

**E-BOOK**

# **II European Conference on Domestic Violence**

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**2019**

# Domestic Violence against Children

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**Title:** Is Corporal Punishment A Legitimate Form of Education?

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The issue of corporal punishment has recently been the subject of heated discussion. This debate is maintained at an international and national level, presenting itself as transversal to the academic and legal discourse. In the light of the foregoing, some definitions of concept are in place.

In 1990 Straus & Gelles conducted a nationwide incidence study of 8,145 American families which demonstrated that 6.9 million children had been abused (Whipple & Richey, 1997). In this regard Straus & Gelles (1990) defined corporal punishment as “*a legally permissible violent act carried out as part of the parenting role*”. According to this Authors this definition included behaviours such as “*hitting a child with an object*”. Straus (1994) would present a new, more restricted, definition of this concept: “*corporal punishment is the use of physical force with the intention of causing a child to experience pain but not injury for the purposes of correction or control of the child’s behavior*”.

Recently in 2006, the Committee on the Rights of the Child defined corporal punishment as “*any punishment in which physical force is used and intended to cause some degree of pain and discomfort, however light*”.

The chronological disposition of the definitions put forward shows an increasingly restrict development of the concept, certainly influenced by the growing legal and social recognition of the role of children in modern societies. That said, here we are able to isolate four necessary and common elements to the definitions of corporal punishment, namely: ***the use of physical force, the intention to harm, the light nature of punishment and, finally, its educational purpose.***

Despite the growing role that this issue has been gaining on international stages, the truth is that we are dealing with a current and globally widespread practice whose negative effects are not fully understood. In regard to the aforementioned, Giles-Sims, Straus & Sugarman (1995), and Straus & Stewart (1999), stated that physical aggression by parents toward children under the euphemism of spanking is not only normative as well as expected when necessary. Percentage wise, 94% of American toddlers (3 to 4 years old) have been subjected to this form of aggression which occurs an average of three times a week (Gershoff, 2002).

Finally, in 2001 New Zealand’s Ministry of Justice conducted a national survey (Carswell, 2001) through which it was possible to gauge that 23% of participants thought it was acceptable to physically discipline children under 2 years old and 62% thought it was acceptable to physically discipline children between 2 and 5 years old. In 2009 New Zealand conducted a Citizen’s Initiated Referendum which posed the question “*should*

*a smack as part of good parental correction be a criminal offence in New Zealand?*”. Almost 88% of the population answered “no”.

According to a cross-European study conducted in Austria, Spain, France, Germany and Sweden by Bussmann, Erthal & Schroth (2009) 14.1% of Swedish parents admitted to giving “*mild slaps on the face*” to their children; on the other hand Austrian, German, Spanish and French parents presented much higher percentages, respectively, 49.9%, 42.6%, 54.6% and 71.5%. It was also possible to verify that in Spain and France more than half of the parents resort to a smack on the rear as a way to reprimand their offspring. In Austria and Germany, 32% and 31% of respondents were aware of the current legal situation whereas in Spain, approximately 38% and in France, approximately 32% were aware of awareness-raising campaigns regarding the harmfulness of corporal punishment (Bussmann, Erthal & Schroth 2009).

In a similar study carried out in Greece (Tsirigoti et al, 2010), 26.7% of children admitted to have been smacked by a relative and 71% of the parents had physically punished their children. Despite this figures, 98.3% of parents admitted that corporal punishment should not or probably not be used as a disciplinary method.

Even though this is a fairly common practice around the world, the truth is even now we don’t have an academic consensus regarding the negative outcomes of corporal light punishment in children. As a matter of fact some researchers believe that light to moderate disciplinary conducts such as spanking and/or slapping are not hurtful for children (Baumrind, Larzelere & Cowan, 2002) whereas other argue these behaviours predict a more negative outcome (Gershoff, 2002).

Whether or not we agree with the use of corporal punishment we cannot ignore one of its most appealing consequences (if not its only) namely the capability of stopping children from misbehaving immediately, as research has shown (Newsom, Flavell, & Rincover, 1983; Gershoff, 2002). In a world where there is less free time and family spare-time is relegated to the end of the day when patience is not in abundance it comes as no surprise the fact that most parents that resort to corporal punishment do it in search of immediate compliance.

Turning to the second of the positions mentioned, we cannot ignore that immediate compliance and moral internalization are, most of the times and in this context, not compatible. Strictly speaking, the application of corporal punishment does no more than to rest education in the fear of punishment and not in the internalization of norms and values, which in turn passes the wrong message that it’s more important not to get caught than to behave properly. Furthermore, many times a spank is not followed by any kind of feedback so the child is unable to learn the desired behavior. As a matter of fact, children’s internalization of moral values is thought to be heightened by parenting strategies that use feedback and provide explanations on the desirable behaviours as teaching tools and that seek to foment children’s autonomy and decision making (Kuczynski & Hildebrandt, 1997).

Furthermore, as Gershoff (2002) pointed out in her meta-analysis, the use of corporal punishment is associated with the following behaviours and experiences in children: decreased moral internalization, increased aggression, increased delinquent and antisocial behaviour, decreased quality of parent-child relationship, decreased mental health, and increased risk of being a victim of physical abuse. It also may play a major role in adulthood as it is associated with increased adult aggression, adult criminal and antisocial behaviour, decreased

adult mental health, and increased risk of abusing own child or spouse which in turn can lead to the creation of cycles of violence. In addition, and using the well-known adage "*violence begets violence*", the application of corporal punishment by parents can lead to the creation of cycles of violence perpetuated for generations. In fact, children learn to become more aggressive through modelling, that is, by imitating the actions performed by their parents (Deater-Deckard and Dodge, 1997).

The concept of corporal punishment can be included in the wider concept of "*harsh parenting*" which comprises not only physical punishment but also verbal/psychological aggression. As is the case with corporal punishment, children subjected to harsh discipline may also display negative outcomes such as disruption of the development of security, self-worth, and self-regulatory skills, all of which ease the development of positive adjustment (Bradley & Corwyn, 2007). In addition, harsh physical discipline in particular is likely to compromise adolescent efforts to express autonomy and relatedness. It's also noteworthy the fact that parents who adopt a harsh discipline, particularly, corporal punishment are more prone to become abusive (Kim *et al.*, 2010; Gershoff, 2002; Straus, 2000).

Despite the social ballast of such conducts, we cannot forget that the application of corporal punishment is a form of violence against children. This realization impelled some countries to take legal actions to prohibit the use of corporal punishment however light and as a means of discipline (Sweden, Austria, Croatia, Cyprus, Denmark, Finland, Germany, Israel, Italy, Latvia, and Norway).

At this juncture the main question is: *What about Portugal in particular?*

In Portugal the use of corporal punishment can, formally, lead to the commission of one of two crimes: domestic violence and mistreatment.

In this regard article 152.º of the Portuguese Penal Code stipulates that commits the crime of domestic violence he:

*1 - Who, whether or not repeatedly, inflicts physical or psychological maltreatment, **including corporal punishment**, deprivation of liberty and sexual offenses: (...) d) To a particularly helpless person, in particular on account of age, disability, illness, pregnancy or economic, that cohabit with him; shall be punished with imprisonment from one to five years, if a more severe penalty does not fit him under another legal provision. 2 - In the case provided in the preceding paragraph, if the perpetrator acts against a minor, in the presence of a minor, in the common domicile or at the victim's home, he shall be punished by imprisonment of two to five years. 3 - If the facts provided for in paragraph 1 result in: a) Serious offense to physical integrity, the perpetrator shall be punished by imprisonment for two to eight years; b) Death, the perpetrator shall be punished with imprisonment from three to ten years. (...).*

In an identical fashion, article 152.º-A dictates that commits the crime of mistreatment he:

*1 - Who, having under their care, under the responsibility of their direction or education or working for their service, a minor or particularly defenceless person, due to age, disability, illness or pregnancy, and: a) repeatedly or not inflicts physical or psychological ill-treatment, including **corporal punishment**, deprivation of liberty and sexual offenses, or cruel treatment; b) employ him in*

*dangerous, inhuman or prohibited activities; or c) overburdening with excessive work; Shall be punished with imprisonment from one to five years, if a more severe penalty does not fit him under another legal provision. 2 - If the facts provided for in paragraph 1 result in: a) Serious offense to physical integrity, the perpetrator shall be punished by imprisonment for two to eight years; b) Death, the perpetrator shall be punished with imprisonment from three to ten years.*

From the transcribed rules it is expressly stated that the application of corporal punishment may result in the application of a criminal sanction.

However, to the question *can Portuguese parents apply light corporal punishment to children for educational purposes* the answer is a resounding yes even though the law is quite clear.

This *kafkian* system is due to the fact that this legal articles were not written with this particular situation in mind. Due to the aforementioned social ballast of this kind of practices, the truth is that the use of light corporal punishment isn't even seen as a form of violence but rather as a form of parents exerting their educational duties on their children. This means that Portugal's penal system, usually, doesn't punish this type of conduct, since it does not even bring them back to the concept of corporal punishment contained in the norms transcribed. In other words, if there is no problem there is no need for a solution.

Moreover, it is supported by the majority of national case-law, as shown in the excerpts from this Porto's Court of Appeal, July 2<sup>nd</sup> 2008 decision: "*Offences to physical integrity will only be justified when applied for education purposes and by the child's guardian/parent (...) Parents are entitled to resort to punishment due to their parental power. Since the right to correction is part of the relationship between parents and their children, transferring said right will only be allowed to individuals who are close to the child.*"

Despite decisions like this one, there is a growing influence of international treaties as well as increasing concern about matching the legal status of the child to that of the adult both formally and materially. In addition, we cannot ignore the proliferation of scientific articles highlighting the possible harmful effects of a slap-based education and the consequent increase of voices among the general population against the use of this type of *educational* conduits.

In view of the above, there is currently a possible paradigm shift with relevant effects in Portuguese Courts. Therefore, it is now unanimous in Portuguese jurisprudence that the administration of light corporal punishment with *educational* purpose can never be done through the use of objects, such as belts, sticks, wooden planks, etc... as this is seen in the eyes of the Courts as a disproportionate measure. In this regard on April 2<sup>nd</sup> 2014, Porto's Court of Appeal stated that: "[*It should be noted that the defendants acted, as a result of the child's concealment of poor results obtained by him and lesser smoking, however the reaction occurred (with the use of a bel on an 11-year- old child in January 2011) is not, due to its disproportionate nature, within the scope of a parental education power/duty.*]"

Although parental power can be exerted by a third party like a guardian or a teacher, Portuguese Courts do not tolerate that third parties other than close relatives (ex. grandparents) resort to corporal punishment as a means to educate. Such understanding is clear in a decision from Coimbra's Court of Appeal dated from January



28<sup>th</sup> 2009 stating that: “*the application of corporal punishment in educational establishments constitutes a reproachable conduct.*”.

With all this being said we believe that tiny step by tiny step Portuguese Courts are starting to acknowledge corporal punishment, even if light and *educational*, as a form of violence against children. Reflecting what we just said, a recent decision by Lisbon’s Court of Appeal from October 10<sup>th</sup> 2016 stated that “*According to several documents designed by UNICEF, we believe that there is still a high prevalence of corporal punishment practices as educational measures; therefore, it is important to change the state of things, by creating a culture of non-violence towards children and raise people’s awareness, so that adults will never express their will or frustration through violence against children.*”.

Even though this kind of judicial decision is far from being the norm we believe that this is not an outlier decision but a sign of hope that we can end the popular belief that corporal punishment, even if light and educationally driven, is not a form of violence against children.