

# Aspects Regarding the Protection of Children against any Forms of Violence

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## Abstract

Adult's violence manifested against children is an extremely common phenomenon and with dramatic consequences on the latter. Therefore, at the international level, an attempt has been made to prohibit the manifestation of any form of violence against children. In our scientific approach, we set out in particular to examine the extent to which internationally adopted documents succeed in preventing violence against children and in providing them with the necessary protection against such manifestations.

**Keywords:** child protection, physical violence, emotional violence, corporal punishment, abuse, degrading and inhuman treatment, legal protection, European Convention on Human Rights, UN Convention on the Rights of the Child.

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## INTRODUCTION

Although, most of the time, violence against children is invisible, it is still an extremely widespread phenomenon and, unfortunately, still growing, regardless of the form in which it manifests itself. There are many cases in which some forms of violence have acquired an even higher level of intensity, and others are ignored or considered as being normal.

Most of the cases of violence take place even in the family environment, having as a form of manifestation, first of all negligence. Neglect is followed by emotional, physical and sexual abuse. As a result of the violence manifested in the family environment, many children end up being separated from the family and placed in specialized institutions or given for temporary adoption.

Usually, the general tendency of parents when a child makes a mistake is to raise their voice first, then the threat and application of a physical correction (slapping, pulling hair or ears). These aspects show that, in most cases, parents do not have the necessary skills or knowledge to respond constructively to the negative behavioral manifestations of children, usually involuntarily repeating a certain traditional model of raising and educating children.

Negligence translates into a lack of protection from dangers, a lack of necessary care for a child, a

failure to meet health and education needs, and any other shortcomings that impede his harmonious and safe development.

Violence in the family is manifested especially between parents, children witnessing such events, which will negatively influence their way of thinking and feeling, development, behavior towards other people throughout life. In addition, it was found that, in most cases, violence against the mother will be followed by violence against the child.

Emotional violence is much more common than physical violence, manifested by adults with whom children have developed a close personal relationship or emotional attachment and will keep its mark in the long run, with devastating consequences, so that the child will become an adult, to unconsciously repeat behaviors that affected him intensely in childhood. In adulthood, the consequences include the installation of depression, anxiety, post-traumatic stress, self-isolation and self-alienation from others, low self-esteem, problems with attachment and relationships with others. Emotional violence is manifested by acts such as scaring, terrorizing, harassing, threatening, intimidating, exploiting, rejecting, isolating, ignoring, lacking an emotional response, insulting, humiliating, and ridiculing the child. Emotional violence, through its intrinsic subtlety, is the most difficult form of violence to be recognized by other people, but also by the

victim. The child victim ends up blaming himself for the violence he is subjected to, considering that there is something wrong with him.

The conclusion is that the experience of the first years of life shapes what we become - physically, emotionally and socially [1]. The child who has become an adult and a parent will perpetuate what he saw and what he lived in his own family, as the first behavioral landmarks of the child are the parents and the family. Behavior, attitude, actions, language of parents are examples to follow for children, who consider them landmarks of normalcy or the only possible reactions. Even long after the child has begun the process of socializing first in kindergarten and later in school, he continues to keep as a behavioral benchmark what their parents and other family members do and say. Basically, these consequences can never be removed.

## RESEARCH METHODS

The author used established research methods: documentation method, comparative method, analytical method, the logical method, examination of judicial practice or application method [2]. "This type of study was a normative juridical with the nature of this research is analytical descriptive. This study applied a statute approach and a conceptual approach" [3]. The conceptual approach concerns to legal norms of international law.

## DISSCUSIONS AND RESULTS

### Relevant United Nations Standards Existing for the Protection of Children against Violence

The rights of the children and, consequently, their right to protection against abuse in the family are recognized and guaranteed by the United Nations Convention on the Rights of the Child, adopted by General Assembly Resolution 44/25 of November 20, 1989. Article 19 of that document provides:

"1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child against all forms of violence, harm or abuse, physical or mental, abandonment or negligence, ill-treatment or exploitation, including sexual abuse, in the time spent in the care of the parents or of one of them, of the legal representative or representatives or of any person to whom it has been entrusted.

2. These protection measures shall include, where appropriate, effective procedures for the establishment of social programs to ensure the necessary support for the child and those entrusted to him, as well as for the establishment of other forms of prevention and for the identification, denunciation, action court, the investigation, treatment and follow-up of cases of ill-treatment of the child, described above,

and, if necessary, the procedures for judicial involvement."

In 2006, at the UN General Assembly, the General-Secretary presented a study on violence against children, the message of which is that any form of violence against children cannot be justified and can be prevented, and in this regard, all the states of the world must take the necessary steps to prohibit, by 2009, all forms of violence against children, including all corporal punishment. The General-Secretary stated that "the study should mark a turning point - to put an end to the justification of violence against children by adults, whether it is accepted as a "tradition" or disguised as a "discipline". There can be no compromise on challenging violence against children. Given the uniqueness of children - their potential and vulnerability, their dependence on adults - it is imperative that they benefit from more, not less, protection against violence."

In 2008, there were already 23 states worldwide that banned all forms of corporal punishment, including those applied within the family.

General Comment no. 8 (2006) on the right of the child to protection against corporal punishment and other forms of cruel or degrading punishment [4] stated that "States must develop effective notification and reporting mechanisms. Although all reports of acts of violence against children should be properly investigated and their protection against significant harm should be guaranteed, the main aim should be to prevent parents from resorting to punishments imposed with violence or cruelty or to degrading punishments, through interventions to support and educate them and not through interventions with a punitive purpose. The dependent status of children and the unique intimacy of family relationships require that precautionary decisions be taken with the parents to prosecute or to intervene officially in the family in another way. In most cases, the prosecution of parents is unlikely to be in the best interests of the children. In the Committee's view, criminal prosecution and other formal interventions (for example, removal of the child or of the perpetrator) should be used only when they are considered both necessary for the protection of the child from significant harm and in the best interests of the affected child. The views of the affected children should be given due weight, depending on their age and level of maturity."

On April 18, 2011, the UN Committee on the Rights of the Child issued General Comment no. 13 (2011) on the right of the child to be protected against any form of violence, which examines in depth from a legal point of view Article 19 of the UN Convention on the Rights of the Child. The document states that "In the General Comment no. 8 (11), the Committee defined 'corporal' or 'physical' punishment as any punishment by which physical force is used and which

is intended to cause a certain degree of pain or discomfort, no matter how small. Most punishments involve hitting children (slapping the face or other parts of the body, slapping the bottom of the body), with the hand or an object - a whip, a stick, a belt, a shoe, a wooden spoon. But they can also involve kicking, shaking or pushing children, scratching, pinching, biting, pulling or hitting the ears, hitting with a stick, forcing children to sit in awkward positions, burning, scalding or forced ingestion. In the Committee's view, corporal punishment is invariably degrading." Also, "The Committee has consistently supported the position that no form of violence against children is acceptable, no matter how mild. "No form of physical or mental violence" leaves room for the legalization of any degree of violence against children." At the same time, it is pointed out that in the signatory states where the necessary measures have not been taken, it is necessary to revise the legislation in the sense of amending to bring it into line with the provisions of the Convention, and implicitly with those of Article 19, so as to ensure absolutely all forms of violence against children, in all environments, and the appropriate sanctioning of perpetrators. Regarding the best interests of the child, as set out in Article 3 of the Convention, "The Committee emphasizes that the interpretation of the notion of the best interests of the child must be consistent with the whole Convention, including the obligation to protect children against all forms of violence. It cannot be used to justify certain practices, including physical punishment and other forms of (applied) cruel or degrading punishment, which run counter to the child's human dignity and right to physical integrity. An adult's opinion in the best interests of the child may not prevail over the obligation to respect all the rights of the child under the Convention."

### **Relevant Standards of Council of Europe Existing on the Protection of Children against Violence**

A number of documents have been drawn up at Council of Europe against domestic violence affecting children, including the mechanisms needed to implement them. Numerous large-scale campaigns have also been undertaken in this regard.

In order to persuade the Member States to ban the application of corporal punishment, the Committee of Ministers of the Council of Europe has taken a number of steps since 1985. The first step is the Recommendation of the same year, which stipulates that "the protection of the family involves the defense of all its members against any form of violence, which occurs far too often within the family." In the Explanatory Memorandum to this Recommendation, corporal punishment is described as "an evil that must, at the very least, be discouraged, as a first step towards a categorical prohibition. The presumption that the physical punishment of children is legitimate is the one that opens the way for all types of excesses and makes the traces and symptoms of such punishments to be

considered acceptable by third parties". The initiative of the "Children and Violence" program developed over three years also belonged to the Committee of Ministers, and its objectives included providing the necessary assistance to Council of Europe member states to implement the provisions of the United Nations Convention at national and local level of the United Nations Convention on the Rights of the Child, of the European Social Charter and of the European Convention on the Exercise of Children's Rights, as well as the development of a set of rules and methodologies by 2008 to redress all aspects of this issue.

The European Social Charter [5] expressly regulates among the rights of the child, the right of children and young people to protection (Article 7) and the right of children and adolescents to social, legal and economic protection (Article 17), compliance with which is monitored by the European Committee of Social Rights. At European level and at the same time at international level, there is a consensus on the need to explicitly and exhaustively prohibit the application of corporal punishment to children by law [6].

The Parliamentary Assembly of the Council of Europe requested in Recommendation no. 1666 (2004), the introduction of a interdiction in Europe on the application of corporal punishments to children, so that this space can become a "free area of any corporal punishment imposed on children". The document states that "any physical punishment applied to children is a violation of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still legal in some Member States violates another fundamental right of children, which is to enjoy the same legal protection as adults. The social and legal acceptance of corporal punishment of children must end."

The Council of Europe Commissioner for Human Rights [7] has analyzed in detail the situation of child abuse at national level and the progress made in eliminating corporal punishment of children at European level, noting that: "The imperative to abolish the alleged rights of adults to hit children is a matter of human rights principles. Therefore, it should not be necessary to demonstrate that positive alternative methods of socializing children are more effective. However, research into the harmful physical and psychological effects of corporal punishment in childhood and later development in life and on links to other forms of violence clearly provides compelling new arguments for banning such practices and thus disrupting the cycle of violence."

The Committee of Ministers of the Council of Europe adopted on November 18, 2009 Recommendation CM / Rec (2009) 10 to Member States on integrated national strategies for the

protection of children against violence. The document states that "the fragility and vulnerability of children, as well as their dependence on adults for their growth and development, requires greater investment from the family, society and the state in the prevention of violence and the protection of children."

Guidelines on justice in the interests of the child (CM / Del / Dec (2010) 1098 / 10.2), a document adopted on November 17, 2010 by the Committee of Ministers at the 1098th meeting of the Ministers' Delegations, stresses that the best interests of the child in any matter concern or affect him or her, and justice shall be done in this respect, with respect for all the rights of the child and, implicitly, for the right to respect for physical integrity and dignity.

By signing the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence [8] in Istanbul on May 11, 2011, States Parties have undertaken to prevent violence against women, to ensure the protection of victims of violence and to prosecute their perpetrators. Also, a series of acts of physical, sexual and psychological violence were regulated as crimes, which, committed against or in the presence of a child, will be punished much more severely. Thus, Member States will be obliged to take all necessary legislative measures, as well as any other measures necessary to ensure that the offences established under the Convention will be punished effectively, proportionately and dissuasively, in proportion to their gravity.

### **Relevant Standards Regarding the Protection of Children against Violence Existing in Romania**

In Romania, Law no. 272/2004 on the protection and promotion of the rights of the child prohibits the application of corporal punishment, the following provisions being relevant:

- Article 33 (1) "The child has the right to respect for his personality and individuality and may not be subjected to corporal punishment or other humiliating or degrading treatment. (2) The disciplinary measures of the child can be established only in accordance with the dignity of the child, not being allowed under any reason the physical punishments or those that are related to the physical, mental development or that affect the emotional state of the child."
- Article 89 (1) "The child has the right to be protected from abuse, neglect, exploitation, trafficking, unlawful migration, abduction, violence, internet pornography and any form of violence, regardless of the environment in which he or she find out: family, educational institutions, medical institutions (...)"
- Article 94 (1) "Child abuse means any voluntary action by a person who is in a relationship of responsibility, trust or authority which endangers

the life, physical, mental, spiritual, moral or social development, bodily integrity, physical or mental health of the child, and is classified as physical, emotional, psychological, sexual and economic abuse."

- Article 95 "It shall be prohibited to commit any act of violence or deprivation of the child's rights which would endanger his life, physical, mental, spiritual, moral or social development, bodily integrity, physical or mental health of the child, [...]"

Also, articles 98-103 of the same law stipulate that the General Direction of Social Assistance and Child Protection has the obligation to verify any information on allegations of abuse and that the police have the obligation to support the representatives of the direction in order to carry out these checks. The General Direction of Social Assistance and Child Protection can refer the matter to the court, requesting the issuance of a presidential order to ensure that the child is not (anymore) subject to abuse.

At the same time, the Code of Criminal Procedure contains provisions according to which, in criminal process, victims of crime have the right to obtain compensation for moral or material damage suffered, and when the victim is a person lacking legal capacity or limited legal capacity (for example, a minor), the court is obliged to examine ex officio the possibility of awarding compensation for damages. In such cases, the civil action may be exercised ex officio, the court being obliged to rule ex officio on the reparation of the damage and moral damages, even if the injured person is not a civil party.

### **Protecting Children from Violence in the View of the European Court of Human Rights**

The European Convention on Human Rights stipulates in Article 3 that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Unfortunately, however, often when such abuses reach the authorities, investigations are lengthy, on the one hand because they require in-depth analysis to avoid judicial errors, and on the other hand because there are long periods of inactivity attributable to authorities. Regardless of the motivation, the result is the ignorance of the reality, namely that the victims, being children, are extremely vulnerable people and, since most of the abuses take place in the family, the prolongation of court proceedings only prolongs the exercise of abuse against those children. At other times, there were obvious shortcomings in the proceedings, which could affect the effectiveness of the investigation. There are many situations in which court proceedings are accompanied by successive reversals of decisions, not as a result of the applicants' abuse of their procedural rights, but as a result of omissions by lower

courts. There were also cases in which, although to the authority of the General Direction of Social Assistance and Child Protection was reported abuse, it did not verify the information to send to the police for investigation and did not take action for protection of victims of alleged abuse, although it had a legal obligation to do so.

We consider that any procedure, but especially those of a criminal nature, in which minors are involved, necessarily involves an "exceptional diligence [9]".

The European Court of Human Rights, in its case law, has stated that Member States must develop an effective legal framework for the protection of children against acts of domestic violence, which fall under Article 3 of the ECHR. In this respect, the Court considered that the legislative measures adopted must be capable of effectively discouraging such serious manifestations of a breach of personal integrity and lead the authorities to conduct effective formal investigations if a person makes a well-founded complaint of ill-treatment. The European Court has also stated that respect for the dignity of a child cannot be ensured if the national court accepts any form of justification for acts of ill-treatment, including that of corporal punishment, prohibited under Article 3 of the ECHR [10].

The European Court can only find a violation of Article 3 of the ECHR, whenever the domestic authorities fail to fulfill their procedural obligations under this Article. Therefore, when investigations into ill-treatment are extremely lengthy, thus becoming ineffective, or when such investigations contain serious deficiencies, the Court will rule on a breach of the procedural aspect of Article 3 of the ECHR [11].

In a decision[12], the Court states that in order to fall under the provisions of Article 3 of the ECHR, ill-treatment must be of a minimum degree of severity, its assessment being made in the light of the circumstances of the case. Thus, the nature and context of the treatment, its duration, its physical and mental consequences, as well as, in some cases, the sex, age, condition of the victim's health will be taken into account [13].

Therefore, the assessment of the minimum severity is relative. The Court has established as degrading treatment within the meaning of Article 3 of the ECHR, the treatment that induces feelings of fear, anxiety and inferiority in the victim[14], the treatment by which a person is humiliated and humiliated, humiliation in the victim's own eyes[15] and / or in the eyes of others[16], regardless whether this was the purpose of the perpetrator or not[17], the treatment likely to defeat the physical or moral resistance of a person or to determine him to act contrary to his own

will or conscience[18], the treatment which shows disrespect for human dignity or which human dignity diminishes[19].

Article 1 of the ECHR is the responsibility of the Member States to ensure that all their citizens have the rights and freedoms provided for in the Convention. In conjunction with Article 1 and Article 3 of the Convention, Member States are required to take all necessary measures to ensure that their nationals are not subjected to ill-treatment, including where the perpetrators are physical persons [20]. On the other hand, if the State is not directly liable for acts of violence falling under the provisions of Article 3 of the Convention, this does not mean that the State is exempt from its obligations under these provisions. In such situations, the authorities have the obligation to prosecute the alleged ill-treatment, officially and effectively, regardless of whether the perpetrator is a physical person [21] or whether the treatment contrary to the provisions of Article 3 has been applied with the involvement of state agents. The criminal investigation is considered effective if, by the means used, it is likely to determine the facts of the case and to identify and punish the authors. Any irregularities during the prosecution resulting in the impossibility of establishing the causes of the injury or the impossibility of establishing the identity of the authors, as well as the delay in initiating the criminal investigation and its late execution could constitute violations of this provision [22].

If the victims are children or other vulnerable persons, the European Court of Justice has stated the following [23]: "136. (...) In particular, children and other vulnerable persons have the right to protection from the State, in the form of effective deterrence of such serious violations of their personal integrity (see, for example, *A. v. The United Kingdom*, cited above, § 22, and *Opuz v. Turkey*, No 33401/02, 159, ECHR 2009, as well as the Council of Europe's Recommendation on integrated national strategies for the protection of children against violence (...)) The Court also recognized the special vulnerability of the victims of domestic violence and the need for the active involvement of the State in their protection (see *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008, and *Opuz*, cited above, § 132) These positive obligations, which often overlap, consist in: a) the obligation to prevent ill-treatment that the authorities knew or should have known about (see, for example, *Đorđević v. Croatia*, No 41526/10, pt. 138-139, ECHR 2012) and b) the (procedural) obligation to conduct an effective formal investigation in case a person makes a well-founded complaint of ill-treatment (see, for example, *Dimitar Shopov v. Bulgaria*, no. 17253/07, § 47, 16 April 2013)."

## CONCLUSIONS

We note that, although there is progress in trying to prohibit the imposition of corporal punishment worldwide, the level of these abuses committed against children reaches huge levels all over the world, regardless of state or social origin.

All international documents state that any form of violence against children, including in the family, is considered unacceptable, no matter how mild, and that states have an obligation to take all necessary measures to prevent acts of violence against children and to protect those who are victims of such actions. Also, all international documents prohibit any corporal punishment of children.

We emphasize that violence against children is intolerable and that the prevention of such actions requires the involvement of all citizens, policy makers, governments and international organizations. It is necessary for the policy of the world's states to address the issue of violence against children to focus on the development of laws and programs that ensure the prevention of such abuse and the protection of victims as effectively as possible. At the same time, awareness campaigns are needed on the effects of acts of violence against children.

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5. Ratified by Romania on May 7, 1999.
6. To see in this regard, the Association for the Protection of All Children (APPROACH) Ltd. v. France, complaint no. 92/2013, September 12, 2014 (substantive decision).
7. In 2008, in the thematic document "Children and corporal punishment: The right not to be hit is also a right of children".
8. Signed by Romania on June 27, 2014 with reservations, the Convention entered into force on 1 September 2016.
9. To see H. v. The United Kingdom, no. 9580/81, § 85.
10. To see in this regard, M., & M. V. (2013). Croatia, cited above, § 136, and Söderman v. Sweden (GC), no. 5786/08, paragraphs 80 and 81, ECHR 2013.
11. To see, mutatis mutandis, W. V. Slovenia, no. 24125/06, paragraphs 66-70, January 23, 2014; PM v. Bulgaria, no. 49669/07, paragraphs 65-66, January 24, 2012; and MC and AC, (no. 12060/12, 12 April 2016), paragraphs 120-125.
12. To see MC and AC v. Romania (no. 12060/12, 12 April 2016), paragraphs 107 to 112.
13. To see in this regard, Bouyid V. Belgium (MC), no. 23380/09, § 86, ECHR 2015; M. and M. V. Croatia, no. 10161/13, § 131, September 3, 2015; A. v United Kingdom, September 23, 1998, paragraph 20, Collection of judgments and decisions 1998-VI; Costello-Roberts v. The United Kingdom, March 25, 1993, § 30, Series A no. 247-C.
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