

EXCESSIVE PUNISHMENT OR CHILD ABUSE: AN UNUSUAL CASE

MALTRATTAMENTO E ABUSO NELL'INFANZIA: UN CASO CHE PUÒ FAR DISCUTERE

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Abstract

Corporal punishment has been an integral part of how parents discipline their children.

Psychologists and other professionals are divided on the question of whether the benefits of corporal punishment might out-weight any potential hazards.

In Italian Jurisprudence the use as educative function of the means, in theory legal, of physical, moral or psychological nature, which would torn in abuse excesses measure.

The cases referred described an unusual case of "excessive punishment" during routine clinical examination in our Institute.

Riassunto

Le punizioni corporali hanno costituito da tempo, parte integrante del sistema educativo specialmente da parte dei genitori. Psicologi e educatori sono ancora in disaccordo, anche al di fuori dei confini nazionali, sulla questione relativa ai vantaggi e agli svantaggi delle punizioni corporali.

La giurisprudenza italiana ha offerto elementi per risolvere il problema della distinzione tra il reato di abuso dei mezzi di correzione e disciplina e i reati di maltrattamento in famiglia e di lesioni personali.

Il caso descritto offre lo spunto per qualche commento trattandosi di un insolita fattispecie di "abuso" direttamente osservata nel corso di una consulenza all'interno della azienda ospedaliera ospedali civili di brescia da parte di una di noi per un intervento richiesto dalla clinica pediatrica del medesimo nosocomio.

Background

Underage abuse cases, punished even by the Penal Code of our country, are unfortunately likely in the forensic practice (1-4).

In our Institute, beyond events of the Public Prosecutor's office duty, there are numerous patterns of suspect cases which are brought to our attention during support consultancies to other colleagues pertained to the pediatric area. Most of those are then focalized as nonchalant instances.

The case that we would like to analyze is unusual because it starts as a concrete offence hypothesis for excessive punishment in a familiar environment as also reported unanimously by the Doctrine Medical Examiner (5-8).

The child's mother has evidently admitted causing injuries to her daughter trying to correct some of her inadequate behavior.

Case Report

A seven years old Maghreb girl was in the circumstance of a routine check up in a cancer ward of a public hospital, where she was known and cured for her illness. At the time, the girl was in good health. During routine clinical examinations, the doctor noticed some burns around her thigh and the outer part of the genitals. The burns were very detailed (Figure 1) as they were dark stripes well-defined in the whole spectrum and parallel, prompting the shape of the harmful tool. The examinations pursued by the forensic doctor dated the lesions to some days before. Questioned on the subject, the mother, attended by the husband, said that the girl had been fidgety and she occurred a loss of studying performances lately.

Worried, she reproached her many times, but without any accomplishments. As well, the mother acknowledged that the girl used to masturbate herself while she was with friends. Deeming that she should have corrected this behavior the mother hurt the girl by using a fork made incandescent by a flame.

The punishment, according to the parents, is part of the ones allowed in these cases among their people. These explanations were given with no reticence, calmly, convinced that their actions were uniquely for the sake of the girl.

The case was brought to the examining magistrate who was well informed of the declared reasons of the educational purposes of the woman. During routine clinical examination the girl turned out to be in good health conditions, with no other injuries and she looked untroubled and cooperative with the parents as well as the doctor. The mother, well-adjusted in our town, is affectionate in confrontation of the girl.

Figure 1

Discussion and Conclusion

Corporal punishment is the use of physical force with the intention of causing a child to experience pain, but not injury, for the purposes of correction or control of the child's behavior (9, 10). Professionals and experts on the subject are divided on the question of whether the benefits of corporal punishment might out-weigh any potential hazards. However, corporal punishment is being proscribed more and more by the most authoritative international conventions. For example "the human rights to prohibit and eliminate all corporal punishment and other degrading forms of punishment of children is premised on the rights of every person to respect for his/her dignity and physical integrity and to equal protection under the law, originally formulated in the International Bill of Human Rights and affirmed and developed in the UN Convention on the rights of the child (CRC) and other international human rights treaties" (11).

On the subject of the abuse for the correction means, the Italian Jurisprudence took part in many occasions by offering ideas to define "correction" as a synonym of education with regards on culture. In a period of high immigration there is a particularly strong contrast on methods of education of young people and children (12). In fact, cultural heritages and religious beliefs can lead to extremely different views than those inherent in the culture of the host country (13).

In any case, in our legal order, the use of violence as education purposes cannot be considered legal. A modicum can be allowed so "Acts of minimum physical or moral violence cannot be precluded if they result necessary to strengthen the non arbitrary or unfair prohibition of objectively dangerous and harmful behaviours which demonstrate the unawareness and underestimation of the danger, disobedience, contradictive and insolent.". It integrates, instead, the abuse pursuant to and by effect of the Art.571 Italian Penal Code, the use as educative function of the means, in theory legal, of physical, moral or psychological nature, which would turn into an abuse of excess of measure, without nevertheless involving forms of violence (14, 15).

In this case we pertain to the most severe crime of mistreatment, lesions and private violence.

In the light of these principles the punishment raged to the girl of the discussion under analysis, goes over into the illegal, even though the circumstance should be contextualized and acknowledged in what, far some culture, is an offence and for some is not (16, 17).

On the other hand the massive foreign people migratory current sets problems everywhere as regards of the fundamental and undeniable values of the criminal law, as surety of the fundamental rights of a person adjusting into a society.

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