

Corporal punishment of children in Italy

LAST UPDATED July 2020

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Child population 9,870,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home.

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 The “right to correction” should be explicitly repealed and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have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.

Current legality of corporal punishment

Home

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.

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 In 2017, the Government again implied that corporal punishment of children was fully prohibited under existing legislation.⁴ During the UPR in 2019, the Government stated that, under the interpretation of the Supreme Court judgment, children were protected from corporal punishment under the Constitution and the Criminal Code, and that the “jus corrigenda” was only intended to be “a system of instructions, guidelines and potential orders and advice, as well as prohibitions and very mild penalties - all falling within the sphere of children’s upbringing”.⁵

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.⁶ 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). 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

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

⁵ 7 August 2019, A/HRC/WG.6/34/ITA/1, National report to the UPR, paras. 98, 99 and 100

⁶ 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

was no violation of the Charter.⁷ 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.⁸

Alternative care settings

Corporal punishment is considered unlawful in alternative care settings under the 1996 Supreme Court ruling (see under “Home”), but this has not been confirmed through law reform.

Day care

Corporal punishment is considered unlawful in early childhood care and in day care for older children under the 1996 Supreme Court ruling (see under “Home”), but this has not been confirmed through changes to written legislation.

Schools

Corporal punishment has been unlawful in schools since 1928⁹ 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 institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions but we have no details of applicable law.

Sentence for crime

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

Universal Periodic Review of Italy’s human rights record

Italy was examined in the first cycle of the Universal Periodic Review in 2010 (session 7). The following recommendation was made:¹⁰

“To incorporate in its legislation the 1996 Supreme Court judgement that corporal punishment was not a legitimate method of discipline in the home, and criminalize corporal punishment in all cases, including in education (Spain)”

⁷ Collective complaint No. 94/2013, *Association for the Protection of All Children (APPROACH) Ltd v Italy*

⁸ Resolution CM/ResChS(2015)7, *Association for the Protection of All Children (APPROACH) Ltd. v. Italy*, Complaint No. 94/2013

⁹ For example, 10 December 2014, A/HRC/28/4, Report of the working group, see para. 142

¹⁰ 18 March 2010, A/HRC/14/4, Report of the working group, para. 84(38)

The Government rejected the recommendation, stating that corporal punishment has been unlawful in schools since 1928 and that it does not apply in the penal system, but gave no details of prohibiting legislation in this regard. The Government stated that corporal punishment is also unlawful in the private sphere: “In 1996 the Supreme Court ruled that the legislation in force already prohibits any forms of violence in child-rearing and confirmed that this is no longer a legitimate method of discipline nor defensible under the right to correction (‘jus corrigendi’). Therefore Italy deems that there is no need to adopt a specific supplementary law.”¹¹

Examination in the second cycle took place in 2014 (session 20). 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.¹² The following recommendations were made:¹³

“Enact legislation to enshrine the 1996 Supreme Court ruling in legislation and explicitly prohibit all corporal punishment of children in the home (Liechtenstein);

“Explicitly prohibit all corporal punishment of children, bringing legislation into line with the 1996 Supreme Court ruling against violence in childrearing (Sweden)”

The Government rejected the recommendations, 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.¹⁴

Third cycle examination took place in 2019 (session 34). In its national report to the UPR, the Government declared that, since the Supreme Court judgment in 1996, corporal punishment was prohibited under the Constitution and the Criminal Code and that the “jus corrigenda” was only intended to be “a system of instructions, guidelines and potential orders and advice, as well as prohibitions and very mild penalties - all falling within the sphere of children’s upbringing”.¹⁵ No recommendation on corporal punishment was made but the following recommendations were extended:¹⁶

“Formulate a comprehensive strategy for preventing and combating violence against children (Montenegro)”

“Create a national system to monitor and collect data on violence against children and formulate a comprehensive strategy for preventing and combating violence against children (Zambia)”

The Government later supported the recommendations.¹⁷

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

¹² 10 December 2014, A/HRC/28/4, Report of the working group, para. 142

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

¹⁴ 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

¹⁵ 7 August 2019, A/HRC/WG.6/34/ITA/1, National report to the UPR, paras. 98, 99 and 100

¹⁶ 27 December 2019, A/HRC/43/4, Report of the Working Group, paras. 148(216) and 148(243)

¹⁷ 19 February 2020, A/HRC/43/4/Add.1, Report of the Working Group: Addendum

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(1 February 2019, CRC/C/ITA/CO/5-6 Advance unedited version, Concluding observations on fifth/sixth report, para. 20)

“Taking note of target 16.2 of the Sustainable Development Goals, the Committee, with reference to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, reiterates its previous recommendations (CRC/C/ITA/CO/3-4, para. 35) and urges the State party to:

- (a) Explicitly prohibit corporal punishment, however light, by law in all settings;
- (b) Raise awareness among parents and the general public on the harmful effects of corporal punishment for the well-being of children;
- (c) Promote alternative positive, non-violent and participatory forms of child-rearing and discipline.”

Committee on the Rights of the Child

(31 October 2011, CRC/C/BHR/CO/2-3, 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 well-being 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)

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

“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

(March 2020, Conclusions 2019)

“The Committee recalls that in the complaint *World Organisation against Torture (OMCT) v. Italy*, Complaint No. 19/2003, decision on the merits of 7 December 2004, it held that “it is apparent from Judgment No. 4909 of the Court of Cassation of 16 May 1996 (...), that the Court explicitly and conclusively removed any ambiguity concerning the lawfulness of the use of any degree of violence against children by any person, and even in circumstances traditionally regarded as justifying such conduct” (§ 46).

“However, in its previous Conclusion on Article 17.1 (Conclusions 2011), the Committee noted from another source [Global Initiative to End Corporal Punishment of Children] that the law still confirms the right to correction (“*jus corrigenda*”). The 1996 Court of Cassation ruling states that the law cannot be used to defend the use of corporal punishment but this has not been confirmed in legislation. According to the same source, the near universal social acceptance of corporal punishment in childrearing in Italy necessitates clarity in law that no level of corporal punishment is acceptable.

“The Committee asked whether there were any plans to amend the legislation following the 1996 ruling, and explicitly ban corporal punishment in all settings, such as in the home, in schools and in institutions (Conclusions 2011).

“The Committee notes that according to the report corporal punishment of children is unlawful. Further it states the use of violence as a means of correction and discipline, which is in any case not permitted, is an offence if the acts entail a risk of injury. The jurisprudence of the courts has recalled that education using anti-educational means is not permitted because it would be a contradiction in itself that could affect the physical and / or mental health of the minor.

“However, the Committee notes that the Global Initiative to End Corporal Punishment of Children: Country report Italy 2019 maintains that prohibition is still to be achieved in the home. Further the UN Committee on the Rights of the Child in its Concluding Observations on the combined fifth and sixth periodic report of Italy [CRC/C/ITA/C/5-6, February 2019], inter alia, recommends that Italy explicitly prohibits corporal punishment, however light by law in all settings.

“Therefore, the Committee asks how the jurisprudence of the courts is respected in practice. Meanwhile the Committee once again reserves its position on this point.

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

European Committee of Social Rights

(January 2012, Conclusions 2011)

“The Committee notes that there have been no changes to the situation which it has previously found to be in conformity. In this context it recalls that in *World Organisation against Torture (OMCT) v. Italy*, Complaint No. 19/2003, decision on the merits of 7 December 2004, it held that ‘it is apparent from Judgement No. 4909 of the Court of Cassation of 16 May 1996 (...), that the Court explicitly and conclusively removed any ambiguity concerning the lawfulness of the use of any degree of violence against children by any person, and even in circumstances traditionally regarded as justifying such conduct’ (*OMCT v. Italy*, § 46). In its previous conclusion (Conclusions 2007) the Committee asked whether the 1996 ruling was still good law.

“The Committee notes from another source that the law confirms the right to correction (‘*jus corrigenda*’). The 1996 Court of Cassation ruling states that this cannot be used to defend the use of corporal punishment but this has not been confirmed in legislation. According to the same source, 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 thus 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. Legislation should explicitly prohibit corporal punishment in all education settings, public and private, all institutions accommodating children in conflict with the law, and all alternative care settings.

“The Committee asks whether there are any plans to make legislative amendments following the 1996 ruling that would explicitly ban corporal punishment in all settings, such as home, schools and institutions....”

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

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....”

Prevalence/attitudinal research in the last ten years

A study involving 1,000 parents with a child aged 3-16 and 250 11-16 year olds living in Italy found that 28% of parents of children aged 3-5, 21% of parents of children aged 6-10 and 26% of parents of children aged 11-16 were opposed to “smacking” and never did it. Around half the parents said they only smacked their children in exceptional circumstances, 18-27% a few times a month, and 3% of parents of 3-5 year olds and 5% of parents of 6-16 year olds almost every day. The proportion of parents opposed to corporal punishment had increased slightly compared to a similar survey in 2009. Fifty-seven per cent of parents of 3-5 year olds, 48% of parents of 6-10 year olds, 53% of parents of 11-16 year olds, 51% of children aged 11-13 and 48% of young people aged 14-16 felt that smacking was more violent than educational; 22-27% of all groups felt smacking was more educational than violent. Large majorities of parents and young people said that after smacking, parents feel bitter, embarrassed or uncomfortable. Nearly half (49%) of parents of 3-5 year olds, 41% of parents of 6-10 year olds and 42% of parents of 11-16 year olds thought smacking could teach children to smack others or definitely made children aggressive. Of those who recalled seeing a child being smacked in a public place, 47% of 11-13 year olds, 51% of 14-16 year olds and 53-58% of parents had reactions which were opposed to smacking, while 17-20% of parents, 11% of 11-13 year olds and 6% of 14-16 year olds tended to justify the smacking. A large majority (81-92%) of parents believed a public awareness-raising anti-smacking campaign would be effective.

(Ipsos Public Affairs (2012), *I metodi educative e il ricorso a punizioni fisiche*)

A study of the relationship between gender and physical punishment in China, Colombia, Italy, Jordan, Kenya, Philippines, Sweden, Thailand and the US, which used interviews with around 4,000 mothers, fathers and children aged 7-10, found that in Italy, 61% of girls and 66% of boys 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), and 12% of girls and 23% of boys had experienced severe corporal punishment (hitting or slapping the child on the face, head, or ears, or beating the child repeatedly with an implement) by someone in their household in the past month. 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 believed it was necessary.

(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 they had slapped their children. Over one third (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. Parents and children were asked how children react when they are slapped, and why parents slap. Around 20% of parents, 14% of 11-13 year olds and 26% of 14-16 year olds said children are angry, want revenge on their parents and will deliberately repeat the behaviour which led the parent to smack them. Around 30% of 11-16 year olds and 23% of parents of 11-16 year olds said children are offended and will respect their parents less. Only 8-14% of parents and children thought parents slap because they believe it is the best thing to do, while around half the parents and children said parents slap because of exasperation or fear. Seventeen per cent of parents of 11-16 year olds and around 13% of 11-16 year olds felt it was "essential" that all corporal punishment be prohibited by law in Italy, while a further 26% of parents and 30-37% of young people said a law prohibiting corporal punishment would be useful. Two thirds (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 & Ipsos (2009), *Vissuto della punizione corporale e reazioni all'ipotesi di un'educazione senza violenza* (in Italian), images.savethechildren.it/f/download/Educazione-senza-violenza/Ri/Ricerca.pdf)