
Corporal Punishment in Portugal:

In Portugal, the corporal punishment is prohibited in schools, at an institutional level in general and within the family, constituting a public crime (integrated into crimes of "domestic violence" and "abuse"). According to the Children's Rights Committee, is considered corporal punishment any action taken to punish a child which, if directed against an adult, would constitute unlawful assault; any use of violence with intent to cause some degree of pain or discomfort, even if slight, and, not physical cruel punishment, humiliating and degrading treatment. In Portugal, with the 23rd amendment to the Penal Code (2007), emerged the crime of maltreatment to minors (art.152^oA, D.L.59/2007). The legal right protected in the art. 152^o is the health – covering both the physical and mental health - as well as "the normal and healthy development of the child's personality". The content of this article is broader in protection, because it also includes non-physical, and passive, punishment.

Previously, the Portuguese government had considered that the law already prohibited all corporal punishment. The Civil Code states that parent-child relations are characterized by obedience and parental authority (article 1878), but a 1994 Supreme Court decision (Supremo Tribunal de Justiça, 9 February 1994) had ruled that this does not give parents the right to use physical aggression in childrearing. And an earlier decision by the Supreme Court (18 December 1991) stated that a simple slap which caused no injury and no physical or mental suffering was considered a "light corporal assault" and so was covered by article 143.1 of the Criminal Code which punishes "whoever causes bodily injury or impairment of health of another". Subsequent Supreme Court decisions (21 January 1999 and 4 March 1999) confirmed this ruling, and a Court of Appeal decision (12 October 1999) referred to the absence of a "right" to use physical discipline in the Civil Code.



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In 2003, the World Organisation Against Torture brought a complaint against Portugal under the Collective Complaints procedure of the European Social Charter alleging that Portugal was in breach of article 17 of the Charter because legislation did not explicitly prohibit corporal punishment of children, including by parents. In view of the Portuguese case law described above, the European Committee of Social Rights concluded by 9 votes to 4 that there was no violation of Article 17 of the Revised Social Charter because section 143 of the Criminal Code as interpreted by the Supreme Court provided a legal prohibition of all forms of corporal punishment of children and that no legal provision authorised the use of corporal punishment of children (Resolution ResChS(2005)1, Collective complaint No. 20/2003 by the World Organisation against Torture (OMCT) against Portugal, adopted by the Council of Ministers on 20 April 2005).

But on 5 April 2006, the Supreme Court overturned its previous interpretation of legislation in ruling that slaps and spankings are “legal” and “acceptable”, and that failure to use these methods of punishment could even amount to “educational neglect”. The Supreme Court’s judgment stated:

“As far as the children in question is concerned ... the acts with which the defendant is charged should, in our view, be considered lawful. In the upbringing of the human being moderate punishment that can be corporal or other forms of punishment is justified....

‘Who being a good parent does not, once or twice, slap the bottom of the child refusing to go to school? Does not slap the child who throws a knife at him? Or punishes a child by sending it to his room when it does not want to eat?’

As for the first two, we can even say that if the person having the lawful control or charge of the child would refrain from acting, then yes, that would amount to educational neglect. Many children refuse at times to go to the school. Because of its utmost importance, going to school has to be strongly imposed. It is obvious that in case of repeated school phobia, it would be advisable to find out the reasons and even get professional counselling. But should it happen once or twice, slapping (always moderate) the bottom is part of the method of upbringing.



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Similarly, to throw a knife and what's more at the person raising him, justifies, within the framework of a stable upbringing, emphasizing to the child that it did wrong and let it see the possible consequences. A slap in the heat of the moment cannot be considered extreme....”

The World Organisation Against Torture submitted a second complaint under the collective complaints procedure in May 2006. This time the European Committee of Social Rights found the situation in Portugal to be in breach of article 17 of the Revised Charter because there is no explicit prohibition in law of all corporal punishment of children, including in the home. In its decision, the Committee clearly stated the need for explicit and effective prohibition of corporal punishment (Collective complaint No. 34/2006 by the World Organisation against Torture (OMCT) against Portugal, Decision on the merits 5 December 2006, paragraphs 19 to 22):

“To comply with Article 17, states’ domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice. The conclusion to be drawn from the Supreme Court’s decision of 5 April 2006 is that Portuguese law does not include such provisions, even though this was the interpretation that had been drawn from a previous decision of that court. In addition, the Government has not supplied information to show that the measures in practice are likely to result in the eradication of all forms of violence against children. For

these reasons, the Committee concludes unanimously as to the violation of Article 17 of the Revised Charter.”

Following this, the Government announced it would review the Criminal Code and explicitly prohibit all corporal punishment. Prohibition was finally enacted in September 2007.

Original Law: “Artigo 152.º -A Maus tratos 1 — Quem, tendo ao seu cuidado, à sua guarda, sob a responsabilidade da sua direcção ou educação ou a trabalhar ao seu serviço, pessoa menor ou particularmente indefesa, em razão de idade, deficiência, doença ou gravidez, e: a) Lhe infligir, de modo reiterado ou não, maus tratos físicos ou psíquicos, incluindo castigos corporais,



privações da liberdade e ofensas sexuais, ou a tratar cruelmente; b) A empregar em actividades perigosas, desumanas ou proibidas; ou c) A sobrecarregar com trabalhos excessivos; É punido com pena de prisão de um a cinco anos, se pena mais grave lhe não couber por força de outra disposição legal. 2 — Se dos factos previstos nos números anteriores resultar: a) Ofensa à integridade física grave, o agente é punido com pena de prisão de dois a oito anos; b) A morte, o agente é punido com pena de prisão de três a dez anos.”

Translated Law: “Article 152.º -A 1 — Who, having the care, custody, under the responsibility of their management or education or working at their service, minor or person particularly helpless, on the grounds of age, disability, illness or pregnancy, and: a) Inflict, repeatedly or not, physical or psychological ill-treatment, including corporal punishment, deprivation of liberty and sexual offenses, or to treat cruelly; b) to employ in dangerous, inhuman or prohibited activities; or c) overload with excessive work; Is punished with imprisonment of one to five years, if more severe penalty does not fit under any other statutory provision. 2 — If the facts as referred to in the above paragraphs result: a) Serious offense to physical integrity, the agent is punished with imprisonment of two to eight years; b) Death, the agent is punished with imprisonment of three to ten years.”

Conclusion:

In Portugal, although we have seen a lot of change in the last two decades, we have a long cultural tradition of the use of corporal punishment, in numerous dimensions. The use by the parents for discipline and correction is still common. On the other hand, the use of corporal punishment in schools has decreased drastically, as well as in other public organizations that work with children.



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