

Children are unbeatable!

An alliance of organisations and individuals seeking legal reform to give children the same protection under the law on assault as adults and promoting positive, non-violent discipline

BRIEFING

(August 2005)

HUMAN RIGHTS PRESSURE FOR EQUAL PROTECTION

IT IS no longer a question of whether the UK should abolish all legal defences that allow children to be hit and thus give children equal protection under the law on assault. It is a question of how soon the UK will respond to its human rights obligations.

Law reform to abolish all corporal punishment of children is now seen as an obligation under international law by both European and United Nations human rights monitoring bodies. This has been confirmed by the UK parliamentary Joint Committee on Human Rights.

Hitting people breaches their fundamental rights to respect for their physical integrity and human dignity. The existence of a special legal defence for parents who hit their children – formerly “reasonable chastisement” but now known as “reasonable punishment” in England and Wales under the Children Act 2004 – breaches children’s right to equal protection under the law.

The pressure for equal protection reform from human rights treaty bodies is overwhelming and there is a growing consensus for change in Europe – more than a third of European countries now give children equal protection from assault in the family and more will do so this year.

The Children Are Unbeatable! Alliance aims to ensure that the UK joins the growing movement for equal protection sooner rather than later. We should do the right thing, right now.

FURTHER INFORMATION

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10 reasons to support equal protection for children under the law on assault:

Children are being legally hit right now

Research commissioned by the Department of Health shows that most UK children are hit and around a third are hit severely (Smith and Nobes, 1997).

Support child protection professionals

All those involved in protecting children from abuse, from the NSPCC to Social Services Directors, want the law changed to provide a clear basis for child protection.

Promote positive parenting

The law as it stands undermines the work of health visitors, midwives, early years carers and many others who try to promote positive, non-violent discipline.

Cultural change

The law sets standards in every sphere of society, including family relationships. How can we expect parents to stop hitting their children if the law says it’s acceptable?

Reform works

Children are afforded equal protection from assault in Germany, Sweden, Norway, Austria and many other countries, changing attitudes and behaviour for the better.

Human rights obligations

The UN Committee on the Rights of the Child has twice recommended law reform; the European Social Charter requires abolition of all corporal punishment, and the European Court of Human Rights has ruled that UK law does not provide adequate protection.

The law is archaic

The law allowing children to be legally hit dates back to the 19th century and is out of step with the values of a modern society.

Ordinary people do not oppose change

In fact, when asked in a non-sensationalist way, the majority of people support changing the law to give children equal protection (MORI Social Affairs Institute, 2004).

It’s the right thing to do

Many countries have changed their laws without having public opinion firmly on their side. They did it because it is the right thing to do for children, children’s rights and child protection, and public attitudes have changed as a result.

**hitting children is wrong
& the law should say so**

HUMAN RIGHTS PRESSURE FOR EQUAL PROTECTION

COUNCIL OF EUROPE

In Europe it is the human rights mechanisms of the Council of Europe in Strasbourg, enforcing the binding standards of the European Convention on Human Rights and the European Social Charter, which are actively pursuing the UK. Many other reforms in UK law have been made to comply with these standards – including prohibition of school corporal punishment.

The Council of Europe, founded in 1949 to defend human rights, democracy and the rule of law, now has 46 member states. Its Committee of Ministers first proposed law reform to end corporal punishment of children in a 1985 recommendation; this and other more recent recommendations, condemning all corporal punishment, were supported by the UK. In a Strasbourg seminar on corporal punishment in the family held in November 2002, the Deputy Secretary General of the Council challenged the governments of member states “to stop defending – or disguising as discipline – deliberate violence against children and to accept that children, like adults, have the fundamental human right not to be assaulted. In the face of such a fundamental right states cannot remain indifferent – it is their duty to interfere: hitting children is no more acceptable than hitting anyone else. There can be no divide in the respect of human rights”. In 2003, speaking at a meeting of European Children’s Ministers, the Deputy Secretary General noted that the Council of Europe had succeeded in eliminating the death penalty throughout the continent: “I hope we can soon declare Europe free of corporal punishment.”

More than a third of the member states of the Council of Europe now give children equal protection. Fourteen have abolished all corporal punishment: Austria (1989), Bulgaria (2000), Croatia (1999), Cyprus (1994), Denmark (1997), Finland (1983), Germany (2000), Hungary (2004), Iceland (2003), Latvia (1998), Norway (1987), Romania (2004), Sweden (1979) and Ukraine (2004). In addition, in Italy in 1996 the Supreme Court of Cassation in Rome declared that all corporal punishment was unlawful and Portugal's Supreme Court issued a similar judgment in 1994; neither has confirmed these decisions explicitly in legislation, however these judgments meet the requirements of the European Social Charter (see page four).

There are commitments to proceed with prohibition in Luxembourg, the Slovak Republic, Slovenia and the Netherlands. Greece has also announced its intention to do so soon (see page four).

Follow-up to 1998 A v UK judgment of the European Court

The Committee of Ministers of the Council of Europe, responsible for ensuring that governments “execute” European Court of Human Rights judgments, has had a succession of discussions on “A v UK”, which was issued more than six years ago in September 1998. The Court found unanimously that UK law – the “reasonable chastisement” defence – failed to give children adequate protection including effective deterrence. It found that the beating of a young English boy by his stepfather amounted to inhuman or degrading punishment. During consideration of the case in 2004, delegations from other European states expressed serious concern at the UK’s lack of action in response to the judgment. In particular, the deputies were concerned that the UK Government had given an undertaking to the Court that it would reform the law allowing “reasonable chastisement”.

“While it may be a moot point for many victims, it is nevertheless important that it is no longer legal to hit, or physically chastise or smack women. For children, sadly, it is still another matter, in several of the Council of Europe member states.” **Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, 2003**

“A failure to criminalise violence against children in the family breaches children’s fundamental rights to respect for their physical integrity and human dignity. Affording children equal protection from assault is an inevitable consequence of our human rights obligations. We should embrace the higher standards now - not put them off to a later day. Our aim should be to make Europe a corporal punishment free zone and the UK should take the lead.” **Baroness Helena Kennedy QC, 2005**

The European Committee of Social Rights, monitoring conformity with the European Social Charter

In 2001, the European Committee of Social Rights issued an interpretative "General Observation" on corporal punishment, concluding that compliance with article 17 of the Social Charter, and the Revised Social Charter which will replace it, requires abolition of all corporal punishment: "...the Committee considers that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It furthermore considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law."

The Committee states in its Observation that it has been influenced by the European Court judgment in "A v UK", by the consistent recommendations from the United Nations Committee on the Rights of the Child, and by developing law reform across Council of Europe states. The Committee's position, like that of the Committee on the Rights of the Child (see page six), does not allow for any compromises: there must be explicit and effective prohibition of all corporal punishment: "The Committee does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence."

Since 2003, the Committee has found that a number of states are not in conformity with the Social Charters because corporal punishment in the family was not prohibited. These include France, Slovak Republic, Romania, Hungary, Poland, Slovenia, Turkey, Spain and Malta. In 2004, Romania and Hungary complied with explicit legal prohibition and Slovenia and the Slovak Republic are committed to doing so.

"...since there is no prohibition in legislation of all corporal punishment in the home, the situation [in the UK] is not in conformity with Article 17 of the Charter"

In July 2005, the Committee of Social Rights issued its conclusion on the latest UK report (submitted in June 2004) and found UK law in breach of human rights obligations. It "recalls that Article 17 of the Charter requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere".

Furthermore, the Committee "considers that this prohibition must be combined with adequate sanctions in penal or civil law..." and "...since there is no prohibition in legislation of all corporal punishment in the home, the situation [in the UK] is not in conformity with Article 17 of the Charter".

The Committee's conclusion goes to a Governmental Committee and then to the Committee of Ministers. If the UK does not remedy the situation, the Committee of Ministers is likely to issue a resolution, setting out the action required to comply.

There is also a procedure allowing for "collective complaints" to be made against states alleging that they are not complying with the Social Charters. Thirteen member states have so far accepted this procedure by ratifying an Additional Protocol to the Charter – not including the UK. In 2003, collective complaints were registered against five of these countries – Belgium, Greece, Ireland, Italy and Portugal – on the grounds that they have not effectively prohibited all corporal punishment and other humiliating treatment of children.

In June 2005, in a landmark ruling, the Committee of Social Rights concluded that Belgium, Greece and Ireland are in breach of their human rights obligations under the European Social Charter because they have not prohibited all corporal punishment. It further concluded that the law in Italy and Portugal, as interpreted by Supreme Court decisions (1996 and 1994 respectively), does prohibit all corporal punishment, including in the family, and therefore conforms with the requirements of article 17. In response to the Committee's decisions, Greece has announced that it will prohibit all corporal punishment and Belgium and Ireland are expected to act soon.

Parliamentary Assembly of the Council of Europe calls for corporal punishment free zone

The Parliamentary Assembly of the Council of Europe adopted a detailed recommendation on 24 June 2004, with overwhelming support, calling for a "coordinated and concerted campaign in all the member states for the total abolition of corporal punishment of children" (Recommendation 1666/2004). The recommendation "notes the success of the Council of Europe in abolishing the death penalty and the Assembly now calls on it to make Europe, as soon as possible, a corporal punishment free zone for children".

The Parliamentary Assembly notes the established human rights standards in the Convention on the Rights of the Child and the European Social Charter which require prohibition of all corporal punishment: "The Assembly considers that any corporal punishment of children is in breach of their fundamental rights to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended."

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Committee of Ministers responds to Parliamentary Assembly – calls for a co-ordinated and concerted campaign

In April 2005, the Committee of Ministers, decision-making body for the Council of Europe, responded to the Parliamentary Assembly recommendation (see above), stating that it agrees with the Assembly on the need to begin "in all member states, a coordinated and concerted campaign for the abolition of all violence against children". The Committee notes that it has made recommendations promoting law reform and generally condemning corporal punishment, dating back to 1985, and goes on to "underline the importance of appropriate legislation in this field...".

The Committee accepts the need for a "comprehensive strategy" to coordinate the efforts of all key actors and to mobilise resources. It underlines that both the UN Convention on the Rights of the Child and the European Social Charter aim to protect children against all forms of violence.

The Committee announced a new three-year programme of action on "Children and violence". One priority field of the programme will be effective legal protection of children against all forms of violence. "The programme will, as requested in the Assembly's recommendation, heighten the awareness of children, those who live and work with them and the general public on the need to protect children from all forms of violence. It will also ensure general awareness of children's fundamental rights, in particular their right to human dignity and physical integrity".

The Committee also agreed with the Assembly that "children and young people should be given the opportunity to express their views and be involved in planning and implementing activities to eradicate violence against children...".

"Many citizens and politicians regularly express their concern about increasing violence in their societies. The credibility of this concern is questionable as long as they are not willing to seriously address the use of violence against children. And don't suggest that a little bit of violence is acceptable. It is not! That applies equally for adults and children." **Jaap E. Doek, Chairperson, UN Committee on the Rights of the Child, 2004**

"The recourse to physical punishment by adults reflects a denial of the recognition, by the Convention on the Rights of the Child, of the child as a subject of human rights. If we want to remain faithful to the spirit of the Convention, strongly based on the dignity of the child as a full-fledged bearer of rights, then any act of violence against him or her must be banned..." **Mary Robinson, former UN High Commissioner for Human Rights, 2001**

HUMAN RIGHTS PRESSURE FOR EQUAL PROTECTION – AT A GLANCE

2005 Committee of Social Rights, the Council of Europe body monitoring conformity with the European Social Charter, finds the UK in breach of its human rights obligations. The influential committee “considers that since there is no prohibition in legislation of all corporal punishment in the home, the situation is not in conformity with Article 17 of the Charter.”

A landmark ruling by the European Committee of Social Rights finds Belgium, Greece and Ireland in breach of human rights obligations under the European Social Charter for not prohibiting all corporal punishment of children, including in the family. However the law in Italy and Portugal, as interpreted by their supreme court decisions, is judged to be in conformity. This means that more than a third of Council of Europe members states now give children equal protection.

Committee of Ministers, the executive authority of the 46 member state Council of Europe, agrees with the Parliamentary Assembly on the need to begin in all member states “a coordinated and concerted campaign for the abolition of all violence against children”.

2004 Parliamentary Assembly of the Council of Europe adopts recommendation calling for a corporal punishment free zone and states: “...any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended.”

The UK parliamentary Joint Committee on Human Rights confirms in its September 2004 report that UN and European agreements require complete abolition of the “reasonable punishment” defence in order to give children equal protection.

2002 UN Committee on Economic, Social and Cultural Rights recommends UK should prohibit corporal punishment in the family “given the principle of the dignity of the individual that provides the foundation for international human rights law”.

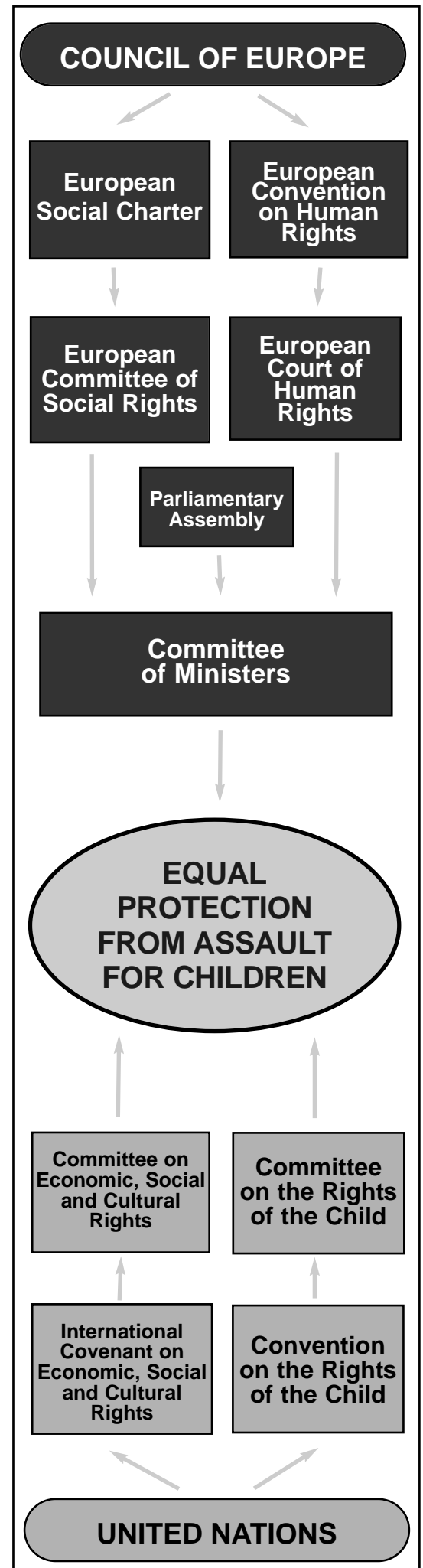
UN Committee on the Rights of the Child, after examining the UK’s second report under the Convention on the Rights of the Child, “deeply regrets that the UK persists in retaining the defence of ‘reasonable chastisement’ and has taken no significant action towards prohibiting all corporal punishment of children in the family”. Recommends UK “with urgency adopt legislation throughout the State party to remove the ‘reasonable chastisement’ defence and prohibit all corporal punishment in the family and in any contexts not covered by existing legislation”.

2001 European Committee of Social Rights tells Council of Europe member states, including the UK, that the European Social Charter requires prohibition of all corporal punishment.

European Committee of Social Rights decides to defer its conclusion on the latest report from UK until it receives more information on the legality of corporal punishment. The Committee notes that “not all forms of corporal punishment are prohibited within the family”.

1998 European Court of Human Rights finds that the beating of a young English boy by his stepfather breaches the boy’s right to protection from degrading punishment and that the UK Government is responsible because current law - the defence of “reasonable chastisement” - fails to provide “adequate protection” including “effective deterrence”. Court orders the UK to pay the boy £10,000 damages and his legal costs.

1995 UN Committee on the Rights of the Child, after examining the UK’s first report under the UN Convention on the Rights of the Child, expresses concern at the existence of the “reasonable chastisement” defence and the level of violence against children in the UK; recommends prohibition of all corporal punishment in the family.





United Nations human rights monitoring bodies

In addition to the European human rights pressure, the UN Committee on the Rights of the Child and another UN human rights monitoring body, the Committee on Economic, Social and Cultural Rights, have also formally recommended that corporal punishment in the family must be prohibited in the UK. The Committee on the Rights of the Child monitors states' compliance with the UN Convention on the Rights of the Child, ratified by the UK in 1991 and by 192 other states worldwide (all eligible states apart from the US and Somalia).

In 2002, the Committee on the Rights of the Child told the UK it "deeply regrets that the UK persists in retaining the defence of 'reasonable chastisement' and has taken no significant action towards prohibiting all corporal punishment of children in the family". It had already urged law reform in its 1995 report.

The Committee went on to recommend that the UK "with urgency adopts legislation throughout the State party to remove the 'reasonable chastisement' defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation; promotes positive, participatory and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, engaging with children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment".

The Committee on Economic, Social and Cultural Rights, after examining the UK's fourth periodic report under the International Covenant on Economic, Social and Cultural Rights also concluded in 2002: "Given the principle of the dignity of the individual that provides the foundation for international human rights law...the Committee recommends that the physical punishment of children in families be prohibited, in line with the recommendation of the Committee on the Rights of the Child."

The UN Secretary-General has launched a Study on Violence against Children, which is led by former Brazilian human rights minister Paulo Pinheiro. Nine regional consultations have taken place, including in Europe, at which law reform to end all corporal punishment has been a consistent recommendation.

"...deeply regrets that the UK persists in retaining the defence of 'reasonable chastisement' and has taken no significant action towards prohibiting all corporal punishment of children in the family"

UK parliamentary Joint Committee on Human Rights

JCHR September 2004: "We do not think that the very clearly expressed views of the Committee on the Rights of the Child can be ignored. As the only body charged with monitoring compliance with the obligations undertaken by States in the Convention on the Rights of the Child, its interpretations of the nature and extent of those obligations are authoritative. In our view, the Committee has consistently made clear that corporal punishment of children is a serious violation of the child's right to dignity and physical integrity, and that states must both introduce a legislative prohibition of such punishment at the same time as measures for educating the public about the negative consequences of corporal punishment. In the light of this, we do not consider that there is any room for discretion as to the means of implementing Article 19 of the Convention on the Rights of the Child as interpreted by the Committee on the Rights of the Child: it requires the reasonable chastisement defence to be abolished altogether."

JCHR November 2003: "It is anomalous that while the Green Paper's stated goal is to "keep children safe", the Government does not acknowledge, in the context of the law on assault, that children should have the same right as adults to respect for their human dignity and physical integrity and to equal protection under the law. The Government struggles to support the reasonable chastisement defence, which continues to be incompatible with its obligations under the Convention on the Rights of the Child."

JCHR June 2003: "We conclude that the time has come for the Government to act upon the recommendations of the UN Committee on the Rights of the Child concerning the corporal punishment of children and the incompatibility of the defence of reasonable chastisement with its obligations under the Convention. We do not accept that the decision of the Government not to repeal or replace the defence of reasonable chastisement is compatible with its obligations under the Convention on the Rights of the Child."