

# Parental violence in the upbringing of children; legal standards in four European countries

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## Summary

The Netherlands Institute for Care and Welfare (*Nederlands Instituut voor Zorg en Welzijn, NIZW*) has been asked by the Research and Documentation Centre of the Dutch ministry of Justice to compile a report of legal standards which have been applied in various European countries in order to eliminate all forms of violence in the upbringing of children. The report aims to contribute to the social and political debate on the desirability and use of a similar normative standard in the Netherlands.

The report addresses four main questions:

1. How is the prevention of violence against children organized in the national legislation?
2. What is the aim of the legislation and what arguments led to its enactment?
3. What support measures were undertaken parallel to and after the legislation?
4. What information is available on the effectiveness of the legislation?

We opted for a descriptive approach as best suited to the questions and aims of the study. The information was collected by means of desk research (literature and websites) and interviews with key figures in each country. These interviews were conducted by telephone with the aid of a questionnaire (sent in advance) and by e-mail. Additional information was then gathered from various other informants.

In dialogue with the steering committee we selected four countries which have applied a legal standard to combat all forms of violence in the upbringing of children. These countries were selected on the basis of cultural comparability with the Netherlands, geographical range (between Scandinavia and Central Europe), the moment the legislation was introduced (at least two years ago) and the expected availability of evaluations and reports on effectivity. This resulted in the selection of Sweden, Austria, Denmark and Germany (in chronological order of administering the legislation).

To get a clear idea of the (current) arguments against legal standards we have also included a description of the recent debate on the issue in England.

## Legislation

### Sweden

In 1979 Sweden amended the *Föräldrabalken* (Parental Code, Section 6.1) as follows: *Children have a right to care, safety and a good upbringing. Children shall be treated with respect for their person and character and shall not be subjected to physical punishment or any other form of humiliating treatment.* This amendment can be seen as the latest in a series of steps taken in the previous century to protect children against parental violence. The prohibition is a provision under civil law. There are no sanctions for violations.

### Austria

In 1989 Austria added the following provision to the *Allgemein Bürgerliches Gesetzbuch* (3, 146a): *Minors shall follow the instructions of their parents. The parents shall take account of the age, development and personality of the child when setting and enforcing rules; the use of violence and the infliction of physical or mental suffering are prohibited.*

This section of the law is referred to as the *Züchtigungsverbot*.

Austrian legal history also shows an evolution in legislation, which is intended to eliminate violence against children and between family members. The legal prohibition on the use of violence when disciplining children is based on civil law. Hence, any violations can have civil law implications in the

sense that the court takes account of parental violence when determining the legal relationship between parents and children in connection with limiting or revoking parental rights. There are no sanctions for violations of this prohibition.

#### *Denmark*

In 1997, Denmark amended its *Lov om forældremyndighed og samvær* (Parental Authority and Access Act, Section 2.2) as follows: *A child has a right to care and safety. He/she shall be treated with respect for his/her person and shall not be subjected to physical punishment or any other form of humiliating treatment.*

This prohibition is the latest in a series of legal actions which were introduced in Denmark during the previous century. The legal history shows a progressive trend towards prohibiting violence between men and women and between adults and children. The prohibition is based on civil law. Violations are not subject to sanctions.

#### *Germany*

The following legal provision has been in force in Germany since 2000, laid down in the *Bürgerliches Gesetzbuch* (Book IV, Family Law, Section 1631.2): *Children have a right to an upbringing which is free of violence. Physical punishment, mental injury and other degrading treatment is prohibited.*

Before 2000 only degrading parenting practices - with no further specification - were prohibited under German law. The amendment extends this prohibition to physical punishment (including the smack on the wrist) and mental injury.

Violations are not subject to sanctions. The primary aim of the legislation is to establish the normative standard that the use of violence in any shape or form is inadmissible in disciplining children - including those forms of physical and mental violence which are not explicitly defined as punishable in Criminal Law.

#### *Similarities*

A large degree of similarity exists between the legislation passed in Sweden, Austria, Denmark and Germany to prevent violence in the upbringing of children. In all four countries the purpose of the legislation is to afford children protection against all forms of violence. There is no punishment or prosecution for parents who breach these legal provisions. The provisions are intended to establish a norm with the primary aim of making adults refrain from using violence towards children, in the same way as all members of society are required to desist from any form of violence. As such, they supplement, on the one hand, the prohibition on violence in Criminal Law, and on the other, the child protective measures that confer on children the civil right to protection, if necessary, from severe parental threats to their interests and health.

#### *Aims and arguments*

In the four selected countries the ultimate aim of the legislation was to afford children (better) protection against all forms of violence, not only from parents and carers, but from other adults as well. The principal aim of the legislators when enacting the prohibition was to effect a change of mentality of the population, and to strengthen existing public opinion in such a way that adults would not use any form of physical or mental violence against children. Accordingly, the intention was to offer children the same protection of physical integrity and human dignity as is offered to adults. The legislators also wanted to create a framework to provide parents with support and information and to allow scope for preventive interventions to stop physical punishment from escalating into abuse.

In none of the countries, the legislator intended to impose sanctions, exercise control over parents or carers, or limit parental freedom. It was, however, the intention to limit the means employed by parents or carers when exercising their right to discipline children. The legislators in these four countries attempted to make parents and carers aware of this by amending the law.

The following arguments were put forward in the four countries:

- A clear normative legal standard on physical punishment clarifies the legislator's intentions towards parents, carers and children, and towards the courts.

- A normative legal standard is in keeping with current public opinion and international treaties stating that children have the same rights as adults to physical and mental integrity and to protection against violence.
- A normative legal standard provides a good starting point for combating child abuse. Parents have a clearer idea of where they stand and professionals can legitimately address cases sooner and offer support or intervene in situations where children are physically punished (too) rigorously and (too) often.
- Academic studies increasingly show that physical punishment impedes healthy child development and can lead to various forms of anti-social behaviour.

After extensive discussions, the English government has as yet decided not to amend the law because of, amongst others, insufficient public support. In addition, the existing laws were deemed to afford sufficient protection.

### ***Support measures***

#### *Information campaigns*

Sweden launched a large-scale public information campaign to draw attention to the amendment as soon as it had been introduced. In the years that followed, the government repeatedly disseminated information jointly with private organizations. Between 1998 and 2001, another large-scale information campaign was conducted by a public-private partnership. Parents, children and professionals were approached with information about physical punishment and the prevention of parenting problems and child abuse.

Austria did not launch a campaign when it introduced the legislation but it did, several years later, draw attention to violence towards children as part of a broader campaign against domestic violence.

Denmark organized one large-scale campaign after passing the amendment. The aim was primarily to inform parents. Professionals were recruited, mostly to distribute information material. Parents are still supplied with information on a smaller scale.

An extensive campaign targeting parents and professional groups was also carried out in Germany. Unlike Sweden and Denmark, the German campaign was not only conducted nationwide (with posters, advertisements and TV commercials), but also through locally organized public events, courses, et cetera.

#### *Supportive policy and legislation*

Sweden operates a system of child health care and family policy (including family allowances, parental leave) aimed at helping parents to bring up young children. In the past few years the legislative and executive aspects of family law and child protection have focused increasingly on the best interests of the child. Recently, a specially formed government committee submitted a list of recommendations to further improve the approach to combating child abuse. Early intervention and the prevention of violence play a central role in these recommendations.

Austria is also taking steps to prevent violence in families by, for example, setting up the *Plattform gegen Gewalt in der Familie*. It is also introducing measures for child welfare, child protection and parenting support. More than 50% of all parents visit the free *Elternberatung* (parent support meetings). Apart from the previously mentioned campaigns, we saw less evidence of a flanking policy in Denmark. The child health care services, however, place a heavy emphasis on support for young families.

After the legislation against physical punishment, Germany reformulated its Child Services Act, which now states that parents must be helped to solve family conflicts without resorting to violence. This act constitutes an important framework for the implementation of parental support and child protection in the federal states. Subsequent amendments relating to domestic violence were also passed.

### ***Data on the effects***

A limited amount of data on the effects of the legislation in the four countries is available. The published research focuses largely on attitude towards and the use of physical punishment. Figures on a

possible decline in child abuse are scarce. It is also noticeable that the research on the effects almost exclusively concerns physical violence.

### *Effects on attitude*

In 2000 11% of Swedish parents were in favour of physical punishment (cf. 26% in 1981, two years after the act was passed). Thirty-four percent believed that light or moderate punishment was sometimes necessary when disciplining children. Fifty-six percent were totally opposed to physical punishment (at least 80% of juveniles). Smacking children in public was especially considered 'not done'.

Very little research has been carried out in this field in Austria. A study conducted two years after the legislation was introduced revealed that almost 70% of parents categorically rejected the use of physical punishment. We were unable to find any data for the years before and after.

In Denmark, the scarce data suggest that, since the early 1980s, an increasingly larger part of the population has become opposed to physical punishment of children (26% in 1980 compared with 57% in 1997), but it is unclear whether this percentage has risen further since the amendment of 1997.

Parental values are appearing to shift from acceptance of physical punishment to positive ways of setting rules and limits.

In Germany, an initial study has been conducted into the effects of the amendment of 2000. It shows that the new legislative provision is accepted by the vast majority of the population. The population also appears to have become more sensitive to what is and is not allowed under the law. Compared with ten years ago fewer parents and juveniles accept physical punishment as a parenting tool.

### *Effects on the use of physical punishment*

In Sweden the use of physical punishment in raising children has declined over the years. This trend had already started before the act of 1979 (from around 90% in the early 1960s to 51% of all parents in 1980), but research from 2000 shows that it continued afterwards. In 2000 only 8% of parents used physical punishment at least once a year. This decline covered various forms of physical punishment, including those that cause a child potentially serious injury, such as striking (hard) with the fist or an object and kicking. It is less clear whether a decline has occurred in very serious forms of physical violence, such as threatening with or using a weapon.

Soon after the legislative amendment (early 1990s) it turned out that 25% of Austrian parents used physical punishment occasionally and that 5% practised seriously violent forms of punishment. There are no data for the years before or after.

In Denmark no specific evaluation research was conducted on the subject. The use of physical punishment appears to have declined since the late 1960s, but one third of parents still use it incidentally.

A decline in parental violence has been recorded in Germany over the past ten years, but here too, a large number of parents (almost 60%) still give their children an occasional clip on the ear. The use of heavy physical punishment (beatings or striking with an object) has fallen by 30% to 3%. It is still too early to clearly discern the effects after the introduction of the amendment.

### *Effects on child abuse*

There is very little information on the effects of the legislation on levels of child abuse. No clear data could be found in any of the four countries on this for the period before or after the amendment.

In Sweden a strong upward trend has been discernible since 1984 in the number of reports to the police of abuse to children up to the age of 14. However, further analysis revealed that the number of serious injuries had fallen significantly compared with light injuries or none at all. Probably, the increase is partly caused by a greater willingness among the public to report child abuse to the police (also when it takes a lighter form). It should also be noted that these police statistics are a fairly poor reflection of the extent of child abuse. Unfortunately, no national data are available on the inflow at the local report centres of the social services, which must be called in for each case of suspected abuse, neglect or perturbing parenting situations. Similarly, other indicators which we have studied (questionnaires among parents and young adults, reports by children themselves, infanticide records) do not allow us to draw concrete conclusions about shifts in the extent of child abuse.

In Austria and Denmark there are no valid national data about levels or reports of child abuse that can be attributed to possible effects of the legislation.

In Germany there has been a rise in the number of reports by adults about physical violence towards children. The number of reports by children has also risen by almost 45%.

### *Commentary*

The lack of information on the effects of legislation can be explained by the fact that the legislation in Denmark and Germany came into force only recently. Longitudinal research is not (yet), or only marginally, available.

The literature confirms that it is very difficult to collect reliable figures on levels of physical punishment and child abuse. Often, the police statistics are not representative, because many cases of (suspected) child abuse are not reported. This is also true of countries such as Sweden and Denmark, where professionals are even obliged to pass on information to the authorities. A rise in the number of reports may be due to greater alertness and / or lower tolerance of domestic violence, and thus disguise any real decline or stability in the levels. Figures from polls are difficult to interpret: the composition of the sample and the content and wording of the questions can influence the results and complicate comparisons.

On the basis of the available data, it is not possible to distinguish between the effects of legislation as such, support measures, wider social and cultural changes in recent decades (such as increased prosperity and changing styles of parenting) and the influence of the social debate around the legislation.

### *Summarizing*

The available information indicates that legislation - in combination with information and a support structure for parents and professionals - can help to lower acceptance of violence in favour of positive means of correction. It also leads to a decline in physical punishment as a parenting tool. The effects on lowering child abuse are not demonstrable, though the increase in the reports in Sweden and Germany does suggest greater alertness and willingness to report incidents. We found no signs in any of the countries in the study that the change to the law is experienced as an infringement of parental rights.

### ***Recommendations***

1. *Concerning the protection of children against parental violence, the Dutch government should be clear in its aims, task and responsibility*

Clearly defined aims are essential if the debate and the decision-making are to be productive. It is only when the aims are clear that the means to achieve them can be introduced. The governments in this study passed the legislation with a view to improving the protection of children against all forms of violence. As a means, they decided on an unequivocal normative standard, which makes it explicitly clear that parents must refrain from all forms of physical and mental violence towards children. We recommend that the Dutch government also formulates a clear standpoint on the importance of protecting children against parental violence. This standpoint should state whether - and if so, how - the government intends to communicate the norm that violence against children is unacceptable. The answer to this question is partly dependent on the government's vision of its own task and responsibility in this matter.

2. *If the government wants to commit itself to the norm that all forms of violence against children are unacceptable, it should pass legislation that supports this vision.*

This report suggests that legislation can be useful if the government wants to establish a normative standard that violence towards children is unacceptable. By administering legislation, the government commits itself to communicating this message. It is difficult to say on the basis of this report whether this norm could be communicated just as well without legislation. However, legislation offers clear advantages, namely:

- Clarity regarding the intentions of the legislator;
- A good framework for information and support measures;
- A clear stimulus for these measures.

In the four countries studied, we found no information on negative effects of the legislation, including possible limitations experienced by parents in the upbringing of their children.

If the government decides to legislate, it is advisable, given the experience in the countries in this study, to introduce a provision in the Dutch Civil Code which covers all forms of violence and is formulated on the basis of children's rights. This will underscore the positive premises and intentions of the standard and prevent the measure from being wrongly associated with possible sanctions or government control over parents.

1. *Legislation should be supplemented by additional measures in the form of information, support for parents and professionals, and research.*

Finally, in order to increase acceptance and enhance the effect of legislation, supplementary measures are necessary in the form of:

- A public information campaign when the legislation is introduced;
- A support structure for parents and professionals;
- An evaluation report and an analysis of the effects.

Consultation with all parties concerned is recommended to ensure sufficient support for the necessary changes.

Lessons can be learned in all these fields from the experience of the countries in the study.