

Gruppo di Lavoro
per la Convenzione
sui Diritti dell'Infanzia
e dell'Adolescenza

SUBMISSION OF INFORMATION

to the UNITED NATIONS

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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IN CONNECTION WITH THE CONSIDERATION OF
THE FOURTEENTH AND FIFTEENTH PERIODIC REPORTS OF

ITALY

Abstract* of the 3rd Update Monitoring Report on CRC in Italy 2006-2007

Rome, February 2008

* The complete version is available in Italian on the websites www.crin.org, www.savethechildren.it



Gruppo di Lavoro per la Convenzione sui Diritti dell'Infanzia e dell'Adolescenza

Italian Working Group for the Convention on the Rights of the Child

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* Associations that signed the 2007 Follow Up Report.

ABOUT US

The **Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza (Italian Working Group for the Convention on the Rights of the Child)** is a network open to any association, NGO, cooperative, foundation and any other stakeholder from the third sector dealing with the promotion and protection of children's rights in Italy.

In order to subscribe to the *Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza* mailing list and receive updates on initiatives under way, a participation form must be completed. For single initiatives the individual subscription of the association is required.

The *Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza* was established in December 2000 with the main aim of drafting a report on the implementation of the CRC in Italy, supplementary to the one issued by the Italian Government, to be submitted to the UN Committee on the Rights of the Child (UN CRC Committee) at the High Commissioner for Human Rights.

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OBJECTIVES

Purpose

To promote the effective implementation of the UN Convention on the Rights of the Child (CRC) in Italy.

Mandate

To guarantee an independent, permanent and up-to-date monitoring system on CRC implementation, which all members agree upon, and to implement potential related advocacy actions.

Main activities

- Drafting a Yearly Follow-up Report on some of the priority issues identified and highlighted in the Concluding Observations of the UN CRC Committee.
- Meetings with institutions in order to assess CRC implementation and the Concluding Observations of the UN CRC Committee
- Training/information for associations
- Drafting of the Second Supplementary Report by the CRC Working Group in 2008/2009.

Activities carried out and under way

In **November 2001** the **Supplementary Report** “*The Rights of Children in Italy - perspectives in the third sector*” was published and signed by 42 Italian associations and non governmental organizations.

Even though the document did not intend to provide a comprehensive assessment of all the child-related issues in Italy, nonetheless it provided the UN CRC Committee a starting point for its consideration of the Italian situation by highlighting critical points in our system. The English version of the Report was indeed sent to the UN CRC Committee who, in **October 2002**, invited the *Gruppo di Lavoro per la Convenzione sui diritti dell’infanzia e dell’adolescenza* to a restricted-access meeting (the pre-Session) in order to learn more about the content of the Report.

In **January 2003** a delegation from the *Gruppo di Lavoro per la Convenzione sui diritti dell’infanzia e dell’adolescenza* then attended as an observer the Session, between the UN CRC Committee and a numerous Italian governmental delegation. On the 31 January 2003 the UN CRC Committee made public its Concluding Observations on Italy (CRC/C/15/Add.198).

Thanks to the Supplementary Report drafting and missions sent to Geneva, the *Gruppo di Lavoro per la Convenzione sui diritti dell’infanzia e dell’adolescenza* obtained recognition at an international level:

□ the *Gruppo di Lavoro per la Convenzione sui diritti dell’infanzia e dell’adolescenza* is member of CRIN (*Child Rights Information Network*), and publications from the Group are available on CRIN website www.crin.org;

□ it is part of the Geneva *NGO Group for the CRC* circuit which manages contacts among working groups established in many Countries and facilitates the exchange of information with the UN CRC Committee.

The *Gruppo di Lavoro per la Convenzione sui diritti dell’infanzia e dell’adolescenza*, presenting the *Supplementary Report*, committed to pursuing the monitoring of CRC and the Concluding Observations, not only in view of the next meeting with the UN CRC Committee (set in 2008), but also in order to guarantee an independent monitoring system agreed upon by several NGOs working for the rights of the child.

The hope is to urge and contribute to get policy, practice, as well as future legal reform in order to make a real improvement to the status of all children in Italy.

In **December 2004** the *Gruppo di Lavoro per la Convenzione sui diritti dell’infanzia e dell’adolescenza* published a practical guide for the third sector called “**CRC Monitoring in Italy**” thus providing a working instrument for the numerous associations dealing directly or indirectly with child-related issues in order to better understand and share the notion and aims of CRC implementation monitoring.

The guide explains the path undertaken by the *Gruppo di Lavoro per la Convenzione sui diritti dell’infanzia e dell’adolescenza*, and aims to facilitate the participation of all the various stakeholders that, in different ways, work in the field of the rights of the child.

In the framework of the monitoring process, the *Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza* decided to produce a Follow-Up Report on the implementation of the rights of the child and on the UN Committee Recommendations to Italy, on a yearly basis, focused on selected issues considered priority.

The Follow Up Report represents a summary of the monitoring carried out by the *Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza* over the year, but it is not meant to be simply a chance to criticize the deficiencies of the Italian system. It is also an opportunity to undertake an on going and constructive debate with institutions in charge of childhood policies, that is responsible for the implementation of the rights enshrined in the CRC.

In the first Follow Up Report, published on 27 May 2005, anniversary of CRC ratification in Italy, four main focus areas were identified: legal reforms, protection of the rights of most vulnerable children, and implementation of the two Optional Protocols to the CRC.

The Report was personally delivered by the delegation of the Group to the institutional representative of the Group at the Ministry of Welfare. The part related to the Protocol on children trafficking, child prostitution and pornography, representing children and related to the Protocol concerning the involvement of children in armed conflicts were translated into English and sent to Geneva as a Supplementary Report.

Following the *Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza*'s contribution by way of this publication, it was invited to meet the UN CRC Committee in a restricted-access meeting (the pre-Session, 6 October 2005).

In March 2006, a Group delegation was received by the Human Rights Inter-Ministerial Committee at Ministry of Foreign Affairs to discuss implementation of the

Optional Protocols, and in May the *Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza* attended as an observer the Session between the UN CRC Committee and the governmental delegation.

In the second Follow Up Report, published on 27 May 2006, issues addressed in the 2005 Report were reviewed and updated and two new clusters on Basic health and welfare, and Education, leisure and cultural activities were introduced.

On 13 June 2006 a *Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza* delegation presented the Report to the Inter-Ministerial Committee at the Ministry of Foreign Affairs during an ad-hoc meeting.

On 20 November 2006, on the occasion of the National Child Day organized by the Parliamentary Committee for Childhood, the Report was included among the materials available for attendees.

The third Follow Up Report was published on 27 May 2007 and broadened the extent of monitoring to include an evaluation of general CRC principles, beginning with child participation and consideration of their views (Art. 12 CRC). Furthermore, a chapter on family environment and alternative care was introduced.

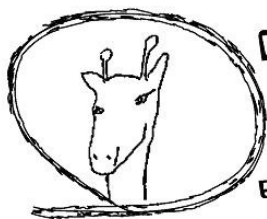
The Report was signed by 62 Italian non governmental associations and organizations.

The aim of the *Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza* is to broaden the monitoring area of the Follow Up Report each year, so as to focus even further on all 8 thematic groups in which the UN CRC Committee has grouped the first 41 articles of the CRC. To that end, the *Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza* will prepare its next Supplementary Report for the United Nations 2008-2009 CRC evaluation.

PUBLICATIONS OF THE Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza

- *The Rights of Children in Italy, perspectives in the third sector. Supplementary Report to the United Nations by the CRC Working Group*, November 2001
- *The Rights of Children in Italy, perspectives in the third sector - Supplementary Report to the United Nations*, October 2002, available on www.crin.org
- *Monitoring of the Convention on Child's Right in Italy, Practical guide for the Third sector*, December 2004
- *The Rights of Children in Italy, First Follow Up Report on the Convention of Child's Right monitoring in Italy, year 2004-2005*, May 2005, available on www.crin.org
- *Supplementary Report on the implementation of the Optional Protocols on the CRC in Italy*, May 2005, available on www.crin.org
- *The Rights of Children in Italy, Second Follow Up Report on the Convention of Child's Right monitoring in Italy, year 2005-2006*, May 2006, available on www.crin.org

all the publications are available on the website www.crin.org as well as on the websites of the *Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza*.



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SUBMISSION OF INFORMATION

PART I. GENERAL

Although the principle of non-discrimination is formally and extensively recognized in the Italian legal system, both by the Constitution and in legislation, its actual implementation is less consistent.

The Italian Government has made a commitment to respect the rights enshrined also in the Convention on the Rights of the Child and guarantee them to every child living under its jurisdiction, «without any distinction and regardless of any consideration of race, colour, sex, language, religion, political opinion or any other opinion of the child or of the child's parents or legal representatives, or their national, ethnic or social origin, financial situation, condition of being incapacitated, birth or any other circumstance». Yet the evidence provided throughout the **3rd Update Monitoring Report on CRC in Italy 2006-2007** demonstrates that there are still several groups of children who suffer extreme discrimination, in particular, foreigners and Roma.

A significant proportion of **non-European foreign minors** have a much higher school failure rate than their Italian classmates. They also represent a significant proportion of those in **asylum-seeker** holding camps and juvenile correctional institutions, the latter partly because it is impossible to implement alternative measures than imprisonment. The many **unaccompanied foreign children** in Italy live in extremely deprived and precarious conditions, lacking appropriate protection, partly as a result of the inadequacy of the legislation.

Roma children, most of whom are Italy-born citizens, suffer from a lack of suitable integration policies, effective schooling campaigns, or health programmes that acknowledge the implications of their culture. These factors all contribute to their continuing social exclusion. The rate of non-attendance at school is very high among these communities; at the same time, these children are frequently exploited for purposes of begging. There are a disproportionate number of Roma children in juvenile prisons, although the exact number of children is not known due to the lack of disaggregated data.

Thus, a significant minority of children and adolescents in Italy experience discrimination and are denied appropriate respect for their rights.

Consequently, the Gruppo CRC (Italian NGO Group for the CRC) recommends that special attention be devoted to these social groups and that policies are developed to ensure the proper and effective implementation of the principle of non-discrimination.

PART II. INFORMATION RELATING TO ICERD ARTICLES 5 AND 7

ICERD ARTICLE 5

A. The right to equal treatment before tribunals and all other organs administering justice:

There continues to be discrimination in the Italian child justice system for certain categories of children, including foreigners and Roma.

First of all, it should be noted that there is a high percentage of foreigners among child detainees (at the end of 1996, 194 foreign children were detained in penal institutes in Italy, compared with 149 Italian children¹) which is not attributable to the crime level among foreign children, since crimes reported against them are little more than a quarter of the total².

Admissions of foreign minors to penal institutes continue to increase, in particular in Central and North Italian prisons, compared with a progressive decrease in admissions of Italian minors into prison. Foreign children and Roma, as well as being more frequently subject to imprisonment, have greater difficulty in obtaining access to probation and alternative detention measures.

An important factor is also the scarcity, in terms of number and quality, of public or registered communities providing accommodation for children as an alternative measure to detention. They are hardly ever equipped, for example, to respond to the specific needs of foreign minors and rarely have the necessary instruments for cultural mediation. The municipal authorities and the Ministry of Justice do not seem able to allocate sufficient resources for the development of such communities, which thus become places providing accommodation for a few privileged people, or places of transit prior to return into a penal institution.

Finally, it should be noted that the Italian legislation has an important provision for safeguarding foreigners who have committed a crime while they are still minors: they have the right of access to an "assistance and social integration" programme and to obtain permission to stay on humanitarian grounds (article 18 (6), Consolidated Legislation 286/1998). Nevertheless, the ambiguous wording of the legislation, the absence of specific implementation circulars and the lack of funds allocated for this purpose mean that this legislation is seldom used.

In the light of these observations the Gruppo CRC recommends:

The adoption of specific policies and action programmes aimed at remedying the serious discrimination against foreign children, Roma and in particular the allocation of special institutional funding for carrying out programmes under article 18(6) Consolidated legislation no. 286/1998 (namely, the inclusion of a call for applications in relation to the Fund established under article 12 of Law 228/2003), as well as the issue of a circular that aims to provide clarification in relation to the implementation and applicability of this kind of protection system developed over time for "social protection" of victims of violence or serious exploitation (pursuant to the first subsections of the same article), clarifying also that children undergoing probation can make use of this authorisation in the same way as children who have completed a sentence of detention.

¹ Ministry of Child Justice, statistics office, 2007.

² Belotti V. *Doppia pena, reati e criminalizzazione*, in Belotti V., Maurizio R., Moro A. C *Minori stranieri in carcere* Guerri e associati, Milan 2006.

E. Economic, social and cultural rights:

1. The right to work

In certain situations, as a result of incorrect interpretation procedures, foreign unaccompanied children holding permissions to stay "by reason of being children" are not allowed to work, in violation of the principle of non-discrimination, thereby frustrating their need and desire to earn money. Alternatively, where they do decide to work, they end up being exploited by working without permission and/or in illegal activities.

4. The right to public health, medical care, social security and social services.

First of all, unlike the right to education, the legislation in force does not clearly recognise the right of children without permission to stay to have access to public health services on equal conditions as Italian citizens³, with a consequent failure to protect the right to **healthcare** in those frequent cases where the timescales for the issue of permissions are very lengthy⁴.

The Italian social health system appears to be unable to take into consideration the social complexity of healthcare, so that immigrants, even in equal economic and social conditions as Italians, are often subjected to discriminatory treatment in terms of assistance and the possibility of using services. There is a limited flexibility of attitude in carrying out procedures, and a considerable lack of elasticity of supply in services, in the face of new health problems for these new groups of users⁵. Another critical factor is the lack of information and consequently a lack of awareness about regulations, as well as complexity in the organisation of services at local level and in the bureaucracy governing them, which makes it difficult to inform users about the services available.

Many health agencies are not fully informed about the possibilities of funding for health care for foreigners without permission to stay and only certain regional authorities have passed legislation in relation to national Fund allocation for migration policies assigned to them, and for funding policies aimed at re-establishing equal opportunities between foreign citizens and Italian citizens.

Therefore the Gruppo CRC recommends:

that foreign minors who are the children of immigrants without a permission to stay are guaranteed free choice of National Health Service paediatrician as the best form of health protection, and in any event all foreign children have access to the National Health Service, in order to ensure that public healthcare is visible, easily accessible and in line with the needs of this group of children who are particularly vulnerable

³ Art. 34 Consolidated Legislation no.286/98. Although art. 35 of Consolidated Legislation no. 286/98 provides for "the protection of child health in execution of the Convention on Child Rights", the absence of provisions implementing this principle make it very difficult in fact to effectively carry it out.

⁴ «[...] States are required to ensure that children who are unaccompanied and separated from their families have the same access to healthcare services as child citizens" in General Comment no. 6 of the UN Committee, point 46.

⁵ ISTAT *Health conditions and availability of healthcare services*, 2005. www.istat.it/salastampa/comunicati/non_calendario/20070302_00/

5. The right to education and training

During the academic year 2005/2006 the number of pupils of non-Italian citizenship was 424,683, equivalent to 4.8% of the overall school population. This confirms the continual increase already identified in recent years⁶. Overall, 64.5% of Italian schools have pupils who are not Italian citizens⁷.

Pursuant to Presidential Decree no.394/1999, all children living in Italy have the right to education, irrespective of whether they have a permission to stay. Foreign children without local authority registration documents, or who do not have correct or complete documentation, are registered provisionally in the class in which they are allocated, as a matter of priority, according to their age, except where the teachers' committee decide otherwise. The same indications are also set out in Ministerial Circular no.74/2006.

Despite these guidelines, there remain various problems that require further attention.

The first relates to the presence of phenomena of **concentration** of foreign pupils in various cities and in various schools. In this respect, the most recent Ministerial Circular no.74/2006 invites the directors of regional education departments and school managers to make arrangements with local authorities in order to ensure a balanced distribution of the foreign school population, as well as inviting school teachers to make equal divisions among of classes.

The second important question is that of **educational dispersion**, which relates to a discontinuity of school courses due to course repetition, exam failure or dropping out of schooling. During the academic year 2004/2005, 96.7% of foreign pupils were successful in primary school, and 89.8% in secondary school⁸, while the success rate among Italian pupils was 99.6% at primary school level and 96.1% in 1st grade secondary school. In the 2nd grade secondary school there is a major variation: the success rate for pupils who are not Italian citizens is 72.3%⁹, while for Italians the percentage is 85.1%¹⁰.

Another important phenomenon is that of **learning delay**¹¹, connected only in part with discontinuity in the migratory programme of the child and end-of-year success rates. Although the legislation provides as a priority that pupils should be placed in a class of children of the same age (Presidential Decree no. 394/1999), Ministry of Education figures show a strong incidence of learning delay among foreign children, concerning 22.5% of pupils at primary school, 60.5% by the end of the 1st grade secondary school and almost 70% in the 2nd grade secondary school.

The problem of availability of the right to education without discrimination arises in particular for the **female population of non-Italian origin and the Roma population**, two areas where it is necessary to strengthen activities. When the figures are separated by gender it is possible to analyse attendance and dispersion levels in relation to female pupils who are not Italian citizens. In particular, the 2006 Ministry of Education Report provides a picture of attendance levels among female pupils who are not Italian citizens and the effect on the total of pupils who are non-Italian citizens. The most significant considerations emerge from the comparison between the figures relating to foreign female pupils and

⁶ 3.5% in academic year 2003/04 and 4.2% in 2004/05.

⁷ Ministry of Education *Alunni con cittadinanza non italiana – anno scolastico 2005/2006* December 2006.

⁸ In academic year 2003/2004 they were respectively 96.2% and 89%.

⁹ In academic year 2003/2004 equivalent to 72.7%.

¹⁰ Ministry of Education *Alunni con cittadinanza non italiana – anno scolastico 2005/2006* December 2006.

¹¹ "Learning delay" means school attendance in one or more classes below that expected, having regard for the age of the pupil (Ministry of Education, 2006).

those for the resident female population of corresponding age¹². In the nursery school and in the first education cycle there emerges a "phenomenon of school attendance by foreign girls which is 2-3 points below the percentage of the resident population of the same age". In particular it appears that "so far as primary school and 1st grade secondary education is concerned, there is a dispersion rate (absenteeism, dropout, course repetition etc.) of between 2.5 and 3 points"¹³. This trend is not to be found, however, in the attendance levels for foreign female pupils in the secondary school: here, according to what emerges from the report, the attendance level for foreign female pupils is higher than that of boys as well as that of the national total for girls. This interesting figure results from the concentration of attendance by foreign girls in the non-state schools, in particular in the 2nd grade secondary schools.

The picture created in the Ministry of Education Report, which is based on figures relating to the resident population, does not however take into account foreign children without local authority registration documents or who do not have correct or complete documentation, and this means that the overall picture of the phenomenon is incomplete.

Schools and vocational training centres, in fact, often draw attention to the problems of enrolling **unaccompanied foreign children without documentation** and the available training is often found to be inadequate for the needs of these children (in terms of lack of support in learning Italian, scarcity of short-term training courses, etc.)¹⁴.

With regard to school attendance by **Roma children**, we point out that in Italy the figures relating to the overall number of Roma children continue to be indicated in a way that is absolutely superficial and inexact, especially in terms of the number of Roma children, and in particular those Roma children of school age, educational dispersion levels and training success or failure levels. The Ministry of Education drew up a protocol agreement with one of the associations operating at national level for safeguarding and protecting the rights of Roma¹⁵ to be adopted in all regions. This provided for activities aimed at promoting the integration of Roma children in school, and was widely circulated among regional educational departments and provincial education offices. Nevertheless, the adoption of specific measures is in fact required in regions, provinces and municipal authorities within the context of initiatives in pursuance of the right to education or through measures involving social inclusion actions. What is therefore lacking is a systematic organisation of the actions indicated which can be promoted and extended throughout all schools in the country where Roma children attend¹⁶.

¹² Ministry of Education *Alunni con cittadinanza non italiana – anno scolastico 2005/2006* cit., which sets out the official statistics at January 2005.

¹³ *Ibid.*

¹⁴ «[...] Every child who is unaccompanied or separated from her/his family, and independently of her/his social status, has the right to have full access to education in the country in which she/he has entered [...]» "[...] All adolescents must be allowed to attend a training school whether general or professional [...]" in General Comment no. 6 of the UN Committee, points 41 & 42.

¹⁵ See "Protocol agreement for the safeguard of gypsies, nomads and travellers" drafted between the Ministry of Education and Opera Nomadi Nazionale on 22 June 2005.

¹⁶ Despite these limits, the Lombardy Regional Authority Department for the Family and Social Solidarity has supported, for the second year, an advanced project for training and placement of women cultural mediators in the schools at compulsory level and in the public health family services, in collaboration with Milan Province Education Office, the Public Health ASSI department and Milan University, Bicocca – Department of Primary Training Sciences, which constitutes an excellent model for cultural interaction practices with the Roma communities.

Therefore the Gruppo CRC recommends:

1. guaranteeing effective schooling for foreign children, including children without full permission to stay and unaccompanied children, in particular girls, through the promotion of programmes and support measures, including extra-curricular activities;
2. promoting activities aimed at ensuring a balanced distribution of the foreign population in schools, both at territorial as well as at school level;
3. promoting a monitoring of resources, allocated at national and local level, for projects directed towards school placement of foreign children;
4. promoting the adoption of integration indicators that take into account not only school results and language ability but also classroom relations (wellbeing/difficulties).

Focus on discrimination against the most vulnerable groups of children: unaccompanied foreign children, asylum seekers and Roma children

On 31 December 2006 the number of **unaccompanied foreign children** registered by the Foreign Children's Committee was 6,551, most of whom came from Romania (36%), from Morocco (22%) and from Albania (15%). Most of these were adolescents: 73% of unaccompanied foreign children were between 15 and 17 years old, but there was also a significant 26% of children between 7 and 14 years old. The clear majority (85%) were boys. Such figures, which do not show a substantial difference in comparison with the figures for 2005, must however be considered with caution. On the one hand, in fact, they are underestimated to the extent that they do not include all of those children who have not come into contact with any institution (in this respect, there is a discrepancy between the figures of the Committee and the figures relating to arrivals on the coast of Sicily, in particular of certain nationalities)¹⁷, as well as the number of unaccompanied children who have applied for asylum. On the other hand, it should be remembered that a significant proportion of children, though declaring themselves to be "unaccompanied", do in fact have parents in Italy. Furthermore, as from 1st January 2007 the figures for unaccompanied foreign children from Romania are no longer registered by the Foreign Children's Committee, nor by any other central body, with a consequent serious reduction in the reliability of the data collection system in relation to the number of unaccompanied foreign minors in Italy. In addition, when collecting data, little account is given to the need to gather further information on the circumstances of the child's background and how she or he reached Italy, which would make it possible to better understand the phenomenon of exploitation and the success of child integration activities.

On the basis of the current legislation, every unaccompanied foreign child present in Italy, irrespective of their status, has the right to adequate accommodation in a community or placement within a family, to be the subject of protection proceedings, to obtain permission to stay, to be registered with the National

¹⁷ Between 2005 and 2006, among children who reached the Sicilian coasts, there were almost 2000 Egyptian children, of whom the majority were presumably unaccompanied (Report «Fuori dal buio: un anno dalla parte dei minori migranti», Amnesty International, February 2007), while Committee figures at 31 December 2006 show that 148 children of Egyptian nationality were present in Italy: the invisibility of these children gives rise to considerable concern in relation to the safeguard of their rights.

Health Service, and to receive education and training¹⁸. Yet there continue to be significant differences in policies and procedures from place to place, and in many situations these rights are not adequately guaranteed.

Protection proceedings are often opened with serious delays and in many cities the judge in the Court of Protection does not appoint a physical person but instead a local authority as guardian, even for a large number of unaccompanied foreign children. As a result, the children have no opportunity of expressing their own wishes in relation to decisions regarding them, nor of effective access to their legally recognised rights.

The majority of unaccompanied foreign children have no official documents and there is therefore a problem in their official *identification* by the local authority, in relation to which there is often no effective collaboration by diplomatic representatives from their country of origin.

In the case of adolescents, there is also the problem of establishing their age, in relation to which there is a lack of regulations (except for criminal sanctions) and procedures at national level. In general terms the age is established by wrist radiography, although reliability is the subject of much contention among scientists, and often the examinations are carried out by experts who are not adequately trained in the application of this method. Moreover, the principle by which the person is presumed to be a minor is not always applied in the certification of results and in the subsequent orders made by the authorities¹⁹. Finally, if the adolescent declares that she/he is an adult (as happens in the case of many girls exploited in prostitution, who are persuaded by their exploiters to state that they are adults), generally no examination is carried out.

As a result of these procedures it often happens that unaccompanied foreign children are treated as adults and therefore, in breach of Italian legislation, are held in a Temporary Holding Centre or an Identification Centre or expelled or sent back to the frontier without any protection or, in any event, are not guaranteed the protection provided by Italian legislation.

As soon as an unaccompanied foreign child is identified as such, she/he should be reported to the Foreign Children's Committee which, after carrying out investigations in the country of origin, can make an *assisted repatriation* order so that the child can be returned to her/his family²⁰. In 2006 the Committee made 8 assisted repatriation orders. It appears also that children requesting repatriation or very small children from adequate family backgrounds, for whom repatriation would be in their best interest, are not repatriated, in breach of these children's right to family unity.

In addition, the current legislation does not have adequate provisions regarding criteria and procedures to ensure that repatriation is carried out exclusively in the best interests of the child (there is no provision

¹⁸ As well as the general principle of non-discrimination provided by the Constitution and by the Convention on the Rights of the Child, the Italian legislation has specific provisions relating to the abovementioned rights, in particular the application to children of the regulations on care proceedings and urgent orders (Law no.184/83, art. 37(b)), the right to obtain a permission to stay (Presidential Decree no. 394/99, art. 28), to register with the National Health Service (Consolidated Legislation no. 286/98, art. 34; Ministry of Health Circular of 24.3.2000), to education (Consolidated Legislation no. 286/98, art. 38; Presidential Decree no. 394/99, art. 45).

¹⁹ This principle is established in the criminal justice system by article 8 of Presidential Decree no.448/88: "In the event, even after expert examination, of there still being doubt as to age, the person is presumed to all effects to be a child".

²⁰ Consolidated Legislation no. 286/98, art. 33; D.P.C.M. 535/99, arts. 2, 5, 7. Assisted repatriation is different to expulsion in that it must be adopted for the purposes of protecting and guaranteeing the right of family unity and not as a sanction for breach of regulations on the entry and stay of immigrants.

for assessment in this respect by juvenile magistrates²¹, nor is it clear what criteria are applied by the Committee who decide the question of repatriation. Nor is there adequate guarantee of the right of the child to be heard and her/his wishes duly taken into account, depending upon her/his age and maturity). Finally, repatriated children are not always provided with reintegration programmes that are adequate for their needs or their wishes.

Finally, the *quality of accommodation* in certain parts of Italy is greatly lacking. The cost of accommodation for unaccompanied foreign children is paid entirely by municipal authorities, with the consequence that the smallest municipal authorities and the poorest areas, in particular in the South, which have very limited care budgets, are not able to guarantee minimum levels of accommodation. There is also a lack of suitable accommodation standards at national level, and in some cases there is inadequate monitoring of expenditure and results achieved.

Even those children who remain in communities, follow a training course and obtain a job, are unable to obtain permission to stay in Italy when they reach the age of 18 and are therefore expelled. In fact, at present, many police authorities do not issue any *permissions to stay on reaching majority* to unaccompanied foreign children who do not meet the requirements introduced by the Bossi-Fini Law (namely, that they entered Italy prior to reaching the age of 15 and have followed an integration project for 2 years)²², even if they have been in custody or care. This restrictive interpretation of the law is illegitimate insofar as it is contrary to rulings of the Constitutional Court in 2003 and of the Consiglio di Stato in 2005 which have stated very clearly that a permission to stay can be issued to a child in custody or care even if she/he does not meet the requirements of 3 years stay and 2 years integration programme²³. This procedure has very negative consequences, in that on the one hand it provides a disincentive to children entering Italy after they have reached the age of 15, which are the majority, to follow an integration programme, and on the other hand it provides an incentive to children to enter Italy before they reach 15, with a consequent lowering of the average age of unaccompanied foreign children present.

Finally, there is a problem regarding *children from new EU countries*, given that after the entry of Romania and Bulgaria into the European Union on 1 January 2007, the legislation on non-EU citizens (including the jurisdiction of the Foreign Children's Committee and issue of permissions to stay for minors etc.) does not apply to children from these countries (who, as can be seen from above, represent 36% of the total). The legislation on free circulation of European citizens does not, however, clarify adequately what regulations should be applied in relation to stays by unaccompanied EU children and their return to their country of origin.

²¹ Art. 33 (2) (b) of Consolidated Legislation no. 286/98 is limited to providing the authorisation of the Judicial Authority in the event of jurisdictional proceedings being commenced against the child.

²² Consolidated Legislation no. 286/98, art. 32 (1) (b) & (c)

²³ Constitutional Court ruling no. 198/2003 and Consiglio di Stato ruling no. 1681/2005 state that the requirements established by art. 32 (1) Consolidated Legislation no. 286/98 (care and protection) and the requisites set out in article 32 (1) (b) & (c) (entry for at least 3 years and participation in an integration project for at least 2 years) are alternative and not concurrent.

In the light of these considerations the Gruppo CRC recommends:

1. the adoption of regulations and a protocol on the identification and determination of the age of unaccompanied foreign children, which establish, inter alia, standard procedures at national level to ensure maximum reliability of results, the principle of presuming that the person concerned is a child, and the application of regulations to protect children until it has been established that they have reached adulthood;
2. amendment of regulations and standardisation of procedures in relation to the issue of permission to stay on reaching adulthood, making it possible to issue permission to children in custody or care without the need to meet rigid requisites in relation to time;
3. amendment of the regulations and standardisation of procedures in relation to assisted repatriation, in order to ensure that family investigations and the repatriation assessment are carried out rapidly (giving priority to the youngest and/or most vulnerable children) and establishing adequate guarantees so that repatriation is carried out only in the best interest of the child and taking into account her/his wishes (also providing for jurisdictional control);
4. clarification of the regulations relating to protection, stay, auxiliary rights (access to health services etc.) and to the return of unaccompanied EU children;
5. improvement of the system for collecting information on unaccompanied foreign children at national level (in terms of completeness, disaggregation, updating and accessibility) and the training of various kinds of personnel working with unaccompanied foreign children.

In relation to *children seeking asylum*, it should be pointed out first of all that Italy has still not adopted a systematic law on asylum, even if this question is dealt with in the programming documents of the present government. Presidential Decree no. 303/2004 prohibited unaccompanied foreign children from being held in identification centres or in temporary holding centres, in line with article 37 of the CRC, but this does not cover children who are members of families seeking asylum on arrival. However, these provisions have not prevented children, whether accompanied or not, continuing to be moved around the various holding centres in Italy.

On 31 January 2007 the De Mistura Commission²⁴ presented a report to the Italian Government on the situation in relation to Temporary Holding Centres, Temporary Holding and Care Centres and Identification Centres, revealing that so far as children were concerned "the situation worthy of greater attention was that of the centre in Lampedusa, where 18,115 passed through in 2006, of which 1,554 were children". Also in January 2007, the Ministry of the Interior published for the first time figures relating to children landing on the coasts of southern Italy - 1,335 were children, out of a total of 22,016 immigrants arriving²⁵. According to the official figures, "children represent almost 7% of arrivals by sea. [...] Although official documents and declarations by the authorities failed for many years to make any reference to the arrival of unaccompanied children by sea from North Africa or the Middle East, in reality the evidence and documentation gathered indicates that they were fairly numerous"²⁶. To this must be added all those describing themselves as children who, upon investigation by wrist radiography alone, are classified as adults.

²⁴ Set up by the Ministry of the Interior on 6 July 2006, with the "purpose of proceeding, also by way of site inspection, to investigate the conditions of safety and the situation of habitability of all structures that provide temporary accommodation and assistance for unauthorised immigrants, as well as hospitality for asylum seekers, in order to ensure the protection of the dignity of the person and respect for fundamental rights".

²⁵ Report of the De Mistura Commission available on line at www.interno.it/assets/files/1/200715132855.pdf

²⁶ Amnesty International *Fuori dal buio: un anno dalla parte dei minori migranti. Aggiornamento al rapporto Invisibili – I diritti umani dei minori migranti e richiedenti asilo detenuti all'arrivo alla frontiera marittima italiana* published on 23 February 2007.

A worrying practice was revealed in relation to certain foreign families reaching the port of Ancona without suitable documents from Countries at risk, where orders were given for the children to be separated from their parents²⁷. The family group (very often seeking asylum), in order to avoid separation, would prefer to be shipped back to Greece. It was also reported that several dozen unaccompanied children, including several from Afghanistan, were sent back from the port of Venice to Greece.

Legislative Decree no.140/2005, in relation to asylum-seekers, provides that unaccompanied children should be accommodated by the municipal authority. The De Mistura Commission "found that the situation in relation to unaccompanied minors assigned to special institutions is not always sufficiently monitored. [...] The international standards require that children are placed in accommodation where there are specially trained staff and, from the information currently available, it cannot be stated that this always happens". There is a high risk of escape and that these children will therefore disappear from the area. According to a statement by the spokesman for the Sicily Regional Authority Department for the Family, during 2006 over 900 unaccompanied children have in fact escaped from reception centres in Sicily. Finally, the De Mistura Commission expressed the hope of there being "an effective activity of counselling and access to the asylum procedure" for children, since it appears "from reports and from available information that legal assistance from experts in child rights is still entirely insufficient". The official figures for requests for asylum in Italy are not divided according to age and, as a result of this gap, it is therefore not possible to identify the number of child applicants for asylum. In addition, it can be seen that for unaccompanied children the commencement of proceedings for recognition of the status of refugee requires a great deal of time, since in order to be valid, it is necessary for the application to be confirmed by the guardian pursuant to Presidential Decree no. 303/2004, for whose appointment it is necessary to wait various months.

To deal with these latest problems, the Ministry of the Interior, in conjunction with the Ministry of Justice, has issued a directive, in force since 9 March 2007, in relation to unaccompanied foreign children requesting asylum. This provides, on the one hand, that all public officials employed by public services, or authorities carrying out public health or care activities, are required to supply them with all relevant information about the right to request asylum and to invite them to express their wishes in this respect, ensuring the assistance of a cultural mediator. On the other hand, it provides a duty upon the police authority to accede to the application to place the child in the care of the social services department of the municipal authority in which the child is present. The Directive is to be welcomed as a reminder of the obligatory nature of providing immediate information, mediation and protection for children who may wish to seek asylum. However, it does not resolve the problem of the length of the procedure, except by providing that in the process for appointing the child's guardian, documentation shall be issued with a certified description of the asylum seeker. It does not seem even to respond to the important need for minimum quality standards in accommodation for children, limiting itself only to providing for the inclusion of unaccompanied foreign children in the centralised system for the protection of asylum seekers and refugees, which however for 2007 provides for only 350 places reserved for the most vulnerable categories, including unaccompanied children.

There continue, however, to be reports that certain interviews carried out by members of the Territorial Commissions for the purposes of recognising the status of the refugee are conducted in breach of the

²⁷ Joint press release of UNHCR – Save The Children Italia, available on line at www.unhcr.it/index.php?option=com_content&task=view&id=596&Itemid=217

1997 UNHCR guidelines and the guidelines produced by the National Commission for the Right to Asylum in 2004. These guidelines provide specific procedures for listening to the needs of children and criteria for assessing the risk of persecution which take into account the specific forms of persecution against children. The figures relating to orders issued by the Territorial Commissions in respect of children have not however been published. The law does not provide for the possibility of requesting re-examination by a higher authority for applicants following the un-simplified procedure and there are no provisions in relation to tracing members of the family.

Finally, there are no changes in the discretion of the police authorities in relation to the issue of a foreigners travel permit to unaccompanied children holding a permission to stay for humanitarian reasons who cannot obtain a passport from their government.

With regard to *Roma children*, in addition to what has already been set out in relation to the right to education and healthcare, they often find themselves, like their parents, in a de facto condition of statelessness, namely without any legal recognition either by the country in which they live or were born, or by their parent's country of origin. Italian legislation protects stateless people, recognising that they have the same rights as political refugees only to the extent that their status as stateless people has been recognised. Investigation by administrative authorities, or even simply at legal level, of the condition of statelessness is very difficult in the case of the Roma population due to the difficulties of obtaining documentary proof through consul declarations that their parents had not acquired citizenship. It is in effect impossible for them to acquire Italian citizenship, to obtain identity documents, to regularise their position as foreign or stateless citizens in Italy and to be enrolled on municipal registers or with the national health service.

ICERD ARTICLE 7

Measures have been taken by Italy to combat prejudices which lead to racial discrimination and to promote understanding, tolerance and friendship among nations and racial and ethnic groups on education and teaching.

Education policies have for some time identified inter-cultural education, integration at school and the prevention of forms of discrimination as objectives to be pursued.

Nevertheless, Italy has still failed to comply with recommendations made at international level that are designed to encourage the inclusion of Human Rights Education into school curricula, given that it is neither a compulsory subject to be studied during compulsory schooling nor at 2nd grade secondary school level, and it is found even less, except as an optional subject, at university level.

The *Guidelines for receiving and integrating foreign pupils* and the recent ministerial circulars recommend projects and reception procedures which assist the integration of foreign pupils. However, the implementation of these procedures poses a problem of resources and the allocation of specific funds. In this respect, the 2007 Finance Law establishes a Fund, operated by the Ministry of Social Solidarity, for the social integration of immigrants, with an allocation of 50 million euros a year for the three year period 2007-2009²⁸. The Fund will finance the foreign pupil reception plan, aimed at "*assisting the relationship between school and family, through the use for non-educational purposes of special mother-tongue professional figures as cultural mediators*"²⁹. It will therefore be interesting to monitor the implementation of this plan, as well as its impact on measures for the reception of foreign pupils. It is necessary, however, to define an overall framework of measures to support the integration of foreign pupils, which takes into account the resources allocated by individual Ministries and makes it possible to

²⁸ Law no. 296/2006 "Provisions for the annual and long-term state budget".

²⁹ Law no. 296/2006 art. 1 (1267).

identify projects carried out by individual schools, within the context of school autonomy. Indeed, school autonomy means that individual schools can decide whether to invest their own resources, and if so how much, in reception projects for foreign pupils. For this reason, it becomes important to encourage adoption of the measures set out in the reception guidelines in order to guarantee an effective right to education for all.

The effective use, in schools, health care and social services, of cultural mediators who come from Roma communities is even more limited. According to one of the associations operating at national level for protecting and promoting Roma rights, the most significant figures relate to the Province of Milan, where around twenty Roma women are employed as cultural mediators in school services and as family consultants³⁰, followed by the provinces of Mantua (4-6 mediators) and Turin (2 mediators). So far as other provinces are concerned, no clear figures are available.

Therefore the Gruppo CRC recommends:

1. inclusion by the National Review Commission of Human Rights Education as a study subject forming part of the programme on Social Education in study programmes ;
2. training on the subject of Human Rights Education as an integral and cross-programme subject in all school subjects, to be included in the teaching curriculum at primary and secondary school level

With regard to the child justice system, a positive development has been the wider use of juvenile crime mediation techniques in various cities and also of social reparation. This seems to indicate the development of a culture that is more conscious of the needs of children. The application of juvenile crime mediation and social reparation appear still to be too limited. At times, it creates the risk of broadening the criminal area rather than providing an alternative system of justice.

Therefore the Gruppo CRC recommends:

The widening and further development, also through the passing of specific legislation, of indications relating to the application of juvenile crime mediation and the spread of mediation structures at national level.

³⁰ See the conventions between Opera Nomadi and Milan Municipal Authority, Provincial Education Office, ASSI Public Health Department, Lombardy Regional Authority and University of Milan.