23% resorting to “mild” physical violence (slapping, throwing things at the child, pushing, shaking or pulling by the ear/hair) and 1% using “high level” physical violence (punching, hitting with something, kicking, dragging, beating, choking, burning a part of the body, threatening to use or actually using things like a knife or firearm).

(Boğaziçi University, Humanist Bureau and Frekans Research (2014), Research on Domestic Violence against Children Aged 0-8 Years in Turkey, Istanbul: Bernard van Leer Foundation)

In a study involving 464 families, carried out by Hacettepe University Public Health Institute, 38.6% of parents thought corporal punishment could be used as a “last resort”; 14% said boys could be beaten but girls could not, 6.7% said it was OK to “smack” younger but not older children. Fifty-seven per cent of parents thought using physical force against children should be completely banned, 67.5% thought corporal punishment was “completely harmful” for children.

(Reported in *The Daily News*, 20 November 2013)

A 2010 study examined the prevalence of various types of family violence in the childhoods of 988 college students through anonymous questionnaires. The types of violence included being kicked, punched, thrown, bruised, burned, or caused to bleed, lose teeth, or have broken bones; 53.3% had experienced some of these types of violence in childhood (64% of males and 41.6% of females). The most common perpetrators were mothers and fathers, but siblings and other relatives also inflicted some violence. Over one in five (22.6%) of the victims of violence said the perpetrator had behaved violently to establish discipline, 15.9% said the perpetrator wanted to teach them a lesson, and 16.1% said the perpetrator wanted to instil respect; 60.7% said the perpetrator was unable to control him or herself and 8.7% said the perpetrator was violent in order to release their anger; 35.4% reported feeling humiliated by the violence, 26.3% accepted it, and 10.4% felt hate for the perpetrator.

(Turla, A. et al (2010), “Prevalence of Childhood Physical Abuse in a Representative Sample of College Students in Samsun, Turkey”, *Journal of Interpersonal Violence*, 25 (7), 1298–1308)