

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



15 March 2004

**Collective Complaint No. 19/2003
World Organisation against Torture (OMCT)
v. Italy**

Case Document No. 4

**OBSERVATIONS FROM THE ITALIAN GOVERNMENT
ON THE MERITS**

registered at the Secretariat on 2 February 2004

Strasbourg, 30 January 2004

Dear Sir,

I have the honour to transmit to you herewith the observations of the Italian authorities concerning complaint No. 19/2003 under the Additional Protocol to the Social Charter providing for a system of collective complaints.

I take this opportunity to inform you that, in conformity with Article 22 para. 1 of the Charter, the Italian authorities have appointed Mrs Simonetta MATONE, *Deputy Public Prosecutor at the Youth Court in Rome*, and Mrs Adriana CIAMPA, *Director of the Youth Department of the General Directorate for Family and Social Affairs and Children's Rights of the Ministry of Labour and Social Policy*, to defend the interests of Italy in this case.

Yours faithfully,

(signed) Pietro AGO
Ambassador
Permanent Representative of Italy
to the Council of Europe

Mr Régis BRILLAT
Executive Secretary of the
European Social Charter
Council of Europe

STRASBOURG

**OBSERVATIONS CONCERNING COMPLAINT N° 19/2003
LODGED UNDER ARTICLE 7, PARA. 1 OF THE PROTOCOL
PROVIDING FOR A SYSTEM OF COLLECTIVE COMPLAINTS**

The allegation that Italian law has not effectively prohibited corporal punishment of children or other forms of degrading punishment or treatment of children, or provided adequate sanctions in civil and criminal law, is quite unfounded.

On the contrary, Italian law prohibits the above-mentioned behaviour by means of an integrated, carefully thought-out, complex and very strict set of rules.

Italian law provides explicitly for the protection of children and young persons against all forms of negligence, violence or exploitation, as required by Article 17 of the revised European Social Charter, through various texts currently in force:

- The Constitution of the Italian Republic recognises and guarantees the inviolable human rights (Article 2), equal social status and equality of all citizens before the law (Article 3), the rights of the family (Article 29), the duty and right of parents to support, instruct and educate their children (Article 30), and includes further - economic and other - provisions to help families and protect maternity, infancy and youth (Article 31).
- Act No.176 (1991), whereby Italy ratified the 1989 United Nations Convention on the Rights of the Child, fully implements the provisions of the Convention and transposes them into domestic law. This means that Italy explicitly acknowledges the right of the child to “the full and harmonious development of his or her personality”, to be brought up “in the spirit of peace, dignity, tolerance, freedom, equality and solidarity” and to be protected “from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.

Thanks to this law, the United Nations Convention has been transposed into Italian law as an integral part thereof, and all its provisions, whose content is clearly defined, are immediately applicable (see decision No.1455 of the Court of Cassation, dated 21 May 1973), including those provisions which lay down the rights of children and the corresponding duties of parents, other individuals and the public authorities.

Article 572 of the Criminal Code (*maltreatment in the family or of children*) provides for a prison sentence of up to 5 years for anyone found guilty of maltreating a member of their family, a child under 14 years of age or a person under their authority or who has been placed in their care for the purposes of education, instruction, care, supervision or custody.

The term maltreatment is taken in a fairly broad sense and includes any form of physical or psychological abuse, any behaviour likely to result in a state of physical or spiritual prostration or any form of submission. It also includes all forms of harassment of a child by an adult or a person belonging to the same household. Behaviour causing serious bodily harm to a minor is punishable by 4 to 8 years' imprisonment; the sentence is 7 to 15 years in the event of very serious injury and 12 to 20 years if the child dies.

In the event of an isolated incident of assault resulting in injury, the penalties incurred under Article 582 of the Criminal Code (bodily harm) are: a minimum sentence of up to 3 years for slight injury; up to 7 years for aggravated injury and up to 12 years for very serious injury, all these sentences being increased if the offence was committed using an offensive weapon or object.

Furthermore, "family protection orders" can be issued under Article 342*bis* of the Civil Code, a highly effective means of preventing any form of violence against children in the family. By means of an interim order the judge may direct any person to cease their abusive behaviour, to stay away from the household and even to stay away from the places frequented by the victim. With regard to sexual abuse of children, our Criminal Code provides for extremely severe measures against all forms of perversion or direct or indirect exploitation of children for sexual purposes. The minimum sentence even seems exorbitant compared with other countries: child prostitution is punishable by up to 12 years' imprisonment (Article 600 *bis* of the Criminal Code), child pornography by up to 12 years (Article 600 *ter*), simple possession of pornographic material involving children by up to 3 years (Article 600 *quater*) and sex tourism involving minors by up to 12 years (Article 600 *quinquies*). These sentences may be increased by between one third and one half when the offences involve children under 14 years of age.

For crimes of sexual violence and sexual acts to the detriment of minors (Articles 609 *bis* to 609 *decies* of the Criminal Code), the sentences are considered excessive by many legal experts in comparison with those applied in other countries. We do not share this opinion, but it is worth noting.

Furthermore, in all these cases the Public Prosecutor must inform the Youth Court, with a view to prompt action being taken to protect the children concerned. The children are always assisted by the social services, to which the judge in charge of the case is required to have recourse under Article 609 *decies* of the Criminal Code.

Italian civil law guarantees extensive protection to child victims of physical, psychological or sexual abuse, through a whole range of co-ordinated measures that treat abusive parents quite harshly. The type of action that can be taken includes removing the child from the family home as a precautionary measure (Article 333, last para. of the Civil Code). Concerning the question of the provision on the abuse of "correctional" or disciplinary measures in Article 571 of the Criminal Code, only an intentionally malicious interpretation can take this to imply that corporal punishment is common in our country.

By the “use of correctional measures” we mean the complex system inherent in the concept of education that makes it the right and duty of the parent to give directives, to provide models and lessons, to protect from potential dangers and to prohibit certain things in the child’s own interest. The term “correction” in the provision in question must therefore not be taken in a purely authoritarian sense, or as an abstract authorisation by our legal system for parents to inflict corporal punishment on their children.

The use of violence for correctional and disciplinary purposes in educational relationships is prohibited in all cases and treated as the offence provided for in Article 571 of the Criminal Code if there is any risk of harming the child’s physical or mental health. It is important to stress that what is referred to here is an offence that *presupposes* a risk; the harm does not have to be apparent, as the existence of actual bodily harm is considered as evidence of the most serious case provided for and punished under the second paragraph of Article 571 of the Criminal Code (decision No. 6001 of the Criminal Court of Cassation, Ch. VI, 21 May 1998). It follows that the use of violence cannot be considered lawful, even for educational purposes (decision No. 4904 of the Criminal Court of Cassation, Ch. VI, 16 May 1996).

It is important, therefore, to note the historical fact that the Italian legal system has evolved rapidly and developed a close-knit network of rules to protect children from all forms of distress, violence, negligence and economic and sexual abuse and exploitation. We refer in particular to a number of laws, such as Act No.285/97 promoting the rights and opportunities of children and young people; Acts Nos.66/96 and law No. 269/98 concerning violence and sexual abuse and exploitation; Act No. 148/00 ratifying and implementing ILO Convention No.182; Acts Nos.476/98 and 149/01 on international and national adoption and foster families; enabling act No. 286/98 (single text regulating immigration), which offers extensive protection to foreign children on Italian soil, and Decree No.535/99 issued by the Presidency of the Council of Ministers, which, in application of the above enabling Act, lays down the functions and powers of the Committee for Foreign Children.

The allegation that violence in the family is on the increase in Italy, based on an increase in the number of complaints lodged, is therefore unfounded. The increase in the number of complaints should be regarded as something positive, a sign of the emergence of a previously hidden phenomenon. Italy has seen the birth of a veritable culture of the child; it is impossible to claim that public awareness and education are lacking in our country when what is happening is exactly the opposite. The practice of using severe corporal punishment to “correct” one’s children (which happens in other countries) is simply not part of the Italian culture, where children’s rights receive increasingly far-reaching and conscious protection.