

# Corporal punishment of children in Italy: Briefing for the Universal Periodic Review, 34<sup>th</sup> session, November 2019



GLOBAL INITIATIVE TO  
**End All Corporal  
Punishment of Children**

*From the Global Initiative to End All Corporal Punishment of Children, March 2019*

**The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.**

**In Italy, corporal punishment of children is still lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the European Committee of Social Rights.**

**We hope the Working Group will note with concern the legality of corporal punishment of children in Italy. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Italy draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal all legal defences for its use.**

## **1 Review of Italy in the 2<sup>nd</sup> cycle UPR (2014) and progress since**

- 1.1 Italy was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 20). The issue of corporal punishment of children was raised in the compilation of UN information<sup>1</sup> and in the summary of stakeholders' information.<sup>2</sup> During the review, the Government stated that corporal punishment had been unlawful in schools since 1928, but made no reference to corporal punishment in the home.<sup>3</sup>
- 1.2 The Government received recommendations to bring legislation in line with the 1996 Supreme Court ruling and explicitly prohibit all corporal punishment of children but rejected them,<sup>4</sup> stating that the Constitution prohibits all violence within the family, "including even mild corporal punishment", that the Criminal Code punishes ill-treatment of children in the family and that case law of the Court of Cassation has interpreted article 571 of the Code as excluding violence in childrearing.<sup>5</sup> Since the review, there has been no change in the legality of corporal punishment.
- 1.3 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Italy. We hope states will raise the issue during the review in 2019**

<sup>1</sup> 18 August 2014, A/HRC/WG.6/20/ITA/2, Compilation of UN information, para. 42

<sup>2</sup> 4 August 2014, A/HRC/WG.6/20/ITA/3, Summary of stakeholders' views, para. 45

<sup>3</sup> 10 December 2014, A/HRC/28/4, Report of the working group, para. 142

<sup>4</sup> 10 December 2014, A/HRC/28/4, Report of the working group, paras. 145(126) and 145(127)

<sup>5</sup> 12 March 2015, A/HRC/28/4/Add.1, Report of the working group: Addendum, para. 4; 26 March 2015, A/HRC/28/2 Advance Unedited Version, Report of the Human Rights Council on its 28th session, paras. 205 and 240

and make a specific recommendation that Italy draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal all legal defences for its use.

## 2 Legality of corporal punishment in Italy

### ***Summary of current law and reforms needed to achieve prohibition***

In Italy, a 1996 Supreme Court judgment declared all corporal punishment of children illegal but this has not been translated into legislation. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including the home, and clearly repeal all legal defences for its use.

- 2.1 **Home (lawful):** In 1996, a Supreme Court judgment outlawed all violence in childrearing.<sup>6</sup> Article 571 of the Criminal Code 1975 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. Since, according to the 1996 ruling, corporal punishment is no longer a legitimate method of discipline, it is not defensible under the right to correction (“jus corrigenda”). However, there has been no law reform to confirm the judgment in legislation by amending/repealing article 571 or enacting explicit prohibition of corporal punishment in the home, though a number of Bills have been proposed over the years.
- 2.2 During the Universal Periodic Review (UPR) of Italy in 2010, the Government stated that since corporal punishment is unlawful by virtue of the Supreme Court judgment, there is no need to prohibit it through law reform.<sup>7</sup> Following the second UPR of Italy in 2014, the Government stated that corporal punishment is prohibited in all settings under articles 2, 3, 29, 30 and 31 of the Constitution, and rejected recommendations made on the issue during the review.<sup>8</sup> In 2017, the Government again implied that corporal punishment of children was fully prohibited under existing legislation.<sup>9</sup>
- 2.3 Following a complaint against Italy brought in 2003 by the World Organisation Against Torture under the Collective Complaints procedure of the European Social Charter, the European Committee of Social Rights concluded by 11 votes to 2 that there was no violation of Article 17 of the Revised Charter because the prohibition of all forms of corporal punishment of children has a legislative basis.<sup>10</sup> Since the decision, the Committee has confirmed that compliance with article 17 of the Charter requires explicit prohibition in domestic law.<sup>11</sup> However, following a second complaint in February 2013, submitted by the Association for the Protection of All

<sup>6</sup> Judge Ippolito, Supreme Court of Cassation, 18 March 1996

<sup>7</sup> 31 May 2010, A/HRC/14/4/Add.1, Report of the working group: Addendum

<sup>8</sup> 10 December 2014, A/HRC/28/4, Report of the working group, paras. 145(126) and 145(127); 12 March 2015, A/HRC/28/4/Add.1, Report of the working group: Addendum, para. 4; 26 March 2015, A/HRC/28/2 Advance Unedited Version, Report of the Human Rights Council on its 28th session, paras. 205 and 240

<sup>9</sup> [June 2017], CRC/C/ITA/5-6, Fifth/sixth report, para. 87

<sup>10</sup> Resolution ResChS(2005)1, Collective complaint No. 19/2003 by the World Organisation against Torture (OMCT) against Italy, adopted by the Council of Ministers on 20 April 2005

<sup>11</sup> January 2012, Conclusions 2011

Children (APPROACH) Ltd and alleging that many children in Italy are still suffering corporal punishment, that violent punishment of children is still culturally and socially accepted, and that Italy has failed to adopt the necessary legislation and has shown a lack of diligence in eliminating violent punishment of children, the Committee again concluded that there was no violation of the Charter.<sup>12</sup> It remains the case that in Italy the 1996 Supreme Court judgment outlawed violence in childrearing but this has not yet been confirmed through changes in legislation.<sup>13</sup>

- 2.4 **Alternative care settings (unlawful):** Corporal punishment is considered unlawful in alternative care settings under the 1996 Supreme Court ruling, but this has not been confirmed through law reform.
- 2.5 **Day care (unlawful):** Corporal punishment is considered unlawful in early childhood care and in day care for older children under the 1996 Supreme Court ruling, but this has not been confirmed through changes to written legislation.
- 2.6 **Schools (unlawful):** Corporal punishment has been unlawful in schools since 1928<sup>14</sup> but we have yet to identify prohibiting legislation. In secondary schools, the Decree of the President of the Republic of 29 May 1998 states that no student shall be subject to disciplinary sanctions without having been first invited to explain their reasons but to our knowledge it does not explicitly prohibit corporal punishment.
- 2.7 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions but we have no details of applicable law.
- 2.8 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. It is not an available sentence under the Criminal Code.

### 3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has twice recommended to Italy that the law be reformed to explicitly prohibit corporal punishment of children in the home – in its concluding observations on the initial report in 1995<sup>15</sup> and on the third/fourth report in 2011.<sup>16</sup> In 2005, the Committee made recommendations concerning implementation of prohibition of corporal punishment in schools.<sup>17</sup>
- 3.2 **ECSR:** The European Committee of Social Rights has repeatedly raised the issue of the legality of corporal punishment in the home in Italy, in 2001, 2003, 2007 and 2012.<sup>18</sup> Under collective complaints brought against Italy on the issue, the Committee concluded that there is a legislative basis for not using corporal punishment in childrearing.<sup>19</sup> However, the Committee has also confirmed that compliance with the European Social Charter requires explicit prohibition in domestic law.

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<sup>12</sup> Collective complaint No. 94/2013, *Association for the Protection of All Children (APPROACH) Ltd v Italy*

<sup>13</sup> Resolution CM/ResChS(2015)7, *Association for the Protection of All Children (APPROACH) Ltd. v. Italy*, Complaint No. 94/2013

<sup>14</sup> For example, 10 December 2014, A/HRC/28/4, Report of the working group, see para. 142

<sup>15</sup> 27 November 1995, CRC/C/15/Add.41, Concluding observations on initial report, paras. 12 and 20

<sup>16</sup> 31 October 2011, CRC/C/BHR/CO/2-3, Concluding observations on third/fourth report paras. 34 and 35

<sup>17</sup> 18 March 2003, CRC/C/15/Add.198, Concluding observations on second report, paras. 43 and 44

<sup>18</sup> 1 January 2001, Conclusions XV-2 vol. 1, pages 315-317; 1 October 2003, Conclusions 2003 Vol. 1, page 300; 2007, Conclusions XVIII-1, vol.2; January 2012, Conclusions 2011

<sup>19</sup> Resolution ResChS(2005)1, Collective complaint No. 19/2003 by the World Organisation against Torture (OMCT) against Italy, adopted by the Council of Ministers on 20 April 2005; Resolution CM/ResChS(2015)7, *Association for the Protection of All Children (APPROACH) Ltd. v. Italy*, Complaint No. 94/2013

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*The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.*