

# PROTECTION OF MINORS

By Angela Condello

## **Introduction: defining the term “minor”**

Before talking of the rights of minors, it is necessary to decide, at least from a methodological standpoint, who is in such a legal situation and who is a minor according to the law.

Usually, a minor is somebody who, under the law of their country, has not attained the age of majority, to which the law attaches a series of obligations and powers <sup>1</sup>.

As for the Italian legal system specifically, Section 2 of the Civil Code, as amended by Section 1 of Law No. 39/1975, states that “the age of majority is set at eighteen years of age. With majority all those acts can be performed for which the law does not require a different age”. These rules take effect both for Italian and foreign minors. However, conversely, the eighteen-year olds are no longer to be considered as minors.

On attaining majority an individual is no longer a minor and therefore is fully capable to act, thus losing the right to benefit from the corpus of regulations being aptly set for minors and its related safeguards.

However, majority is not required to autonomously perform certain acts: for instance the capacity to acknowledge a biological child is acquired at 16 (Section 250 of the Civil Code) and the same holds true for the exercise of the rights related to artistic works.

At 14 a minor becomes criminally responsible, at 12 he or she is to be heard in adoption proceedings, whereas according to Law No. 54/2006 concerning parental separation and shared custody, the

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<sup>1</sup> For the detailed regulatory framework, see L. Pomodoro, *Diritto di famiglia e dei minori*, UTET (2011),..., who rightly emphasises, inter alia, that the age of majority “is not attained ...at the hour corresponding to one’s birth as entered in the Register of births, marriages and deaths but at past midnight of the day the birth occurred” p. 256.

court orders the hearing of children aged 12 or less <sup>2</sup>.

The criteria adopted to determine the age of an individual and, consequently, his belonging to the category of minors - the subject matter of this contribution - are particularly important (though extremely complex) for foreign minors. This topic involves Italy in a direct way.

In fact, if on the one hand there are precise regulatory references for the classification of an Italian national as a “minor”, for non-nationals staying in Italy it is necessary to apply parameters which are not always consistent or in line with domestic law. It would be necessary to assess case by case when a minor comes of age in his or her own country of origin. Clearly, this problem can be easily solved for EU citizens, where domestic legislations are homogeneous, whereas the problem arises when non-EU citizens present on the Italian territory are taken into consideration.

In this regard, under the law that reformed the Italian system of private international law (Law No. 211/1995), a minor is an individual experiencing the conditions envisaged by the Hague Convention (1961), implemented in Italy by Law No. 742/1980: that is, a minor is an individual who is considered as such according to his or her own national law, namely the law of the country of habitual residence.

The Hague Convention does not precisely define the “habitual residence”, as it refers to a *de facto* – i.e. case by case – and not to a *de jure* assessment.<sup>3</sup>

This assessment has to consider the activity of the minor’s family so as to identify the core of his or her life, as well as the ties the minor has in the place where he or she is physically located. The first Hague

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<sup>2</sup> L. Pomodoro (et al.) equally notes that in general “hearing the minor and the obligation to keep his or her opinions into consideration is then acknowledged by various EU regulations, such as, among others, the one related to the enforcement of measures on the rights of custody and access”, p. 257.

<sup>3</sup> To an extent that even the State where the minor has been illegally transferred to (against parental will) can be qualified as place of residence.

Convention (1961) was reformed by a new Hague Convention (1996) and the Strasbourg Convention (1996, implemented through Law No. 77/2003), that lay down simplified age assessment criteria.

## Focus on facts

From a brief reconstruction of facts occurred in the last two years as far as minors are concerned, a complex and definitely critical picture immediately emerges. It displays a wide range of discriminations and no or poor respect for the rights of a category which naturally experiences weakness and precarious situations<sup>4</sup>.

## Child Labour

“Child labour” means the set of activities performed by minors aged less than 16 years, hence illegal activities under the Italian law on access to the labour market, as confirmed by the 2007 Budget Law also, that raised the compulsory school leaving age to 16 and brought the years of compulsory schooling up to 10. At present, in Italy child labour has by no means disappeared in economically advanced countries.

Last August (2013) even the Council of Europe warned that the scourge of child labour is on the rise in Italy due to the economic crisis. In fact child labour is as high as 5.2%, a very remarkable percentage that led the Council of Europe’s Human Rights Commissioner Nils Muiznieks to declare that in most cases members of governments are fully aware of the issue, but are not really ready to face it earnestly.

Child labour is extremely diversified and encompasses a whole set of issues. For this reason, and for the sake of brevity, it is worth

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4 It is worth referring to the last report of the CRC Italia group that constantly monitors issues relating to minors’ rights, both for reconstructing facts and for the subsequent remarks on legislation and case law.: [http://www.gruppocrc.net/IMG/pdf/6\\_rapporto\\_CRC.pdf](http://www.gruppocrc.net/IMG/pdf/6_rapporto_CRC.pdf).

mentioning just some important data relating to these past two years. Firstly, child labour in Italy concerns all regions across the national territory. Furthermore, it also occurs in the least backward areas of the country. Moreover, working experiences are often not in line with the minors' education, and this is why they end up hindering the regular course of individual education.

Minors mostly work in trade and the most involved are males aged under 15. Most of them come from single parent or single income families with various members in the households.

Finally, foreign minor workers often tend to accept heavier jobs than Italians, which turn into very “strong” experiences, hence minor foreign workers would be exposed to marginalisation and social exclusion risks.

Some of the most important data on this issue are provided by the publication of the outcomes resulting from a survey conducted by Save the Children Italia and updated to last summer. Reference is hereby made to this report (“Game Over. Indagine sul lavoro minorile in Italia”).<sup>5</sup>

### Child prostitution

Child prostitution is not a single phenomenon: it is highly complex and diversified and can only be tackled as such. The most frequent episodes concern males and females indiscriminately, in particular Roma males and Romanian females (the latter being more often victims of trafficking for sexual exploitation and account for 30% of prostitutes). Nigerians are also strongly represented as well as child prostitutes living in Roma camps. It must be acknowledged that minors are victims of prostitution, especially among the most vulnerable social categories.

Surely, the most important case of child prostitution occurred over the last two years is the so-called “baby escorts scandal”, in Rome.

Investigations started with two underage girls who were found to receive numerous clients in a bare room of the Parioli district in Rome. Investigations then spread to other cities (including Milan, Florence and Bologna) and from prostitution investigators are now focussing on another line related to drug supply and dealing. At the beginning of 2014, another prostitution ring involving a 15 or 16 year-old girl was discovered in Rome.

### Disputed Minors

Data of the Ministry of Foreign Affairs show that if in 1998 only 89 cases of disputed minors were reported, the following year the number reached 242. In October 2013, a criminal organisation was discovered that organised international abductions to extort money and requested 200,000 Euros to release a single child.

There have been many episodes of disputed minors over the last two years and even though, as is always the case, it is impossible to reconstruct a complete picture of the types of “dispute”, it can at least be stated that there have been various cases of disputed children in quarrelling couples.

The most recent episode concerns a child disputed between an Italian father and an American mother, who spent most of her life between Los Angeles and Parma. The mother was initially charged with child abduction and the father did not see his child for years.

Then, at the end of January 2014, the father disappeared with his son and for various days there was no information about them and their movements. Only in mid-January did he bring the child back to his mother, with whom he has joint custody over him.

There are so many desperate stories: in Lodi, in November 2013, a man beat up his former partner in the middle of the street, taking the child away from school straight after that. In October 2013, in Ventimiglia, a father was stopped while fleeing to France with his

two children: he was therefore charged with child abduction and kidnapping.

In the same period, in Terni a man drove off taking his two children with him after a violent fight with his wife.

On this specific theme, brief reference should be made to a recent ruling of the European Court of Human Rights, that in December 2013, for the second time in a year, ruled against Italy “as it failed to commit in an adequate and sufficient way to have a father’s right of access respected, thus breaching his right to respect for private and family life sanctioned by Article 8 of the European Convention on Human Rights”.

### Unaccompanied foreign minors<sup>6</sup>

Facts concerning foreign minors are far too many to be listed in such a short space<sup>7</sup>.

However, in order to understand the serious emergency situation affecting this category of minors an appeal to “politics” in general by Save the Children of July 2013 is reported: “Ours is a unanimous grieved appeal: let’s have a single procedure to restore order and not squander money. In submitting this draft we offer our commitment to move forward.”

With these words Valerio Neri, general director of Save the Children Italia addressed the following MPs: Cesaro (SC), Carfagna (PDL), Zampa (PD), Fratoianni (SEL), Dall’Osso (M5S), Mantero (M5S) and Gozi (PD), submitting the first comprehensive bill for the

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6 On the issue of unaccompanied foreign minors, see the various data and statistics on the regions of origin present on Save the Children website (updated as of 2013, [http://risorse.savethechildren.it/files/comunicazione/Ufficio%20Stampa/DDL%20MNA\\_DATI%20E%20STORIE\\_25lug2013.pdf](http://risorse.savethechildren.it/files/comunicazione/Ufficio%20Stampa/DDL%20MNA_DATI%20E%20STORIE_25lug2013.pdf) ) and ANCI (<http://www.anci.it/index.cfm?layout=sezione&IdSez=808833>). In particular, domestic and international laws and Italian case law can be found at the following link: <http://www.anci.it/index.cfm?layout=dettaglio&IdSez=808843&IdDett=18038>.

7 For key information on the status of unaccompanied foreign minors see: <http://www.meltingpot.org/Vademecum-sui-diritti-dei-minori-stranieri-non-accompagnati.html#.Uu--cLSOdE>.

protection of unaccompanied foreign minors in Italy (Government bill on unaccompanied foreign minors).

In 2012 alone, 13,267 migrants arrived in Italy, of whom 1,999 were unaccompanied minors. The number of adults considerably dwindled (by five times) compared to the previous year, whereas that of unaccompanied foreign minors was halved.

At present, in Italy there is a National Programme for the Protection of Unaccompanied foreign minors funded by the Fund for the Social inclusion of immigrants. Promoted by the Ministry of Labour, Health and Social Policies, it was implemented by ANCI (National Association of Italian Municipalities).

The aim was to create a national care and integration system for unaccompanied foreign minors.

Starting from the needs of local authorities to host and protect minors in a more efficient way, the programme is based on the sharing of responsibilities and burdens between central government and local authorities, according to a collaboration model already successfully tested in other sectors of social policies.

By means of this Programme, innovative tools will be tested and disseminated. They will contribute to improve the identification of minors' needs. In November 2013, ANCI denounced the lack of sufficient funds for unaccompanied foreign minors. Although more resources were requested for the Fund for unaccompanied foreign minors, the outlook is not positive and it seems that this financing will not be granted to local institutions in charge of the care of these minors.

Despite the existence and effective implementation of a programme for the protection and integration of unaccompanied foreign minors, according to ANSA, in December 2013, the communities hosting unaccompanied foreign minors were nearly "collapsing": this is due, inter alia, to the fact that many operators have not been receiving their wages for months.

They threatened the competent prefectures to dismiss the children and adolescents they host to the “competent prefectures” should the Government fail to call a meeting to listen to their voices.

There have been many protests voiced by local authorities responsible for the management of the emergency of unaccompanied foreign minors: in December 2013, a national committee encompassing 53 communities hosting 727 foreign minors staged a sit-in in front of the Italian Parliament.

Furthermore, even the Regions, during the discussion on the Stability Law had their voices heard at the end of 2013: 50 million Euros have been requested for minor immigrants. In particular, to fuel the fund for unaccompanied foreign minors, restore the Family Fund, allocate at least 500 million Euros for the Self-sufficiency and Social Policies’ Fund: requests have been made in the form of amendments and recommendations by the Conference of Regions, in Parliament, in view of the approval of the Stability Law.

As they live in very precarious conditions, unaccompanied foreign minors are often faced with serious health problems that cannot often be solved swiftly with the help of a paediatrician.

According to the data of the Italian Society of Paediatricians (Sip), at the end of 2013 in Italy there were more than 3 thousand minor migrants living in severe emergency conditions.

Italian paediatricians call for “timely and effective actions”, firstly through the setting up of a multi-professional task force with paediatricians and specialists to provide migrant children-friendly support.

The conditions of minors in immigration detention facilities (C.I.E and C.A.R.A) are very difficult.

One case in particular deserves to be emphasised; the Human Rights Committee of the Senate heard Marilina Intrieri, Commissioner for Children and Adolescents of the Calabria Region, during a hearing

on the reception conditions of asylum seekers in the facility of Isola Capo Rizzuto.

The Commissioner denounced serious deficiencies for the unaccompanied minors hosted in the centre, especially in terms of health care and, more in general, housing conditions. In addition, emphasis was put on the need, shared by the members of the Committee, to ensure free and permanent access to the immigration facilities for Ombudspersons for Children all over the country, particularly where minors and pregnant women are hosted.

The most alarming element pertaining to unaccompanied minors, both from a factual and regulatory viewpoint, is the lack of a common approach to the emergency, in all its dimensions.

What concerns the most, is the lack of clarity about the competence and responsibility vis-à-vis individual minors and the management of communities that should take care of them.

### Minors living in poverty<sup>8</sup>

The crisis affects all the most vulnerable social categories and, therefore, minors. On the one hand, there is the great discomfort of the impoverished families, who are often forced to reduce their consumption, especially when there are children in the household, on the other the economic difficulties prevailing in Italy - including the crisis of the welfare state, cuts in children funds, and projects failing to commence.

Stuck between these two already incredibly complex phenomena, there are more than one million children living in conditions of absolute poverty, with clear housing difficulties, together with and dependent on unemployed adults: in places where school dropout rates are high child labour thrives and inequalities prosper.

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8 Save the Children has recently published a very detailed survey on minors and crisis: [http://images.savethechildren.it/IT/f/img\\_publicazioni/img222\\_b.pdf](http://images.savethechildren.it/IT/f/img_publicazioni/img222_b.pdf).

On top of that, there are: adults' "educational" poverty - parents' low education and skill levels that provide the background to economic poverty, deprivations, precarious health conditions and risk of obesity.

The most widespread phenomena, according to the data collected by Save the Children and confirmed by a survey carried out by the Bicameral Committee on Childhood, regard the downgrading of food expenditure, cuts in education (as well as nurseries and services for children and adolescents), and precarious housing conditions often exacerbated by eviction orders for not paying the rent. On the other hand, the growing poverty conditions worsen chronic backwardness, such as the absence of a national network of services for early childhood.

Here are some figures: in 2012, out of more than 4.8 million people in conditions of absolute poverty, almost 1.1 million were minors, as against 723,000 minors out of 3.4 million absolute poor in 2011. If the total number of people in 'absolute' poverty rose by 41% compared to 2011, the number of absolutely poor children increased to a greater extent, that is by 46%.

From 2007 to 2012, minors in absolute poverty more than doubled, from less than 500,000 to more than a million. In addition, 17% of children do not have access to proper meals on a daily basis, and in this regard the school does not contribute to bridge the social gap either. According to ANSA, food expenditure remained stable between 2007 and 2012 among families with minors, but due to a 13% increase in food prices since 2007 there has been a restriction on the quality and the amount of food purchased. Among families with children in absolute poverty, reductions relate to meat, vegetables and fruit: in fact higher costs for housing, fuel and healthcare have to be catered for.

Moreover, UNICEF Italia reported some episodes in which children have been excluded from the canteen service as their parents failed to pay the fees. One of the most striking cases concerned the Municipality of Vigevano, which decided to solve the problem

of unpaid canteen fees not only, as it would be normal, through enforcement actions against defaulting households, but also through the exclusion of their children from the service, and even through the elimination of exemptions that were previously granted to yearly incomes of less than € 22,000 through the ISEE (Equivalent Financial Situation Index) system.

In the 2012-13 school year this decision led to the exclusion from canteen services of about 150 children, almost the half of which (84) had been entitled to a free lunch up to the previous school year. This emergency situation was likewise highlighted at the end of 2013 by the Deputy Minister of Labour and Social Affairs Maria Cecilia Guerra – in a hearing before the Committee on Childhood.

### Minors and international adoptions

Over the past two years, much fewer Italian couples have been adopting children as procedures have become lengthier and more cumbersome, at times even obscure. The most sensational case concerned children and families involved in international adoptions in Congo, a case exploded at the end of 2013 but dating back to years ago.

Numerous Italian families, after going through the whole international adoption process, visited Congo to spend the usual time in the country of their adoptive children aimed at integration, and were meant to go back to Italy just before Christmas.

As a result of various red-tape problems and after visiting Congo several times without ever being allowed to go back to Italy with their children, in November 2013 the Congolese General Directorate for Migration blocked the exit of all children from Congo, due to irregularities found in some (non-Italian) adoption documents.

In 2013 alone, the Directorate interrupted the process as many as 3 times due to irregularities found in (non-Italian) adoption documents. At the end of November, 28 Italian couples were stuck in Congo,

although they were issued a visa and all the necessary documents by the Italian Embassy. In January, families went back to Italy without their children.

## Discriminations and violence

June 2013. CRC Report. On line paedophilia and child pornography.

According to the CRC<sup>9</sup> research and monitoring group, child pornography takes place in two main ways: on the one hand, producing, distributing, downloading, and viewing child pornography material, which entails a “passive” role of child victims.

On the other, inducing children and adolescents online or through cell phones to produce material, have sex-based chat sessions, grooming minors on line to obtain sex-based offline encounters.

Only to mention but just a few remarkable cases, one of the last on line paedophilia episodes occurred in L’Aquila: the accused, a 40-year old man from Avezzano, used to groom minors on line and, after gaining their trust, asked them to show themselves naked in front of the webcam - thus recording photos and videos.

Grooming used to occur by means of false accounts on instant messaging systems: in some cases he pretended to be a boy, in others a girl, depending on the gender of the person he was talking to. He had a collection of almost 82,000 files with child pornography pictures and videos, all stored on encrypted hard drives and protected by passwords, some of which were distributed via the Internet.

In Perugia, a businessman used to collect pictures of naked girls from Facebook, pretending to be a woman. By so doing, he managed to receive naked pictures from 28 girls, most of whom were aged 14. In the Marche region, another man with no previous convictions used to record child pornography videos by threatening minors to

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9 <http://www.gruppocrc.net/>.

disseminate images portraying them naked should they fail to accept and show themselves in video calls via web-cams.

June 2013. Rome Cyberbullying and “sexting”

Inquiry of “La Repubblica” daily newspaper on Cyberbullying

Cyberbullying has been on the rise over the last two years. It has thrived thanks to the Internet and social networks, thus experiencing a constant and imperceptible development. However, this phenomenon exists and often represents a source of anxiety, depression and in general exclusion of those who - among adolescents - are somehow “different”.

For 72% of Italian adolescents it is the most dangerous social issue: most victims are gay, immigrants and those who do not fall into a defined category<sup>10</sup>. According to research studies carried out by Telefono Azzurro, the highest percentage of bullies is to be found among adolescents with family problems. There is no real distinction between victims and persecutors and the crisis, that suffocates us all, increases the anger expressed even by younger children.

The symbolic case of this undeniable degeneration of social networks has been the suicide of Andrea Spezzacatena, the 15-year old boy mocked as “the young man with pink trousers”.

The phrase stemmed from the colour of a pair of his jeans as a result of a laundry problem.

Rather than getting angry with his mum, Andrea was amused and started wearing those trousers without imagining that they would be mocked for months and become the object of cyberbullying and derision.

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10 For further information and data see the survey on the topic at Repubblica.it: [http://inchieste.repubblica.it/it/repubblica/rep-it/2013/06/06/news/la\\_nuova\\_guerra\\_del\\_cyberbullismo\\_per\\_noi\\_ragazzi\\_un\\_vero\\_incubo-60488506/](http://inchieste.repubblica.it/it/repubblica/rep-it/2013/06/06/news/la_nuova_guerra_del_cyberbullismo_per_noi_ragazzi_un_vero_incubo-60488506/).

Pointed at as “gay” even on a Facebook profile dedicated to the “the young man with pink trousers”, Andrea took his life with a scarf around his neck on 20 November 2012.

The Human Rights Committee of the Senate, chaired by Prof. Luigi Manconi, has been conducting a survey on cyberbullying since June 2013 that included the hearings of the National Ombudsman for children and adolescents, Mr Vincenzo Spadafora, and of Mr Marco Rossi Doria, under-secretary for education, between October and December 2013<sup>11</sup>.

Another phenomenon to be taken into consideration is “sexting”. According to ANSA, one adolescent out of 4 (25.9%) states to be victim of sexting, i.e. to have received sex text messages/mms/videos; the percentage of adolescents who declares to have sent pornographic material is on the increase (12.3%) and 2.3% admits doing it for money or a cell phone top up or because they were being victim of threats. Among other episodes related to this topic, in December 2013, in Rome some adolescents sent a video with pornographic images to another adolescent via WhazzApp (an app for sending information, text messages, and images via smart phones).

October 2013. Rome. Statistics on minors in prison

In October 2013 there were 456 minors in youth prisons. This figure has been provided by the former Minister of Justice Annamaria Cancellieri during a hearing before the Human Rights Committee of the Senate on the topic of minors in prison. She also reminded that “the territorial administration consists of 12 centres for juvenile justice, 19 youth prisons, 25 first reception centres, 12 ministerial communities and 29 offices of social services for minors”.

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11 For additional information see the webpage of the Committee: <http://www.senato.it/notizia?comunicato=46431>.

Ms Cancellieri reviewed the projects under way on this specific subject with a view to protecting minors and detained mothers. She equally announced that the Department of Juvenile Justice was assessing the need to draft specific bills to protect the children of underage or young women prisoners that can combine the state of detention with the protection of children living in jail.

There is still a lot of confusion regarding the distinction between ICAM (low-security establishments) in Milan and Venice and protected shelters. ICAMs are indeed prison establishments as the prisons regulation is applied even though with some resulting limitations to relationships with the outside (interviews, visits etc.) and outside world.

For minors who live in prisons with their mothers there are baby doctors and specialised staff together with operators and volunteers who also take children on a daily basis to the municipal nurseries. In all women's prisons or women's sections of prisons educational services for young children are provided, as well as - given the high percentage of foreign women prisoners with children - education, training, access to labour market and linguistic-cultural mediation projects.

In various regions similar facilities are being studied, but they should already be operational since many minors aged between 0 and 6 (almost 50) are currently obliged to live in cells with their own mothers.

October 2013. Rome. Paedophilia.

In October 2013 updated data on sexual abuse against minors in Italy were published.

According to the Terres des Hommes dossier, in one single year there has been a threefold increase: 78% of victims are female. In

fact, even from the “Indifesa” dossier, recently presented in Rome together with a campaign with the same name, it emerged that out of 689 sexually abused children (882 in 2011) in 2012, 85% of the victims were female.

There have been many paedophilia episodes over the last two years: just to mention but a few, a foster father of a Chernobyl little girl, within the “respite care holidays”, repeatedly forced her to endure sexual assault and, furthermore, collected child pornography images by filming the little girl. Another Belarus young girl who also came from the city of the nuclear disaster was assaulted by her foster parents.

Another upsetting case of sexual abuse concerned the Forteto care home where children placed in the care of the shelter in Vicchio del Mugello (Florence) were repeatedly sexually assaulted: as of today, 23 persons are charged with child abuse, including the “guru” and founder of the community. In Piacenza, an Ivorian young girl was assaulted for three years (from 12 to 15) by her 39-year-old uncle and 21-year-old brother. In Bologna, a 63-year-old employee was investigated for and charged with continuing and aggravated sexual assault perpetrated to detriment of a brother and a sister, aged 8 and 9 respectively.

13 December 2013. Turin. General Convention on Child Abuse in Italy

According to Dario Merlino, CISMAI (Italian Coordination and private services against child abuse) President, “in Italy considerable progress has been made over the last twenty years in the social, cultural, scientific, and legislative spheres. However, if we consider the proposals put forward by our Coordinating Committee in the first General Convention in 2010, we must acknowledge that in Italy the indications coming from the most important international and national organisations on prevention and care of abused children

have been disregarded.”

According to CISMAI data, from 2005 to 2012 the number of child abuses increased by 23.6%.

Furthermore, child abuse and violence are extremely costly for the government: according to ANSA, they account for 13 billion Euros, with even higher indirect costs, such as ad hoc education, youth delinquency and healthcare in adulthood. In fact, most of the times an abused child becomes a problematic adult. Abused children taken care of by social services are 100,231, i.e. 0.98% of the global youth population.

## Rules and policies

### Law No. 219/2012 on status equalization and children’s right to know their origin (Constitutional Court and European Court of Human Rights)

With Law No. 219/2012, Parliament eliminated, at least from a regulatory standpoint, whatever form of discrimination between legitimate and biological children, i.e. children born out of wedlock. The non-discrimination between these two « kinds » of children is the main objective pursued by the new rules on acknowledgement of biological children.

In particular, this law has amended the Civil Code as well as its enforcement and transitional provisions in the following items: child acknowledgement, children born of parental relations, legal capacity to be a defendant, and legal status of children (the former section 315 of the Civil Code is now being replaced by «Section 315 (Legal status of filiation).- All children are granted the same legal status»), names of children.<sup>12</sup>

<sup>12</sup> For a detailed analysis on the topic see R. Cippitani, S.Stefanelli (eds.), *La parificazione degli status di filiazione*, Atti del Convegno di Assisi (2013), Università degli studi di Perugia. Studi tematici di diritto e processo a cura di Antonio Palazzo.

With a recent judgement, the Constitutional Court (278/2013) revisited the right of an adopted child to know his or her own origins - thus balancing this right with the right of the mother to remain anonymous - following a question of constitutional legitimacy raised by the Juvenile Court in Catanzaro<sup>13</sup>.

In any case, this judgement is in line with the decisions of the European Court of Human Rights. The latter, in the case *Godelli v. Italy* (application no. 33783/09), had ruled against Italy for breaching Article 8 (right to respect for private and family life) of the European Convention on Human Rights. The Court considered, among other things, that Italy did not try to strike a balance in a proportionate way thus exceeding the State's margin of appreciation.

The Constitutional Court, with its recent judgement No. 278/2013, has identified Article 2 of the Constitution as the basis of the right to personal identity, intended as right to a correct self-representation, as well as a child's right to know about his or her origins and the mother's right not to disclose her identity; this latter right should not be intended as an unchangeable "simulacrum", but rather as a flexible notion and therefore subject to interpretation.

As already mentioned, with the *Godelli v. Italy* judgment the Court has tackled the delicate issues of acknowledging the right of the adopted person to have information about the identity of his or her biological mother, and the margin of appreciation that a national system has in striking a balance between the right of the biological mother not to disclose her identity and the claim of the adopted child to know the identity of his or her biological parent.

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13 On this point too, see E. Frontoni, *Il diritto del figlio a conoscere le proprie origini tra Corte EDU e Corte Costituzionale*. Nota a prima lettura sul mancato ricorso all'art. 117, primo comma, Cost., nella sentenza della Corte Costituzionale n. 278/2013, in AIC, osservatorio, December 2013.

The case originated from an appeal to the European Court lodged by a woman who, after being abandoned by her biological mother, had initiated administrative and court proceedings to obtain information on the identity of her biological mother.

The European Court found a breach of Article 8 ECHR due to a failure to strike a balance between the right of an adopted child and the mother's right. In the light of the complete absence of such a right for adopted children Italy could not invoke a national margin of appreciation.

Finally, on 7 January 2014, the European Court of Human Rights (Strasbourg) ruled against Italy for breaching the right of two spouses, as it denied them the possibility to pass on her mother's surname instead of her father's to their daughter. In the ruling, which will become final in three months' time, the court calls on Italy to "adopt reforms" in its legislation and in other field to remedy the breach. The request was promptly accepted by the former Prime Minister Letta. The appeal was lodged in 1999 by a couple from Milan.

Years ago (2006, 2008), the Court of Cassation had already voiced its concerns about the legal system under which Italian mothers' are not entitled to pass on their surname to their children. According to the Supreme Court, as a result of the approval of the Lisbon Treaty even Italy, as is the case for the other 28 Member States, has the duty to comply with the fundamental principles of the EU Charter of Rights, including the prohibition "of any discrimination based on sex". In 2012 there had been a further change in that the mother's surname could be added to the father's though it could not replace it. The Strasbourg signal should then represent a milestone in this regard.

## Paedophilia and child pornography

In November 2013 a legislative decree strengthening the fight against child pornography was approved, with the ensuing introduction of a new criminal offence and the extension of the use of telephone tapping.

Furthermore, new aggravating circumstances were introduced and telephone tapping and bugging were extended to the offence of grooming of minors, coupled with the possibility of extending to the same crime the administrative responsibility of legal entities.

These are the novelties as regards abuse and sexual exploitation of minors and child pornography that were introduced into the legislative decree approved by the Council of Ministers in November 2013. A press release by the Ministry of Justice was issued in this regard.

In 2012 Italy ratified the Lanzarote Convention<sup>14</sup>, the first international instrument that criminalizes sexual abuse against children. Beside the most common criminal offences in this field (sexual abuse, child prostitution, child pornography, forced participation of children in pornographic performances), the Convention regulates likewise grooming and sexual tourism.

Domestic violence. It is worth noting that Italy has been urged from many sides to introduce adequate rules to protect minors from all kinds of corporal punishment and domestic violence.

In this regard, in July 2013 the Association for the Protection of All Children (APPROACH), filed a complaint with the European Committee of Social Rights,- which was immediately declared as admissible - concerning an alleged violation of Article 17 of the European Social Charter by Italy.

The question raised by the Association active in the promotion and protection of the rights of minors concerns the lack of an explicit prohibition, in the Italian system, of physical punishment at home. As a result of this there is a need to adapt the Italian rules, which is

14 <http://nuovo.camera.it/561?appro=517&Legge+172%2F2012+-+Ratifica+della+Convenzione+di+Lanzarote>.

fully in line with what has already been acknowledged by the Court of Cassation in its case law.

Even Save the Children Italia launched a campaign on the topic, considering it necessary to adopt a legislative reform aimed at introducing an explicit ban on corporal violence at home together with awareness campaigns to support positive parenting to help parents understand how important the adoption of positive educational methods is.<sup>15</sup>

Introducing these rules is of paramount importance if account is taken of the fact that the use of humiliating physical punishment is against the principles enshrined in the Convention on the Rights of the Child. The Committee on the Rights of the Child, responsible for the implementation of the Convention, defined in 2008 humiliating corporal punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children”..... Corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child”. In the Italian legal system (hence both in legislation and case law) corporal punishment is usually banned in schools and jails. However, there is no explicit prohibition in domestic settings. Nonetheless, since 1996 the Court of Cassation (judgment. Cambria) has acknowledged the unlawfulness of the use of domestic and psychological violence for educational purposes. Later on, in 2009, the Supreme Court stated that “the abuse of correction means (...) can occur when going too far in the use of a legal means, in the form of a physical force exerted in a single punitive gesture and in the reiteration of the same gesture”.

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15 “ [www.savethechildren.it/amaniferme](http://www.savethechildren.it/amaniferme).”

Finally, in 2012 the Criminal Division of the Court of Cassation pinpointed that “similar types of behaviour, whenever they occur...(.) as reiterated violence causing bodily harm, are unrelated to a correction aim that, as already mentioned by this Court, insofar as justified in its educational dimension, sees violence as incompatible with both the protection of the minor’s dignity and the need for a balanced development of his or her personality ”. Hence, given this situation, Italy lags considerably behind: a survey conducted by IPSOS in 2012, as well as other surveys conducted by paediatricians, revealed how in Italy the use of physical violence against minors is considered as an <<educational>> method and is quite tolerated and common.

### Problems of the National Childhood Plan

The National Action Plan designed to protect the rights and the development of young people (National Childhood Plan) is the guiding instrument with which Italy fulfils its commitments to implement the contents of the CRC and its Optional Protocols<sup>16</sup>.

In its report on the state of implementation of the New York Convention, the Committee for the Rights of the Child pinpointed that the implementation of the National Childhood Plan in Italy still lags behind and there are gaps.

Although the project for the implementation of this plan is still ongoing and praiseworthy, there are manifold criticalities.

Firstly, since the setting up of the plan the necessary funds for its implementation have not been allocated so far. The Plan was approved by the President of the Republic, but has not been fully concluded.

There is a Plan monitoring system, which in turn has experienced manifold difficulties in the collection and exchange of data: a recurrent problem is, for instance, the lack of structured connection and therefore of coordination between the Observatory and the other institutional figures responsible for monitoring the implementation

state of the rights of children and adolescents (National Ombudsperson, regional Ombudspersons).

The CRC report highlights that, despite the adoption of a national action plan to protect the rights and development of young people (in 2010-2011), there is however a big gap as the plan itself has not been implemented. Indeed, resources have not been allocated and the funds allocation process at regional level can further delay its implementation.

The key problems related to the National Childhood Plan can be summarised as follows: lack or insufficient resources destined to the Plan organisation and implementation, lack or insufficient homogeneous data - which somehow remain incoherent in terms of quantity and type of source they originate from. Furthermore, childhood plans, projects and programmes require greater coordination: conversely, there are quite a few non-integrated plans, protocols and guidelines.

Likewise, there is no single forum where the topics of the rights of children and adolescents can be discussed among the various levels of government (local, national).

### Bicameral Committee for Childhood and Adolescence

It is worth noting that, in 2013, there has been a clear delay in the appointment of the bicameral Committee on Childhood. Still, in September, a few months after the Government had taken office, the Ombudsperson for Childhood and Adolescence, Mr Spadafora, declared: "I deplore that after all these months, there still is no Bicameral Committee on Childhood. There are single members of Parliament, however there is no agreement on the president. Therefore we do not have an interlocutor."

As for the fact-finding surveys conducted by the Bicameral

Committee, in line with what has been reported so far, it is worth mentioning;

- the survey ended in October 2011 on the protection of minors in the media, carried out according to two different approaches to the protection of minors in the media from a subjective viewpoint, to favour their psychological growth, and from an objective viewpoint, to address the protection actions towards adults and other minors;
- the survey, ended in January 2012, on the implementation of the laws on adoption and foster care, with a special focus on the drop in adoption applications which has been experienced in Italy over the last few years and the crisis of international adoptions;
- the survey on unaccompanied foreign minors, aimed at examining how reception is organized for unaccompanied foreign minors;
- the survey on child prostitution ended in July 2012, which underscored some possible tools to counter the phenomenon.

### Safeguards to protect children and adolescents

In 2011 the law setting up the National Ombudsperson for Children and Adolescents was passed, and subsequently the first Ombudsman was appointed.

Therefore, 2012 was the first year Italy had such a figure, even if the regulation that made the Authority operational was enacted only in September 2012.

The 2013/2015 Stability Law, however, confirmed for 2013 a 1 million Euro fund for the operation of the Office of the National Ombudsperson for Children and Adolescents. As of today, its

activity cannot be assessed yet, as Mr Spadafora has been in office for a short time and the activities being developed are not that many.

Nevertheless, it is possible to trace some guiding principles emerging from the statements of the incumbent Ombudsperson.

During the General Convention on Child Abuse, organised by CISMAI, Mr Spadafora declared : “I do realise I am often talking about childhood with interlocutors who are not competent in the subject matter. The crisis is given the blame for the lack of investments in the childhood sector, but the truth is that the interest for such a delicate and important sector has never been there, not even when economic investments were possible”. The issue of funds and financing allocated for childhood and adolescence can no longer be postponed. Furthermore, Mr Spadafora added that “Unfortunately, in our country there is a strong speculation on the topic of juvenile justice. Media are those to be blamed first”.

## Recommendations

1. Introducing and strengthening adequate monitoring systems and fostering programmes to counter child labour.
2. Monitoring and supporting the activities of the Observatory against paedophilia and child pornography, so as to ensure that it can become operational and effective as soon as possible.
3. Strengthening the actions countering trafficking for prostitution purposes - taking into consideration the transnational nature of this crime, and the « informal » features of the phenomenon.
4. Appointing the new national Observatory as soon as possible and providing it with the necessary resources to draw up the IV Action Plan with no further delays. Ensuring that every action of the new Plan has the necessary economic coverage.
5. Creating a conference of Regional Ombudspersons to work in synergy with the National Ombudsperson. Regions that have not been compliant so far are called upon to appoint them without delay.
6. Introducing harmonised age assessment procedures at national level for unaccompanied foreign minors by improving the coordination system of reception facilities in municipalities and regions; where necessary, setting up a task force for the timely identification of unaccompanied foreign minors as of their first reception.
7. Promoting the adoption of new rules for international adoptions aimed at simplifying adoption procedures but at the same ensuring effective monitoring during the various stages of the adoption procedure.
8. Enhancing the role of the qualified no-profit sector and family associations in custody proceedings, through the involvement of public institutions.