

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



4 October 2004

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

Case Document No. 6

**ADDITIONAL INFORMATION FROM THE ITALIAN
GOVERNMENT ON THE MERITS**

registered at the Secretariat on 31 August 2004

(TRANSLATION)

The statement by the World Organisation Against Torture (OMCT) censuring Italian law for failing to include specific provisions prohibiting all forms of corporal punishment of children by their parents lacks any foundation, for it reflects neither the actual situation of children in Italy nor the public perception in the country.

It first has to be pointed out that the statistics on the Italian population's acceptance of the theoretical possibility for parents to use physical force as an instrument for correcting minor children bring us to sociological considerations, which have nothing to do with the technical and legal considerations which are our responsibility.

It is incorrect to affirm that corporal punishment is more common than other forms of punishment in Italy, for there is no current relevant statistical research of a credible nature.

The organisation's observations on the memorial submitted by the Italian Government in respect of Complaint No 19/2003 are based on a survey carried out in Italy (between 5 and 8 April 2004) by Market and Opinion Research International, commissioned by the Association for the Protection of All Children Ltd.

This was a telephone survey based on a sample of 1 009 adults aged 14 and over. A summary of the findings has been presented, representing only a partial picture of both the results and the survey methods used.

This summary gives rise to the methodological considerations which follow about the way in which the research was conducted:

- The method used for selecting the sample, cutting across various sectors of the population, in order to achieve statistical representativeness, has not been explained;
- We have no information about the method used to draw up the questionnaire used for the survey;
- Persons aged 14 to 17 were regarded as adults. This could be a flaw in the survey, since even the UN Convention on the Rights of the Child defines the "child" as any human being aged under 18;
- No explanation has been given of the various elements characterising the different age, gender, education and social origin categories;
- No information has been given about evaluation sample error;
- In the description of replies to the question about whether or not respondents believed that Italian law allowed people to slap/spank their children, the 45-54 age group, traditionally the group of parents whose children are still adolescents, is not mentioned.

What is more, the translation from English into Italian of the questionnaire put to the Italian sample surveyed is rather puzzling. It would have been more accurate to provide the Italian version of the questionnaire, since there is a difference both in principle and in practice between the terms "slap", "beat" and "correct with force", which relate to hugely different forms of behaviour.

It is generally accepted that the use of the aforementioned terms as synonyms might imply a serious semantic error, giving rise to confusion when the person being interviewed cannot distinguish between them.

What is more, the general ignorance of the actual situation under the law which this research seems to show further reinforces the view that the legislative situation and society's perception do not necessarily coincide and do not interfere with each other.

The right to correct (*ius corrigendi*) for which Italian legislation provides must be interpreted in its entirety as a system of instructions, guidelines and potential orders and advice, as well as prohibitions and mild penalties for failure to comply, all falling within the sphere of the bringing up of children. An upbringing which, furthermore, may be accompanied by an extremely moderate use of force, which is and remains legitimate within the aforementioned limits. The term "correction" is thus part of the broader, more general principle of "child upbringing", a fundamental element of the relationship between parents and their children.

The affirmation that Italy's constitutional principles do not give a clear message on this argument is misleading, for it has to be emphasised that ours is a complex, integrated system respecting to an exceptional degree the rights of minor children.

It also has to be emphasised that there is a difference between the use of physical force to "correct" a minor child who has misbehaved or to remove the said child from imminent danger, an act which is and must remain legitimate, and the *use of violence*, an act which is and remains illegitimate. If the latter occurs, there is an assault on the physical integrity of the minor, something which is explicitly prohibited by the Criminal Code.

Nor does it seem acceptable to use arguments dealt with in the report which accompanied the entry into force in 1930 of the Criminal Code, for, 74 years on, Italian society, the rules of private life and relations within the family have undeniably undergone far-reaching change.

Furthermore, it is untrue that there have been arbitrary interpretations in case-law of Article 571 of the Criminal Code, for every decision of a court has to be placed in its context and examined in its entirety. Nor is it true that degrading forms of punishment are not explicitly punishable under Italian law, for they are covered by Article 572 of the Criminal Code ("ill-treatment in the family or of children"), and constitute conduct for which there is criminal law

provision, and they are punishable only by a criminal penalty, and not at all under the Civil Code, as suggested in paragraph 7 of the observations. When such conduct is found to have occurred, however, it does come within the scope of civil law, having additional immediate consequences for the exercise of parental authority.

A UNICEF study has shown that three times fewer minor children die as a result of ill-treatment in Italy than in Sweden, four times fewer than in Finland and five times fewer than in Austria. All of those are countries where ad hoc legislation prohibiting corporal punishment has been specifically introduced. What is more, the numbers of deaths in Italy have been cut by half since the seventies, whereas the reduction has been far less striking in Sweden and in Finland, notwithstanding the introduction of ad hoc legislation.