

National Action Plan

On elimination of corporal
punishment against children

PORTUGAL

APDES - Agência Piaget para o
Desenvolvimento
Universidade Católica Portuguesa |
Escola de Direito



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Title

National Action Plan on elimination of corporal punishment against children
Portugal

Coordination and Edition:

APDES - Agência Piaget para o Desenvolvimento
Universidade Católica Portuguesa | Escola de Direito

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This document is part of the Workstream State-led Action. It is an intellectual output from the project "HandsUp - Promoting the Effective Elimination of Corporal Punishment Against Children"

Project JUST/2015/RDAP/AG/CORP/9182

www.handsupchildren.org



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Porto, september of 2018

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Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world ... Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.

- Eleanor Roosevelt

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I. Introduction

In 2007, a study about corporal punishment was developed in Germany, Spain and three other countries. At the end, researchers were able to determine the following data: 43% of the parents used to lightly smack their children in the face, 68% admitted to have smacked their children in the bottom, 13% had already applied stronger smacks and 5.2% stated that they used objects to hit their children (Bussmann, 2009).

In 2007 and 2008 a similar study was developed in Greece, leading to the following results: 26.7% of the children admitted to have been smacked by a relative and 71% of the parents mentioned they resorted to corporal punishment as an educational tool [Tsirigoti, 2010].

In 2013, a similar research was carried out in Bulgaria, later showing that 40% of the Bulgarians were in favour of corporal punishment for educational purposes – 5% of them even perceived as “adamant supporters of smacking”.

Concerning Portugal, there are no specific data on this theme, since there are no similar studies; however, resorting to light to moderate corporal punishment for educational purposes is a socially accepted practice.

Hence, we face a serious and disseminated issue. In addition to the countries aforementioned, there are other European countries where children are deliberately submitted to smacks, shaking and injuries caused by objects (e.g. belts). The application of corporal punishment is usually carried out by the adults who children trust the most (parents, caregivers, guardians, etc.). [CommDH/IssuePaper (2006)].

However, said practices oppose the increasing international awareness of children’s rights; this way, it is important to recall the following:

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Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

(...)

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.”

and also article 37 (a):

“States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;”

in this sense:

“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.”

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

In 1985, the recommendation by the Committee of Ministers of the CoE stated that *“the defence of the family involves the protection of all its members against any form of violence, which all too often occurs among them”*. This recommendation also defined corporal punishment as *“an evil which must at least be discouraged as a first step towards outright prohibition. It is the very assumption that corporal punishment of children is legitimate that opens the way to all kinds of excesses and makes the traces and symptoms of such punishment acceptable to third parties”*.

In addition, Recommendation 1966 (2004) by the Parliamentary Assembly states that *“member states must ban all forms of corporal punishment and any other forms of degrading punishment or treatment of children”*.

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However, the UN Committee on the Rights of the Child (General Comment no. 8, 2006) also emphasised the need to thoughtfully address this question: “*The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents*”.

In other words – and despite the importance of prohibiting corporal punishment and other degrading practices – it is not necessary to prosecute parents in cases of occasional and light corporal punishment for educational purposes, especially because said prosecution could not favour the child’s well-being. Hence, each State has the possibility of finding the best ways to promote positive parenting/educational practices and eliminate corporal punishment and other humiliating practices; in the ambit of Criminal Law (*ultima ratio* of social policies) States also have the option to intervene only in more serious cases (according to the inflicted punishment and/or continuity of said punishment).

It is also important to mention:

- the commitment by several nations’ Heads of State to develop specific actions to eradicate all forms of violence against children – at the Summit carried out in Poland (May, 2005);
- the Pan-European awareness-raising campaign against corporal punishment, promoted by the CoE in 2008;
- the “Building a Europe for and with Children, 2009-2011” programme, with the CoE acting as a regional promoter and national coordinator of initiatives designed to prevent violence against children.

In what concerns the Portuguese legal framework, the Portuguese Constitution (number 1, article 69) establishes the following:

“Children have the right to the protection of society and the State conducive to their integral development, especially against all forms of abandonment, discrimination and

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oppression and against the abusive exercise of authority in the family and in other institutions.”

Considering the above, corporal punishment is a violation of Children’s Human Rights – namely their dignity and physical and mental integrity – and an affront to their right to protection against all forms of violence while under the care of their parents and other caregivers. In other words, resorting to corporal punishment (even for educational purposes) is a violation of several international and national legal documents. However, not all States include the prohibition of corporal punishment in their legislation, with only 11 countries prohibiting said practices¹. In fact, some even seem to accept resorting to moderate punishment to children’s best interest; therefore, one can observe the normalisation of corporal punishment for educational purposes resting on tradition.

Concerning this, it is important to present the conclusions by Deckard & Dodge (1997): if corporal punishment becomes improper (countries with legal frameworks specifically addressing its prohibition), it will only be used in borderline cases e.g. when parents lose control of the situations which could negatively affect children’s development. On the other hand, if corporal punishment is not fully prohibited, people will resort to it in a more controlled and less damaging way.

However, in 2002, Elizabeth Gershoff published an analysis of studies on the application of corporal punishment by parents and the behaviours/experiences of children, which presented an association between resorting to corporal punishment and negative effects on children, such as: mental disorders; internalisation of violence; bad relationships between parents and their children; aggressiveness; delinquency; criminal and antisocial behaviours; etc. (Gershoff, E.T., 2002). Recent studies seem to reinforce the data published by the author, showing that submitting children to violent disciplinary practices leads to negative consequences – according to the nature, extension, severity and exposure of the punishment (UNICEF, 2014, p. 95).

Opposing the apparently dominant social practices, the consistency of the results from several studies on this theme has been encouraging several psychology authors

¹ Countries that prohibit corporal punishment: Austria, Croatia, Cyprus, Denmark, Finland, Germany, Israel, Italy, Lithuania, Norway and Sweden.

to advocate the prohibition of corporal punishment and the promotion of positive parenting.

In fact, several researches suggest that resorting to harsh physical disciplinary practices (a concept that comprehends light corporal punishment and ill-treatment) hinders children's capacity for becoming autonomous and establish relationships. Some authors also mention that light corporal punishment, e.g. smacks, could lead to negative effects in the adaptative processes during childhood (Strassberg, *et al.*, 1994).

During adolescence, corporal punishment could eventually decrease the sense of safety among the family and also hinder teenagers' autonomy, since the relationships become very fragile (Bender *et al.*, 2007). Hence, it is easy to understand how ill-treatment is associated with some children's inability to establish meaningful relationships with their family members, peers and teachers (Bender *et al.*, 2007).

The need and relevance of the project

The need for this project rests on the continuity of the practices carried out for educational purposes. Despite their objective, they are clear acts of violence against children.

Smacking is still perceived as a socially and legally tolerated practice and a tool that people ought to resort to "*if necessary*" (Strauss et Fields, 2003). In fact, resorting to corporal punishment has been perceived as an important element in parental discipline (Gershoff, 2002).

In this matter, it is important to mention the results of a research carried out in the U.S.A. in 1990, according to which 94% of children had already been victims of corporal punishment, an average of three times each week (Giles-Sims, Straus & Sugarman, 1995; Straus & Stewart, 1999).

However, these practices haven't been abolished nor decreased, despite all the international recommendations and initiatives and the Portuguese constitutional

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regulation.

One of the reasons for this is the fact that these practices are perceived within the concepts of reasonableness² and legitimate correction. In this sense, it is important to mention the statement by the Commissioner for Human Rights [CommDH/IssuePaper (2006)], according to whom the interpretation of corporal punishment according to said notions refers to the existence of parents' right of property over their children – a social “step backward” of 100-200 years. The Commissioner also made a comparison between the degrading treatment experienced by some children and the relations between masters and servants: the caregivers' right to punish children rests on the power *of the stronger over the weaker* by resorting to violence and humiliation.

In fact, there aren't effective guidelines concerning children's Fundamental Rights nowadays.

“Violence begets violence”, so the application of corporal punishment by parents could lead to violent practices over several generations. In fact, children can become more aggressive by imitating their parents' actions (Deater-Deckard & Dodge, 1997). Gershoff (2002) also points out that this aggressiveness could also affect the victims' romantic relationships. In other words – and even if parents advocated a non-violent upbringing, but occasionally resorted to corporal punishment – children and teenagers could mimic their parents' actions and be violent towards their partners or peers.

The project aims to eliminate the current social tradition that enables and promotes corporal punishment against children – which will hopefully lead to the implementation of positive parenting practices based on positive examples and words. In fact, in 1997, Kuczynki & Hildebrandt advocated for the internationalisation of moral principles that protected children's well-being, strengthened by educational strategies that did not resort to physical disciplinary actions. Therefore, parents ought to favour an upbringing supported by decision-making, autonomy and the need to make children adopt the desired behaviours; resorting to punishment with no apparent reason will convey the idea that the most important thing is not the adoption of the right

² Please check one of the most relevant case law decisions – *AV. UK, 1998*.

behaviours, but not getting caught in the act (Gershoff, 2002).

Main goals of the project

- i. - Identify and address the loopholes in the laws concerning corporal punishment against children;
- ii. - Improve the cooperation between different stakeholders through the establishment of expert working groups and develop guidelines for the effective application of international, national and regional laws regarding corporal punishment through the implementation of national action plans;
- iii. - Improve states' actions to eradicate corporal punishment through the implementation of Workstream 1 results by the different stakeholders.

Project's corollaries

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- Improve cooperation and planning and countries' capacity to effectively deal with the issues associated with corporal punishment;
 - Promote guidelines and training of the key-actors from different child protection systems, according to the Committee on the Rights of the Child;
- i. - Promote the adoption of educational actions focused on positive parenting – which ought to rest on positive examples and words and encouraging;
 - Raise the parents' and caregivers' awareness of the need to eradicate corporal punishment;
 - ii. - Adequately include mechanisms to tackle corporal punishment against children in the national legislation;
 - iii. - Promote training programmes for law professionals, namely focused on the absolute prohibition of corporal punishment.

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II. Corporal Punishment

Definition and interpretation according to the national case law and legal doctrine

According to the CoE, one can define corporal punishment as a conduct that aims to correct/educate a child; however, when applied to an adult, it is perceived as a mistreatment crime, a domestic violence crime or a crime of physical offences. The following is the European Commission of Human Rights' conclusion concerning the discussion to terminate the parental right to resort to corporal punishment (Sweden):

“The fact that no distinction is made between the treatment of children by their parents and the same treatment applied to an adult stranger cannot, in the Commission’s opinion, constitute “an interference” with respect for the applicant’s private and family lives since the consequences of an assault are equated in both cases (...) The Commission finds that the scope of the Swedish law of assault and molestation is a normal measure for the control of violence and that its extension to apply to the ordinary physical chastisement of children by their parents is intended to protect potentially weak and vulnerable members of society.”

The Portuguese legislation, however, does not comprehend a normative definition of corporal punishment, since the natural definition of physical punishment does not raise any questions. What exists is a controversial application of the law based on the dominant social practice.

Concerning the Portuguese penal code, it clearly penalises the application of corporal punishment, namely articles 152 and 152-A:

Article 152 – Domestic violence: 1 – Anyone who, whether or not repeatedly, inflicts physical or psychological maltreatment, including **corporal punishment**, deprivation of liberty and sexual offenses to: (...) d) a particularly defenceless person, in particular on account of age, disability, illness, pregnancy or economic status, that cohabits with the offender; (...) shall be punished with imprisonment from one to five years, if a more severe penalty does not fit the offender under another legal provision. 2 - In the case provided in the preceding paragraph, if the perpetrator acts against a minor, in the presence of a **minor**, in the common domicile or at the victim's home, he/she shall be punished by imprisonment of two to five years. (...)

Article 152-A – Mistreatment: 1 – Anyone who, having under their care, under the responsibility of their direction or education or working for their service, a minor or particularly defenceless person, due to age, disability, illness or pregnancy,: a) repeatedly or not inflicts physical or psychological ill-treatment, including **corporal punishment**, deprivation of liberty and sexual offenses, or cruel treatment.

The analysis of the aforementioned articles may lead to the conclusion that the

individuals who resort to corporal punishment commit a crime of domestic violence or a crime of mistreatment. However, this conclusion is mitigated by three factors: a) the incrimination was not established to prevent the application of light corporal punishment for educational purposes; b) acknowledgment of parents' power-duty of education/correction; and c) the concept of violence and ill-treatment could require a certain degree of seriousness (and/or continuity) of the corporal punishment.

By emphasising the penal irrelevance of parents' conduct, Faria (2005) states that light punishment applied by those who have the power-duty of correction is socially accepted. However, the author also mentions that perceiving said conduct as socially accepted will always require a thorough analysis of all circumstances, namely: **the purpose of said punishment; the punishment's indispensability, adequacy and proportion in terms of the child's education; its non-repetition; the child's age; the child's physical constitution and maturity, etc.**ⁱ

Ferreira (2016) also claims that **parents are entitled to the power-duty of correction**. So, although the educational practices should be based on the respect towards children's physical and psychological integrity, resorting to 'light' corporal punishment could be, in certain cases, allowedⁱⁱ.

Carvalho (2012) **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** – which excludes more severe practicesⁱⁱⁱ.

Figueiredo Dias also supports the notion of **justified corporal punishment** for educational purposes, as long as they are **thorough, proportional and moderate**. The author does not agree with the application of the social adequacy principle, since all practices that harm children's well-being are typical; so, the situation can only be solved in the domain of an eventual justification^{iv}.

The following excerpt is a proper example of the national case law – Porto's Court of Appeal, July 2nd 2008:

“The offences to physical integrity will only be justified when they are applied for educational purposes and by the child's guardian/parent. Hence, it is difficult to determine the pedagogical adequacy of corporal punishment and its compatibility with the

*child's human dignity. There are differences in the domain of the right to correction whether these practices are applied to one's own children or other people's children. **The parents are entitled to punishment due to their parental power. Since the right to correction is part of the relationship between parents and their children, transferring said right will only be allowed to individuals who are close to the child.** The right to punish will never be applied in the presence of the parents/guardians, since it is their exclusive right.*³

According to the previous excerpt, the justification to resort to corporal punishment for educational purposes, based on the power-duty of correction, can only be granted to a short number of people - parents and close family members.

The Portuguese courts are adamant about the unlawfulness of corporal punishment (even light punishment) by third-parties. In fact, and despite the caregivers, auxiliary teaching staff and teachers' power-duty of correction granted by the parents/guardians, they cannot resort to corporal punishment. In other words, these third-parties have a limited power-duty of correction and any educational practice that puts the children at risk will lead to criminal and civil liability.

On the other hand, parents cannot resort to objects like sticks, belts or rulers to punish their children.

*“On October 12th 2016, Lisbon's Court of Appeal sentenced a father who assaulted his 7-year-old daughter with a belt (causing her pain and bruises in the affected area). The defendant was sentenced to 10 months of prison – suspended sentence for a 1 year period upon presentation of proofs of job seeking, participation in training programmes and referral to medical appointments to address the use of psychoactive substances. The sentence was influenced by the fact that the victim was particularly vulnerable given she was a child and also by the defendant's relationship with the victim and the family context. It is important to mention that the child was under her grandparents' care; therefore, this offence was not perceived as a crime of domestic violence (article 152). The Court proved that the defendant tried to persuade his daughter to never leave the house without being authorised and never disobey her grandmother. Despite the alleged educational purpose of the acts, the Court perceived them as an “unacceptable violation of the child's physical integrity and an intolerable demonstration of physical strength against the body and health condition of a helpless 7-year-old child”.*⁴

³ Porto's Court of Appeal ruling (02/07/2008) and Coimbra's Court of Appeal ruling (07/10/2009).

⁴ Lisbon's Court of Appeal ruling (12-10-2016).

A change in the paradigm

The problematization of the application of light corporal punishment is relatively recent. The questions associated with the application of corporal punishment are increasingly discussed in courts and the judging bodies are gradually supporting a more restrictive notion of the power-duty of correction. However, one should not mistake this position for the existence of a movement that advocates the elimination of corporal punishment.

These cases are discussed at Portuguese Courts and the perpetrator is rarely absolved (they are usually sentenced to prison or to pay a fine). However, the prison sentence is usually suspended during its execution.

Consequently, one can observe a certain level of understanding towards this issue, regardless of the seriousness of the offence:

“On October 26th 2004, Évora’s Court of Appeal sentenced a father who frequently beat his daughter with sticks and iron sticks and kicked her. During some of these episodes the assailant also insulted her and yelled she was a gipsy’s daughter, which was false. As a result, the child was left with scars in the affected areas. According to the defendant, the offenses were inflicted for educational purposes, since the child was not performing well at school and was becoming interested in boys. Due to the acts committed, the defendant was sentenced to 14 months of prison for the crime of maltreatment. The Court stated: “It is vital to point out the individual’s inappropriate acts. We are living in an era in which the simple act of corporal punishment against children is questioned in terms of Law and Psychology”.⁵

“On December 9th 2010, Évora’s Court of Appeal sentenced a father who smacked his son twice in the street, causing him bruises. The Court proved that the individual was under the influence of alcohol at the time and that he slapped his son. The facts took place after he picked up his son, who was at a friends’ house. The defendant claimed he smacked his son only because he did not want to come home, despite the fact that he had to go to school the next day. In short, the defendant justified the slapping with his correction power-duty. The argument presented was not successful and the defendant

⁵ Évora’s Court of Appeal ruling (26/10/2004).

was sentenced to two years in prison and the payment of 1,500.00€ to a social institution, due to the crime of offence to physical integrity, his relationship with the victim and the seriousness of the injuries.”⁶

Nevertheless – and considering what was described in the previous section – one can observe how doctrine and case law are gradually complying with the international notion of absolute prohibition of corporal punishment.

That being said, and quoting a decision by 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.”⁷

According to this idea, the decisions by **Coimbra’s Court of Appeal on October 7th 2009** and by **Lisbon’s Court of Appeal on October 12th 2016** are perceived as the beginning of a new legal framework that complies with the international guidelines:

“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) – Cristina Dias, ‘A Criança como sujeito de direitos e o poder de correção’, JULGAR magazine, number 4, 2008, pp. 95 and 101. 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.”⁸

“According to several documents designed by UNICEF, we believe that there is still a high prevalence of corporal punishment practices as educational measures;

⁶ Évora’s Court of Appeal ruling (09/12/2010).

⁷ Coimbra’s Court of Appeal ruling (19/06/2013).

⁸ Coimbra’s Court of Appeal ruling (07/10/2009).

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.”⁹

In what concerns the national doctrine, one can find authors that advocate the full prohibition of corporal punishment for educational purposes. Clara Sottomayor (*cit in Dias, 2008*) believes that 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^v. Despite this position, the same author acknowledges parents' right to resort to physical strength to protect their children in certain occasions, e.g. **touching a hot surface, putting fingers in power sockets or being in danger of falling off a balcony**.¹⁰, especially since children can perceive this type of reactions more quickly and easily than the corrective reaction¹¹.

Even when the corporal punishment is immediately 'useful', it is important to point out that it does not include the internalisation of moral and social norms that are vital to children's process of socialisation¹².

Sottomayor (*cit in Dias, 2008*) also advocates the importance of promoting a balance between civil and penal unlawfulness, according to which certain punishments ought to be perceived as illicit practices rather than crimes.

Dias (2008) also claims that children's duty of obedience, established by article 1878, does not necessarily justify the fact that parents often resort to violence. Also, and since this duty is moral rather than juridical, its compliance should not be obtained in a coercive manner. To the author, **educating does not mean punishing; it means teaching and educating without resorting to physical or psychological abuse.**

⁹ Lisbon's Court of Appeal (12/10/2016).

¹⁰ Please check other works by Catron & Masters, 1993; Culp, Dengler & Maisano, 1999; Flynn, 1998; Grusec & Kuczynski, 1980; Holden *et al.*, 1995; Peterson, Ewigman & Vandiver, 1994; Socolar & Stein, 1995; Zahn-Waxler & Chapman, 1982.

¹¹ Please check other works by Catron & Masters, 1993; Siegal & Cowen, 1984.

¹² Please check other works by Grusec & Goodnow, 1994; Hoffman, 1983; Lepper, 1983.

III. National projects

Over the recent years, we have witnessed the increase of civil society actions to eliminate domestic violence. In spite of these efforts, this question is not frequently discussed in Portugal, mainly due to the overall tolerance towards corporal punishment.

The National Commission for the Promotion and Protection of Children's and Teenagers' Rights has two projects that address this question:

- ❖ *Tecer a Prevenção* project – implemented at a national level in 2010, aimed at promoting the discussion of Human Rights among the Commissions on the Protection of Children and Teenagers at Risk;
- ❖ International Child Abuse Prevention Month – since 2008, the National Commission promotes a nationwide campaign to prevent maltreatment.

In the matter of Social Welfare, there are some funding programmes to support foster care institutions, in order to empower their staff and promote interventions solely focused on children's best interests, like the *Desafios, Oportunidades e Mudanças* programme (eventually replaced by the *Sensibilizar, Envolver, Renovar, Esperança* plan). Though not focusing on eliminating corporal punishment, some of these programmes contribute to this objective.

IV. Conclusions

- ❖ The power-duty to education is part of 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 parents' last resort and limited in terms of seriousness and frequency.
- ❖ 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.
- ❖ There is 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.
- ❖ The majority of the doctrine and jurisprudence 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 number 2 of 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.
- ❖ 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).
- ❖ However, one could question if such behaviours could be perceived as offences to physical integrity (article 142), 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 the doctrine and jurisprudence do not perceive them as a crime of offence to the physical integrity, thus appealing to the principles of justification and social adequacy.

- ❖ Clara Sottomayor claims 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 State's intervention) – despite not being criminally unlawful, some actions could be characterised by civil unlawfulness.
- ❖ In essence, there 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 parenting, 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.
- ❖ The Portuguese doctrine tend not to address the issue of punishment outside family contexts, but the majority of them acknowledge its unlawfulness. The same can be said regarding jurisprudence.

V. Proposals

In order to change the paradigm of corporal punishment among the Portuguese society, we propose the following:

a. Improvement of the monitoring of parents and other caregivers (social/healthcare workers)

Improve the social/outreach monitoring among soon-to-be parents and families, provided by multidisciplinary teams specialised in the field of paediatrics/childhood – in order to identify critical situations and promote the prevention of social and economic inequalities.

Target-groups: soon-to-be parents – parents

b. Promotion of training actions on positive parenting

These training programmes should be provided by healthcare centres and maternity hospitals, as well as by the Centre for Family Support and Parental Counselling (CAFAP), and disseminated by family doctors and obstetricians.

Since there CAFAP and other units already provide these actions, it would be important to strengthen them and increase their frequency, so more parents could benefit from them.

Target-groups: soon-to-be parents – parents – parents who recently had a child.

c. Promotion of CAFAP's capacity-building

CAFAP provides specialised services to families, children and teenagers, in order to prevent and address situations of psychosocial risks through the development of parental, personal and social skills. CAFAP provides said services whenever the families need them.

Among others, CAFAP's goal is to promote positive parenting practices and improve the relationships among family members through workshops, counselling and dialogue.

For a referential of 100 families, the team should include:

- A social worker;
- A social educator;
- A psychologist.

The services provided by CAFAP fail to be an asset, since there is no funding and dissemination among society in general.

The lack of funding compromises the possibility of hiring professionals and hinders the follow-up processes with the families.

Hence, it is vital to increase the budget allocated to CAFAP, in order to implement the aforementioned proposals.

Target-groups: Ministry of Labour, Solidarity and Social Welfare

d. Improvement and broadening of child and adolescence psychiatry services in Healthcare Units, in order to support children up to 18 years of age

Child and adolescence psychiatry services should support all children, in compliance with the Convention on the Rights of the Child i.e. people up to 18 years old; they ought to be free of charges and prompt and also be available at healthcare centres, schools or other child protection services.

It is important to provide more human resources to these services/departments and improve their facilities, in order to support a larger number of children and teenagers.

Target-groups: Ministry of Health – children/teenagers

e. Promotion of research on the theme

In what concerns the academic fields, there are not enough studies about this theme and the majority of the works focus on a legal perspective. It is important to develop

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research through the promotion of national and international meetings and conferences and to increase the public budget allocated to scientific production. Spoken interventions should be kept in written records, i.e. articles or abstracts, which should be available for all audiences.

Target-groups: experts in Law, Psychology, Sociology, Educational Sciences, Criminology and Social Work

f. Inclusion of Children's Rights (as Human Rights) in schools' *curricula*

Children's Rights (and the Convention on the Rights of the Child) should be included in the schools' curricula and the associated terminology should be adapted to children of all ages. Hence, all schools should address the Human Rights question and resort to other key-agents if necessary.

In addition, all teaching staff should promote the learning of Human Rights and citizenship, by carrying out activities that promote mutual respect and raise awareness of the importance of school e.g. through the creation of students' assemblies.

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Target-groups: Ministry of Education

g. Promotion of children's and teenagers' participation

Children should be encouraged to express their opinion from an early age. In this sense, schools should provide a safe environment of respect and trust for children to manifest their ideas.

Target-groups: Teaching staff – children/teenagers

h. Multidisciplinary teams in every school

All schools should have a multidisciplinary team composed of social workers and psychologists to support children and their families, and also safe places to share information and monitor the most difficult cases.

Target-groups: children and their families – Ministry of Education

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i. Mandatory professional accreditation of people who work with children

People who work with children on a regular basis should have specific skills for their positions. Working with vulnerable groups requires certain skills and training/academic background.

Therefore, people who work with children should have access to training actions on positive discipline, focused on Children's Rights, alternative methods of conflict management, positive discipline practices with children at risk, etc. These training programmes ought to be mandatory and a *sine qua non* condition for all professionals in the field.

People who already work with this target-group should have priority over other workers.

Target-groups: professionals/caregivers who work directly with children, namely technical staff at foster homes – educational staff at schools – other caregivers

j. Assurance that children have access to adequate services where they can anonymously talk about their problems

It is important to establish children-friendly spaces in healthcare centres and schools, so children can have access to information about their rights and also talk with qualified personnel.

At the moment, there are several offices that provide information on contraception and family planning, and they should also be capable of supporting children and teenagers in the prevention of violence and ill-treatment.

Target-groups: children/teenagers

k. Training of key-actors

It is vital to promote adapted training programmes for different audiences, focused on

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Children's Rights and corporal punishment.

Target-groups: police forces – social workers – other professionals/caregivers who work with children – lawyers and judges – healthcare professionals – parents – children/teenagers.

I. Awareness raising with respect to corporal punishment and other issues

The development of awareness-raising actions will improve knowledge about this theme and present alternative educational practices, while favouring a healthier dialogue and discussion. The actions should be adapted to each target-group, to successfully disseminate the message among the largest number of people.

Target-groups: civil society – parents – professionals/caregivers who work with children

m. Compilation of all practices and training actions on positive parenting in Portugal

This document/compilation should include all the information about the entities who provide training programmes on positive parenting and disciplinary practices in Portugal. It should be available at the Social Security website and other institutions: healthcare centres, maternity clinics, hospitals, etc.

Target-groups: Ministry of Health – Ministry of Labour, Solidarity and Social Welfare

n. Promotion of a nationwide campaign for the elimination of corporal punishment

Design and develop informative material aimed at children, parents/guardians, caregivers, professionals from different fields, etc. It is also important to promote civil society's participation and encourage the discussion about the theme, by including the national media.

We would like to suggest three different campaigns: one aimed at the general audience, another focused on parents and caregivers, and another one exclusive for children.

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Regarding campaign number two, we believe that the Swedish model will be successful – i.e. the use of diapers with the slogan “No hitting!” – which would be provided to mothers at maternity clinics.

Target-groups: civil society – parents/guardians – caregivers – professionals

o. Development of an institutional website aimed at a specific target-group, in order to promote the elimination of corporal punishment and positive parenting

This website will be useful to disseminate the message that all forms of corporal punishment should be prohibited in compliance with national and international laws, with an exclusive section dedicated to positive parenting and tools for caregivers and children/teenagers.

Target-groups: caregivers – parents/guardians – professionals who work with children – foster care staff

p. Improvement of the cooperation between institutions and governmental entities

Improve the communication and liaison channels between different institutions and state entities; it would be important to create work-groups to develop tools aimed at the elimination of corporal punishment and the promotion of positive parenting.

Target-groups: different entities and governmental bodies

q. Development of a longitudinal research

We would like to suggest the development of a research (with estimate duration of up to 10 years) immediately after the creation and implementation of the Action Plan, in order to ensure that people became more aware of this question and to analyse the social evolution of the theme. It would be important to carry out surveys every two years to evaluate the implementation of said Plan.

Target-groups: academia (namely experts in social sciences)

r. Changes to legislation

It is vital to implement changes to the Portuguese legislation, namely to the Criminal Law and Civil Law areas.

These changes aim to ratify laws and make sure that parents' responsibilities comply with the principles of positive parenting.

- Changes to criminal law

Number 1 d) of the article 152 states that:

“Anyone who, whether or not repeatedly, inflicts physical or psychological maltreatment, including corporal punishment, deprivation of liberty and sexual offenses to:

*d) a particularly defenceless person, in particular on account of age, disability, illness, pregnancy or economic status, who **cohabits** with the offender; (...) shall be punished with imprisonment from one to five years, if a more severe penalty does not fit the offender under another legal provision.”*

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According to what was mentioned above, people who do not live with children, but have visiting rights during the weekends, cannot be sentenced because of this crime. Hence, children are clearly at risks at said situations.

Therefore, we believe that the number 1 d) should include the following: **“who cohabits with the offender or is his/her descendent, ascendant, adopted or adopter.”**

In addition, the sentences should include mandatory training sessions on positive parenting, similarly to what happens in cases of domestic violence.

Therefore, number 4 of article 152 should state:

*“In the cases provided in the preceding paragraphs accessory penalties can be applied, such as: prohibiting contact with the victim and prohibiting the use and carrying of weapons, for a period of six months to five years, and the obligation to attend specific programmes on prevention of domestic violence **and/or positive parenting.**”*

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We also suggest a substantive amendment with procedural effects.

For those guilty of domestic violence offences, who have been sentenced with the withdrawal of parental responsibilities, Portuguese criminal law does not include a solution similar to that provided for safety measures not involving deprivation of freedom.

In this sense, we would like to mention article 103 of the Penal Code and how it allows requests to withdraw the safety measures due to the ineligibility of the preconditions that dictated its application.

As number 6 of article 152 states:

“Anyone who is convicted of a crime under this article may, given the specific gravity of the act and its connection with the function exercised by the agent, be disqualified from exercising parental authority, guardianship or custody for a period of one to ten years.”

However – and concerning the mentioned crime – the Penal Code does not have a solution for the eventual end of the prohibition of the exercise of parental responsibilities due to the rehabilitation of the individual.

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Hence, in order to ensure children’s well-being, number 6 of article 152 should also include the following:

“Article 103 should be adapted and applied in these cases whenever suited.”

The crime of ill-treatment addressed and penalised by article 152-A does not include the application of ancillary penalties, contrary to the crime of domestic violence, regulated by article 152.

This is quite peculiar, since both crimes depend on the existence of a specific type of relationships between the victim and the offender.

Consequently, we suggest the application of ancillary penalties (issuing a restraining order for the perpetrator and mandatory participation in social rehabilitation programmes) and the creation of numbers 3 and 4 of article 152-A:

3 “In the cases provided in the preceding paragraphs accessory penalties can be applied, such as: prohibiting contact with the victim and prohibiting the use and

carrying of weapons, for a period of six months to five years, and the obligation to attend specific programmes on prevention of domestic violence and/or positive discipline.”

4 “Anyone who is convicted for a crime under this article may, given the specific gravity of the act and its connection with the function exercised by the agent, be prohibited to exercise the function and from having contact with children for a period of one to ten years.”

- Changes to civil law

In what concerns civil law, it would be important to include the following number in article 1878 (parental responsibilities) of the Civil Code:

3 “Parents ought to respect their children and should not submit them to physical punishment or humiliating practices.”

Target-groups: political parties.

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