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Rights of the Child in Italy

Report on the implementation of the
Convention on the Rights of the Child
by Italy

Report prepared by the
World Organisation Against Torture (OMCT)
for the Committee on the Rights of the Child

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1. Introduction

The Italian Government has ratified the Convention on the Rights of the Child (hereafter the Convention) on 5 September 1991 and it came into force on 5 October of the same year. Both optional protocols to the Convention were also recently ratified in May 2002. Italy is also a party to other international instruments related to human rights, in particular to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At a regional level, Italy has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment.

OMCT welcomes the first periodic report submitted by the State of Italy to the Committee on the Rights of the Child (hereafter the Committee). In particular, OMCT notes with satisfaction the intention of the Italian Government to develop a national strategy to protect the rights of the child focusing especially on the need to improve the coordination between the various governmental entities, as well as between national, regional and municipal levels, and to adopt a more comprehensive dimension of the problem, including fighting against structural causes leading to violations of children's rights. Adoption of law n° 451/1997 has led to the setting up of various institutions and mechanisms for the protection and monitoring of the rights of the child in Italy, including in particular the National Documentation and Analysis Centre for Children and Adolescents; the Parliamentary Commission on Children, which approves a National Plan of Action; and the National Observatory on Children within the Department of Social Affairs.

Nevertheless, despite positive developments, OMCT notes with concern that several suggestions and recommendations of the Committee linked to Italy's initial report remain pertinent. In particular, Italian legislative provisions concerning the protection against torture and other cruel, inhuman or degrading treatment or punishment are insufficient and do not contain a specific definition of torture. Ill-treatment by police and other public officials against children in detention have been reported as well as excessive use of force and denial of fundamental rights against demonstrators in the street or subsequently in custody. Physical and verbal abuse against Romani has been frequently denounced.

Indeed, discriminatory attitudes against some group of children, in particular immigrant and Roma children, persist preventing the creation of an environment favourable to their fullest possible integration into Italian society. Roma communities, for example, are still not offered the possibility of adequate housing and face serious difficulties in access to education as well as excessive delay in the processing of residence permit applications. Official statistics show a pattern of discrimination relating to foreign children in the administration of juvenile justice with more foreign than Italian children sent to custodial facilities rather than benefiting from alternatives to detention. Recently, the Italian Government has endorsed a very restrictive approach on immigration giving rise to serious concerns in the face of an ongoing tide of illegal migrants landing on its shores.

Therefore, OMCT decided to submit an alternative report on Italy to the Committee, in which it focuses on specific areas that fall within the OMCT's mandate. The report will raise several concerns, sometimes regarding the information given by the Government, and will make a number of recommendations on how to improve children's rights in various situations.

2. Definition of the Child

In accordance with article 1 of the Convention, which declares that “a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”, article 2(1) of the Italian civil code establishes the age of majority at the attainment of 18 years¹.

According to article 84(1) of the civil code, minors under the age of 18 cannot enter into a marriage contract. However, before achieving the age of majority, a minor can be considered as “emancipated” at 16 years old if he obtains from the court an authorisation to get married. The court’s approval is issued after receiving confirmation of the child’s psychological maturity and sound motivations, and after hearing the Public Prosecutor, parents or guardian².

The “emancipated” minor is permitted to perform ordinary transactions. For transactions exceeding ordinary administration, the authorisation of the guardianship judge is required³. An emancipated minor may also engage in a commercial activity with the court’s consent⁴. In any event, the emancipated minor must be assisted by a curator. The latter may be either the spouse if aged over 18 or any other person appointed by the guardianship judge, preferably one of the parents⁵.

Act n° 345/99, implementing the EC Directive n° 33/1994, and Act n° 262/2000 establish the minimum age at which a person may be employed at the end of compulsory schooling, however not less than 15 years of age⁶. Nevertheless, Act n° 345/99 does not apply to children carrying out domestic work within the family environment or working in family-run businesses provided that the tasks performed are not prejudicial to the child⁷. The State report⁸ mentions the possibility for children at 14 years old to enter into agriculture, domestic work and light non-industrial work on condition that the professional activity is compatible with the protection of the minor’s health and does not violate school obligations. Act n° 977 of 1967 and n° 345/99 introduced a special regulation to protect working minors, such as special medical certificates which guarantee their physical fitness for work, periodical medical check-ups, limits on working hours, and prohibition of night work. Finally, Act n° 148/2000 is intended to meet the obligations arising out of the ILO Convention 182 on the Worst Forms of Child Labour in the fight against the exploitation of minors.

Regarding the age of military recruitment, law n° 331/2000 allowed voluntary military recruitment of children under 18 years of age but not the participation of under-18s in armed

¹ Article 2(1) : “La maggiore età è fissata al compimento del diciottesimo anno. Con la maggiore età si acquista la capacità di compiere tutti gli atti per i quali non sia stabilita una età diversa.”

² Article 84: « Il tribunale, su istanza dell’ interessato, accertata la sua maturità psico-fisica e la fondatezza delle ragioni addotte, sentito il pubblico ministero, i genitori o il tutore, può con decreto emesso in camera di consiglio ammettere per gravi motivi al matrimonio chi abbia compiuto sedici anni » ; and article 390 : « Il minore è di diritto emancipato col matrimonio ».

³ Article 394 of the civil code.

⁴ Article 397 of the civil code.

⁵ Article 392 of the civil code.

⁶ Article 5 substituting article 3 of law n° 977/1967 states that : « L’età minima per l’ammissione al lavoro e’ fissata al momento in cui il minore ha concluso il periodo di istruzione obbligatoria e comunque non può essere inferiore ai 15 anni compiuti”.

⁷ Article 4 of Act n° 345/99.

⁸ Italian First Periodic Report to the Committee on the Rights of the Child, CRC/C/70/Add. 13, p. 28.

conflict. The recent adoption of law n° 2/2001 prohibits both compulsory and voluntary recruitment of 17 years-old children⁹, bringing Italy in line with the "straight-18" position¹⁰.

3. Discrimination (article 2)

OMCT believes that discrimination is one of the root causes of torture and other forms of ill-treatment and violence. Article 2 of the Convention asserts that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Legal framework

The principle of equal treatment is reflected in the Italian Constitution through article 3 which establishes that: “all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, personal and social conditions.” Furthermore, this article specifies that measures have to be taken by the Government “to remove those obstacles of an economic and social nature which, really limiting the freedom and equality of citizens, impede the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country.”

However, the main legal framework for the implementation of the principle of non-discrimination is represented by the provisions contained in law n° 286 of 25 July 1998, entitled “Regulation of Immigration and Rules on the Condition of the Foreigner”¹¹. This law includes a detailed definition of discrimination and provides for a specific judicial civil action against discrimination.

According to its article 43(1), “discrimination shall be taken to mean any conduct which directly or indirectly involves distinction, exclusion, restriction or preference based on race, colour, lineage or descent, national or ethnic origin, religious belief or practice, or that has the purpose or effect of destroying or jeopardising the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social and cultural spheres and in any other sector of public life”. Specific situations amounting to discrimination including access to public goods and services, to employment, accommodation, education, training and social care or welfare services are further described in article 43(2), which covers also specifically behaviour by police officials, including immigration authorities. The scope of these provisions is extended by article 43(3) that applies also to “acts of xenophobia, racism and discrimination with regard to Italian citizens, stateless persons and European Union citizens in Italy”. Finally, article 44 allows a person who feels discriminated against to present him/herself personally before the court to ask for an order for the termination of the

⁹ Coalition to stop the use of child soldiers, *Child Soldiers Global Report*, 2001.

¹⁰ Italy ratified the Optional Protocol to the CRC on the involvement of children in armed conflict on 9 May 2002 which establishes the obligations for State parties to ensure that persons who have not attained the age of 18 are not compulsorily recruited into their armed forces and not involved directly in hostilities.

¹¹ Decreto Legislativo n° 286, *Testo Unico Delle Disposizioni Concernenti La Disciplina Dell' Immigrazione e Norme Sulla Condizione Dello Stranier*, 25 Luglio 1998.

discriminatory acts and provides for the setting up of observation centres offering information and legal assistance.

Protection against discrimination is also afforded by law n° 205/1993¹², integrating the Act of 1975 ratifying the UN Convention on the Elimination of All Forms of Racial Discrimination, which provides for sanctions with prison sentences for those who “incite others to acts of violence on racial, ethnic, national or religious grounds, or who carry out such actions themselves” and for those who “disseminate on racial, ethnic, national or religious grounds or carry out such acts themselves”.¹³

Finally, mention should be made of the adoption of law n° 285 of 28 August 1997, entitled “Provisions on the Promotion of Rights and Opportunities for Children and Adolescents”,¹⁴ which calls for particular action to be taken in various sectors, and in particular towards Roma and immigrant children, and aims to overcome the unequal nation-wide conditions by allocating funds and developing programmes which will favour disadvantaged areas. The monitoring of the enforcement of this law has been entrusted to the National Research Centre for Children and Adolescents.¹⁵

While welcoming these important legislative developments, OMCT is deeply concerned by the fact that various sources report on the Government’s difficulty to implement anti-discrimination laws, particularly in the cases of immigrant and Roma children. In this context, the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities has considered that “the Italian Government should review its anti-discrimination legislation in order to ensure that all acts of discriminations are outlawed and effective remedies and sanctions are available to all persons who suffer from discrimination, both by public authorities and private entities”.¹⁶ More precisely, the Committee recommends the development of “a more comprehensive body of provisions outlawing discrimination in a number of societal settings including employment, delivery of services, and housing”¹⁷. It further suggests “to review the legal remedies and the penalties prescribed in respect of discrimination (...)”¹⁸.

Situation

The Committee on the rights of the child recommended that the Italian Government take measures “to prevent a rise in discriminatory attitudes and prejudices towards particularly vulnerable children such as children living in poverty, children from the southern region, Roma children and foreign children and (...) to create an environment favourable to their fullest possible integration into Italian society.”¹⁹

¹² Legge n° 205/93 (legge Mancino), *Misure urgenti in materia di discriminazione razziale, etnica e religiosa*.

¹³ Article 1.

¹⁴ Legge 28 agosto 1997, n° 285, *Disposizioni per la promozione di diritti e di opportunità per l’infanzia e l’adolescenza*.

¹⁵ Italian First Periodic Report to the Committee on the Rights of the Child, CRC/C/70/Add. 13, p. 9.

¹⁶ Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Italy, 14 September 2001, para. 22.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Concluding observations of the Committee on the Rights of the Child, 27 November 1995, CRC/C/15/Add.41, para. 17.

However, stereotypes and discriminatory attitudes against immigrant and Roma children are still widespread throughout the country reinforcing their marginalisation from mainstream society.

Of particular concern is the use of xenophobic language made in public statements by members of the right-wing political groups exploiting fears about immigration to gain political power. For example, Mr Umberto Bossi, leader of the Lega Nord and Minister for Reforms and Devolution since June 2001 within Mr Berlusconi's cabinet, distributed flyers during the regional elections of April 2000 that stated: "If you don't want Gypsies, Moroccans and delinquents in your house, be the master of your own home in a liveable city and vote Lega Nord".²⁰ On 2 March 2001, in Brescia, another demonstration against illegal immigration was held by the Lega Nord. Statements made by Mr Bossi the previous month called, among other, for the construction of a 260 km wall along Italy's border with Slovenia in order to keep out illegal immigrants.²¹ More recently, the BBC reported on the establishment of a vigilante patrol made up of a dozen members of the Lega Nord party whose task is to monitor the activities of immigrants and in particular illegal immigrants in the streets of Turin.²² The article states that "the patrols are certainly confrontational, even inflammatory. Their members wear uniforms, wave flags and shout provocative slogans through megaphones; and they deliberately target areas with many immigrant residents".²³

OMCT is deeply concerned by this worrying rising trend which has a negative impact on children. A survey conducted by the *Instituto Ricerche Economico-Sociali del Piemonte* of 1521 children revealed that 36% of respondents who fear open spaces (60% of all children) did so because of "drug addicts, Gypsies and Moroccans". 82% of respondents stated that their fears were based on information that they had received from their parents and teachers or otherwise indirectly. 92 children explained that they feared Gypsies because "they steal children".²⁴

Despite recommendations made by several UN Committees²⁵, the Roma communities are still not offered the possibility of adequate housing and face serious difficulties in the workplace, in access to health and social services as well as in legalising their status. Indeed, the European Roma Rights Centre (ERRC) reports that Roma are still being isolated from the rest of the population by being located into inhumane and degrading camps situated in marginalized areas where the infrastructure is very poor often lacking running water, toilets or electricity.²⁶ Immigrant Roma, including Roma who have been in Italy continuously for a number of years and their children born in Italy, face excessive delay in the processing of

²⁰ « Campland : Racial Segregation of Roma in Italy », the European Roma Rights Centre, October 2000, p. 8.

²¹ "Concerns in Europe January – June 2001", Amnesty International.

²² « Italy – from emigrant to immigrant state », Julian Pettifer, BBC News, 7 January 2002.

²³ Ibid.

²⁴ « Campland : Racial Segregation of Roma in Italy », the European Roma Rights Centre, October 2000, citing Miceli Renato, « Sicurezza e paura », Working Paper #127, October 1999, Torino : Instituto Ricerche Economico-Social del Piemonte, pp. 54-57.

²⁵ The Committee on Economic, Social and Cultural Rights has recommended to Italy to « step up its efforts to improve the situation of the Roma population, inter alia by replacing camps with low-cost houses; by legalizing the status of Roma immigrants; by setting up employment and educational programmes for parents; by giving support to Roma families with children at school; by providing better education for Roma children; and by strengthening and implementing anti-discrimination legislation, especially in the employment and housing sectors », E/C.12/1/Add.43, para. 23.

²⁶ ERRC's letter to the CERD, 29 June 2001.

residence permit applications, and those who managed to legalise their status receive permits only for very limited periods of time.²⁷

Children greatly suffer from the discrimination imposed on the Roma communities. The transportation problems facing Roma children who live in camps remote from schools, and the precarious financial situation of many parents severely hinders their access to education resulting in an abnormally high level of absenteeism among Roma pupils.²⁸ It has been estimated that only 30-35% of the Roma school age population attend school.²⁹ Following testimonies collected by the ERRC, some parents don't send their children to school "because they don't have the means to buy decent clothes".³⁰ Finally, school attendance is hampered by the necessity for Roma children to participate in generating the family income often through begging or working at home.

When attending school, Romani children meet a number of difficulties "ranging from prejudice on the part of non-Romani parents who do not want their children attending schools with 'Gypsies', to bullying by non-Romani classmates, to stereotyping by teachers and school administrators who perpetuate myths of 'genetically' lower intelligence levels among Romani children"³¹. Therefore, OMCT would like to recommend the Italian Government to implement training programmes to promote respect for children of Romani descent by teachers and other school officials, and monitor the behaviour of teachers in the classroom.

The Committee on Economic, Social and Cultural Rights has underlined the above-mentioned situation with great concern noting that " a large number of the Roma population live in camps lacking basic sanitary facilities on the outskirts of major Italian cities. The Roma on the whole live below the poverty line and are discriminated against, especially in the workplace, if and when they find work, and in the housing sector. Life in the camps has had a major negative impact on the Roma children, many of whom abandon primary and secondary schooling in order to look after their younger siblings or to go out begging in the streets in order to help increase their family income."³²

OMCT is deeply concerned by the devastating effects of the negative representation of Roma which seems to be conveyed also by high governmental spheres. A recent Government publication ,“Not Only Exploited or Violent: Children and Adolescents of the Year 2000: Report on the Condition of Infancy and Adolescence in Italy”, was released in June 2001 and describes Roma as “Gatherers”³³ comparing their way of making a living to that of “the Pygmies and Native Americans”³⁴, rather than to “our industrial society”³⁵. Later in the chapter, the report explains that “the Roma Gypsies did not immigrate to Italy seeking gainful employment in the labour force, but rather with the idea of remaining outside it, living by

²⁷ Ibid.

²⁸ Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Italy, 14 September 2001, para. 55.

²⁹ A. Patrignani & R. Villé (eds.) « Rromani youths : The pathway of juvenile justice », UNICRI publication series n° 59, Rome, 1998.

³⁰ « Campland : Racial Segregation of Roma in Italy », the European Roma Rights Centre, October 2000, p. 80.

³¹ Ibid, p. 82.

³² Concluding observations of 23 May 2000, E/C.12/Add.43, para. 10.

³³ « Non Solo Sfruttati o Violenti : Bambini e Adolescenti del 2000 : Relazione sulla Condizione dell'Infanzia e dell'Adolescenza in Italia », Presidenza del Consiglio dei Ministri, Osservatorio Nazionale per l'Infanzia, Centro Nazionale di Documentazione e Analisi per l'Infanzia e l'Adolescenza, June 2001, p. 231.

³⁴ Ibid, pp. 226-227.

³⁵ Ibid.

‘gathering’. (...) the male children must go out with their mothers and sisters into their ‘natural’ environment, which is to say, in the midst of non-Gypsies, to search for food or for the money to buy it. They beg, but there are also those who steal; inasmuch as they are ‘gatherers’ they feel no guilt from having deprived some non-Gypsy of the ownership of some object (...)”³⁶. OMCT is deeply concerned by the official position the Italian authorities have expressed in this publication based on a perception of Roma people which will not be conducive to their integration into mainstream society, and, on the contrary, will incite to further discrimination.

In this context, OMCT regrets the exclusion of Roma from the scope of law n° 482 “Norms concerning the protection of linguistic and historical minorities” which was adopted on 15 December 1999 and came into force in January 2000. This law makes provisions on the protection of the historical linguistic minorities of Italy and applies to the populations speaking Albanian, German, Catalan, Croatian, Greek, French, Franco-Provencal, Friulian, Ladin, Occitan, Sardinian and Slovenian. It allows various protective measures to be activated in specific territorial areas. Despite the attested historical presence of Roma in Italy (in 1994, the Romani population was estimated at between 80’000 and 120’000 people, of which between 25’000 and 35’000 do not have Italian citizenship³⁷), they have been excluded on the ground of this group’s having no association with a given territory.³⁸

OMCT deeply regrets the absence in the State report of information on prejudice against children on ethnic or national grounds. OMCT urges the Committee to remind Italy of its obligations under article 2 of the Convention, and further emphasises the interdependent and indivisible nature of the CRC which requires State Parties to apply the principle of non discrimination to all the other articles of the Convention.

OMCT considers that the role of education is of crucial importance in overcoming the racist and xenophobic feelings existing in the Italian population against immigrants and Roma communities. This should not be limited to school education, but other forms of formal and informal education should be undertaken by the Government aiming to promote a culture of acceptance and tolerance at all levels of the community through the use of the mass media and public campaigns to combat stereotypes and racist behaviour or attitudes.

³⁶ Ibid, pp. 231-232.

³⁷ A. Patrignani & R. Villé (eds.) « Rromani youths : The pathway of juvenile justice », UNICRI publication series n° 59, Rome, 1998.

³⁸ Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Italy, 14 September 2001, para. 11 and 16.

4. Protection against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 37a)

Article 37 (a) of the Convention provides for the protection of the child against torture or other cruel, inhuman or degrading treatment or punishment, including capital punishment or life imprisonment.

Legal framework

Article 27 of the Italian Constitution establishes that “punishment cannot consist in treatment contrary to human dignity and must aim at rehabilitating the condemned”. This principle is reaffirmed in article 1(1) of Act n° 354 of 26 July 1975 on "Prison rules and provisions on the enforcement of prison sentences and measures restricting freedom", which provides that treatment in prison must be humane and must ensure respect for the dignity of the person. Article 61(9) of the criminal code punishes with more serious sentences the perpetrator who commits the offence with abuse of power or with violation of the duties inherent to its own public function. Finally, article 608 of the penal code sanctions the public official who abuses his/her power against detainees and persons under arrest with an imprisonment sentence up to 30 months. Nevertheless, in the criminal code, there is no mention of “torture” as a specific crime punishable under the law.

In its concluding observations relating to Italy’s initial report in 1995, the Committee on the Rights of the Child had already specifically suggested that “the clear prevention and prohibition of torture or other cruel, inhuman or degrading treatment or punishment (...) be reflected in the national legislation”.³⁹

More recently, in 1999, the Committee against Torture recommended to the Italian Government to “proceed to incorporate into domestic law the crime of torture (...)” and to establish “an appropriate system of compensation for torture victims”.⁴⁰

However, according to the current State Party report, the Italian legislative authorities don’t seem to have implemented these recommendations yet. According to the Government report, the prevention and prohibition of such acts are “already present in the Italian legal system” and “are enshrined in the highest law of the land, namely the Constitution”.⁴¹

While welcoming the rehabilitation dimension included in the concept of punishment, OMCT considers that Italian legislative provisions concerning the protection against torture and other cruel, inhuman or degrading treatment or punishment are insufficient and do not contain a specific definition of torture. OMCT recommends that this act be clearly established as a crime in Italy’s penal code based on the definition set out in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴². In this

³⁹ CRC/C/15/Add.41, para. 20, 27 November 1995.

⁴⁰ A/54/44, para. 169(a), 7 May 1999.

⁴¹ Italian First Periodic Report to the Committee on the Rights of the Child, CRC/C/70/Add. 13, p. 23.

⁴² Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as: “ (...) any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

regard, Italian legislation should moreover establish children as specific holders of the right to be protected against torture or other cruel, inhuman or degrading treatment or punishment by establishing more severe sentences against perpetrators acting against a child, setting up a proper system of complaint through which the child can effectively ensure that his/her rights are being respected and carrying out appropriate measures to promote physical and psychological recovery as well as social reintegration of the child victim.

Furthermore, OMCT welcomes the Constitutional Court's Decision n° 168 of 27 April 1994 which has declared life imprisonment for children unconstitutional in light of articles 27 and 31(2)⁴³ of the Italian Constitution. However, OMCT deems it necessary that an express law be adopted formally abolishing this type of sentence.

Finally, capital punishment has been prohibited by Decree Law n° 244 of 20 August 1944. The death penalty has also been abolished for the criminal code applicable in war time through the adoption of Law n° 589/1994.

Ill-treatment by Police and other Public officials

Despite the ratification by Italy of the principal international instruments prohibiting torture and cruel, inhuman or degrading treatment or punishment, reports from different organisations mention several cases in which police officers and prison guards have treated minors/youths abusively.

The Council of Europe's Committee for the Prevention of Torture (CPT) published in December 1997 the findings of a two-week visit of inspection it carried out in 1995. The various places of detention CPT visited included the penal institution for minors of Nisida in Naples. The main findings include the following:

- A boy told the delegation that a few weeks before the visit several prison guards had beaten him, after attaching his hands to metal bars.⁴⁴

