



Global Initiative to  
**End All Corporal Punishment  
of Children**

## **ITALY – COUNTRY REPORT**

### **Summary of necessary legal reform to achieve full prohibition**

#### ***Settings where explicit prohibition is necessary***

Home, ?schools, ?penal institutions, ?alternative care settings

#### ***Is there a legal defence for corporal punishment which must be repealed?***

Yes – The law confirms a right to correction (“jus corrigenda”). A 1996 Supreme Court ruling states that this cannot be used to defend the use of corporal punishment but this has not been confirmed in legislation. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. The “right to correction” should be explicitly repealed and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have parental authority.

#### ***Other legislative measures necessary***

*Schools* – The law should explicitly prohibit corporal punishment in all schools public and private.

*Penal institutions* – The law should explicitly prohibit corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

*Alternative care settings* – Explicit prohibition should be enacted in law of corporal punishment in all alternative care settings, including public and private day care, residential institutions, foster care, etc.

# DETAILED COUNTRY REPORT

## Legality of corporal punishment

### Home

In 1996, a Supreme Court judgment outlawed all violence in childrearing (Judge Ippolito, Supreme Court of Cassation, 18 March 1996). 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.

In 2008, three members of parliament signed the Council of Europe’s petition against all corporal punishment of children. But during the Universal Periodic Review 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 (A/HRC/14/4/Add.1, Report of the Working Group: Addendum).

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 (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). Since the decision, the Committee has confirmed that compliance with article 17 of the Charter requires explicit prohibition in domestic law (see “Recommendations by human rights treaty bodies”, below).

### Schools

Corporal punishment has been unlawful in schools since 1928, 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.

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. It is not an available sentence under the Criminal Code.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions but we have no details of applicable law. As at August 2011, Bill No. 3912 was under discussion which would regulate the juvenile justice system.

### Alternative care

Corporal punishment is unlawful in alternative care settings under the 1996 Supreme Court ruling (see above), but there appears to be no explicit prohibition in law.

## Prevalence research

A study of the relationship between gender and physical punishment in China, Colombia, Italy, Jordan, Kenya, Philippines, Sweden, Thailand and the US used interviews with around 4,000 mothers, fathers and children aged 7-10. In Italy, 61% of girls and 66% of boys involved in the study had experienced “mild” corporal punishment (spanking, hitting, or slapping with a bare hand; hitting or slapping on the hand, arm, or leg; shaking; or hitting with an object) by someone in their household in the past month; 12% of girls and 23% of boys had experienced severe corporal punishment (hitting or slapping the child on the face, head, or ears; beating the child repeatedly with an implement). Much smaller percentages of parents believed it was necessary to use corporal punishment to bring up their child: for girls, 5% of mothers and 2% of fathers believed it was necessary; for boys, 4% of mothers and fathers. (Lansford, J. et al (2010), “Corporal Punishment of Children in Nine Countries as a Function of Child Gender and Parent Gender”, *International Journal of Pediatrics*)

In a 2009 study, 63% of parents of children aged 3-5, 55% of parents of children aged 6-10 and 40% of parents of children aged 11-16 said that they had slapped their children; 34% of 11-13 year olds and 24% of 14-16 year olds said their parents had slapped them; 2% of 11-13 year olds and 1% of 14-16 year olds said it happened almost every day. The study involved 1,000 telephone interviews with a representative sample of the Italian population and online interviews with 600 parents and 500 11-16 year olds. Seventeen per cent of parents of 11-16 year olds and around 13% of 11-16 year olds felt that it was “essential” that all corporal punishment be prohibited by law, while a further 26% of parents and 30-37% of young people said that a law prohibiting corporal punishment would be useful; 67% of parents of 11-16 year olds, 62% of parents of 6-10 year olds and 59% of parents of 3-5 year olds strongly agreed that it is not acceptable or legitimate to beat a child. (Save the Children Italia ONLUS and Ipsos (2009), *Vissuto della punizione corporale e reazioni all'ipotesi di un'educazione senza violenza*)

Data analysis of calls to Telefono Azzurro (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 by Telefono Azzurro to the Committee on the Rights of the Child, February 2003*)

An inspection by the Council of Europe’s Committee for the Prevention of Torture of the penal institution for minors in Naples found that staff believed in and administered slaps to the child detainees, for their “educational function”. (Cecchetti, R. & Boffi, A. (2002), *Rights of the Child in Italy: Report on the implementation of the Convention of the Rights of the Child*, Switzerland: World Organisation against Torture)

Telephone interviews with 1,009 adults aged 14 and over in April 2004, revealed that 69% believe it is acceptable for parents to smack their children, including 7% who believe it is always acceptable and 62% who believe there are some circumstances in which it is acceptable. A quarter believe it is unacceptable in any circumstances. (Market & Opinion Research International (2004), “Attitudes towards smacking children: Italy”, Research conducted for the Association for the Protection of All Children)

## Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

(6 October 2011, CRC/C/BHR/CO/2-3 Advance Unedited Version, Concluding observations on third/fourth report paras. 34 and 35)

“The Committee is concerned at the prevalence of corporal punishment in the home, in particular that many parents still find it appropriate to use slapping as a means of discipline. The Committee is also

concerned that the State party has not yet passed legislation explicitly prohibiting all forms of corporal punishment in all settings, including in the home (CRC/C/15/Add.41, para. 20) despite the Supreme Court ruling on prohibition of corporal punishment.

“The Committee recommends that the State party reform domestic legislation to ensure the explicit prohibition of all forms of corporal punishment in all settings, including in the home, taking into account the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and general comment No. 13 (2011) on the right of the child to freedom from all forms of violence. The Committee further recommends that the State party raise awareness among parents and the general public on the impact of corporal punishment on the wellbeing of children and on positive alternative methods of discipline in accordance with the rights of the child.”

*Committee on the Rights of the Child*

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

43. The Committee ... is concerned at the prevalence of bullying in schools and at the lack of consideration of the views of children within education.

44. The Committee recommends that the State party: ...

d) ensure that legislation throughout the State party reflects article 12 of the Convention and respects children’s rights to express their views and have them given due weight in all matters concerning their education, including school discipline.”

*Committee on the Rights of the Child*

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

“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.”

*European Committee of Social Rights*

(2007, Conclusions XVIII-1, vol.2)

“The Committee recalls that the situation was found to be in conformity with the Charter in both the previous conclusion and in its decision on the merits of World Organisation against Torture (OMCT) v Italy (complaint No. 19/2003, decision on the merits of 8 December 2004). Italy prohibits corporal punishment of children within the family through a combination of legislation and case law (Decision No. 4909 of 16 May 1996 of the Court of Cassation). Since then, the Committee affirmed that in order ‘to comply with Article 17, states’ domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice’ (World Organisation against Torture (OMCT) v Portugal, complaint No. 34/2006, Decision on the Merits of 5 December 2006, §§19-21).

“The Committee asks that the next report explain whether this ruling is still good law.”

*European Committee of Social Rights*

(1 October 2003, Conclusions 2003 Vol. 1, page 300)

“As regards corporal punishment of children, the Committee notes that the *Corte di Cassazione* declared all corporal punishment to be unlawful in a judgment of 18 March 1996. It wishes to know what the effect of this decision is....

“Pending receipt of the information requested, the Committee defers its conclusion.”

*European Committee of Social Rights*

(1 January 2001, Conclusions XV-2 vol. 1, pages 315-317)

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

## **Universal Periodic Review**

Italy was examined in the first cycle of the Universal Periodic Review in 2010. The Government rejected the recommendation to incorporate the 1996 Supreme Court judgment into legislation by explicitly prohibiting all corporal punishment of children (A/HRC/14/4, Report of the Working Group, paras. 79 and 84(38); A/HRC/14/4/Add.1, Report of the Working Group: Addendum). Examination in the second cycle is scheduled for 2014.

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