

Compilation of National Assessment Reports on Prohibiting Corporal Punishment against Children

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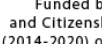
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SUMMARY

This compilation contains a short description of the national legislation, case law, literature and strategies implemented in the past 10 years in Bulgaria, Germany, Spain and Portugal on the topic of corporal punishment against children.

In the framework of the project “Hands Up” – promoting the effective elimination of corporal punishment against children” the partners from 4 countries prepared their national country reports. In order to have one consistent report where the situation in these countries is reflected, SAPI prepared the current compilation report.

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INTERNATIONAL LAW

Declaration of the Rights of the Child. Proclaimed by the General Assembly in its Resolution 1386 (XIV) of November 20, 1959. Principles 2 and 7 include the term “best interests of the child”.

Convention on the Rights of the Child of November 20, 1989 (UN General Assembly Resolution 44/25) (BOE nº 313 of December 31, 1990). Recognition of the inalienable rights of children and the obligations of states, public authorities, parents and society as a whole. The literal diction of Article 3.1: *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”*.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”).

III Optional Protocol to the Convention on the Rights of the Child on a communications procedure adopted and opened for signature, ratification and access by General Assembly resolution A/RES/66/138 of December 19, 2011 - enforced on April 14, 2014. (BOE nr. 27, of January 31, 2014) - Acknowledges “the best interests of minors”, in areas where resources are used to redress any violation of their rights; establishes that the procedures are adapted to minors at all instances; recognises the important role of national human rights institutions and other specialised institutions in the promotion and protection of children’s rights; empowers the Committee on the Rights of the Child to carry out the functions provided for in this Protocol. State Parties should establish appropriate national mechanisms to ensure that minors whose rights have been violated have access to effective support in their countries. The general principles governing the functions of the Committee on the Rights of the Child (Article 2) are: a) principle of “the best interests of the child”, b) the rights and views of the child, the views of the child being given due weight in accordance with the age and maturity of the child.

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Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, concluded May 29, 1993 (BOE nr. 182, August 1, 1995).

Convention on the Civil aspects of International Child Abduction, concluded October 25, 1980 (BOE nr. 202, August 24, 1987).

Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, A/RES/85, December 3, 1986, 95th Plenary Meeting.

Resolution of the United Nations General Assembly, “A World Fit for Children”, A/RES/S-27/2, May 10, 2002.

Resolution adopted by the General Assembly Rights of the child (on the report of the Third Committee, A/RES/61/146, December 19, 2006.)

Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants, October 5, 1961 (BOE nr. 199, August 20, 1987).

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Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, concluded May 29, 1993 (BOE nr. 182, August 1, 1995).

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (BOE nr. 291, December 2, 2010).

Convention on the International Recovery of Child Support and other forms of Family (Maintenance), concluded November 23, 2007).

Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul May 11, 2011 (ratified by Spain on March 18, 2014, BOE nr. 137, June 6, 2014). Especially significant is Article 26: regulates the protection and support of children exposed to violence. Urges States to take legislative (or other) measures to ensure that the provision of victim protection and support services takes into account the specific rights and needs of minors exposed.

Treaty on European Union, Maastricht, February 7, 1992 (consolidated version 2010) (DOUE nr. 83, March 30, 2010).

Charter of Fundamental Rights of the European Union (DOUE nr. 83, March 30, 2010). Article 24 (1) states: “Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity”. The second paragraph of Article 24 states: “In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration”.

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European Charter of the Rights of the Child (DOUE nr. C 241, September 21, 1992). Paragraph 7.15 states that any family, administrative or judicial decision in regard to minors should have as priority the defence and safeguard of their interests. Hence, and provided that this doesn’t imply any risk or prejudice for the children, they must be heard from the moment their maturity and age allow it in all decisions that affect them.

Directive 2012/29/UE of the European Parliament and of the Council, October 25, 2012 (DOUE L 315/57, November 14, 2012), establishing minimum on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

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SPECIFIC INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION AGAINST CORPORAL PUNISHMENT TO MINORS

Article 19 of the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on November 20, 1989. (BOE nr. 313, December 31, 1990).

The sections 1 and 2 of the aforementioned article provide the following:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

General Comment Nr. 8 (2006) "The right of the child to protection against corporal punishment and other cruel or degrading forms of punishment" (Article 19, Article 28, paragraph 2 and Article 37, among others). Committee on the Rights of the Child (42nd session, Geneva, May 15 – June 2, 2006) at the Convention on the Rights of the Child (August 21, 2006).

This document **prohibits corporal or physical punishment of minors**. Among its goals, it aims to: a) provide guidelines to States Parties on the interpretation of the provisions of the Convention associated with the protection of minors against all forms of violence - and specifically against corporal punishment; b) promote the acknowledgement of the rights of minors, namely the respect for human dignity and physical integrity; c) promote the prohibition and elimination of all corporal punishment against minors (and in all forms); d) develop legislative amendments aimed at eliminating and/or preventing any form of corporal punishment against minors; e) improve liaison in terms of measures, plans, protocols, etc. of awareness-raising and/or training, in order to eliminate corporal punishment against minors.

"Corporal" or "Physical" punishment is defined as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light¹. It involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an object - a whip, stick, belt, shoe, wooden spoon, etc., but it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). According to the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention on the Rights of the Child. These include, for example, actions that belittle, humiliate, scapegoat, threaten, scare or ridicule children.

Recommendation REC (2006) 19 on "Policies to support positive motherhood" adopted by the Committee of Ministers of the Council of Europe. Positive parenthood is defined in the Recommendation Rec (2006) 19 as: *"parental behaviour based on the best interest of the child that is nurturing, empowering, non-violent and provides recognition and guidance which involves setting of boundaries to enable the full development of the child"*.

¹ UN Committee on the Rights of the Child, General Comment nr. 8 "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", in 11, 2006 f. <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G07/407/71/PDF/G0740771.pdf?OpenElement>.

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The Recommendation aims to raise awareness of the need to provide parents with sufficient support mechanisms to meet their important responsibilities in bringing up their children. Member states are encouraged to take all appropriate legislative, administrative and financial measures to create the best possible conditions for positive parenthood.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *An EU Agenda for the Rights of the Child*. Brussels, February 15, 2011.

Council of Europe Strategy on the Rights of the Child (2012-2015). The programme will focus on four strategic objectives: a) promoting child-friendly services and systems; b) eliminating all forms of violence against children; c) guaranteeing the rights of children in vulnerable situations; d) promoting child participation.

Council of Europe Strategy on the Rights of the Child (2016-2021) again places the violence in the focus of attention through its Strategic objective 3 “Life free of violence for all children”. The Council of Europe will continue to promote the effective elimination of corporal punishment and other cruel or degrading forms of punishment of children in all settings, including within the home contexts.

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Assessment of relevant national laws and identification of existing gaps on the implementation of the prohibition of corporal punishment against children

Spain

According to the analysis made, one could say that much progress has been made in the protection of minors and, in particular, in the prohibition of corporal punishment against children - namely by the parents. The turning point occurred in 2007, when Law 54/2007 was approved, thus eliminating the so-called "right of correction" from the legal system (article 154 of the Civil Code). Currently, **in civil terms**, there are two key-articles that should be mentioned:

- Firstly, **article 154 of the Civil Code**, recently modified through Law 26/2015, which regulates parental authority and the inherent functions of this institution. In this sense, parental authority is normatively defined as "**parental responsibility**" and must always be applied according to the best interests of minors and their personality and always respecting the rights of minors, as well as their physical and mental integrity. Among the roles granted in the exercise of parental authority, the parents are required to watch over, to feed, to educate and to provide children an integral formation.
- Secondly, **article 155 of the Civil Code**, which regulates the "duty of obedience" of the minors.

However, **the criminal management of the actions of mistreatment to minors** does not have a specific approach - despite being included in the Spanish legislation concerning family violence since the late 80s. Notwithstanding the foregoing, it is vital to mention two articles of the Penal Code: articles 153 and 172 of the Penal Code; the first **criminalises any psychological impairment or minor injury**, as well as beatings and mistreatment without causing injury.

Some aspects of interest of the normative, doctrinal (scientific literature) and jurisprudential (case law) analysis in Spain are listed below:

1. From the normative point of view, the wording of article 154 of the Civil Code after the amendment introduced in 2007, makes it possible to assert that the so-called "right of correction" of the parents on the children (framed in the faculties and powers of parental authority and perceived as an educational measure) is 'formally and normatively' outside our legal system at the national level, in line with Article 19 of the Convention on the Rights of the Child and Comment nr. 8 of the Committee on the Convention on the Rights of the Child of 2006 .
2. Regarding the normative delimitation of parental authority (and its functions) via article 154 of the Civil Code, special attention must be paid to the changes introduced in the Law 26/2015 (mentioned above). In this sense, it is possible to understand how parental authority is normatively defined - at the present time - as "parental responsibility", which must always be exercised according to the best interests of minors and their personality. Regarding the explicit limits of parental authority, the wording of article 154 is new, because it addresses, for the first time, the "respect for the rights" of minors - as well as for their physical and mental integrity. An important element in the new

normative nomenclature of the *patria potestad* is the functions attributed to said figure. Functions are not perceived - in any case - as parental rights, but as duties and rights of parents. The list of such duties and faculties comprehends watching over the minors, feeding them, educating them and providing them with an integral formation.

3. Notwithstanding what has been said in relation to the elimination of the "right of correction" in the Spanish legal system, one can observe that in terms of civil and/or legal autonomous legislation, some expressly contain the "right of correction", framed within the so-called "paternal authority". Such is the case of the Autonomous Communities like Catalonia, Navarre and Aragon.
4. In the light of the foregoing and in relation to these qualifications in terms of being able to state clearly and forcefully that the so-called "right of rectification" of the parents is outside the legal protection, one can quote article 155 of the Civil Code. This precept regulates the "duty of obedience" of the minors; this would justify a certain degree of (slight) correction by the parents on the minors.
5. Following this interpretation, one could quote articles 2, 3 and 9 of Law 26/2015 (July 28), which mention the duties of minors and, in particular, their duties in the family environment².
6. The solution, perhaps, would be not to establish the "right of correction" of the parents having corporal punishment as normative.
7. In what concerns the criminal sphere, it is important to emphasise that although articles 153 and 173 of the Penal Code criminalise minor injuries and inhuman and /or degrading treatment in the domestic sphere - where corporal punishment could be introduced to minors -, after successive modifications in 2003, 2004 and 2015, the truth is that there is a sector that is reluctant to penalise certain behaviours that could be classified as 'mild' (when they do not cause injuries). According to this, the criminal responsibility of a criminal offense is included in article 20.7 of the Penal Code, with the argument that a person could be acting "in the performance of a duty or in the legitimate exercise of a right."
8. Following the same interpretive line - minimise (within a given socio-cultural context) minor corporal punishment of minors by parents) - it would be possible to refer to the principles of insignificance and minimal intervention in the criminal sphere, which are used to exempt and/or dilute the criminal responsibility of parents.
9. Other aspects to be considered and / or taken into account in relation to proposals for improvement in the normative area (and specifically in criminal law) would be the following: a) the allegation of acting in a 'state of necessity' and/or 'self-defence' where the use of physical violence would be defensive and not corrective and/or educative; b) the practical issues of imposing mandatory accessory penalty of 'detachment' in all convictions for domestic violence via article 57.2 CP; c) resorting to pardon³ when, after the criminal conviction, the penal sanction is totally or partially without effect.

² On this point see ALGARRA PRATS, E., and BARCELÓ DOMÉNECH, J. (2016). "Freedom of the children in the family: duties of the children and right of correction of the parents. Situation in the Spanish law", in *Legal News Iberoamerican*, nr. 4, February 2016, pp. 59-74.

³ It's important to mention that this is a measure of grace, of an exceptional nature, consisting of the total or partial remission of the sentence imposed by a final judgment, granted by the King on the proposal of

10. Significant differences are observed within the analysis of the scientific doctrine and in the doctrinal analysis of jurisprudence. This shows a greater reluctance to eliminate the "right of correction" within the legal system. Moreover, in line with the scientific doctrine, the criminalisation of behaviours that would be classified as 'mild' that do not lead to physical injuries, is questioned in a more or less constant way. On the other hand, in terms of normative application in a court seat (since the normative amendment of 2007), an important line of jurisprudence has been developed, rejecting corporal punishment in all cases and the "right to correction. However, it is also possible to refer to an important set of perspectives according to which – and by taking into account different interpretative criteria – the "right of correction" within the faculties of parental authority is based on a series of limits, such as respect for the physical and/or psychological integrity of the children and for a criteria of proportionality and corrective purpose.

the Minister of Justice, after deliberation by the Council of Ministers. The pardon can be total or partial and implies the remission of all the penalties or part of them pending compliance and / or, where appropriate, the commutation of the same. For the purposes of this report, it is necessary to mean the contradictions that arise when at the legal level it is not possible to speak of the "right of correction" and nevertheless at the level of application and normative interpretation after a sentence for domestic violence derived from corporal punishment to minors the Pardon and this is granted, at least partially, in the part of leaving without effect the accessory but mandatory penalty of removal of the condemned parent over the minors. As an example of the above, it is worth mentioning Royal Decree 606/2009, of April 8, whereby the mother convicted by the Provincial Court of Jaén is sentenced in judgment of January 22, 2009, resolving the appeal filed against Another from the Criminal Court number 3 of Jaén, as the author of an offense of ill-treatment, to the sentence of 67 days imprisonment, with the accessory of spatial disqualification for the exercise of the right to vote suffrage, deprivation of possession and possession of Weapons for six months and prohibition of approaching less than 500 meters to his son during a year and 67 days. The pardon granted in this case was partial affecting the penalty of prohibition of approach to his minor child. The Royal Decree can be consulted at the following URL: <https://www.boe.es/boe/dias/2009/05/09/pdfs/BOE-A-2009-7726.pdf>. Date of consultation: 12/22/2016.

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Portugal

The relationship between parents and children is characterised by mutual respect. However, the parents should guide their children's education and the children should obey them. The corrective power of parents is neither absolute, nor the children's obedience should be blind. According to this – and to the number 2 of the article 1878 of the Civil Code – parents should grant children a level of autonomy which is adequate to their age and development stage. The Portuguese Constitution also establishes the children's right to protection against the abusive exercise of authority in the family

In Portugal, the application of corporal punishment could lead to criminal and civil liability. That being said, there are two parallel ways of intervention that could eventually be cumulative or alternate.

The article 152 of the Penal Code, which establishes the crime of domestic violence (Law number 59/2007, September 4th) criminalises corporal punishment, qualifying it as maltreatment. **This solution is entirely adequate - and in compliance with the ratification by Portugal of the Convention on the Rights of the Child and other international obligations that binds the country.** On the other hand – and in cases where maltreatment occurs outside the house and family context, such as the institutional domain [e.g. corporal punishment practiced by a professional] – the article 152-A is the one that ought to be applied. The crime of domestic violence (ref. article 152) against children requires the **cohabitation** with the agent in a context of violence.

All other cases of corporal punishment against children that are not specifically established by the aforementioned articles should be addressed as offences to physical integrity:

It is important to make a distinction between the crime of domestic violence and offences to physical integrity: a single smack is not considered domestic violence, but rather a simple corporal offence, with the exception of cases of a violent relationship. Only in case of light corporal offence (when the article in question is art. 143^o) is possible to exclude the penal relevance of the parents' behaviour on the basis of his educational purpose.

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However, in what concerns corporal offences that should not be addressed as domestic violence (a father who beats his son, but does not live with him) art. 145 can be applied in situations of significant **reprehensibility** and **perverseness**. The Portuguese legislator established a set of examples in the number 2 of the article 132 of the Penal Code, in order to clear the concepts of significant reprehensibility and perverseness. However, the simple verification of said examples is not enough to determine the nature of the crime. In other words, these are **mere indicators of serious misconduct**. This way, it is always necessary to prove the reprehensibility and perverseness, even when the nature of the situations is determined. Having said that, one of these examples is associated with the fact that the **perpetrator is the victim's ascendant**.

As mentioned before, civil law also includes mechanisms to protect victims of corporal punishment, even if compensatory – the different **forms of indemnity** paid to the victims. The indemnity is used to compensate the victim and reduce the damage suffered. However, it is important to point out that said compensation can have a punitive character to the agent.

In order to exercise the right to an indemnity, the victim can submit a **civil compensation claim** during the criminal proceedings. The non-submission could lead to the debarment of said right. However, the **minors** and their **representatives** rarely require the payment of any form of monetary compensation, which is easily understandable.

In this regard, a recent law (Law number 130/2015, September 4th) established an automatic mechanism of compensation, in order to protect the victims of the criminal proceedings, namely

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those who are particularly vulnerable, such as children. In other words, if a particularly vulnerable victim does not solicit the payment of a civil compensation during the criminal proceedings, that will not exclude said compensation (unless the victims or his/her representative waives said right).

The Portuguese legislation establishes the incrimination of corporal punishment according to the **articles 152 and 152-A of the Penal Code**. However, these legal types of crime are not solely related to children nor were they established to inhibit 'light' corporal punishment for educational purposes. As mentioned before, this type of crime requires a penalisation that meets the maltreatment offences, perceived as significantly serious. However, corporal punishments which do not correspond to the requisites of these articles can be punished within article 143 (or even 145).

Conclusion

The Portuguese legislation is quite clear in the prohibition of corporal punishment, in cases of domestic violence (article 152), maltreatment (152-A), physical injury (art. 143º) and qualified physical injury (art. 145º). Therefore, it is easy to observe that there is no ambiguity in terms of legislation.

However, the clarity of these notions is mitigated by two circumstances: **a)** the fact that the incriminations were established to prohibit the application of 'light' corporal punishment for educational purposes and **b)** by the recognition of a parents' power-duty of education/correction towards their children.

Germany

In Germany, the corporal punishment against children is forbidden. The legislation on physical violence in education and on child abuse and neglect is part of the constitution and of civil, criminal and social law (see Galm/Derr 2011, 16f.), as the following shows:

- The section 1631 of the **civil code**, introduced in 2000, ensures children's right to a non-violent upbringing. Physical punishment, psychological injuries and other degrading measures are strictly forbidden.
- In terms of **criminal code**, neglect, physical maltreatment and sexual abuse are identified as criminal offences. The law determines the following criminal offences in the field of child maltreatment, abuse and neglect: violation of duties of care or education; physical maltreatment causing bodily harm/ causing bodily harm by dangerous means; abuse of position of trust; child sexual abuse; aggravated child sexual abuse; child sexual abuse causing death; leading minors to engage in sexual activity; sexual abuse of juveniles and distribution, acquisition and possession of child or juvenile pornography.
- Regarding the **social code**, the child and youth welfare system and services for children and parents are regulated by the *Sozialgesetzbuch VIII – Kinder- und Jugendhilfegesetz*. The amendment of the child protection law ("Bundeskinderschutzgesetz") in 2012 improved the child protection procedures and it was complemented by a range of additional measures at the federal level.

The so called "Länder" - states within the German federal system, such as Bavaria or Berlin - also regulate some aspects of child protection. The laws of the states ("Länder") regulate for example obligatory preventive medical examinations of children, local child protection networks, as well as rights and duties of professionals concerning data exchange in suspected cases of child endangerment (see Galm/Derr 2011, 16f.)

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Below, one can read the different areas of law that regulate the prohibition of physical violence in education:

Constitution (Basic Law)

The basic rights established in the Basic Law ("Grundgesetz") for the Federal Republic of Germany – the protection of human dignity (article 1, paragraph 1 of the Basic Law) and the right to physical integrity (article 2, paragraph 2 of the Basic Law) – clearly constitute a directive to be legally implemented.

Civil law

Nevertheless, the father's - and later, due to gender equality, the mother's right to corporal punishment - was originally included in section 1631 of the German Civil Code. In 1980, it was amended to include a prohibition of "degrading measures" in education.

As a result, using corporal punishment for educational purposes was still legitimate – as long as it wasn't humiliating. This was based on the idea that education was aimed at teaching children to respect the dignity of others and that it should not be humiliating in itself for this very reason (Salgo 2007).

It was not until 1992, when the UN Convention on the Rights of the Child was signed, that the parents' right to corporal punishment became void.

In 2000, the law on the proscription of violence in education ("Gesetz zur Ächtung der Gewalt in der Erziehung") was finally approved. This law establishes that "children have a right to non-violent upbringing" and that corporal punishment is not allowed. This law is part of the civil code

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and it was established in order to reduce the use of violence in education without criminalising the parents. It mainly aims to change attitudes and an raise the parents' awareness, in order to convince them that violence is not an appropriate strategy of education.

At the same time, this law's definition of what is legal and what is not differs significantly from what the criminal law states. Corporal punishment is forbidden, even if the fine line between light punishment and maltreatment and/or physical injury has not been crossed.

The law has two special characteristics: by explicitly stating that children have a right to non-violent upbringing, it assigns priority to children's basic rights instead of favouring the parents' right to freely chose the educational measures they consider appropriate (section 6, paragraph 2 of the Basic Law). Moreover, the prohibition is combined with mandatory governmental support, meaning that parents have to be offered assistance in accordance with section 16, paragraph 1, p. 3 of the Social Code, Book VIII. Only if this offer is not accepted, if the support fails to have the desired effect or if the physical violence applied for educational purposes has any of the characteristics listed in section 223 or section 225 of the Criminal Code, a family court will intervene in accordance with section 1666 or a criminal prosecution may be initiated. Section 1666a of the Civil Code restricts the activities of the family courts, i.e. the state's options for intervention, to situations in which there is no different way to avert the risk.

Criminal Law

Child abuse, neglect and physical maltreatment are also criminal offences. However "not every incident of child endangerment automatically constitutes a criminal offence, nor does every punishable act result in child endangerment" (Hagemann-White et al. 2010, 43). As already stated, the changes introduced in 2000 aim to socially discourage violence in education without criminalising the family.

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Criminal offences regarding child abuse and neglect are primarily:

Physical maltreatment (Criminal Code, Section 223 and 224)

Corporal punishment can only be considered a criminal offence if it causes bodily harm. The sections "Causing bodily harm" (Section 223) and "Causing bodily harm by dangerous means" (Section 224) aren't exclusive to offences against children, but persons in general. Here, physical assault is understood as a mean to cause a considerable impairment to the well-being of another person or "bad, improper treatment" (Pfaeffgen 2005). In legal practice, this includes cases in which physical violence causes effects such as persistent trembling, bouts of uncontrollable crying, extreme anxiety or insomnia – which could even be brought about by a light slap in the face (Pfaeffgen 2005).

Social law

Social Code, Book VIII – Child and Youth Services ("Sozialgesetzbuch VIII – Kinder - und Jugendhilfegesetz") regulates the assistance services for children and parents – also in cases of child abuse and neglect.

As the law on the proscription of violence in education ("Gesetz zur Ächtung der Gewalt in der Erziehung") was passed in 2000, the tasks conferred upon the child and youth welfare services were extended to include assistance in solving conflicts within the family.

The child protection law ("Bundeskinderschutzgesetz") from 2012 regulates the procedure in cases of child endangerment.

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Here, we have to differentiate between structural child protection and acute cases. The latter are situations in which children are exposed to immediate risks and have to be placed under care as a consequence - if the risks cannot be eliminated. Since taking a child away from its family usually means a significant degree of trauma, it is regarded as a "last resort", only to be considered if nothing else can be done. Generally, youth welfare services will attempt to make the parents realise that they are unable to deal with the current situation and that keeping their children at home is not doing them any good. The parents should, if possible, agree to place their children in foster care, having understood that this is a way of remaining in touch with them and of giving their relationship a chance to remain intact.

In cases where children are exposed to structural risks, i.e. cases that are not defined as child endangerment, parents will be offered assistance and the youth welfare office will be in charge of monitoring the situation. If necessary, it will impose obligations the parents have to fulfil and control whether they do so.

Conclusion

Germany has made a strong effort to establish a legal framework that prohibits corporal punishment against children and grants children the right to a non-violent upbringing. The main idea of the different laws in civil, criminal and social code is to assist the parents in fulfilling their tasks and duties.

The legal framework does repeal all legal defences, justifications and authorisations for the use of corporal punishment in child rearing. It explicitly states that this excludes the use of corporal/physical punishment. It does apply to all forms of corporal punishment without any exception.

Bulgaria

The general notion in Bulgaria is that corporal punishment is forbidden to all citizens⁴. Although the term “corporal punishment” does not exist in the legislation, it is believed that the usage of the concepts “violence”, “harm”, “damage” exhaust the possibilities for its admission.

A ban on corporal punishment first appeared in the **Family Code**, which states that "the parent has no right to use violence and methods of upbringing that undermine the dignity of the child" (art. 125 par. 2 of the Family Code). In other words, the Code prohibits not only the physical abuse of the child, but also the use of inappropriate methods of upbringing, which could affect the children's psychological well-being.

Penalties for corporal punishment can be carried out under the provisions of the **Criminal Code** of the Republic of Bulgaria, namely when when it constitutes a crime. Corporal punishment is virtually criminalised in cases where serious injury is caused (Articles 122 - 124 of the Penal Code); light and medium bodily injuries are considered crimes of private nature and criminal proceedings are opened after the victim's complaint. The Criminal Code classifies it as a more severe offense causing bodily harm to minors (children under the age of 14 years) - art. 125, par. 1, p. 5.

Associated with the real prohibition of corporal punishment and punishment for its implementation, the article number 187 of the Criminal Code establishes the imprisonment or probation of those "who torture a minor or underage person who is under their care or with whose education they have been entrusted, provided the act does not constitute a more serious crime".

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Protection from corporal punishment can be carried out under the provisions of the **Protection against Domestic Violence Act** (PDVA) when it is defined as violence. According to article number 2 of the PDVA "(1) domestic violence is any act of physical, sexual, psychological, emotional or economic violence, and the attempt for such violence, forced restriction of privacy, personal freedom and personal rights committed against persons who are in kinship, who have or have had in a family relationship or de facto marital cohabitation. (2) mental and emotional violence against a child is considered any domestic violence committed in his/her presence."

In the newly adopted **Law on Pre-school and School Education** there is also no explicit prohibition of corporal punishment, but article 171 (1) stipulates as a right of children to "1. be trained and educated in healthy, safe and secure environment" and article 174 (4) provides for "in working with children and students the institutions in the system of pre-school and school education should carry out their work according to the principle of positive discipline, which is associated with measures and approaches that ensure listening to children and students, awareness of the causes of problematic behaviour and allow the adoption of good behaviours by themselves and others".

According to the **Child Protection Act** (CPA) violence is any act of physical, mental or sexual abuse, neglect, commercial or other exploitation, resulting in actual or potential harm to health, life, development or dignity of the child - which can be done in a family, school and social environment. The Act also introduces a ban on the use of physical punishment as a method of upbringing children, by establishing the children's rights: "every child has a right to protection

⁴ <http://www.endcorporalpunishment.org/>

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against all methods of upbringing, that undermine his or her dignity; against physical, psychical or other types of violence; against all forms of influence, which go against his or her interests.”

The philosophy of the CPA is aimed not so much at the punishment of those who have committed violence against children and do not care for the child; it focuses on the protection of children by implementing specific measures provided in this Act - which also includes assistance and support for parents in the upbringing of their children.

The review of the legislation shows a clear trend towards putting the principle of the best interests of the child and the rights of the child as the primary principles in all policies and activities involving children. The provisions of the CPA are increasingly integrated into the practice in application of other laws in cases of children.

Conclusion

The review of the legislation highlights some serious issues regarding the actual ban and penalties for acts of corporal punishment in Bulgaria:

- the lack of a legally adopted definition and, therefore, a lack of legal ban on corporal punishment leads to the possibility of subjectivity in determining whether one or other acts of corporal punishment are perceived as physical offenses or other punishable violence;
- in practical terms, only inflicting severe physical harm or torture is considered a crime; in other cases, the penalty can only be imposed via a complaint by the victim, which, in children’s case, is not automatically guaranteed.

CRITICAL ASSESSMENT OF THE CASE-LAW

It should be mentioned that each country has its own approaches to case-law assessment.

International case law

FRA and CoE issued a Handbook on European law relating to the rights of the child, in which corporal punishment is analysed:

http://www.echr.coe.int/Documents/Handbook_rights_child_ENG.PDF

This document points out that under CoE law, the ECtHR has analysed complaints about corporal punishment as a form of disciplinary measure, mainly under Article 3 of the ECHR – in cases where the measure addressed the level of severity required under Article 3, the ECtHR found that the treatment violated that provision.

In cases where acts of corporal punishment do not reach the threshold of severity required under Article 3, they may nevertheless be addressed under Article 8, as part of the right to physical and moral integrity. However, the ECtHR has not found a violation on the merits of Article 8 in corporal punishment cases so far. Resorting to corporal punishment in state schools may also breach the rights of the parents to raise their children according to their philosophical convictions, as provided by Article 2 of Protocol Nr. 1 to the ECHR.

Example: The cases of *Campbell and Cosans vs. the United Kingdom*, concerning the suspension of two boys for refusing to accept corporal punishment practices. The ECtHR found no violation of Article 3 of the ECHR, as the children were not actually subjected to corporal punishment. It found, however, a violation of Article 2 of Protocol Nr. 1 of the ECHR, since by allowing corporal punishment, the respondent state failed to respect the parents' philosophical convictions. The ECtHR also found a violation of one of the boys' right to education provided for under Article 2 of Protocol Nr. 1 of the ECHR, on account of his suspension from school.

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The ESC does not include any direct prohibition against corporal punishment. Nevertheless, the ECSR has included said obligation in Article 17 of the ESC. By virtue of its supervision, both through the reporting procedure and the collective complaints procedure of states' compliance with Article 17, the ECSR has found that several contracting states breach this provision by not prohibiting all forms of corporal punishment. In three similar cases filed by the Association for the Protection of All Children (APPROACH) Ltd. against Belgium, the Czech Republic and Slovenia, the ECSR found a violation of Article 17 of the ESC, as these states lacked legislation setting out "an expressive and comprehensive prohibition on all forms of corporal punishment of children that is likely to affect their physical integrity, dignity, development or psychological well-being".

The ECSR also established that laws prohibiting the corporal punishment of children must be applicable to such forms of alternative care as institutional care, foster care and kindergartens. It is important to mention that the Council of Europe's Parliamentary Assembly issued a recommendation requesting all contracting states to ban corporal punishment in 2004.

FRA and CoE highlighted several cases where corporal punishment has been under consideration:

ECtHR, *Tyrer vs. the United Kingdom*, Nr. 5856/72, April 25, 1978.

ECtHR, *Campbell and Cosans vs. the United Kingdom*, Nr. 7511/76 and 7743/76, February 25, 1982

ECSR, *World Organisation against Torture (OMCT) vs. Belgium*, Complaint Nr. 21/2003, December

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7, 2004;

ECSR, Conclusions XVI-2, Poland, Art. 17.

ECSR, Association for the Protection of All Children (APPROACH) vs. Belgium, Complaint Nr. 98/2013, May 29, 2015,.

ECSR, Association for the Protection of All Children (APPROACH) vs. Czech Republic, Complaint Nr. 96/2013, May 29, 2015.

ECSR, Association for the Protection of All Children (APPROACH) vs. Slovenia, Complaint Nr. 95/2013, May 27, 2015.

Spain

Currently, at the jurisprudential level, there has been progress in terms of considering inadequate the corporal punishment against minors, traditionally legitimised in the so-called 'right of correction' of the parents. In other words, a jurisprudence line has evolved that does not consider adequate resorting to corporal punishment as an educational measure or as a right within the faculties of the exercise of "parental authority". Proof of this is the recent ruling of Malaga's Criminal Court Nr. 4 of Malaga on September 28, 2011 where it sentenced a woman to 31 days of community work and did not allow her to communicate or get close to her younger daughter for a year, since it considered her responsible for a crime of ill-treatment addressed in Article 153.2 of the Penal Code.

The analysis of the rulings shows how, from the point of view of the normative application, the non-acceptance of corporal punishment of minors within the framework of the right of correction slowly started to be commonly accepted.

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Notwithstanding what has been mentioned concerning recent court rulings dated 2015 and 2015, it's interesting to point out one of the key-decisions in the matter, since it introduced changes in the traditional notion of the paternal/maternal-children relationships: sentence of the Provincial Court of Jaen on January 22, 2009, sentencing a mother according to Article 153 of the Criminal Code. For the purposes of this report, it is important to pay particular attention to the Legal Basis, since it defines the purpose of the appeal in the following terms: *"(...) The issue of the case isn't about the breakdown of family peace or the situation of domination or tyranny of one family member over others, but whether there is a right of correction of parents to children who legitimises the use of physical violence, and if the accused has exceeded the exercise of that right-duty of education of the child, after beating her son as a consequence of a violent behaviour by the child"*.

In line with the above - and from the point of view of case analysis through jurisprudence – one could infer that the jurisprudential doctrine denies that there is a right of correction that protects and/or legitimises corporal punishment against minors. However, although this is the main line, it is possible to delineate a minority (and more conservative) doctrine that considers it possible to frame 'light' corporal punishment within the right of correction and as a dimension of the parents' right to education - within the framework of the faculties of the exercise of parental authority i.e. 'light, isolated and corrective' action.

As examples of both jurisprudential lines - and without prejudice to the jurisprudential references analysed and quoted in previous paragraphs – it would be useful to present the following sentences in terms of normative application and/or interpretation:

- **Sentences that considered that the exercise of violence (in any form) should not be framed within the right of correction (and/or education).**

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- Decision of the Supreme Court of Criminal Matters - November 8, 2015. Analytical overview: The right of correction is not justified in cases where the parents' partners slap the child. Therefore, it is not possible to assume that said slap was applied as an exercise of parental authority. The classification of this conduct is included in paragraphs 2 and 3 of article 153 of the Criminal Code.
- Decision of the Supreme Court of Criminal Matters - July 10, 2014. Analytical overview: The use of violence in the event of a minor's disobedience is not considered justified.
- Decision of the Provincial Court of the Balearic Islands, Section 1 - April 7, 2015. Analytical overview: Considers that the successive regulatory reforms undertaken in both civil and criminal courts preclude a right to correction. And in case of its existence, it considers that this hypothetical right would not justify the use of the violence.
- Decision of the Provincial Court of Salamanca, Section 1 - November 20, 2013. Analytical overview: Considers that the right of education cannot be justified by criminal conduct. It points out eliminator of any express reference to the right of correction through successive regulatory reforms.
- Decision of the Criminal Court of Pamplona / Iruña - July 12, 2013. Analytical overview: Even though there is an autonomous legislation in civil matters where there the right of correction is addressed, it should not be considered as absolute; it has interpretive limits and applications from the point of view of national and international regulations.

- **Sentences that consider that a slap should not constitute a crime.**

- Decision of the Provincial Court of Vizcaya, Section 6 - January 28, 2015. Analytical overview: A father who acted according to his daughter's inappropriate behaviour should not be criminalised.
- Decision of the Provincial Court of Albacete, Section 2 - December 23, 2010. Analytical overview: Considers that occasionally slapping the child in the face after a disrespectful and insolent action is not criminally reprehensible. The slap within the right to education is justified.

Portugal

All the judicial decisions by Superior Courts versed in the application of corporal punishment against children for educational purposes were analysed, under the following circumstances:

- i. The jurisprudence digital databases in Portugal only include the decision by Courts of Appeal, rather than decisions by Courts of First Instance.
- ii. Since the number of Superior Courts' decisions on this theme is not very high, it would only be possible to determine the existence or non-existence of decision-making patterns by analysing all said decisions. Therefore, 23 rulings from 8 Courts were analysed.

It is important to mention that the discussion on the incrimination of the application of corporal punishment against children is **fairly recent** in Portugal. Therefore, this issue was not discussed in terms of jurisprudence and the application of corporal punishment was accepted as part of the parents' correction duty. Consequently, only **2.3%** of the rulings analysed were **prior to 2000**, while **91.3%** took place **after 2004**.

The Courts make decisions on a wide range of conducts with different levels of seriousness: from smacks to situations of extreme violence. These should not be addressed lightly, but rather as worrisome social problems that affect children and require judicial actions. The more serious offences are usually perceived as crimes of domestic violence, while the less serious offences are considered corporal offences (determined according to the perpetrator's relationship with the victim). However, there are serious situations that are not perceived as crimes of domestic violence, because the victim and the agent do not live together

It is important to make a distinction regarding the connection between agent and victim: it could be a **family member** or a **third party** (educators, members of the school staff, teachers, etc.). Regarding the first, the majority of the Superior Courts decisions acknowledged the parents' **entitlement to apply light corporal punishment for educational purposes, as long as these actions are adequate and proportional**. The same goes regarding **grandparents and other family members**. This is understood as a transmission of the power-duty of correction, which is possible if the agents have a **close relationship** with the child or if the **parents trust them**.

Regarding third parties, the Superior National Courts do not acknowledge any power-duty of correction via corporal punishment. In fact, these individuals **cannot resort to corporal punishment, even when entitled to such by the parents**. Therefore, the third parties' power-duty of correction is quite limited; any misconduct or offence against the child's physical integrity could lead to criminal charges.

According to the United Nations, the concept of corporal punishment comprehends all kinds of punishment that resorts to physical strength to cause pain or discomfort. However according to Portuguese Superior Courts there are two distinct subjective plans: when corporal punishment is applied by **parents and close family members** or by **third parties**.

Regarding the first, **the Portuguese jurisprudence and legal writings provide an offset to the definition established by the UN, by acknowledging the parents' power-duty to resort to 'light' offences against the children's physical integrity**. Although, these offences ought to be adequate and can only be applied for educational purposes (e.g. light grabbing a child by the ear). In addition, there's a widespread notion that the older the child gets, the less necessary and adequate corporal punishment becomes.

In what concerns the second plan, the Portuguese jurisprudence **does not recognise any definition different from the one established by the UN**. However, it is necessary to mention that the concept of corporal punishment adopted by the UN will hardly influence the decisions

by the Portuguese Courts. In fact, our Courts do not acknowledge the third parties' power-duty of correction, only the one from the parents and close family members.

The vast majority of national bodies of law recognise the parents' lawfulness in the application of light corporal punishment for educational purposes; in fact, 82.6% of the rulings analysed support this position. However, we are witnessing a change in the paradigm, since the Portuguese Courts are advocating for the benefits of positive parenthood, based on the impact of words and examples, rather than smacks or other practices. That being said, and quoting a decision by the Coimbra's Court of Appeal (July 19th 2013) "it is necessary to highlight the corrective power of persuasion, example and words and the negative impact of causing physical pain, in order to provide a more effective solution to this increasing social issue".

According to this idea, the decisions by the Coimbra's Court of Appeal on October 7 2009 and the Court of Appeal of October 12 2016 can be seen as the culmination of a new path followed by the national bodies of law:

"The power-duty to correction (and not the right to correction) should be perceived as part of the right to education; however, it should not comprehend the right to assault and offend the children nor violate their physical integrity and psychological health)⁵."

Any kind of violent behaviour by the parents or other individuals should be considered a violation of the children's right to education and the parents' duty of education. Educating does not mean punishing. It means teaching and correcting without resorting to physical or mental abuse. On the other hand, it is important to distinguish between the legitimate corrective actions during certain development states (childhood or early adolescence) and practices during later stages of adolescence.

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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.

⁵ Cristina Dias, 'A Criança como sujeito de direitos e o poder de correção', JULGAR magazine, number 4, 2008, pp. 95 and 101.

Germany

The following analysis was developed by resorting to specialised literature in cases where the law on the proscription of violence in education (2000) – including ‘light’ physical punishment – ("Gesetz zur Ächtung der Gewalt in der Erziehung) was applied. Three cases were selected and they are described and discussed below.

It was, however, impossible to analyse court files, since in Germany, this type of analysis is complex and hindered by several types of difficulties.

The first obstacle is associated with the fact that the files are not stored at a central facility or even available online. The files on criminal cases heard at state courts are usually kept by the prosecutors’ office; those on cases tried by local courts are kept by said courts. It is necessary to file a request in all courts and prosecutors’ offices to inspect the files, in both national and regional levels. Then, these entities would have to seek approval from the superior authorities. Often, it takes several weeks until a request is processed.

The debate in Germany

Even though the criminal code prohibits corporal punishment, applying criminal charges is not the main instrument of child protection in Germany. On the contrary: child protection experts strongly advocate that applying criminal charges may, in certain cases, impair the well-being of the child. Therefore, intervention by the state institutions will primarily aim to win the trust of the families. "Child protection is based on the view that for effective protection and assistance, it is vital to achieve the families’ total cooperation whenever possible. Criminal prosecution may hinder this relationship (...) Moreover, criminal prosecution or conviction does not always offer optimal protection to a child at risk. Taking evidence is particularly difficult if children are the only witnesses and the younger the child, the more difficult the situation, since the offender and the perpetration of a criminal offence have to be established without any doubt in court." (Hagemann-White et al. 2010, 43)

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In practice, this means that most of the cases in which the parents' customary right of corporal punishment applied before the law on the proscription of violence in education (2000) would still go unpunished. In other words, a slap in the face and a smack on the bottom are punishable, but will usually remain unpunished. The reason given to justify this is that a sentence based on a slap in the face would affect the family peace and the relationship between the parents and their child far more seriously than the slap itself does.

Usually, a case concerning a slap in the face or similar is dismissed as a minor fault even before indictment. If legal proceedings have been initiated, they are often closed in favour of other measures (e.g. family counselling), since - according to the Guidelines for Criminal and Administrative Fine Proceedings ("Richtlinien für das Strafverfahren und das Bußgeldverfahren" (RiStBV)) - the public interest in a prosecution is then no longer given and a dismissal in accordance with section 153 of the German Code of Criminal Procedure is possible. Legally, this is, of course, a permanent balancing act.

Nevertheless, the law on the proscription of violence in education is having an effect in several areas of jurisdiction. Initially regarded as a "toothless tiger", one can now observe its impact in the fields of family issues and criminal justice, where it effectively means that possible justifications for certain forms of behaviour have been discarded (Roll 2010): It is no longer a matter of determining which behaviour on the part of the child it was that triggered a violent reaction in the adult, since the latter is generally deemed inadmissible.

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Corresponding tendencies can be found on the level of the (rare) sentences and they are also reflected in their assessment by legal practitioners, the expert audience, the general public and the media.

Overall, this sentence reflects a significant change regarding the attitude towards physical violence against children in education, although it is not (yet) met with general consent, if applied this consistently.

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Bulgaria

As already mentioned, there are no specific elements in Bulgarian legislation that address and settle the issue of corporal punishment. However, certain provisions of numerous laws introduce several restrictions regarding infringements against the person. While implementing these laws, jurisprudence has had the opportunity to bring forward the issue of the admissibility of the imposition of corporal punishment for the purposes of upbringing and/or education.

Types of Court Cases

Corporal punishment is often discussed at the judicial practice in criminal cases. The main problem here is that the majority of crimes, resulting in the deposition of injuries, are prosecuted after a complaint by the victim and according to the extent that the latter supports his/her complaint. For these so called "cases of private nature" the legislation provides for instituting a proceeding and pursuing only at the initiative of the victim. In many cases where the victim is a descendant, husband, brother or sister, prosecution is instituted only by complaint of the victim - art. 161, paragraph 1 of the Criminal Code.

Although the court doesn't tolerate any violence for educational purposes, the court had the opportunity to note that child abuse can constitute an offense only when it reaches a certain level of public danger, which is not always the case.

A review of recent case law shows that the issue of the imposition of corporal punishment for educational purposes is important not only in the field of criminal law, but also in civil law. For example, practices of corporal punishment are reported by courts in assessing parental capacity in cases of domestic violence, deprivation and limitation of parental rights, etc. In the majority of hypothesis concerned it comes to proceedings, protecting the interests of children, in which the court collects evidences on its own initiative and *ex officio* examines issues of execution of violence, even if, it's in the form of educational measure.

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Most often, the courts have commented on various forms of corporal punishment when violent acts are perpetrated by parents. The consistent understanding of jurisprudence is that regardless of the objectives pursued, parents do not have the power to punish children physically.

In judicial practice, one can observe cases of corporal punishment perpetrated by third parties - mostly teachers and educators⁶ or people who were present when the act occurred.

With regard to teachers, it is specifically accepted that they should choose educational approaches that meet the requirement of adequate education while preserving the dignity of the child. Hits (slaps, smacks) and eventual verbal abuse could have equally stressful impact on children's psyche.⁷ In practice, it is also assumed that it is irrelevant whether the adult was somehow provoked or not. In both cases, corporal punishment is not justified.⁸

Consistency and predictability of jurisprudence

⁶See Decree № 92/ 9.09.2014, case nr. 812/2014, Sofia City Court.

⁷ See Decree nr. 54/15.05.2014. case nr. 43/2014 z. Devnya District Court, Decree nr. 12573/ 14.12.2006, adm. Case nr. 6875/2006, VI chamber of SAC.

⁸ See Decree nr. 127/24.01.2011, adm.. case nr. 5074/201, Varna District Court, as well as Decree nr. 46/ 30.01.2013, civil case nr. 1095/2012, Pleven District Court.

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Courts rarely and rather exceptionally recognise corporal punishment as an acceptable form of education. While reviewing court decisions, there was only one case where the court found that incidental physical violence does not affect the educational qualities of the parent. The court found that despite the fact that the parent resorted to slapping "[...] There is missing data, however, that the physical assault led to physical violence against the child, having in mind its nature and effects, neither for accepted method by the [respective parent] of such behaviour and attitude towards the child. [...] At this stage of development, in view of his puberty and gender, he needs to perceive authoritative figures as such and to allow their influence to positive development, since the [respective parent] plays a role model in his life."⁹ However, it should be considered that the aforementioned example concerns the case of a custody battle, where the available information confirms physical punishment committed by both parents, but with serious preponderance and significant severe consequences caused by the actions of only one parent.

Overall, the case law review finds no decisions in which any form of corporal punishment is justified or encouraged.

⁹ See Decree *nr.* 573/03.04.2009, *civil case nr.* 341/2009, *Plovdiv District Court*

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ANALYSIS OF NATIONAL LITERATURE

Spain

Following the analysis of the scientific doctrine there are several considerations:

1. General acceptance of the prohibition of corporal punishment against minors as an educational measure.
2. In this sense, the majority of the documents are in line with the elimination of the so-called "*right of correction*" from the legal system and the civil society sphere.
3. However, while this acceptance is general in relation to severe corporal punishment, it is not so much in cases of 'light' and/or non-physical aggressive behaviour.
4. In this context, the doctrine questions the criminalisation of slapping and/or hitting without leaving physical marks (e.g. pushing, etc.).
5. Certain elements of the scientific doctrine use as arguments to not penalise such conducts the application of the exemption of article 20.7, as well as the principles of insignificance and minimal intervention in the terms indicated.

In Spain, there's has been a high tolerance regarding corporal punishment as an educational strategy. In fact, a report by the Ministry of Labour and Social affairs in 1997 – that analysed the attitude of Spanish society towards corporal punishment against children - indicated that:

1. 47.2% of Spanish adults who live with their children admit that it is "sometimes" acceptable to punish children; the percentage among those whose do not live with the children is between 40% and 44%.
2. 2% of the Spanish individuals claim that it is "many times" essential to resort to punishment.
3. Women show greater acceptance of physical punishment (43% compared to 37% of men).
4. There are less arguments supporting corporal punishment among people with higher education levels. People with higher degrees showed less acceptance towards corporal punishment (5%), while 49% of parents with elementary education tend to accept said practices.
5. Young adults advocate for less corporal punishment (even more than the adults).

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A second study developed by the State Centre for Social Research (2004/2005) shows that 25.6% of adults consider it necessary to slap their children to impose discipline, while 74.4% advocate the contrary. 56.9% of Spanish citizens still believe that a slap is sometimes strictly necessary.

A study on the prevalence of corporal punishment against children within the family context, develop by Gámez Guadix (2010) with a sample of 1071 Spanish university students, showed a high prevalence of acceptance of physical punishment among Spanish university students, also revealing that said practices are more common among mothers than fathers.

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Portugal

The main issue is the definition of what the right to education and correction should include, namely in terms of corporal punishment. There is an on-going discussion on the absolute prohibition of corporal punishment and the situations where it could be admissible. If the corporal punishment for educational purpose is admissible, then it is important to determine its limits, in order to reach a consensus in terms of its lawfulness.

The number 1 of the article 31 of the Penal Code establishes that *a behaviour should not be penalised whenever its unlawfulness is excluded by juridical order in its totality*. According to number 2 of the same article, *the conducts can be justified by the exercise of a right*. Is there a right to correction/education (of the parents in relation to their children) that allows eliminating the distinctiveness and unlawfulness of moderate corporate punishment?

A small part of the legal writings refuses the lawfulness of all kinds of corporal punishment, even the practices carried out for educational purposes.

CLARA SOTTOMAYOR believes that the parents' right to education replaced the right to correction, thus blurring the traditional distinction between adults and children. The author also criticises the tolerance regarding certain practices of corporal punishment. To the author "the social lawfulness or adequacy should be limited to situations where resorting to physical strength is the only way to protect children from themselves, as a preventive measure to avoid danger or damages (as long as the parents had tried other measures and explain their option to the children)".

This way, the author acknowledges the parents' right to resort to physical strength to protect their children and provides some examples: a child who refuses to put the seatbelt on, who is close to putting his/her fingers in power sockets or who is in the verge of falling of a balcony. However, the author claims that physical force is only lawful if it does not go beyond the necessary proportion. Therefore, this is not considered a punishment, but a way to prevent damage.

It is important to distinguish between measures of protection and measures of restraint through the use of physical force and punishment. In both cases, the parents resort to physical strength, which could be perceived as an act of violence. However, the act of restraining a child in order to prevent him/her from running across the street or put his/her hand over a flame should not be perceived as corporal punishment.

To some authors, this is not a justification related issue, but an issue of criminal irrelevance of the parents' conduct, as stated by **PAULA FARIA** and **ELISABETE FERREIRA** – who advocate that some light corporal punishments may be seen as socially adequate and accepted when educationally driven, proportional and necessary.

According to **TAIPA DE CARVALHO**, even when applied for educational/corrective purposes, corporal punishment can be perceived as domestic violence (article 152), especially if considered serious or reiterated. However, the author **also acknowledges the possibility of excluding the unlawfulness of corporal and other types of punishment** (like deprivations), **as long** as they are considered **necessary, adequate, proportionate and reasonable** and never serious.

FIGUEIREDO DIAS also supports the notion of justified corporal punishment if applied for **educational purposes, as long as they are adequate, proportional and moderate**. This author does not believe in the application of the principle of social adequacy, since all educational actions should be carried out through atypical practices. Corporal punishment violates the children's protected interests, namely their physical integrity; therefore, the author does not

promote the application of said practices: “this is a highly contentious and it should be addressed in the domain of a possible justification.”

Conclusions:

i. The power-duty to education is part of the parents’ responsibilities, which also comprehend correction – interpreted in the sense of favouring non-physical practices (warnings, explanations, deprivation of fun, etc.), rather than forms of corporal punishment; the latter should always be the parents’ last resort and limited in terms of seriousness and frequency.

ii. Therefore, there is a consensus regarding the unlawfulness of serious punishment (considering the means applied, the consequences of the conduct, the context and the repetition of said conduct) and practices without any educational objective.

iii. There’s also consensus regarding the legitimacy in the use of physical strength (proportional, adequate and limited) to protect the children in dangerous situations – which is not considered punishment.

iv. The majority of the Superior Portuguese Courts accept the non-accountability of the parents who resort to ‘light’, proportional and reasonable types of punishment for educational purposes, based on the following elements: justification according to the right to correction (established by the number 2 of the article 31 of the Penal Code) or the judicial irrelevance of the conduct due to the principle of social adequacy and considering the social tolerance regarding this type of behaviour.

v. Despite being established by article 152, not all forms of corporal punishment (applied by parents who live with their children) should be considered as such, namely those who are not serious enough or those who are not perceived as acts of violence or maltreatment (e.g. a ‘light’ smack for educational purposes).

vi. However, one could question if such behaviours could be perceived as offences to the physical integrity (article 143), since they are less serious. In fact, there are types of corporal punishment that do not fit article 152, but rather the articles 143 or 145. However, in cases that meet all criteria (light injury, educational purposes and proportionality), the majority of authors and Courts’ Decisions do not perceive them as a crime of offence to the physical integrity, thus appealing to the principles of justification or social adequacy.

vii. Also, some authors claim that – according to the seriousness of the crime and the principle of subsidiarity of the penal intervention (criminal law as the *ultima ratio* of the States’ intervention) – despite not being criminally unlawful, some actions could be characterised by civil unlawfulness.

viii. In essence, it seems to exist a relatively generalised consensus regarding this matter, despite the framework’s variations by different authors. There is also a consensus on the need to promote positive parenthood, based on trust, dialogue, warnings and the application of punishment and prohibitions that do not imply resorting to physical strength. In addition, it is vital to advise on the seriousness of actions that do not imply the use of physical strength, but could lead to negative psychological consequences: constant humiliation, deprivation of freedoms for long periods of time, etc.

ix. Both the law, court decisions and the authors are clear regarding the unlawfulness of corporal punishment applied by third parties (outside the family circle).

Germany

In Germany, a wide range of efforts in jurisdiction and social welfare system have been taken to prevent violence against children by parents or caregivers on the last decades. The law established in 2000 has been a milestone and a paradigm shift. It not only prohibits corporal punishment, but grants children the right to a nonviolent upbringing. The introduction of the law was accompanied by a range of federal measures to improve the intervention and prevention of violence against children in family contexts (see chapter IV). Also, the public debate on parental violence increased in Germany. Individual cases of severe (often deadly) cases continuously caused great public stir on how youth welfare institutions should effectively intervene. Surveys suggest that violence by parents decreased strongly within the last decades, but there are still parents exercising light or severe violence against their children - a point that will be addressed later in more detail. As the law of 2000 clarified that children have a right to a nonviolent upbringing, the German public and policy debates focused on the question of corporal punishment within a broader frame of eliminating physical and psychological violence, as well as neglect of children.

Concerning violence by education staff, the current public discussion focuses much on sexual violence in different institutional settings, such as boarding schools or children's homes under the responsibility of institutions ranging from the Catholic Church to innovative pedagogic institutions (popular in the 1970s). Another intensive public discussion shed light on physical and psychological violence perpetrated by children's homes staff between the 1950s and 1990s, both in Eastern and Western Germany, after former inhabitants started reporting their victimisation. The government, as well as civil society institutions, initiated a range of actions to collect complaints, offer consultancy and to provide small financial compensations. Occasionally, incidents of violent practices by pedagogic staff of kindergartens or children's homes are mentioned in media. Physical or psychological assaults by teachers on the other hand, are rarely part of the public discussion. The current policy debate focuses mainly on parents that still exercise violence against their children and on how to deliver suitable assistance to parents and children from hard to reach communities.

Main definitions

The definition of violence against children broadly used in German social science, as well as policy debates, is threefold. It covers child neglect, physical and psychological maltreatment. Very often, also sexual assault and cases of children witnessing domestic violence (between parents or other grown-up family members) are discussed within this context. More rarely, violence of children or youth against their parents, as well as between siblings, is part of the social science discussion (Müller/Iltel 2015, 221). The main definition in the German debates will be outlined here (as translated to English by Galm/Derr 2011, 8–9).

Main definitions of parental violence in the German debate

Child neglect is understood as “permanent or repeated neglect by parents or other guardians to provide care or the failure to contract with third parties for such care, which for any reasonable third party will lead foreseeable to a severe impact on the physical and/or psychological development of the child or it includes a foreseeable high risk of such consequences” (Kindler et al. 2006, 1).

Physical maltreatment of children is defined as “all actions by parents or other related persons, who by using physical force or violence, cause significant physical or psychological impairments of the child and its development, which is foreseeable by any reasonable third party or which foreseeable bears a high risk of such consequences” (Kindler 2006b, 2).

Psychological maltreatment of children is described as “a repeated pattern of caregiver behaviour or extreme incident(s) that convey to children that they are worthless, flawed,

unloved, unwanted, endangered, or only of value in meeting another's needs" (American Professional Society on Abuse of Children 1995, 2).

Prevalence and development of child maltreatment by official statistics

In Germany, there is no central national data collection on the prevalence of child maltreatment, contrary to other countries like the US, Canada, Australia or New Zealand. Germany is also not part of the European Network of National Observatories on Childhood (ChildONEurope) like Spain or France.

The main data collected nationwide in Germany is the annual official police statistics on child maltreatment (Polizeiliche Kriminalstatistik). Additionally, since 2012, national statistics on child endangerment assessments by the youth authorities are published annually. Its mandatory character was introduced as part of the child protection law in 2012. It lumps up all reported cases of child endangerment, while not all of them are due to parental violence. Police forces - as well as social welfare – statistics only cover the reported cases. Surveys show that the actual number of cases is much higher. Nevertheless the statistics reveal the development of the number of cases over the years, indicating how often police or social welfare system intervened

The increased number of reported cases in police (as well as in social welfare) statistics is discussed as an increased visibility of child maltreatment, due to a heightened awareness among the social workers and general public. A study comparing different countries that introduced the prohibition of corporal punishment suggests a strong effect of the law on the awareness, as well as on the practices of parental violence (Bussmann et al. 2008). The number of parents believing that light forms of parental violence (a slap in the face or on the butt) were covered by law decreased between 1996 and 2008. (Bussmann et al. 2008, 415). Countries with a law prohibiting violence show much lower prevalence rates of light parental violence than countries without such a law – comparison between Sweden, Austria, Germany, Spain and France (Bussmann et al. 2008, 407).

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The police statistics show that reported cases of child maltreatment increased between 2000 and 2010. The statistics on assessments of child endangerment, which only started in 2012, also show an increase of child endangerment cases. A reason for the increase of reported cases of maltreatment could be the legal changes and the surrounding public discussion leading to a higher awareness and a greater readiness to report cases of violence against children (Hong 2016, 99).

Prevalence of violence by parents due to surveys

More reliable information can be found in surveys carried out to youngsters and adults about their experiences of violence in childhood. Unfortunately, recent studies are not available on a national level, only as regional samples. They do however indicate the proportion of youngsters still affected by parental violence, as well as changes that took place over the years.

A representative regional survey among 15-year-olds was carried out in 2013 in the federal state of Lower Saxony, which is argued to be similar to a representative sample of Germany as a whole (n=9 512, average age: 14.9 years, 24.3% with migration background, indicating that they or one of their parents are not German citizens or were not born in Germany) (Baier 2015, 147). The study showed the proportion of youngsters who had been exposed to parental violence (lifetime prevalence in childhood).

* At least once during childhood, among those born around 1998

- 56.8% did not experience parental violence;
- 0.5% suffered from light violence at least once (i.e. have been jerked, slapped in the face, their arm was grabbed, something was thrown at them, etc.);

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- 12.7% were victims of severe parental violence at least once (i.e. hit with an object or fist, kicked, thrashed, etc.).

* Among youngsters, a lower percentage is victimised. Within the last year (one-year-prevalence of 15 year-olds)

- 78% experienced no violence by parents;
- 16.4% light violence;
- 4.9% severe violence;

Psychological violence by parents (being called stupid, ugly, fat, or insulted otherwise) during childhood (lifetime prevalence up to age of 13)

- was never experienced by 59.5%;
- rarely by 31.4%;
- frequently by 8.7% (Baier 2015, 147).

There are differences between groups, namely concerning the experience of severe physical violence or frequent psychological violence.

- Girls are slightly more often victimised than boys. Mothers are more likely to hit daughters, while fathers using violence will hit sons as well as daughters.
- Youngsters from families receiving social benefits more often stated they had experienced parental violence.
- German youngsters without migration background experience less parental violence than those with a migration background. Significantly high rates were found in families that migrated from countries of the former Soviet Union or Asia (Baier 2015, 148).

Conclusion

In Germany, measures for improving the prevention and intervention in cases of parental violence must therefore focus on parents still applying light violence and the small portion of parents exercising severe violence against their children. The main target-groups should be families with migration background; families receiving social benefits; marginalised families and families in situations at risk in general.

Bulgaria

Articles on the topic of punishment as an education method can be found in educational publications, mainly in the field of upbringing models. Interest in the topic is rather academic, thus reflecting the place of corporal punishment in the historical development of the concepts and practices of upbringing in the family and in public institutions, vocational guilds,¹⁰ schools and kindergartens. The latest pedagogical publications analyse parental styles of upbringing and the methods of upbringing within this context¹¹. The term “corporal punishment” is hardly used and commented there been relevant academic or sociological studies in this area for the past three or four years.

Among the researches focusing on this topic, it is important to mention the study "Punishment as a method of upbringing children in Bulgaria" developed in 2010 as an omnibus survey by Vitosha Research at the request of SAPI.

The study showed that over 50% of respondents disapprove corporal punishment as an educational tool and that close to 30% believe that it can only be justified in certain situations. About 8% of respondents think that corporal punishment can be used at the parents’ discretion.

Around 40% of the respondents are definitely “for” the legal ban on corporal punishment, while 30% believe that it is needed at large extent about 25% consider it unnecessary. It is important to note that over 70% believe a legal ban is needed to eliminate corporal punishment with any means (stick, whip, etc.), thus showing a serious change in attitude towards severe physical punishment among parents. There is still significant tolerance for clapping and slapping and less than 30% believe that these forms of punishment should be penalised in some way. The study found that physical punishment is more often used by elderly respondents, while younger parents tend to use ‘time-outs’ and criticism as methods of punishment.

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In 2012, The *Capital* newspaper did a poll among its readers "Do you approve slapping as a method of upbringing?" Pooled results show that more than half of those who answered the question fully or partially accept slapping from time to time as a method of upbringing. Those who find slapping unacceptable and an expression of helplessness of parents count for 44% of the total (264 votes).

At the request of the National Network for Children, ESTAT Agency conducted a quantitative survey "Attitudes of parents, future parents and young people towards children's rights", which covered 580 parents and 581 young adults aged up to 35 years. According to it, the attitudes in favour of corporal punishment as a means of upbringing were quite significant and "nearly half the parents think that children are way too young for their opinion to be taken into account and to be heard". According to the same study, it is clear that 39% of parents would use corporal punishment in the upbringing of children. The study also states "that:

- ✓ 50% in both groups reported that they have witnessed adults slapping children and have heard about it from other people;
- ✓ 16% of the interviewees who don't have children and 12% of parents say they have seen children with injuries caused by corporal punishment;
- ✓ between 10% -12% say they worked in cases where adults beat children.

¹⁰ Petya Nedeva - Types of penalties in Bulgarian Revival professional organisations; Atanassov, V. From our past guilds. - PSP, vol. LXII, 1902, p. 882: Act on painting guild in Panagyurishte

¹¹ Ivanov, I. Family Pedagogics, 1998; Traian Popkochev - On style of relations and strategies of education in Roma family, vol. "Roma child and his socialization." Blagoevgrad, 2003

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Interesting and controversial are the results of expressed agreement with the optional statements prepared by the researchers. 39.10 % of young adults and 39.40 % of parents find the popular saying "Beat small butt not to beat buttocks" as an acceptable statement. At the same time, this survey confirms the findings from SAPI's research on the change in attitude towards the use of corporal punishment to beat a child. The statement "Whoever spares the stick hates his son (Solomon Proverbs, chapter 13)." is accepted by only 14.70% of young adults and by 16.90% of the parents. Data on the notion of "respect towards children" - that seems to be shared by nearly all surveyed – is also controversial. 94.40% of young adults and 93.30% of parents agree with this statement. At the same time, almost half of both groups accept as true the statement "The little child does not particularly understand when asked about what he thinks." - 49.30% and 46.70% respectively. The survey showed that 45.30% of young adults and 50% of parents believe that "When a small child is smacked he/she will become an insecure person." The survey results also show a high percentage of readiness in reporting maltreatment, which should be understood as a serious physical violence - "If I'm aware that a parent maltreats his/her child (fights often) I'll immediately call 112." 84.50% of young adults and 79.60% of parents agree with this idea.

Over the last 20, there have been many publications aimed at helping parents to change their upbringing practices, which were characterised by patriarchal tendencies that enabled corporal punishment practices. These publications advocated principles and approaches primarily based on positive parenthood, education to foster better relationships¹² of trust and taking into account their personality.

In other hand, it is important to mention a sort of 'resistance' to the introduction of positive parenthood practices and to an approach based on the rights of the child. Such phenomenon was widely noticeable among parental organisations that protected the full parental right of education, even if it included corporal punishment. These organisations are directly linked to radical Christian ideals, which also highly influence State bodies. Said organisations promoted serious manipulative actions against the adoption of the draft of Child Act in 2011.

Conclusion

One can say that the Bulgarian society still has a high tolerance of punishment as an educational tool - including "light" forms of corporal punishment. There is a positive trend towards rejecting beating as a method of upbringing. Among the young adults who live in more urban areas and those with higher education, the approaches of positive parenthood are increasingly striving for approval and implementation. There is a need to support parents, teachers and people who care for introducing practices of positive parenthood. In accordance, it is necessary to promote more (and better quality) academic researches and to introduce scientific-based evidence in the development and validation of new programs, practices, guidelines, etc.

¹² http://hhf.bg/bg_BG/biblioteka/statii/pravilno-vs-nepravilno-vzpitanie/; <http://detskorazvutie.bg/parenting/basic.html>; http://www.bebe-dete.com/detsa/alternativi_vazpitanie;

STATE ACTIONS TO ADDRESS CORPORAL PUNISHMENT AGAINST CHILDREN

Spain

With **Law 54/2007 (December 28) on International Adoption**, which ratified the Civil Code, the power of "reasonable and moderate correction of children" disappeared from Article 154. More recently, **Law 26/2015 (July 28) modifying the system for the protection of children and teenagers**, identifies among its guiding principles: protection against all forms of violence - including physical or psychological abuse - humiliating physical punishment and neglect, exploitation, exploitation through new technologies, sexual abuse, corruption, gender-based or family, health, social or educational violence (e.g. bullying), as well as human traffic, female genital mutilation and any other forms of abuse.

National Strategic Plan for Children and Teenagers 2013-2016 (PENIA).

The 2nd PENIA – approved by the Council of Ministers (2013) - aims to: improve knowledge about all children's situation; support families who care for children and teenagers; prevent and protect children at risk or social conflict; ensure quality education, protection and adequate access to information technologies and the media; promote the development of the right to healthcare and the participation of children in all affairs.

It also comprehends **8 OBJECTIVES** that are divided into the first general objective (with three specific goals associated with the information needed to carry out all the actions and how to successfully promote their coordination) and the remaining seven (directly linked to the improvement of protection and adequate treatment of children and teenagers in the framework of their rights).

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Objective 1: Raise awareness of the situation of children and adolescents and the impact of policies among the general audience and mobilise social agents.

Specific Objective 1.1: Knowledge about the reality of childhood;

Specific Objective 1.2: Improvement of children's policies and their impact through cooperation;

Specific Objective 1.3: Raise society awareness of the rights of the child and mobilise all the agents involved.

Objective 2: Provide support to families - promote policies that support families in the exercise of their responsibilities in the care, education and integral development of children and facilitate the reconciliation of work and family life.

Objective 3: Media and I.T - promote the rights and protection of children among media and I.T. in general.

Objective 4: Protection and Social Inclusion - promote care and social intervention among children and teenagers at risk or who suffer from lack of protection, disability and/or social exclusion, thus establishing and sharing the quality criteria of practices.

Objective 5: Prevention of situations of social conflict – strengthen preventive and rehabilitation actions among socially vulnerable children and teenagers.

Objective 6 Quality education - ensure a quality education for all, characterised by the following values: adequate training, attention to diversity, promotion of equal opportunities, intercultural principles, respect for minorities, promotion of equity and compensation of inequalities and promotion of children' development since their early years.

Objective 7: Full healthcare coverage: promote actions to ensure the children and teenagers' right to healthcare; improve reintegration practices, by giving priority to the most vulnerable populations.

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Objective 8: Child participation and appropriate environments - promote children's participation, favouring appropriate environmental and social contexts that allow the adequate development of their skills, while advocating their right to leisure and free time in safe environments and promoting responsible and sustainable consumption.

The 2nd PENIA also **encourages the positive exercise parents' rights (Positive Parenthood)**, in order to promote the development adequate skills and to help parents adapt to the exercise of their responsibilities of care, attention and education; it also aims to establish safer environment that favour and said exercise:

2.2.1.-Promote and develop multilateral cooperation with all stakeholders (CCAA, local authorities, associations, experts, etc.) in research, awareness-raising, dissemination of information and "good practices", training of professionals and promotion of specialised social services, in order to address target-groups with different needs (for example, children with disabilities).

2.2.2.-Promote awareness and training programs on the use of parenting skills and positive and violence-free parenthood, with the collaboration of Autonomous Communities, Municipalities and associative movements.

2.2.3.-Include positive parenthood as one of the strategic lines of the future Comprehensive Family Support Plan.

2.2.4.-Include parental and other family support services in the Social Services Reference Catalogue.

In this sense - and with respect to physical or corporal punishment - positive parenthood programs have been promoted and funded by the General State Administration since 2010, through the calls for grants from the IRPF – with an allocated total of €3,568,602 between 2010 and 2015.

Comprehensive Plan for Family Support 2015-2017 [Plan Integral de Apoyo a la Familia 2015-2017 – PIAF]

One of the strategic lines of the PIAF (line 4) foresees the **promotion of positive parenthood**, aimed at helping parents in their upbringing and educational functions, implementing measures focused on training and social awareness; these measures also ought to be implemented among professionals.

- **Strategic line 4 - Positive Parenthood:** Supporting parents in the exercise of their parental responsibilities, in the best interests of the children, is a basic objective of family support policies. This is expressly acknowledged by several Council of Europe's Recommendations and has also been included in other plans approved by the Government, such as the *National Strategic Plan for Children and Teenagers and the Strategic Plan for Equal Opportunities*. All of them require the inclusion of new positive parenthood measures within the framework of the PIAF, through which families are encouraged to develop their parenting and educational functions in the most appropriate way possible.

Autonomous community of Valencia

The goals of the **II Integral Plan of the Family and Children of the Comunitat Valenciana 2007-2010** are:

1. **To reinforce the families' role as a central and basic institutions of society.**
2. **Increase the families' standard of living:** address the needs of families and overcome the obstacles that prevent them from reaching the desired dimension. In other words, it is important to improve their standard of living, not only in economic terms, but also concerning the promotion of all personal and social values that ought to be associated with families: stability,

autonomy, understanding and access to education and culture. The main priorities are the reconciliation of family and work life, taxation and specialised services for children and family care. These measures should positively affect the formation of new homes and the decision behind having the desired number of children.

3. Bridge the gaps between family life and the set of social networks exercised by citizens, such as schools, social, political and religious organizations and support networks: promote, on the one hand, education for the democratic participation of the family, stimulating the solidarity activity that the family performs within society. On the other hand, actions aimed at the formation of parents in order to encourage their responsibility in acquiring healthy living habits and facilitating their work in raising children.

4. Encourage intergenerational solidarity: encourage the new model of intra-family relationships, according to the new configuration of family relationships - determined by a more active participation of each member and a more equitable sharing of functions.

The main objectives are: support and strengthen the family and its weakest members, so that they can cope with changes in the social, labour and demographic domains. These measures should focus on families with minors, larger families, and families with elderly, disabled and/or sick people under their care.

5. Support families and children in situations of social risk and other specific situations: help families dealing with delicate issues, by adopting urgent and specific measures. These measures should focus on families at risk of social exclusion, single-parent families, families in situations of conflict or rupture and families in which intra-family violence occurs.

6. Increase families' and children's knowledge about I.T. and the responsible use of said technologies (Internet, chat rooms, tele-care, etc.) and the evolving role they acquire in everyday life.

Other actions

At the local level, the collaboration between MSSSI and FEMP is underlined by the development of the online platform *Families in Positive* and the *Good Practice Guide for Positive Parenthood 2015*.

Portugal

In recent years, there has been a growing concern and, consequently, a more prolific action by the Portuguese State concerning the promotion and protection of children's rights and well-being. This action is based on the protection of children's rights as Human Rights. In terms of legislation, children's rights are established in article 69 of the Portuguese Constitutional Law "Children have the right to the protection of society and the State conducive to their integral development, especially against (...) the abusive exercise of authority in the family and in other institutions."

In this sense, the State is responsible for the protection of the children's rights, according to 3 levels of interventions: the article 6 of the Law number 147/99 (September 1st) legitimises the entities with proved expertise in matters related to children and teenagers, which are followed by the child protection services (CPCJ) and the Courts.

In what concerns the entities with proven expertise in matters related to children and teenagers, they should promote primary and secondary prevention actions, namely by defining local plans of action; they also ought to be part of partnerships.

In this sense – and since maltreatment of children is a public healthcare issue – there are several measures included in the healthcare action plan, such as:

- Order number 117/04, April 24th – established the Intervention Project in Healthcare Services;
- Order number 21292/2008 by the Minister of Health – established the Healthcare Action for Children and Teenagers at Risk; approved the document: "Maltreatment of Children and Teenagers – Healthcare Intervention", granted it the status of "technical guidelines" and defined it as "Healthcare Action for Children and Teenagers at Risk"; created the Network of Support units (NACJR and NHACHJR), which includes the Monitoring Commission, the Assessment Team and the Coordinators of the Action at the Regional Administrations of Health;
- Ordinance number 965/2009 by the Ministry of Labour and Social Security – established the liaison rules between the healthcare units and social services, thus including the framework of this matter in the ambit of the law for the protection of children and teenagers at risk.

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Regarding the actions by the CPCJ, one can also identify some actions to address the maltreatment of children, namely:

- Design of a Concerted Directive by the Prosecutors' General Office and the National Commission on the Protection of Children and Teenagers at Risk, on the standardisation of procedures between the Public Prosecution Service and the CPCJ;
- Protocol between the National Commission on the Protection of Children and Teenagers at Risk, Social Security and the Generalitat Valenciana, Consejería de Bienestar Social and publication of 4 guidelines on the approach to maltreatment situations, aimed at social, education and healthcare services professionals and police forces;
- Protocol between the CNPCJR and the National Institute of Forensic Medicine (March 28th 2008), in order to promote a series of cooperation actions to address maltreatment;
- Creation of an annual report on the assessment of the activities, which includes: analysis of identified cases and worrisome situations, the entity in charge of said process and the children's/teenagers' profile, among other indicators;
- National campaign on the prevention of maltreatment in April, to celebrate the international child abuse prevention month.

Finally, at the third intervention level, the Courts are also asked to settle cases related to maltreatment of children.

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It is also important to mention other state initiatives to promote the children’s rights and address the maltreatment issue. For example, each year, the Portuguese state disseminates National Plans on Domestic Violence and Gender-related questions – through the Commission on Citizenship and Gender Equality. Although the majority of these plans are on violence against women, they also comprehend actions against maltreatment of children. In addition, the Justice Ombudsman office also created the “Children Helpline” – a free tool to address issues affecting children, namely maltreatment and other dangerous situations.

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Germany

The German government has implemented a set of national measures to improve the protection of children from violence and the promotion of nonviolent upbringing. These measures of child protection are enforced by the local youth authorities, acting as key-agents. At the federal level, the Ministry of Family Affairs, Senior Citizens, Women and Youth has initiated a range of national actions to improve the protection of children from violence in the education, as presented below:

- **“More respect for children” (“Mehr Respekt vor Kindern”)** [2000-2001]

On November 2000, the law on the proscription of violence in education (“Gesetz zur Ächtung der Gewalt in der Erziehung”) came into effect, establishing the children's right to a non-violent upbringing as part of the German civil code, banning corporal punishment, psychological violence and any other humiliating educational measures. The legislative change was accompanied by the nationwide campaign “More respect for children”, which ran from September 2000 until the end of 2001, in order to disseminate and to show parents alternatives to corporal punishment - thus enabling them to solve conflicts and deal with stressful situations without resorting to violence. The institution in charge was the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (“Bundesministerium für Familie, Senioren, Frauen und Jugend”).

The campaign was aimed at parents, staff working at counselling and support facilities, school teachers and interested citizens. Local projects also systematically targeted municipal and independent parents' groups and addressed specific target-groups, such as immigrant families. Apart from the press, TV and radio, the campaign was disseminated among many projects that worked closely to the citizens, allowing it to receive a great deal of attention.

Approximately 500 events – courses, lectures and panel discussions – took place in more than 35 towns and administrative districts in the whole country. In addition, street fairs and theatre performances addressed the topic of the new educational principle and almost two thirds of the German counselling and support facilities organised their own informational events, workshops and campaigns.

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- **“Little Soul. Great Suffering” (“Kleine Seele. Großer Schmerz”)** [2011]

This nationwide awareness campaign was carried out by the German Society for the Protection of Children's (Deutscher Kinderschutzbund) and targeted families, children and teenagers, as well as professionals and institutions. The campaign focused on the demand to provide children with better protection from violence within their families and aimed to draw attention to the fact that in many families, children are still being beaten or neglected. In addition, it was supposed to point out the German Society for the Protection of Children's efforts concerning of the prevention of violence. The campaign was accompanied by the brochure “Violence against Children” (“Gewalt gegen Kinder”).

- **“Hand in Hand – Against Violence!” (“Hand in Hand – Gegen Gewalt!”)** [2007-2011]

This was a concerted campaign by the Ministers of the Interior, the Federal Government's Commissioner for Migration, Refugees and Integration and the crime prevention programme of the German police (Polizeiliche Kriminalprävention der Länder und des Bundes).

This nationwide campaign was aimed at families of Turkish origin living in Germany. TV spots produced in Turkish showed celebrities of Turkish origin speaking out for the non-violent solution of conflicts. The first set included videos featuring football player Nuri Sahin and his parents, TV presenter Nazan Eckes and her brother, as well as Vural Öger, businessman and Member of the European Parliament and his daughter. The second set of TV ads included football player Yildiray Bastürk, policewoman Naciye Cetinkaya and her father and football players Hamit und Halil Altintop. In addition, the police received support from Turkish organisations and businesses e.g.

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the Turkish-Islamic Union for Religious Affairs (DITIB), the Turkish Community in Germany (TGD) and the Turkish-German Chamber of Commerce and Industry (TD-IHK). An important media partnership was established with the Doğan Media Group. All over Germany, the daily paper *Hürriyet* distributed the leaflet “Şiddetten Kurtulma Yolları” (“Ways out of violence”) specifically developed for the campaign.

- National Action Plan "Germany fit for children" [2005-2010]

The National Action Plan "Germany fit for children" ("Nationaler Aktionsplan für ein kindgerechtes Deutschland") was carried out from 2005 to 2010 by the Federal Ministry for Family Affairs Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend). Based on the UN Convention on the Rights of the Child, the National Action Plan was designed to accompany its implementation. The Action Plan addressed a number of children's rights (e.g. models of children's participation). One important aspect of the plan was urging for a society that allows children to grow up without violence. The Action Plan contained a range of measures: model projects to implement trainings for parents; teaching school children about how to care for infants; training for healthcare and social services professionals on prevention and intervention in cases of parental violence; development of programs and documents to parents of young children and implementation of training programs aimed at communities with migration backgrounds. The National Action Plan led to a range of recommendations in the field of violence protection, urging for an improved cooperation between the different actors working with vulnerable families.

- “Letters for Parents” [2011]

“The Letters for Parents: Things work well with respect (Education without violence)” are published by the Association for New Education (Arbeitskreis Neue Erziehung) since 2001.

The so-called “Letters for Parents” are addressed to all parents. They present a series of guidelines intended to provide advice and support regarding common problems that tend to occur in every-day family life. They focus on practical questions and experiences and contain scientifically approved knowledge, findings from educational theory, early childhood research and developmental psychology. The relevant theories from areas such as psychoanalysis, attachment theory, Piaget's developmental psychology, infant research and neurobiology are taken into account. In addition, the “Letters” explain alternatives to corporal punishment and include information on legislative changes.

The “Letters for Parents” are publicly accessible online and as leaflets, in German, English, French, Turkish and Russian. Several lectures and discussions about the themes addressed were held at several childcare facilities.

Online education

The online education manual "Enhancing parenting skills in Germany" (“Stärkung der Erziehungskompetenz in Deutschland”) represents an interesting form of making content available to the general audience. The State Institute of Early Childhood Research (IFP) is in charge of the online manual.

Institutions of Child Protection and Early Aid

- Information Centre on Child Maltreatment and Neglect [2011-2014]

The Information Centre on Child Maltreatment and Neglect (Informationszentrum Kindesmisshandlung/Kindesvernachlässigung) was created by the German Youth Research Institute (Deutsches Jugendinstitut) and it was active from 2011 to 2014. Its aim was to connect

professionals from research, practice and policy-making to support the improvement of the protection of children from violence and neglect. One of the main activities of the Information Centre was to disseminate information e.g. flyers for parents, practitioners and policy-makers.

Networks of Early Aid

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth supports the implementation of local "Networks of Early Aid" (Netzwerk Frühe Hilfen). The development and extension of these networks is presented as an important element of the federal youth policy. The local networks of professionals are designed to support young families during pregnancy and the first three years after birth. They aim at strengthening parenting skills, detecting early risks and issues, providing assistance to children and parents and preventing neglect and maltreatment. The networks connect professionals of the healthcare system, child and youth authorities, women's shelters, and women/family counselling centres, police forces and justice field.

- National Centre for Early Aid [2007]

The National Centre for Early Aid (Nationales Zentrum für frühe Hilfen) supports the implementation of local networks of early aid. It coordinates countrywide model projects to assist young families and to prevent the endangerment of children well-being. The National Centre is a platform for knowledge and information exchange on early aid, funded by the Federal Ministry since 2007. Its aim is to support the development of early aid and to evaluate model projects. It is implemented by a governmental body for public health, the Bundeszentrale für gesundheitliche Aufklärung and a non-governmental body – the German Youth Research Institute (Deutsches Jugendinstitut). The main tasks of the National Centre for Early Aid are:

- research on early aid, lessons learnt of model projects, translating research results into practical discourses;
- exchange of knowledge among local administrative, healthcare and social sectors;
- qualification of different professions;
- inform professionals, as well as families, about the importance of the early years to children's development; support the cooperation between different systems of aid at the federal and local levels and support science and practitioners' associations;
- quality development;

- Federal Initiative "Early Aid" [2012]

In 2012, the Federal Ministry increased its efforts in supporting families of young children and soon-to-be parents. The Federal Initiative "Early Aid" ("Bundesinitiative Frühe Hilfen") started in 2012 and it is also coordinated by the National Centre for Early Aid. From 2012 to 2015 the Ministry supported the extension of networks of early aid with 177 M€. This initiative is part of the federal child protection law of 2012. Since 2016, the Federal Ministry has supported the extension of networks, as well the services of psychosocial help to families with 51 M€.

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Bulgaria

National Strategy for the Child - 2008-2018 includes measures and activities aimed at preventing all forms of violence against children.

The annual strategic and operational plans of the National Programs for Child Protection are regularly updated, in order to ensure the full exercise and protection of children's rights, including the prevention of all forms of violence and exploitation. In the Strategic Plan for Child Protection 2011-2013, in addition to the actions related to violence prevention, actions to support positive parenthood were also planned.

The National Plan for the Prevention of Violence Against Children 2012-2014 is in compliance with the activities envisaged within the National Strategy for Children 2008-2018, which aims at achieving higher efficiency in detecting signals of violence against children, introducing procedures and principles to be shared by partners from different institutions that deal with cases of violence against children and standardising methods of data gathering. Its goals are:

1) Increase the effectiveness of measures for the protection of children from violence; advocate for legislative changes in the field of protection of children against violence; provide an effective and accessible system for reporting cases of children at risk; increase the efficiency in the implementation of the Coordination Mechanism for referral and care of unaccompanied children and children victims of human traffic; coordinate the mechanism of interaction in cases of children who are victims of violence, to improve the professionals' intervention; monitor and control the exercise of children's rights in cases of violence.

2) Improve children's (and their families) access to support services in cases of violence; promote the timely support to children who are victims of violence, by developing practices and methodologies adapted to the specificities of each situation; development of minimum standards to social workers involved in domestic violence cases; introduction of a different approach concerning the institutionalisation of children.

3) Capacity-building of professionals working with children; improve social workers' skills and the quality/effectiveness of their work; capacity-building of physicians and other medical specialists, police forces, teachers and other educational staff.

Overall: prevent violence against children; raise the general audience's awareness of violence against children, by carrying out seminars, conferences, round-tables and media campaigns; promote the active involvement of children in extra-curricular activities aimed at preventing violence.

The **National Program for Prevention and Protection against Domestic Violence 2011-2014** also included an action of "Development and implementation of preventive programs among children in different age groups", which was part of the National Program from 2011 to 2015. It aimed at identifying cases of domestic violence against children and promoting alternatives to violent patterns of communication and behaviour. There are no publicly available reports on its performance.¹³

The promotion of the CE campaign against corporal punishment in 2009 was published at the

¹³Centre for Study of Democracy, Partners Bulgaria Foundation, National Research on Domestic Violence and Violence based on Gender and Elaboration of model to support victims of violence/ 2015

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official website of SACP, as well as other material aimed at promoting the general audience's public support to the campaign via online subscription.

SAPI's campaign "Look at them. Listen to them. Tell someone." in 2009-2010 aimed at the prevention of physical violence and corporal punishment against children with the message "Parents who spank their children want to hide it."

Specific national campaigns against corporal punishment were implemented by SAPI in partnership with the SACP, UNICEF, municipalities and other partners, such as the "**Bad Tradition**" (2013), part of the "Childhood without violence" project - funded by the Oak Foundation. The message was to break the vicious cycle of resorting to corporal punishment in family contexts.

Another national campaign was "**Good Parent, Good Start**" (2012), part of the Daphne European Commission project "Childhood without Violence" - co-funded by the Oak Foundation. The campaign aimed to inform parents about the negative effects of corporal punishment and to provide them methods of coping with children's aggressive behaviours (https://www.youtube.com/watch?v=hksWTAl_X0w).

SAPI also held the European campaign "1 in 5" (2016), in partnership with the Council of Europe and other organisations, to raise awareness of the "Underwear Rule", specifically developed to prevent sexual abuse against children (<https://www.youtube.com/watch?v=wMyQuyK-zfs>).

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