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CHASTISEMENT OF MINORS AS A MEANS OF EDUCATIONAL INFLUENCE

ABSTRACT

The process of upbringing requires full commitment and personal example from parents. This allows for the formation of a special kind of bond that makes parents credible educators, which inspires trust in children, making the process of upbringing more effective. If a child feels safe in the presence of their parents, if they are treated with the respect they deserve, if they perceive their parents' care, it is easier for them to internalise their views, values and principles. Sometimes, however, in order to maintain the chosen direction of educational influence, parents must discipline their children. One of the means of disciplining a child is to reprimand them. The right to reprimand stems from the parents' right to raise their child, which is a fiction without the possibility of discipline. The issue of reprimanding is one of the most socially complex issues, extremely controversial, and completely differently assessed by supporters and opponents of reprimanding-based parenting practices. Writing about scolding is undoubtedly a risky business, because any attempt to rationalise it immediately positions the author in the group of supporters of corporal punishment, which is extremely harmful. The problem of scolding minors exists, regardless of the narrative that has been created around it. The punishment of minors is a constant subject of public debate due to cases of drastic abuse of parental authority publicised by the media, which boil down to severe beatings of young children by their own parents, often with fatal consequences, which should be punished with the utmost severity.

However, the aim of this study is not to decide on the legitimacy or harmfulness of physical punishment, but to point out the interference of state authorities in the process of raising a child by its parents, including the issue of corporal punishment of minors as a method of upbringing, which inevitably infringes on the autonomy of the family.

THE FAMILY AS THE NATURAL ENVIRONMENT FOR RAISING A CHILD

The upbringing of a child is the responsibility of its parents and is one of the most important aspects of the life of every family, which, according to Article 18 of the Polish Constitution, is under the protection and care of the Republic of Poland. On the one hand, it is a manifestation of the parents' involvement in the life of the child, for whom they bear full responsibility, and on the other hand, it is the most vivid example of the social function of the family. After all, families do not function in a vacuum, but in a social group for which the child – upon reaching adulthood – will take responsibility, which is a natural process of generational replacement. Raising a child is one of the

basic functions of the family and plays an extremely important role for the whole of society, of which the child will be a pillar in the future (Juchacz, 2018, p. 92). A contrario, *a poorly raised child will be a problem for society, an object of necessary care and social rehabilitation measures on the part of social institutions and state authorities* (Czarnek, 2011, p. 30). It is therefore not irrelevant how a child is prepared to fulfil its future social roles.

The family has priority in raising a child as the natural environment for life and development, where the child is born and where it learns to know the world. In this respect, parents have an inherent and natural subjective right, not derived from the state, although exercised under state and social control (Judgment of the Constitutional Tribunal, 2011, K 16/10). Since human beings are social creatures, society cannot be indifferent to how they are shaped. This depends on the manner of upbringing, i.e. instilling and reinforcing certain attitudes and behaviours considered good and desirable in society, a system of values, moral principles and a specific worldview that allows for the perception and evaluation of events taking place in a person's environment and lifestyle. Upbringing is nothing more than preparing young people for life in society, supporting them in the natural process of development, identifying their potential abilities and ways of using them, and shaping and enriching their personalities (Grudecki, 2021, footnote 836). Humans have natural predispositions, which parents in particular should develop in order to guide them towards appropriate behaviour, for their own benefit and for the benefit of society.

Education for social life takes place in the family, because it is the primary and fundamental environment for human life and functioning. The family not only satisfies the biological and psychological needs of the child growing up in it, but also transmits basic social values, shapes morality, and thus performs a protective and educational function (Dymek-Balcerek, 2000, pp. 56-69). It is therefore natural for a child to accept what they see around them, what they experience and what they grow up with. Although they also function in various other communities – peer groups, schools, religious communities, etc. – it is the family that has the greatest influence on their lives. As a rule, what they learn at home becomes a point of reference for their own actions, a kind of guidepost for their lives.

Closely related to the process of upbringing are issues of punishment. Educational influence is not a homogeneous institution. Parenting is the entirety of actions taken by a child's parents to regulate their behaviour, which includes both rewarding and disciplining (Grudecki, 2021, footnote 818). After all, parents have a natural right to use all methods they deem appropriate in raising their child (Andrejew, 1964, p. 73), which stems from respect for the autonomy of family life. Nevertheless, the right of parents to raise their children is not absolute. The limits of parental authority are clearly defined in Article 72 of the Polish Constitution, which obliges public authorities to protect children from violence, cruelty, exploitation and demoralisation. Family autonomy does not therefore mean indifference the state authorities to what happens within the family. The guarantees adopted are a consequence of the fact that children should have the opportunity to live in an environment conducive to their proper physical and mental development, free from any pathological forms of upbringing. This does not, of course, mean that punishment should be excluded from the catalogue of educational methods, but responsible parents should be aware of what forms of punishment are in line with the principle of the child's welfare and when they should be stopped (Telusiewicz, 2011, p. 82).

NORMATIVE GUARANTEES OF PARENTS' RIGHT TO RAISE THEIR CHILDREN

The natural right of parents to raise their children is confirmed in the Polish Constitution, which is the highest law. According to Article 48(1) of the Polish Constitution, *Parents have the right to raise their children in accordance with their own convictions. This upbringing should take into account the child's level of maturity, as well as their freedom of conscience, religion and beliefs.* The resulting guarantees are a consequence of the obligation to provide families with state protection and care against arbitrary interference by its authorities in the relationship between parents and children when it is functioning properly.

Constitutional guarantees are reflected in the provisions of the Act of 24 February 1964, the Family and Guardianship Code (hereinafter: FGC), which contains provisions on parental authority, which is the source of rights and obligations towards the child, including educational influence. The provisions FGC

do not contain a definition of parental authority, but indicate what obligations and rights of parents constitute it. *Parental authority includes, in particular, the obligation and right of parents to care for the person and property of the child and to raise the child with respect for his or her dignity and rights* (Article 95 § 1 FGC). *Parents raise and guide a child under their parental authority. They are obliged to care for the physical and spiritual development of the child and to prepare them properly for work for the good of society in accordance with their abilities* (Article 96 § 1 FGC). It follows that raising a child is impossible without the parents' right to guide them, i.e. to lead them through the process of growing up, to watch over their proper development and progress in every area of life, as well as deciding or co-deciding for them until they are mature enough to take over these functions themselves (Cisek, 1990, p. 28). In this way, parents are to prepare their child for independent life. A child owes obedience to their parents, and in matters where they can make decisions and express their will independently, they should listen to their parents' opinions and recommendations formulated for their own good (Article 95 § 2 FGC). By obliging children to obey their parents, the legislator emphasises that this is one of the conditions for the effectiveness of the upbringing process. In turn, *Before making decisions on important matters concerning the person or property of a child, parents should listen to them, if their mental development, health and maturity allow it, and take into account, as far as possible, their reasonable wishes* (Article 95 § 4 FGC). These provisions indicate the relationship between parents and children desired by the legislator and the manner in which parental authority should be exercised, with full respect for the child's subjectivity, who, in connection with the process of growing up, should be involved in decision-making processes concerning them. However, this does not relieve parents of their responsibility for the child, who remains under parental authority until reaching the age of majority (Article 92 FGC).

If irregularities in the exercise of parental authority are found, the court may decide to suspend, restrict or deprive one or both parents of their parental authority. However, deprivation of parental authority, as the most drastic form of court interference in family autonomy, should be treated as a last resort and used only when previous measures of interference have proved ineffective or their use in the circumstances of the case would be inappropriate.

The court may deprive parents or one of them of parental authority in the event of a permanent obstacle to its exercise, abuse of parental authority or gross neglect of duties towards the child. If the court has entrusted the exercise of parental authority to one of the parents, limiting the parental authority of the other to specific duties and rights in relation to the child, each of these parents has the obligation and right to exercise parental authority, except that the other parent may only do so within the scope specified by the court, i.e. within the scope of the duties and rights specified by the court in relation to the child (Article 107 § 2 FGC, as well as Article 58 § 1a FGC). The above applies accordingly to parents whose parental authority has been restricted by the court on the basis of Article 109 § 1 FGC.

All parental actions related to the exercise of parental authority are based on the principle of the best interests of the child, which is the central concept around which the family law system is organised. *The concept of the best interests of the child is complex. On the one hand, it covers the entire sphere of the child's most important personal matters, such as physical and spiritual development, appropriate education and upbringing, and preparation for adult life. On the other hand, it has a clear material dimension. This consists in the need to provide the child with the means to live and achieve personal goals, and in the case where the child has his or her own property, also in the need to look after his or her financial interests* (Supreme Court ruling, 1997, II CKN 90/96). It is assumed that the principle of the best interests of the child is most fully realised in the family, which is the natural environment of life, where the child is provided with the necessary conditions for optimal development, and thus has a sense of closeness, stability and security.

THE RIGHT TO DISCIPLINE A CHILD IN THE UPBRINGING PROCESS

The upbringing process involves many different activities aimed at achieving the educational goal. These also include disciplining a child, which is neither punishment nor a form of violence or abuse. Perceiving reprimanding in this way is an oversimplification that deprives parents of one of the tools they have to influence their child. Upbringing is not limited to rewarding,

nor can it mean condoning behaviour that parents consider contrary to the child's welfare and the public interest. Responsible parents set requirements for their children and enforce their instructions, do not give in to their children's moods, do not exempt them from their duties, and do not allow situations in which children do whatever they want. Giving children unlimited freedom exposes them to physical danger and the risk of demoralisation. A child must know the norms of behavior that apply to him as a member of a social group, to which he is subject like everyone else, which guarantees a relatively harmonious coexistence for everyone. Therefore, it is not acceptable to ignore a child's inappropriate behaviour and pretend that nothing has happened, as this reinforces the child's belief that if their behaviour is tolerated by adults, it means that it is permitted. This only reinforces inappropriate behavioural norms in the child, which, even if tolerated by parents, do not mean that they are socially acceptable. If their parents do not correct them in time, the state will do so in the future, which may have much more severe consequences. It is therefore rightly emphasised that without the use of certain elements of coercion, it is impossible to ensure the basic safety of a small child or to enforce the desired behaviour of older children (Warylewski, 2009, p. 291).

Reprimanding is causing discomfort, but deliberately, in order to make another person aware that their action is reprehensible and to change their attitude in the future. As a form of discomfort, it is somewhat similar to punishment, but the concept of reprimanding more clearly indicates the moment of educational influence than the concept of punishment; moreover, reprimanding is a much milder form of discomfort than criminal punishment. Reprimanding can take various forms and is not limited to causing physical pain; it can be verbal in the form of pointing out inappropriate behaviour, announcing disciplinary measures, but also introducing restrictions on freedom or personal rights, for example, participation in a social gathering, school games, or participation in sporting or entertainment events. Physical punishment causes physical pain, while other forms of punishment, although painful, are of a completely different nature. They cause psychological discomfort in the form of realising one's own mistakes, weaknesses, character flaws, and inappropriate behaviour. The aim is therefore to cause psychological and moral distress felt by the child (Bojarski, 2011, pp. 21-22). The primary task

of those exercising parental authority is first to explain and clarify to the child the inappropriateness of their behaviour (lack of manners, careless performance of their duties) or to express sadness, disappointment or disapproval, and only then to use other means of educational influence (Różycka-Jaroś, 2012, p. 191). It should be emphasised that physical force should only be used when the person using it is certain that other methods of influencing the child will not bring the desired result and will not be effective, which does not immediately mean abuse. After all, parents know their children best and know what forms of educational influence are effective and will bring the desired result. However, physical force must be used in accordance with the *ultima ratio* principle, i.e. to the minimum extent necessary, for the shortest possible time (Hałas, Hypś 2011, p. 54).

The parental right to physical punishment derives directly from natural law. *Many contemporary educators believe that by physically punishing a child, we are teaching them aggression. This is a very simplistic, even infantile way of thinking. Thoughtless beating as the only way to raise a child does indeed serve to pathologise the child's behaviour. Nevertheless, wise punishment, aimed at combating evil, shows the child that sometimes, in extreme situations, the use of physical force is appropriate. Classical ethics allows for self-defence. Here, analogously, physical punishment is a manifestation of defence against evil that cannot be dealt with in any other way. This is what children should learn from parents who use physical punishment. Otherwise, we infect children with shallow pacifism* (Zalewski, 2003, pp. 32-33), which leads to further pathologies. *In some situations in life, the use of physical punishment, corporal punishment, is indispensable. [...] The necessity of using this type of punishment seems obvious: qui bene amat, bene castigat (he who truly loves, punishes severely), melius est pueros flere quam senes (it is better to cry in childhood than in old age), said the ancients, who can hardly be accused of having an unrealistic view of human nature* (Czarnek, 2018, p. 15).

Punishment allows parents – who are responsible for their child until they reach the age of majority – to regulate their behaviour. Of course, the most desired way to regulate a child's behaviour is through persuasion, supported by the strength of arguments and the authority of the parents. After all, the right to reprimand a child stems from parental authority, which obliges parents to take care of their child and ensure their proper development. However, conversations do not always bring the expected results, mainly due to the child's psychological

and physical immaturity, and do not always eliminate negative habits and behaviours. In such cases, parents may resort to permitted educational measures in the form of punishment, bearing in mind, however, that it should be undertaken for educational purposes, be related to a specific offence and not pose a threat to the child's development (Grudecki, 2021, item 82). Educational reprimands, however painful, are not directed against the child's well-being; on the contrary, they are intended to benefit the child and the society of which they are an integral part. After all, no one functions outside a social group, outside the system of norms that apply within it, the respect and protection of which guarantees personal safety, the maintenance of order and conflict-free functioning for all, which is extremely difficult due to the often-conflicting interests, aspirations and expectations of its individual members.

The aim of the person reprimanding should be to instil and enforce appropriate rules of conduct. This cannot be achieved without maintaining discipline, without setting requirements, without orders and prohibitions. The essence of reprimanding is to cause the child some discomfort in order to achieve an educational effect and to inhibit or weaken the type of behaviour that caused it, as well as to indicate and reinforce a positive pattern (Grudecki, 2021, footnote 768). However, through punishment, parents should express their dissatisfaction not with the child as a person, but with their behaviour, with what they have done wrong (Gruszczyk-Kolczyńska, 2010, p. 12). Scolding should direct the child's attention to the act, to the violation of the norm of behaviour. Thanks to this, they will learn the rules that their parents require them to follow and model their behaviour in such a way as to avoid scolding in the future. *By learning the laws that govern the world, the child learns that certain behaviour will be punished and other behaviour will be praised. Through consistent discipline, they gradually learn about the existence of a certain moral order in the world* (Kluz, 2011, p. 165). Punishment therefore serves as a guide and aims to eliminate reprehensible behaviour in children, teaching them obedience, respect for others and respect for the rules. However, this requires consistency; inconsistency in punishment undermines the educational purpose of this method of influence. *If parents are inconsistent and sometimes allow rules to be broken, while at other times they punish their*

children for breaking them, then the child feels hurt, but also fails to learn respect and adherence to moral norms (Kowolik, 2011, p. 101).

Since punishment is a consequence of parental authority, it follows that it can be used against a minor child until they reach the age of majority. The parental authority is therefore gradually reduced as the child grows up. This does not mean, of course, that once parental authority ceases, when the child reaches the age of majority, parents lose the right to reprimand their child if they believe they are behaving inappropriately, to give them advice and guidance to help them avoid unpleasant situations or overcome problems in life. It is not the case that the child's fate becomes indifferent to their parents, that they do not observe their actions and evaluate their decisions. Another issue is the extent to which the child is willing to take advantage of their parents' advice, which is motivated by love for them and supported by their own experience. There are doubts as to whether it is possible to identify a moment, a lower age limit, from which reprimanding a child will be effective. It is emphasised that for reprimanding to be justified, the child must be able to understand the meaning of this type of influence. Most of the doctrine argues that it is not possible to determine this unequivocally, as it depends on the individual development of the child and is linked to their ability to understand the message conveyed by the punishment (Grudecki, 2021, footnote 743). This limit cannot be set from above. However, it seems that there is no need to indicate such a limit, because everyone who experiences a negative assessment of their behaviour in the form of reprimands intuitively understands that one way of behaving will meet with approval, while another will meet with disapproval, which is expressed in unpleasant consequences for them. They do not even need to be particularly aware of the reasons for their reprimand, which result from prevailing social and moral norms, not to mention legal ones. In the future, they will refrain from behaviours that cause various unpleasantness and bring about discomfort that they would like to avoid. The process of recognising these norms, assimilating them and adapting their behaviour to them is therefore based on the most primitive instincts.

Due to the psychophysical immaturity of a child whose personality is still forming, it is not possible to completely abandon punishment, as it is one of the basic, natural methods of learning to refrain from undesirable behaviour

(Trusz, 2011, pp. 22-23; Gruszczyk-Kolczyńska, 2010, p. 12). It follows that it plays a dual role, as a means of responding to inappropriate behaviour and thus has a preventive dimension – it is used to ensure that minors do not behave in a manner that is disapproved of in the future. Therefore, it should be emphasised that punishment is not directed against the child, but is aimed at their welfare and the public interest.

PROHIBITION OF CORPORAL PUNISHMENT

Punishment as a form of disciplining a child is intuitively associated with the use of physical punishment, limiting its scope exclusively to the use of physical coercion. Punishment cannot be equated with violence, nor can a slap be equated with abuse. It should be emphasized that punishment, even physical punishment, does not necessarily mean beating a child or resorting only to corporal punishment. Moreover, such a simplification deprives parents of the right to choose educational measures appropriate to the age and behaviour of their child. It also suggests that punishment is associated with harming the child and, as such, should be prohibited. This understanding seems to be reinforced by the definition of violence contained in Article 2(1)(2) of the Act of 29 July 2005 on counteracting domestic violence, according to which domestic violence is a single or repeated intentional act or omission, using physical, psychological or economic superiority, violating the rights or personal interests of the person experiencing domestic violence, in particular: a) exposing that person to the risk of loss of life, health or property, b) violating their dignity, physical integrity or freedom, including sexual freedom, c) causing damage to their physical or mental health, causing that person suffering or harm, d) restricting or depriving that person of access to financial resources or the opportunity to take up employment or achieve financial independence, e) significantly violating that person's privacy or causing them to feel threatened, humiliated or tormented, including through electronic means of communication. This list of behaviours is illustrative. The use of violence may constitute grounds for initiating the *Blue Card* procedure, regulated by the Regulation of the Council of Ministers of 6 September 2023 on the *Blue Card* procedure and *Blue Card* form templates. When this procedure is initiated, intervention

measures are taken to ensure the safety of the person suspected of being affected by domestic violence and aimed at improving their life situation. If there is a suspicion of domestic violence against a minor, the activities within the procedure are carried out in the presence of a parent, legal guardian or actual guardian, unless they are suspected of using violence, in which case they are carried out in the presence of another adult family member. These activities are carried out by a number of different entities, including a diagnostic and assistance group, a social worker from a social welfare organisation or a social services centre, and a police officer. The *Blue Cards* procedure is a basic mechanism for protecting children against domestic violence, both when they are directly harmed and when they witness aggression, and its aim is to isolate the child from the perpetrator of violence as quickly as possible and provide children with a safe living space. It should be emphasised that domestic violence, as a manifestation of destructive and disintegrative behaviour, should be prosecuted and its perpetrators punished, especially when the victim of violence is a child who, due to their defencelessness, weakness and sensitivity, should be given special protection. It should be noted that such a connection stigmatises the family, identifying it as a potentially pathological environment, a source of danger to the child, from which the child must be protected. As a consequence, this may lead to a weakening of the dominant role of parents.

The need to protect children from corporal punishment has been confirmed in international law. Of fundamental importance is the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, which in Article 19 par. 1 obliges States Parties to take all appropriate measures in the legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or neglect, maltreatment or exploitation, including sexual abuse, while in the care of a parent(s), legal guardian(s) or other person responsible for their care. The interpretation of this provision raises certain doubts in legal doctrine. Guarantees of protection of children against punishment of minors are confirmed by Article 37, according to which *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. However, this provision refers to the punishment of minors by public authorities, not to family relations.

The above guarantees are in line with the provisions of the International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966, which provides in Article 7 that no one (including children) shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In turn, Article 24 grants every child, without discrimination on the basis of race, colour, sex, language, religion, national or social origin, property or birth, the right to such protection as is required by his or her status as a minor on the part of his or her family, society and the State. However, the above provisions can only provide a limited legal basis for prohibiting corporal punishment, as they refer to punishment that is humiliating in nature. They do not provide a normative basis for assuming that all corporal punishment of children is degrading (Kamińska Pośpiech, 2025, commentary on Article 96¹, point 2).

The provisions of the Polish Constitution state that *No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. The use of corporal punishment is prohibited* (Article 40). It appears that the prohibitions resulting from this are not limited solely to criminal law, but apply to interpersonal relations in all areas of life. Due to the fact that the wording of Article 40 of the Constitution of the Republic of Poland is very general and does not provide for any restrictions on the application of the prohibitions resulting from it, they also apply to family life, in relations between parents and children. Therefore, cruel, inhuman or degrading treatment, as well as corporal punishment, cannot be used against children. This interpretation of the provision is also supported by the fact that the Polish Constitution repeatedly emphasises the role of the family and the upbringing of the younger generation, and introduces the protection of children's rights (Skrzydło, 2013, commentary on Article 40). These guarantees are reinforced by the provisions of Article 72 of the Polish Constitution, according to which *The Republic of Poland shall ensure the protection of the rights of the child. Everyone shall have the right to demand that public authorities protect children against violence, cruelty, exploitation and demoralisation* (paragraph 1), and the obligation to appoint a Children's Ombudsman – a specialised body responsible for protecting the rights of the child (paragraph 4). In this context, one can refer to the

judgment of the European Court of Human Rights, which draws attention to the prohibition of inhuman and degrading treatment, and in particular the prohibition of corporal punishment of children. Ensuring the basic dignity of the child means that there can be no compromise when condemning violence against children, whether it is accepted as tradition or explained as discipline. The uniqueness of children – their potential and sensitivity, their dependence on adults – absolutely requires that they have greater protection against violence, including corporal punishment in the home environment, which is always humiliating in nature. Respect for children's dignity cannot therefore be ensured if national courts accept any form of justification for acts of unlawful treatment them, including corporal punishment (Judgment of the European Court of Human Rights, 2017, case no. 23022/13).

All this resulted in the introduction of a ban on corporal punishment into the FGC pursuant to the Act of 10 June 2010 amending the Act on counter-acting domestic violence and certain other acts. Pursuant to Article 96 added to the FGC¹ *Persons exercising parental authority and caring for or supervising minors are prohibited from using corporal punishment*. The provision entered into force on 1 August 2010, limiting the scope of corporal punishment of minors. The prohibition of corporal punishment of children applies to all forms of punishment, i.e. those used to enforce obedience in children by violating their physical integrity. However, the introduction of a legal ban on the use of corporal punishment against minors did not automatically render other forms of influence on them unacceptable, as long as they did not involve the use of physical punishment, which redefines the limits of the counter-type of punishment of minors (Krajewski, 2012, pp. 52-53). This counter-type still functions, but to a lesser extent, as the possibility of using corporal punishment against minors has been excluded from its scope. In other words, it no longer repeals the illegality of using corporal punishment against minors. The countertype still includes other forms of educational influence, such as verbal punishment and the use of orders and prohibitions that restrict the child's freedom and rights. The term *corporal punishment* used by the legislator cannot be treated as a synonym for punishment and applied to all forms of disciplining a child. Corporal punishment undoubtedly is a form of physical violence, which is a reaction to a specific behaviour or lack of behaviour

on the part of the person being punished, aimed at causing pain or at least discomfort, but not resulting in physical injury. Reprimanding, on the other hand, is not limited to the use of physical force. It has been rightly noted in legal doctrine that when introducing the prohibition in question into the FGC, the word *reprimand* should have been used, as the word *punish* generally refers to punishment for behaviour prohibited by law, i.e. the commission of a prohibited act, whereas in the case of chastisement, it is more appropriate to think in terms of an educational sanction combined with the desire to shape the child for the future (Telusiewicz, 2011, pp. 82-83).

It should be added that an amendment to the Act on Counteracting Domestic Violence introduced Article 12a, granting social workers the right to remove a child in the event of an immediate threat to their life or health in connection with domestic violence and place them with another close person who does not live with them, who can guarantee the child's safety and proper care, in a foster family, a family-type children's home or institutional foster care. The decision to remove the child is made by the social worker together with a police officer, as well as a doctor, paramedic or nurse and, if possible, in the presence and with the support of a psychologist. In judicial practice, situations in which social workers make use of the possibilities offered by this provision are rare. The most common practice in situations of immediate threat to the life or health of a child is to notify the police and the court-appointed guardian supervising the family, if such supervision is in place.

Provision 96¹ of the FGC is a generally worded directive on educational and upbringing objectives. The explanatory memorandum to the government's draft bill amending the Act on Counteracting Domestic Violence and certain other acts indicates that the purpose of introducing a ban on corporal punishment of minors was to change public attitudes and to point to other methods of upbringing, which was to lead to the elimination of child abuse. It should be added that the above is in line with the position of psychology and pedagogy, which emphasise that corporal punishment of children is an example of a flawed method of upbringing, which in some cases leads to permanent disorders later in life (Jędrejek, 2019, commentary on Article 96¹, point 1). It is emphasised that corporal punishment only results in causing physical pain, discomfort and humiliation to the punished child and creates fear in their relationship with

their carer, who should be the guarantor of their safety, and thus has a decidedly negative impact on the child's physical, mental and emotional development (Grudecki, 2021, footnote 1013), constituting one of the greatest threats to their proper maturation or education and hindering their future interpersonal relationships (Judgment of the Regional Court in Sieradz, 2018, II Ka 109/18).

One cannot also ignore the Act of 28 July 2023 amending the Family and Guardianship Code and certain other acts, commonly known as the Kamilek Act, which introduced solutions aimed at strengthening the protection of children against abuse. This Act was passed in response to the tragic death of 8-year-old Kamilek from Częstochowa, who, after long suffering, died as a result of brutal abuse by his stepfather, as a comprehensive legal regulation aimed at guaranteeing better protection of children against violence and providing them with effective assistance in cases of harm to them. Pursuant to the amendment to the Act of 13 May 2016 on Counteracting Sexual Crime Threats and the Protection of Minors, Chapter 4b was added, which is entirely devoted to the standards of protection of minors, which is intended to enable comprehensive protection of minors and, consequently, strengthen the system of counteracting crimes to their detriment. The amended regulations impose an obligation to adopt and apply child protection standards, defining the principles of safe relationships between staff and children, in all facilities that work with children. The foundations on which the standards for the protection of minors are based include the implementation of a document at the level of a given facility defining a policy for preventing child abuse, verification of staff, development of procedures for responding to child abuse appropriate to the scale of violence, as well as the evaluation, review and updating of adopted regulations. The primary goal of introducing standards for the protection of minors should be to ensure safe relations between children and the facility staff, and also to standardize the actions taken by the entities appointed for this purpose – both in the area of preventive and intervention activities (Szwed, 2025, p. 388). The standards for the protection of minors are intended to sensitize people working with children on a daily basis to recognizing risk factors and counteracting violence of various origins. It should be added that the obligation to implement standards is legally enforceable and therefore also subject to a system of controls and penalties.

It has been rightly emphasised that the special protection afforded to children is primarily related to the need to ensure their proper development. This is because it concerns a person whose physical and mental development is not yet complete and whose personality is not yet fully formed, especially since the process of maturation is gradual. With age and intellectual development, a child acquires awareness of the significance of their behaviour and the ability to distinguish between good and evil, as well as the ability to guide their behaviour in accordance with the acquired value system (Hypš, 2018, p. 102). While agreeing with this statement in essence, it should be added that one must not overlook what constitutes the core of upbringing, i.e. shaping the child's personality, in particular their emotional attitudes, worldview and value system, ability to coexist in a social group, etc. and guidance, which involves regulating and supervising their lifestyle, stimulating behaviour, deciding on the direction of their education, caring for the development of activities outside the family, etc. The process of upbringing boils down to a direct, permanent influence on the child, whether conscious and intentional or completely random, not aimed at achieving an educational goal. Regardless of the method of influence, it always has an impact on the child, who learns both by receiving messages directed at them and by imitation. It is therefore not the case that a child without educational influence will acquire an awareness of the significance of their behaviour and the ability to distinguish between good and evil, as well as the ability to guide their behaviour in accordance with the acquired value system. Without a role model who would show the child how to behave, this is impossible. Someone has to teach the child, make them aware of what they can and cannot do, and set limits on their freedom.

The wording of Article 96¹ of the Civil Code indicates that it does not distinguish between the legal status of parents and other persons exercising parental authority and caring for or supervising a minor. It uses the broad term *persons exercising parental authority*; in addition to parents, these also include persons who have adopted a child (since adoption creates a relationship between the adopter and the adoptee similar to that between parents and children), as well as foster parents, those running a family-type children's home, managers of care and educational institutions, regional care and therapeutic institutions or pre-adoption intervention centres. Such a person is also a guardian appointed

by the court due to the fact that the guardian of the minor is temporarily unable to exercise care (Article 157 FGC). Furthermore, the prohibition of corporal punishment of minors applies to any adult who, due to their professional duties, deals with children and young people (mainly teachers and educators) (Zgoliński, Zduński, 2012, p. 77), as well as other persons who have noticed reprehensible behaviour on the part of a minor. In doctrine, they are divided into natural educators (parents), professional educators (teachers) and accidental educators (bystanders who witness negative behaviour in a child, or persons providing temporary care for a child at the parents' request) (Andrejew, 1964, p. 79). If the prohibition of corporal punishment applies to persons exercising parental authority, even though they are entitled and obliged to raise and guide the child, then it applies even more so to third parties.

Considering the current wording of Article 96¹ FGC, it can be concluded that parents may be more inclined to use psychological punishment that violates the child's dignity, as they will be guided by the mistaken belief that the prohibition of certain parenting methods is limited only to corporal punishment. Meanwhile, disciplining children by using psychological punishment that humiliates their dignity is an act that violates the protected right of every human being to have their dignity respected. Violating this right during punishment indicates that the act is socially harmful (Różycka-Jaroś, 2012, p. 189 et seq.). Threats, humiliation, name-calling, insulting comparisons (shaming, humiliating, ridiculing), overly harsh reprimands, constant criticism and pointing out mistakes, severe isolation or forcing a child to perform unpleasant tasks are non-pedagogical punishments, which in some cases may constitute forms of psychological violence (Cisek, 1990, p. 34). The above may constitute the offence of abuse, which takes the form of both physical abuse and psychological abuse, as defined in Article 207 of the Act of 6 June 1997, the Criminal Code.

Under the provisions of the FGC, there are no sanctions for violating the prohibition of corporal punishment. The norm resulting from the content of Article 96¹ of the FGC is a typical *lex imperfecta*, which means that those who violate it are not liable. Nevertheless, violation of this prohibition may justify court intervention in parental authority on the basis of Article 109 of the FGC, leading to its restriction. Pursuant to Article 109 of the FGC, in the event of a threat to the welfare of the child, the guardianship court may apply a number

of remedial measures, including placing the minor in a foster family, a family-type children's home or institutional foster care. However, if the parents' behaviour takes a more drastic form, it may constitute abuse of parental authority or gross neglect of duties towards the child, justifying the deprivation of parental authority from the parent(s) (Article 111 FGC). Bearing in mind the welfare of the child, the court may also restrict the parent(s)' contact with the child (Article 113² FGC) or prohibit such contact (Article 113³ FGC). It should be emphasised that any separation of a family constitutes a very serious interference in family relations and should therefore be applied with the utmost caution and determined solely in the best interests of the child. When assessing the best interests of the child in a particular case, two premises should be taken into account: firstly, it is in the best interests of the child to maintain ties with the family, except in cases where the family has proved particularly dysfunctional; secondly, it is in the best interests of the child to ensure their development in a stable and safe environment. Removing a child from the care of their family, and thus separating the family, constitutes a very serious interference with the right to respect for family life, which should only be used as a last resort (Judgment of the European Court of Human Rights, 2018, case no. 11308/16).

COUNTER-TYPE OF PUNISHMENT OF MINORS

The introduction of 96¹ of the Civil Code did not eliminate the countertype of disciplining minors, which excludes the unlawfulness of educational influence, although it did contribute to limiting its scope. Undoubtedly, it resulted in the removal of corporal punishment from the catalogue of educational tools, or at least made people aware of the inappropriateness of its use due to the need to protect the welfare of children from actions that bore the hallmarks of physical abuse.

Criminal law is subsidiary to other areas of law, so if family law contains a specific prohibition, criminal law cannot ignore it, as this would constitute a contradiction within the legal system as a whole, in the sense that family law prohibits such behaviour, while criminal law would still tolerate it on the basis of an extra-legal circumstance that would remove its unlawfulness (Krajewski, 2012, p. 55). The use of corporal punishment against minors should

be considered an unlawful act that may result in criminal liability. This does not mean, however, that parents will automatically be held liable for spanking a child who does not follow their instructions given for the child's own good, as this would be contrary to the rationality of criminal law and would violate its subsidiary nature, unnecessarily interfering in the relationship between parents and children, often serving no one's interests (Krajewski, 2012, p. 53). Although such educational measures are no longer permitted under Article 96¹ of the Code of Criminal Procedure are no longer permitted and do not fall within the scope of the counter-type of punishment of minors, their criminality will, as a rule, be excluded (or at least should be excluded) due to their negligible degree of social harmfulness (Article 1 § 2 of the Criminal Code). They should be assessed in the light of the circumstances specified in Article 115 § 2 of the Criminal Code in order to reconcile the protection of the child with respect for the parents' right to raise their child and the least possible interference of criminal law in the relationship between parents and child. According to Article 115 § 2 of the Criminal Code *When assessing the degree of social harmfulness of an act, the court shall take into account the type and nature of the violated good, the extent of the damage caused or threatened, the manner and circumstances of the act, the gravity of the obligations violated by the perpetrator, as well as the form of intent, the perpetrator's motivation, the type of safety rules violated and the degree of their violation.* It should be clearly emphasized that this does not, of course, apply to cases involving child abuse, where the perpetrators should be prosecuted and punished with the full severity permitted by law. There can be no tolerance for violence against a child who, when confronted with a parent who uses violence, finds themselves in a very complex situation due to being under the parent's authority.

Nevertheless, there are situations in which it may be difficult to draw a precise line between corporal punishment and physical coercion. The need to use physical coercion against a child may arise in the event of an urgent need to prevent them from engaging in activities that threaten their safety, such as attacking another person (Słyk, 2022, commentary on Article 96¹ FGC) or separating fighting children, from running into the street, touching electrical wires, picking up a child from in front of a toy shop or playground when they are not listening, pulling them by the hand if they resist entering

a school or holding them down to give them medicine/a meal (Gromek, 2020, commentary on 96¹, Nb. 13), taking away drugs or other stimulants whose harmfulness is obvious. The use of physical coercion, causing a violation of personal inviolability, is permissible in situations that are considered socially and educationally justified. It should be added that physical integrity has been included in the catalogue of personal rights (Supreme Court resolution, 1971, III CZP 87/71). Personal rights, such as health, freedom, honour and, therefore, personal integrity, are protected by civil law. A violation of physical integrity may therefore constitute grounds for initiating civil proceedings for violation of a child's personal rights pursuant to Articles 23 and 24 in conjunction with Article 448 of the Act of 23 April 1964, Civil Code (hereinafter: CC). If the violation of physical integrity resulted in bodily injury or health impairment, Articles 444-446 of the CC shall apply. Moreover, a whole range of actions that meet the criteria of prohibited acts are permissible, provided that they are undertaken for the good of the child. Examples include forcing a child to perform or refrain from performing a specific action, such as cleaning their room, doing their homework, attending a family gathering, refraining from participating in destructive groups, not leaving the house after a certain hour, or not watching certain programmes. A responsible parent, guided by the child's welfare, must set requirements for the child and must hold them accountable for fulfilling the tasks set. Neglect in this area of child-rearing leads to many pathologies in the family and in society. They also demonstrate the parents' educational inefficiency and, consequently, can and should constitute a basis for court interference in the sphere of parental authority.

It follows that not every behaviour that meets the criteria for prohibited acts, which normally justify holding someone accountable, will be met with criminal punishment if it was undertaken within the scope of the duties and powers arising from parental authority for the good of the child.

SUMMARY

Parenting often requires disciplining a child so that their development proceeds in the direction desired by the parents. One way of disciplining a child is through punishment. Under the influence of the development of the concept of children's rights, the scope of punishment is constantly narrowing. Pursuant to Article 96¹ FGC, punishment involving the use of corporal punishment is excluded. The adopted solution is intended to protect children from harm by persons exercising parental authority, care or guardianship, who abused corporal punishment. However, one cannot help but notice that the prohibition of corporal punishment may lead to antagonism between parents and children and, as a consequence, instead of strengthening family ties, it may weaken them, especially in the case of the conviction of one or both parents for its use. It has been rightly pointed out that when sentencing one or both parents, it is important to realise that the conviction will weigh heavily on family relationships, both in the convicted person's attitude towards the child who is the reason for the conviction and towards other children, causing feelings of bitterness, sometimes resentment, helplessness or worthlessness. With these feelings, it is impossible to be a good parent. Although the negative effects are mitigated by time and the parent's love for the child, it cannot be denied that the conviction may cause the child to feel guilty, since it was because of their actions that the parent was punished, and this punishment contributed to the parent incurring criminal liability (Andrejew, 1964, pp. 117-118).

The prohibition of corporal punishment of minors does not mean a prohibition of reprimanding minors. It is justified by the welfare of the child and is acceptable for achieving educational goals. Media reports showing drastic cases of abuse of parental authority prove that the introduction of a ban on corporal punishment does not translate into parental behaviour. Therefore, it is necessary to change the approach to child-rearing, which requires a change in mentality, and this cannot be achieved through revolution, but through the evolution of attitudes and behaviours and the need to raise awareness of the existence and advantages of alternative parenting methods. This, in turn, requires time, but also information campaigns and social campaigns to

sensitise society to every case of child abuse. With the introduction of the ban on corporal punishment of minors, the first step on this path has been taken.

Child abuse requires intervention by the state, which is obliged to ensure freedom and human and civil rights, as well as the safety of citizens, including the youngest ones who require care and support from adults. The primary means of response should be family law standards, while criminal law standards must be treated as a last resort. Any state intervention in the relationship between parents and children should be carried out with great caution, as it is always a drastic solution, destroying family ties and contributing to or exacerbating family breakdown (Krajewski, 2010, p. 105). By taking actions motivated by the welfare of the child, one can deprive them of their family environment, which is the most optimal because it is the natural environment for their life and development.

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