

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**



4 September 2003

COMPLAINT No. 19/2003

World Organisation against Torture (OMCT)

v. Italy

registered at the Secretariat on 1 August 2003



ORGANISATION MONDIALE CONTRE LA TORTURE

المُنظمة العالمية ضد التعذيب WORLD ORGANIZATION AGAINST TORTURE 世界反对酷刑组织 世界拷問阻止機關
ORGANIZACION MUNDIAL CONTRA LA TORTURA Всемирная организация против пыток
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Regis Brillat
Executive Secretary
Secretariat of the European Social Charter
Directorate General of Human Rights – DG II
Council of Europe
F-67705 Strasbourg Cedex
FRANCE

Geneva, 29 July 2003

Dear Mr. Brillat,

Please find enclosed one collective complaint presented by the World Organisation Against Torture (OMCT) under the European Social Charter of 1961, the Revised Social Charter of 1996 and the Additional Protocol to the European Social Charter of 1995 against Italy concerning its compliance with Article 17 of the Social Charter. You will also find enclosed the required annexes.

All future communications regarding this matter should be addressed to the OMCT at:

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Yours sincerely,

Eric Sottas
OMCT Director

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**Collective Complaint against Italy
submitted by the
World Organisation against Torture (OMCT)
under the 1995 Additional Protocol**

Compliance of OMCT (World Organisation against Torture) with the requirements of the Additional Protocol

Compliance with article 1(b) of the 1995 Additional Protocol:

OMCT is an international non-governmental organisation; it enjoys consultative status with the Council of Europe. It was put on the list established by the Governmental Committee of international non-governmental organisations which have the right to submit a collective complaint.

Compliance with article 3 of the 1995 Additional Protocol:

According to Article 2 of its Statutes, the OMCT's aim is to "*contribute to the struggle against torture, summary executions, disappearances, arbitrary detention, psychiatric internment for political reasons, and other cruel, inhuman and degrading treatment*" (OMCT Statutes, Geneva, December 2001, art. 2, page 2).

Ten years after the decision taken by its 1991 General Assembly to set up a specific programme on children, the OMCT, in conjunction with the Mannerheim League for Child Welfare (Finland), and under the auspices of the Office of the United Nations High Commissioner on Human Rights, held an international conference on children, torture and other forms of violence in Tampere (Finland) from 27 to 30 November 2001 that brought together 183 participants from 73 countries. At the close of three days of discussions, the Conference unanimously adopted the Tampere Declaration which calls for the establishment of new international mechanisms in the fight to eradicate violence against children. The declaration states that "*violence against children, both girls and boys, encompasses all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and includes, inter alia, sexual abuse, harmful traditional practices, trafficking, exploitation, bullying in schools and corporal punishment*".

It further recommends to states that they "*review, enact and amend as necessary all laws to prevent and prohibit torture and all forms of violence against children*". (*Children, torture and other forms of violence – Facing the Facts, Forging the Future*, conference report, Tampere Declaration rec.11, OMCT, 2002, Geneva, page 13).

For preventive and rehabilitative purposes, OMCT regularly documents practices of corporal punishment against children in the context of its urgent appeals and of its reports submitted to the UN Committee on the Rights of the Child (in order to brief the Committee before it examines reports from states under the Convention on the Rights of the Child). These reports always contain an analysis of the legal framework and practice of torture and other cruel, inhuman or degrading treatments or punishments, including corporal punishment. In 2001-2002, in partnership with local

NGOs and members of its network, OMCT has produced 18 alternative country reports presented to the UN Committee on the Rights of the Child, on the rights of the child in Ethiopia, Egypt, Democratic Republic of the Congo, Turkey, Guatemala, Paraguay, Cameroon, Kenya, Bahrain, Spain, Switzerland, Tunisia, Argentina, Sudan, the Ukraine, Italy, the Czech Republic, and Haiti.

In addition, OMCT has regularly made specific statements on the issue of corporal punishment. On 28 September 2001, at the Committee on the Rights of the Child Day of General Discussion on Violence Against Children within the Family and in Schools, OMCT presented a report including analysis and recommendations on physical violence in the home, including corporal punishment.

Compliance with rule 20 of the Rules of Procedure for the system of collective complaints:

The complaint is signed by Eric Sottas, Director of OMCT. Article 20/3 of OMCT's Statutes states that "The director is entitled to take any measures deemed necessary for the implementation of the programmes defined by the General Assembly, the Council and its Bureau, within the limits of the approved budget" (OMCT Statutes, art.20 page 8).

Applicability to Italy of the European Social Charter of 1961 and the Additional Protocol to the European Social Charter of 1995, providing for a system of collective complaints

Italy signed the European Social Charter of 1961 on 18/10/61 and deposited the instrument of ratification on 22/10/65; the Charter entered into force in Italy on 21/11/65. Italy signed the Revised Social Charter on 3/5/96, ratified it on 5/7/99 and it entered into force on 1/9/99. Italy signed the Additional Protocol to the European Social Charter allowing for a system of collective complaints on 9/11/95 and ratified it on 3/11/97. The Protocol entered into force on 1/7/98.

Applicability of Articles 7 and 17 of the European Social Charter of 1961 and the Revised Social Charter to Italy

According to the declarations contained in the instrument of ratification of the European Social Charter of 1961 and the Revised Social Charter, Italy considers itself bound by articles 7 and 17.

These provide (Revised Charter):

Article 7: The right of children and young persons to protection

"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

...

"(10) to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work."

Article 17: The right of children and young persons to social, legal and economic protection

“With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

...

1b to protect children and young persons against negligence, violence or exploitation;

...”

European Committee of Social Rights observations and relevant conclusions

In its General Observations in the Introduction to Conclusions XV – 2, Volume 1 (2001), the European Committee of Social Rights concludes that “... *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’s General Observations relate to both article 7(10) and article 17. In its Observations, the Committee states that it has decided to deal with “protection of children and young people from ill-treatment and abuse” under article 17.

In clarifying its interpretation of these provisions of the Charter, the Committee notes that it has done so “*in the light of the case-law developed under other international treaties as regards the protection of children and young persons, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights. It has also taken into account developments in national legislation and practice as regards the protection of children*”.

We note that in 2003, in its conclusions adopted following examination of Poland’s report on article 17, the Committee states: “*The Committee concludes that the situation in Poland is not in conformity with Article 17 of the Charter on the following grounds: – corporal punishment of children in the home is not prohibited....*” (European Committee of Social Rights, *Conclusions XVI-2*, Volume 2, Chapter 14)

We also note that in 2003, in its conclusions adopted following examination of the Slovak Republic’s Report on article 17 of the Social Charter, the Committee states: “*The Committee previously asked whether the corporal punishment of children in the home, in schools, institutions and elsewhere was prohibited by legislation. The current report provides no information on this subject, however the Committee notes that the concluding observations of the Committee on the Rights of the Child in respect of the Slovak Republic recommend such a prohibition. Therefore the Committee notes that there is no prohibition yet in place and concludes that the situation is not in conformity with the Charter on this point....*

Conclusion

“The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 17 of the Charter, as the corporal punishment of children is not prohibited.”

(European Committee of Social Rights, *Conclusions XVI-2*, Slovak Republic, Article 17, pp 104- 105)

We note that in Conclusions XV-2, the European Social Rights Committee considers Italy’s conformity with article 17 of the 1961 Charter and asks:

“Protection from ill-treatment and abuse

... The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere.”

(Conclusions XV-2, Vol. 1, page 316).

Italy’s obligations under other international human rights instruments

Italy has also ratified the United Nations Convention on the Rights of the Child, in 1991.

We note that when Italy’s Initial Report under the Convention on the Rights of the Child was considered by the Committee on the Rights of the Child in 1995, the Committee’s concluding observations stated: *“The Committee is preoccupied by the existence of child abuse, including physical and sexual abuse and violence within the family, and the insufficient protection afforded by the Penal Code in this regard, as well as the lack of adequate measures for the psycho-social recovery of child victims of such abuses...”*

“The Committee also suggests that the clear prevention and prohibition of torture or other cruel, inhuman or degrading treatment or punishment, as well as a ban on corporal punishment within the family, be reflected in the national legislation”.
(27 November 1995, CRC/C/15/Add.41, paras. 12 and 20)

Italy has also ratified the International Covenant on Civil and Political Rights, in 1978. The Covenant states (article 26): *“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law...”*

The Covenant also requires that (article 24) every child shall have *“the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State”.*

The law relating to corporal punishment of children in Italy

There is no legislative prohibition of all corporal punishment of children by parents.

A judgment of the Supreme Court of Cassation in Rome in 1996 declared that “the use of violence for educational purposes can no longer be considered lawful” (Judge Ippolito, Supreme Court of Cassation, March 18 1996). But the implications of this judgment have not as yet been confirmed in legislation.

Article 571 of the Criminal Code states: “Whoever misuses means of correction or discipline to harm a person subject to his authority, or entrusted to him for purposes of education, instruction, treatment, supervision or custody ... shall be punished.” The offence of abuse of correctional methods is applicable if there is a relationship of authority between the abuser and the abused, if the abuse results in physical or mental injury, and if it involves legitimate correctional methods. The 1996 judgment declared that corporal punishment is no longer a legitimate method of discipline, so that it cannot be defended under the right to correction (“jus corrigenda”).

The judgment suggests that changes to Italian family law “have replaced the traditional institutional and hierarchical model of the family with a participatory and solidaristic view which sees the family as a structure in which the interests of all members are coordinated and which ensures the development of each individual’s personality” (extract from unofficial translation). It refers in particular to article 147 of the Civil Code, which reads:

Doveri verso i figli

“Il matrimonio impone ad ambedue i coniugi l’obbligo di mantenere, istruire ed educare la prole tenendo conto delle capacità, dell’inclinazione naturale e delle aspirazioni dei figli.” (Unofficial translation: “Marriage imposes on both spouses the obligation to maintain, educate and instruct the children taking into account their ability, natural inclination and aspirations.”)

While welcome, this general statement in civil law has no particular implications for disciplinary methods.

The interpretation of the criminal law by Italy’s highest Court is of course very positive and rooted in human rights. But the absence of clear legislation means that the law does not send a clear message to parents and children. In addition, the judgment could be over-ruled by a subsequent decision.

Corporal punishment is unlawful in the penal system and in schools (since 1928). The position in the wide variety of alternative care institutions, provided by state, voluntary and private bodies and in the various forms of daycare is not clear, beyond the implications of the 1996 judgment.

Research into prevalence of and attitudes to corporal punishment

A research study in 1998 using anonymous questionnaires with 2,388 families living in the Tuscany region found that “physical punishment is a general behaviour in Italy, because about three quarters of the caretakers interviewed declared to have thrown something at the child, pushed, grabbed or shoved the child or slapped/spanked the child during the survey year”. Severe forms of violence were much less common – but about 8 per cent of children had experienced more extreme forms of physical punishment during the year. The research report notes that the methodology makes it likely that the incidence of violence reported is likely to under-estimate the true level of violence against children in Italy. (M. Bardi, S.M. Borgognini-Tarli, “A survey on parent-child conflict resolution: intra-family violence in Italy”, *Child Abuse and Neglect*, 6 (2001) 839-853)

Official statistics show that, for crimes for which the judicial authority initiated criminal action between 1986 and 1996, there was an increase in the prevalence of identified maltreatment within the family (for both adults and children) and of abuse of children by means of punishment. (ISTAT Criminal Judicial Statistics, cited in Italy's Second Report under the Convention on the Rights of the Child (2000), CRC/C/70/Add.13). This report acknowledges (para. 289) that there is incomplete monitoring of violence against children and that "much of the violence is perpetrated in the closed sphere of the family". The report also notes inadequacies in the law (paras. 302 et seq), and a lack of promotion of positive, non-violent forms of discipline, care and treatment of the child (para. 307).

Data analysis of calls to Telefono Azzuro (a children's helpline) between January 2000 and June 2002 indicated that over 40% of abuse was physical and 78.6% of all child abuse takes place in the home, with children up to 10 years of age being most at risk. (Analysis presented in the alternative report produced by Telefono Azzuro for the Committee on the Rights of the Child, February 2003)

The complaint

The overall purpose of the Additional Protocol is "to improve the effective enforcement of the social rights guaranteed by the Charter". The purpose of this complaint is to improve the effective enforcement of children's right to protection from violence, including all corporal punishment.

Italy is failing to conform with its obligations under article 17 of the Revised Social Charter because it has not explicitly and effectively prohibited all corporal punishment of children, including by parents and others.

Italy has not prohibited in legislation any other form of degrading punishment or treatment of children and provided adequate sanctions in penal or civil law.

In the absence of explicit prohibition and comprehensive awareness-raising and public education on children's rights to protection and promotion of positive, non-violent forms of discipline, research suggests that hundreds of thousands of Italy's smallest and most vulnerable citizens are still being subjected to preventable breaches of their rights to respect for human dignity and physical integrity.

The 1996 judgment of the Supreme Court of Cassation is a very positive one and quotes Italy's obligations under the UN Convention on the Rights of the Child. But explicit legislation, together with comprehensive awareness-raising, is required to conform with the Charter.