

Promotion of the adoption of “positive discipline” practices

November 20th is Universal Children’s Day. A historical day that deserves some reflection.

Closely connected to this subject is European project “[Hands-Up: Promoting the Effective Elimination of Corporal Punishment against Children](#)” (hereinafter *Hands Up*), which, for a two-year period, and among other tasks, “analysed legislation and jurisprudence related to children’s rights, as well as corporal punishment, and violence and maltreatment against children in order to detect possible weaknesses and suggest alterations”, refers Conceição Cunha, Law Professor at the Oporto Faculty of Law, Universidade Católica Portuguesa and integrated researcher of Católica’s Research Centre for the Future of Law.

Católica Porto: What were the main goals of the *Hands-Up* project?

Conceição Cunha: The main goals were to foment cooperation between different institutions for the protection of children’s rights; to raise society’s awareness on the negative effects of corporal punishment of children (as other humiliating punishments) and on the dangers associated with “escalating violence”; to promote the adoption of “positive discipline practices” by parents and caregivers; to analyse the legislation and jurisprudence related to children’s rights, to corporal punishment of children, and to violence and maltreatment against children, in order to detect weaknesses and suggest alterations.

Católica Porto: What entities were involved in the project?

Conceição Cunha: *Hands Up* was co-financed by the EU Programme on Rights, Equality and Citizenship and managed by the EC Directorate-General for Justice and Consumers. It started October 2016 and ended end September 2018.

The project was coordinated by APDES (Portugal) and involved 5 partners: Universidade Católica Portuguesa – Porto Faculty of Law, the Social Activities and Practice Institute (Bulgaria), Camino (Germany); University of Alicante (Spain); and “One Child One World” (Greece).

Católica Porto: What kind of activities were developed?

Conceição Cunha: Both training initiatives on “positive discipline” aimed at parents and other caregivers and campaigns to sensitize the community took place throughout the project; training initiatives on maltreatment against children were also provided, aimed both at professionals in the field of health and education, and at those in the field of justice; an action plan was designed for each participating country with the analysis of the current national situation, the main weaknesses/problems in the protection of children’s rights and the main recommendations, both at legal and social level. For the elaboration of this action plan, we had the contribution of several experts (from the fields of justice, health, education and psychology) over several meetings. As a result of the analysis of doctrine, legislation and jurisprudence, some problems were identified in the Law; and the Porto Faculty of Law, Universidade Católica Portuguesa therefore went to the Assembly of the Republic – 1st Commission (Equality, Rights, Freedoms and Guarantees) to suggest some legislative alterations of social nature.

Católica Porto: What were the main conclusions drawn therefrom?

Conceição Cunha: Our analysis showed that light and even moderate corporate punishments are still socially tolerated, and that resorting with some frequency to severe corporal punishments (and other punishments) – whether within families or within child protecting services – is still a reality. There is therefore the need to raise the community’s awareness on the importance of protecting children’s rights by promoting education through “positive discipline”, which does not resort to neither corporal punishments nor humiliating treatments. In this sense, it is important to implement several measures, among which training initiatives for parents and other caregivers, as well as for professionals in the fields of health and justice. Caregivers in child protection services show a significant lack of training, which is why the project proposes professional accreditation to be mandatory for those working with minors, since work with vulnerable groups presupposes specific skills and training.

Católica Porto: What about the role of courts?

Conceição Cunha: As regards courts, we have witnessed a recent (yet insufficient) improvement in a sense of less tolerance towards severe and moderate punishments; yet, it is still necessary to invest in the training of professionals in the field of justice (police force, prosecutors, judges, lawyers. In spite of the need to promote positive parenting, we concluded that criminal intervention shall only occur in face of conducts of some severity (penalty as *ultima ratio*), since intervention in case of light punishments inflicted by parents to children could be of no interest to the child (which is also stressed by the European Commission for Children’s Rights). Still, we stress the possibility of a recommendation addressed to child protection services stressing the need to alert Commissions for the Protection of Minors every time there is a suspicion or a hint that a child may be suffering corporal punishments or treated in a humiliating way by their parents, even if it does not justify criminal accusation; this signalization should/could lead to parental monitoring.

Católica Porto: In the scope of the Hands-UP project, some legislative alterations were suggested. Can you name them?

Conceição Cunha: Some legislative alterations were indeed suggested aiming at a more effective protection of children, namely: In art. 1878 of the Civil Code, on parental responsibilities, we proposed a no. 3, with the following writing: “In the fulfilment of their educational responsibilities, parents must respect their children and must not subject them to corporal punishments or humiliating treatment” (underlining, thereby, that there are other educational practices that even if they do not involve physical punishment may still be humiliating and must, therefore, be prohibited). In the Criminal Code, in what regards the crime of domestic violence, which imposes cohabitation of the aggressor and the victim (whether a minor, or an ill or elderly person), we proposed the extension of criminalization to “ascendants and descendants”, even without cohabitation, so as to allow the punishment of progenitors that use violence against their children when exercising their visitation rights. In this sense, art. 152, no. 1, al. d) would state the following: “Particularly defenceless persons, namely by reason of age, deficiency, illness, pregnancy or economic dependence cohabiting with them, or their ascendants or descendants”. Furthermore, we proposed the following penalty to appear in the accessory penalties names in art. 152, no. 2: “To attend specific programmes on positive parenting”.

Católica Porto: And what about the crime of maltreatment?

Conceição Cunha: As regards the crime of maltreatment (art. 152 A), which is applied in institutional context (e.g., maltreatment of children in shelters) but does not foresee accessory penalties, we have proposed a no. 3 and a no. 4 foreseeing those same penalties, namely the prohibition of contact with the victim, the prohibition to keep and use weapons, and the obligation to attend specific programmes on the prevention of maltreatment and/or positive education, as well as the possibility of the agent being prohibited from performing duties which imply contact with children.

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