

Ending family violence in Italy – challenging physical punishment of girls and boys



Global Initiative to
End All Corporal Punishment
of Children

Information for the Committee on the Elimination of Discrimination Against Women's 67th session, from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), June 2017

Introduction: violence against children in their homes in Italy and CEDAW's examination of the seventh state party report

Violent punishment of boys and girls has not been repealed in law in Italy. Article 571 of the Criminal Code confers a right of correction to parents over their children; and although this has been interpreted as not encompassing any corporal punishment by a landmark Supreme Court decision in 1996, explicit prohibition has not been enacted in legislation.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Italy. In particular, we hope the Committee will, in its concluding observations on the seventh state party report, recommend that Italy take immediate action to enact legislation explicitly prohibiting all violent punishment of girls and boys in the home and repealing the right of correction.

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Italy
 2. Treaty body and UPR recommendations on the issue made to Italy to date.
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1 Laws on the use of force in “correcting” children in Italy

Summary

1.1 In Italy, a 1996 Supreme Court judgement declared violent punishment of children illegal; however this has not been translated into legislation. The Government must immediately enact legislation which explicitly prohibits all violent punishment of girls and boys in the home and repeals the “right to correction” in law.

Detail

1.2 In 1996, a Supreme Court judgment outlawed all violence in childrearing.¹ 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.

1.3 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.² 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.³

1.4 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.⁴ Since the decision, the Committee has confirmed that compliance with article 17 of the Charter requires explicit prohibition in domestic law. However, following a second complaint in February 2013, submitted by the Association for the Protection of All 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.⁵ 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.⁶

¹ Judge Ippolito, Supreme Court of Cassation, 18 March 1996

² 31 May 2010, A/HRC/14/4/Add.1, Report of the working group: Addendum

³ 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

⁴ 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

⁵ Collective complaint No. 94/2013, *Association for the Protection of All Children (APPROACH) Ltd v Italy*

⁶ Resolution CM/ResChS(2015)7, *Association for the Protection of All Children (APPROACH) Ltd. v. Italy*, Complaint No. 94/2013

1.5 We hope the Committee will remind the state party of its international obligations and recommend that prohibition of violent punishment of girls and boys in the home be immediately enacted and implemented.

2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review

2.1 **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 1995⁷ and on the third/fourth report in 2011.⁸ In 2005, the Committee made recommendations concerning implementation of prohibition of corporal punishment in schools.⁹

2.2 **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 2012.¹⁰ Under collective complaints brought against Italy on the issue, the Committee concluded that there is a legislative basis for not using using corporal punishment in childrearing.¹¹ However, the Committee has also confirmed that compliance with the European Social Charter requires explicit prohibition in domestic law.

2.3 **UPR:** Italy has been reviewed under the Universal Periodic Review process on two occasions – in 2010 and in 2014. Both times recommendations were made to prohibit by law all corporal punishment of children, including the home, through reforming statute law to reflect the 1996 Supreme Court ruling. Both times the Government rejected the recommendations.¹²

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

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

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

¹⁰ 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

¹¹ 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

¹² 18 March 2010, A/HRC/14/4, Report of the working group, para. 84(38) ; 31 May 2010, A/HRC/14/4/Add.1, Report of the working group: Addendum; 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