

The immigrant minors' integration in the Italian educational system (2005)

Claudia Pretto¹

Introduction

The number of non-European children in Italian classroom is rapidly increasing, which reflects recent trends throughout Europe. These “new differences” in the schools are creating a melting-pot of cultural, ethnic, linguistic and religious diversities, posing challenges for the future.

This short paper aims to analyse how these emerging issues are treated in the Italian educational law. Particular attention will be given to how the right to, and in, education might be assured to immigrant children in Italy, through the exploration of the constitutional law on education and the immigration law related to children. In this paper, following the European common terminology, the words “immigrant children”, indicate pupils with non-European citizenship.²

1. Immigrant children in the Italian educational system

Immigrant children in the Italian schools are adopted children, children of regular or irregular immigrants, or foreign children who arrived alone in the country. The status of immigrant children is an important aspect of Italian educational law; however, it is difficult to fully grasp it as it is legally determined by minors' law and immigration law and is regulated by administrative, criminal, civil and public law. In addition, Italy is facing a period of increasing consciousness of its multiculturalism. The political actors have different positions and this causes the approval of too many contrasting and un-systematic laws. Educational law and in particular the legal status of immigrant pupils is a delicate topic because children will be the future of a society.

1.1. The meeting of differences, a public problem and a social step

Immigration starts as a social phenomenon. It begins in the State of origin and ends in the State where migrants arrive. The meeting between differences becomes a problem, or better, a new step that the societies should pass through. The phenomenon of immigration used to be considered only as a labour related phenomenon. In reality, immigration disrupts all the structures of society, while creating new legal and factual orders.

Minors are protagonists of integration³, for they unite their parents' culture, a foreign culture, to the Italian culture. They participate in both of these cultures, and schools can be the first ground on which integration develops, nevertheless it is difficult for schools to implement intercultural programmes. Immigrant children must be considered as active subjects, they should not be asked to give up their cultural values and origins, for this would be against the respect of immigrant minors' rights in education. Immigrant minors take part in Italian society, so an intercultural approach is necessary to assure them with a right to education.

It is impossible to speak of an intercultural approach if there are still discriminations or unequal treatments within schools or classrooms.⁴ Different treatments can be used only to assure the

¹ This short paper will be part of the author 's final dissertation: “L'integrazione dei minori immigrati nelle legislazioni scolastiche: modelli europei comparati”

² Art. 13 of the Maastricht Treaty refers to “immigrant” as a person having no European citizenship.

³ Ministerial programmatic document on immigration, August 1998

⁴ Papisca A. (2002), ‘Il sapere dei diritti umani nel disegno educativo’, *Quaderni*, pp 115.

substantial equality among pupils of different cultural origins and backgrounds. Intercultural education means to share information, to live and gain experiences, to permit the comparison not only for schools' operators but also for all other subjects participating in education.⁵

“The values which give importance to life are not only the values of our culture, not only the values of the past, or the present. We must have an universal point of view not a relative one. At the same time we recognise in the universal value of the person the foundation of a commune culture and we look at the “Declaration of Universal Rights” (U.N., 1948) the expression of values of a common consensus. The Intercultural education finds in the dialectic conciliation between the diversities the foundations on which to build a multiethnic society.”⁶

On 24 March 1993 the National Council of Education rendered another important opinion on this matter, giving importance to the role of schools in fighting racism and anti-Semitism.⁷ “Intercultural education”, thanks to this Council's statement, became part of the specific language of Italian educational law. The National Council of Education wants to underline the need to give answers to intolerant actions through education, in order to create a society in which the diversities can be considered as sources. A multicultural society is possible if there are no particularisms, but if there is a universal point of view in the school's programs. For this reason the programs have to be contextual, they have to look at the local realities, without losing the universal approach in order to respect the principle of autonomy. During this meeting the National Council of Education outlined the institution of the Documentation Centers of Multiculturalism, the professors and school operators' formation, new pedagogical and didactical activities trough art, cultural exchanges.

Pototschnig, in his work “Insegnamento (libertà di)”⁸, affirmed that the modern State cannot indoctrinate pupils, but, on the contrary, must respect all different doctrines. A State has the duty to foster social pluralism in its institutions.⁹ Immigrant people take part to social pluralism, according to Pototschnig's thought, this means that the State has the duty to admit immigrant pupils into public schools and to assure to them all the rights and all the possibilities given to Italian children. Nowadays there are no international conventions or treaties recognising immigrant pupils as minority, or as a protected group, but it is possible to find their rights' protection trough a thorough examination of our legal system.

1.2. Italian Constitutional law and the International provisions

The Italian Constitution of 1948 addresses educational law in articles 33 and 34. Paragraph 1 of article 34 ensures: “Everyone must have access to school”.¹⁰ This principle is particularly relevant to immigrant children. As everyone has a right to basic education, such access is constitutionally demanded for all persons regardless of their country of origin or even their status under the law.

The Italian Constitution was written after the Second World War when most of the population lived in poverty. Nowadays many immigrant children are suffering the same fate in their countries, but we have to remark that they do not have the same economic standard of life as the Italian children in Italy. As a matter of fact, immigrants' families live in inferior economic situations, due to the different jobs of the immigrant pupils' parents. Therefore the Constitutional principles addressing financial equalisation are of great interest for the protection of this group. The concept of “substantial equality”

⁵ Nascimbene B.(2004), *Diritto degli stranieri*, Cedam, Padova,pp 1047.

⁶ available at www.comune.torino.it, National Council of Education's pronunciation, dated 13 April, 1992, last viewed April 6, 2005

⁷ Meeting of the National Council of Education, 24 March, 1993

⁸ Pototschnig,U. (1961), ‘Insegnamento, istruzione’, *Giuri. Cost.*

⁹ Balboni E. (2004), ‘Prendere la scuola sul serio’, in Borgonovo Re, D. and Cortese, F.,*Un diritto per la Scuola*, Dipartimento di Scienza Giuridiche, Trento, pp 75.

¹⁰ Ital. Const. Part I, Title II, art. 34 Translation by ICL (International Constitutional Law, available at http://www.oefre.unibe.ch/law/icl/it00000_.html, last viewed February 23, 2005. For further reference to the relevant portions of the Constitutional law regarding education see appendix

reflected in article 3, paragraph 2, for instance, obliges the Government to respect the rights of all regardless of social status.

In regards to educational law, article 34, paragraph 2 of the Italian Constitution grants access to schools regardless of financial status. This article is best understood in the context of the principle of substantial equality reflected in article 3. In 1989, more than forty years after the Italian Constitution was written, Article 28 (1)(a) of the Convention on the Rights of the Child (CRC) expresses the same principle. The concept of a natural right to education for everyone is the central point of this reflection because it demands member states not to distinguish this social right on the grounds of the citizenship of its people.¹¹ The fundamental human rights have to be recognised to foreign pupils too. The Convention does not have the same force as the Constitution. Reflecting this idea, paragraph 2 of article 28 of the CRC allows the member States to choose how to promote and respect the dignity of the child considered as human being.¹²

The CRC codifies the nearly universal rights of children. In fact, 191 countries have ratified the Convention, four more than belong to the United Nations. Thus, as the 20th Century came to a close, nations placed a great force on the rights of the child.¹³

Reflecting this consensus, the Treaty Establishing a Constitution for Europe¹⁴ emphasises the importance of children's rights, and particularly the "right to and in Education". Section 5, article III-282 regards education. The principle of subsidiarity, in this Treaty, allows each State to develop its own policies to promote linguistic, cultural and religious diversities in the educational system.

Following the discussion on these educational rights, Section 6, article II-74 underlines that everyone has the right to compulsory and free education.

It is in conformity with the principles of article 34 of the Italian Constitution since it underlines the right of each person to free and compulsory education.

Article 3 of the Italian Constitution underlines the possibility to create schools that must respect the democratic principles and national laws, while at the same time respecting the parent's right to educate their children in accordance with their religion, philosophical and pedagogical believes

After having analysed the CRC and the Italian Constitution it is easy to understand that great importance is given to education for all people, but in the Italian Constitution there are no considerations or references to immigrant children. When this Constitution was written, Italy was not a land of immigration, but on the contrary, Italian people left it to seek jobs in other countries.

Reference to education is also made by the International Covenant on Economic, Social and Cultural Rights (ICESP), article 13 says that all the member States have the duty to make "Primary education...compulsory and available free to all". This act prescribes that education must be given to all people and through it everyone must be allowed to participate in society in order to promote friendship between religious groups, nationalities and races.

The concept of intercultural education lies at the centre of this article, which is one of the most important principles that can be found in many educational systems today.

¹¹ Constitutional Court, sentence 1-18 July, 1986.

¹² Conv.on Rights of Child's paragraph 2 art. 28 *available at*: <http://www.menu3/b/k2crc.htm.unhchr.ch/html/>. Ratified in Italy by law No 176, 27 May, 1991.

¹³ Papisca A. (2002), 'Il sapere dei diritti umani nel disegno educativo', *Quaderni*, pp. 21

¹⁴ The Treaty establishing a Constitution for Europe is commonly referred to as the European Constitution. It intended to create a constitution for the European Union and was signed in 2004 by representatives of the member states of the Union. Two of member states rejected it in referenda.

Intercultural education could be considered as the educational answer to the needs of a multicultural society.¹⁵ Between the rights in education lies the minor's right to be respected. "The school's function is not only to promote culture but also to promote its elaboration in order to allow all young people to be part of this process".¹⁶ Pototschnig made this remark while considering the important role played by a pupil's personality in education. It is possible to relate Pototschnig's statement to foreign pupils as they are part of Italian classrooms as well as part of the young Italian population even if they lack Italian citizenship. They live and grow up in the Italian educational system and schools, bringing along their own cultural luggage, their different history, different traditions, and different origins.

The Right to Education: between State and local governments

Articles 33 and 34 of the Italian Constitution recognise the right to education, in particular article 33 prescribes that it is the government that has to realize the fundamental principles of educational law. The right to and rights in education have to be guaranteed by the State, through all means, therefore the easiest access possible to the Italian language must be provided to immigrant pupils.

In the Italian legal system, due to the constitutional provisions, there is a sharing power between State, Regions and local governments. Thanks to Constitutional Law No 3, 2001 the principle of "subsidiarity" has been codified in the Italian legal system as well as the concept of "governance without government"¹⁷.

Article 114 of the Italian Constitution says that the Italian Republic is composed of Regions, Provinces and Communes.¹⁸ These local governments have their own statutes as well as their own powers and functions.¹⁹

Due to this Constitutional Law the State has an exclusive power in setting the fundamental principles of education (article 117 of the Italian Constitution, at paragraph 1 letter m and n: "m) determination of the basic standards of welfare related to those civil and social rights that must be guaranteed in the entire national territory; n) general rules on education."

The third paragraph of this article says that the Regions and the local governments have a concurrent power in Education.²⁰ This paragraph gives the school's autonomy the central place in the new Italian educational legal system. The local governments have to coordinate themselves with the local school

¹⁵ available at www.comune.torino.it, the National Council of Education's pronouncement, dated 15 June 1993, last viewed April 6, 2005.

This is a national organism. It gives the guidelines through its pronouncements to the schools and the schools' operators. In the Italian legal system the councils are the administrative body in which all the operators of a particular area take part.

This Council was established in 1999 with legislative Decree No 233 30 June, 1999.

¹⁶ Pototschnig, U. (1961), 'Insegnamento, istruzione', *Giuri. Cost*, pp.695

¹⁷ Sandulli A. (2004), 'Dalla scuola di Stato al sistema nazionale di istruzione' in Borgonovo Re, D. and Cortese, F., *Un diritto per la scuola*, Dipartimento di Scienza Giuridiche, Trento, pp 42.

¹⁸ They are called municipalities in many other countries

¹⁹ Falcon, G., 2003, *Lineamenti di diritto pubblico*, nona edizione, Cedam, Padova, pp 346.

²⁰ (3) The following matters are subject to concurrent legislation of both the state and regions: international and European Union relations of the regions; foreign trade; protection and safety of labour; education, without infringement of the autonomy of schools and other institutions, and with the exception of vocational training; professions; scientific and technological research and support for innovation in the productive sectors; health protection; food; sports regulations; disaster relief service; land-use regulation and planning; harbours and civil airports; major transportation and navigation networks; regulation of media and communication; production, transportation and national distribution of energy; complementary and integrative pensions systems; harmonisation of the budgetary rules of the public sector and coordination of the public finance and the taxation system; promotion of the environmental and cultural heritage, and promotion and organisation of cultural activities; savings banks, rural co-operative banks, regional banks; regional institutions for credit to agriculture and land development.

In matters of concurrent legislation, the regions have legislative power except for fundamental principles which are reserved to state law.

Ital. Const. Part II, Title V, art. 117 Translation by ICL (International Constitutional Law, available at http://www.oefre.unibe.ch/law/icl/it00000_.html, last viewed April 13, 2005.

institutes in order to implement good autonomy.²¹ The local governments have an essential power in choosing the topics of: schools programs, school organisation and school management, but they have to respect the essential levels given by the State.²²

The new version of the article 118 expresses the idea that the public functions have to be as near as possible to the citizens. The attribution of the administrative functions to the local governments is given preference in this new version of the constitution.

Constitutional Law No 3, 2001, also gives a constitutional basis to administrative decentralisation, as it transfers administrative functions and duties to the local administrative powers. The administrative functions always remain State functions, but they are exercised through local organs, thus respecting the principle of subsidiarity.

Not only the State has to take care of education, but also regions, this is really important because in Italy there are different regions, in fact the region could be considered like the second local power after the State itself. Some of the Regions²³ have a particular autonomy, they are called “Regions with autonomous statute”. The autonomy means independence in many sectors and it means also economic independence. That creates different economic situations throughout the Italian Regions. So if we consider for example the “Trentino Alto Adige Region”, we can find that the positive economic situation creates more possibilities also in the educational system, for example it is possible to activate more language courses of Italian as second language for foreign children.²⁴

These reforms can be considered as a more thorough application of articles 33 and 34 of the Italian Constitution -truly dynamic norms- as they promote the total human being development, through a more sophisticated educational system.²⁵

2. Immigration and the Italian legal system

2.1. Demographic data

School year 2001-2002

Pupils with European citizenship	80 622	44.35%
Pupils with non-European citizenship	101 145	55.65%

School year 2002-2003

Pupils with European citizenship	103 717	44.56 %
----------------------------------	---------	---------

²¹ Cocconi, M. (2004), 'L'Autonomia funzionale delle istituzioni scolastiche', in Borgonovo Re, D and Cortese F., *Un diritto per la scuola*, Dipartimento di Scienze Giuridiche, Trento, pp 192-193.

²² Sandulli A. (2004), 'Dalla scuola di Stato al sistema nazionale di istruzione', in Borgonovo Re, D. and Cortese, F., *Un diritto per la Scuola*, Dipartimento di Scienza Giuridiche, Trento, pp 44.

²² They are called municipalities in many other countries

²³ These are: Friuli Venezia Giulia, Trentino Alto Adige, Valle d'Aosta, Sicilia, Sardegna

²⁴ *Centro di documentazione e laboratorio per una educazione interculturale Millevoci*, (1999), 'Quale progetto in terculurale, per quale scuola?', in Bampi L, *title, publisher* Trento, pp. 11

²⁵ Cocconi M.(2004), 'l'Autonomia funzionale delle istituzioni scolastiche' , in Borgonovo Re and Cortese, F., *Un diritto per la scuola*, Dipartimento di Scienze Giuridiche, Trento, pp. 194.

Pupils with non-European citizenship	129 049	55.44%
--------------------------------------	---------	--------

Source: Report by the Ministry of Education, Italy school year 2001-2202/2002-2003²⁶.

Analysing this data we can understand the increasing presence of immigrant pupils in Italian schools. In these analysis the MIUR considers both private and public schools and pupils until secondary school.

In 2003/2004 there were approximately 2.5 million foreigners with legal residence permits- equivalent to just over 4% of the resident population²⁷

Many foreign pupils live in northern Italy, the greatest number of them are in the north-east (5.29%), in the east this number is 4.63%, in the south 0.75%, and in the islands 0.56%.

This distribution is caused by the different economic situations in Italy. In northern Italy there are more job opportunities than in the other parts of Italy.

2.2. Italian immigration laws

To analyse the immigrant minors' integration in the Italian educational system, we must first examine the immigration laws of the Italian legal system and then we have to analyse Italian educational law.

Italian immigration laws can be divided into super primary laws, primary laws and secondary laws. This division respects the degree between the sources of the Italian legal system where the treaty and customary international laws are at the top, followed by the constitution and the constitutional laws, at the "third floor" there are the parliament's and government's laws and then all the other laws.

The super - primary sources of immigration law in the Italian legal system:

The general constitutional provision related to the status of foreign people in Italy is found in art. 10.²⁸

Customary international law is, according to art. 10 par. 1 of the Italian Constitution, self executing.

The Italian legal system has to give direct and automatic application to these norms²⁹.

The primary sources of immigration law in the Italian legal system are international treaties on foreign people, ratified by Italy, such as the UDHR (1948), the ECHR³⁰ (1950), ICERD³¹, CRC (1989).

Also the European directives and regulations on immigration and refugees operate in the Italian legal system as established in the Italian Constitution in article 11.³²

Finally, immigration in the Italian legal system is regulated by ordinary laws (parliament or government's laws). An important example is given by Law No 40, March, 1998, so called Turco Napolitano.

²⁶ MIUR's data, October 2003, available at www.eurydice.org, last viewed 16 April 2005

²⁷ MIUR's data, October 2003, available at www.eurydice.org, last viewed 16 April 2005

²⁸ Ital. Const. Part I, Title I, art. 10 Translation by ICL (International Constitutional Law, available at http://www.oefre.unibe.ch/law/icl/it00000_.html, last viewed February 23, 2005.

Article 10 (International law)

(1) The legal system of Italy conforms to the generally recognized principles of international law.
(2) Legal regulation of the status of foreigners conforms to international rules and treaties.
(3) Foreigners who are, in their own country, denied the actual exercise of those democratic freedoms guaranteed by the Italian constitution, are entitled to the right to asylum under those conditions provided by law.
(4) Foreigners may not be extradited for political offences.

²⁹ Falcon, G., 2003, *Lineamenti di diritto Pubblico*, nona edizione, Cedam, Padova, pp 257

³⁰ Ratified by Law No 848, 4 August, 1955

³¹ Ratified by Law No 654, 13 October 1975

³² Ital. Const. Part I, Title I, art. 11 Translation by ICL (International Constitutional Law, available at http://www.oefre.unibe.ch/law/icl/it00000_.html, last viewed February , 2005. Article 11 [Repudiation of War] Italy repudiates war as an instrument offending the liberty of the peoples and as a means for settling international disputes; it agrees to limitations of sovereignty where they are necessary to allow for a legal system of peace and justice between nations, provided the principle of reciprocity is guaranteed; it promotes and encourages international organizations furthering such ends.

Article 47 of this law establishes some legislative decrees³³.

2.3. The secondary sources of immigration law in the Italian legal system

The government's regulation can be considered as secondary sources. For example the d.lgs. No 286, 25 July 1998 enforces law No 40, 1998. In addition there are other normative acts, like the "Programmatic Document on Immigration Policy". It must be underlined that these administrative acts sometimes might have a political profile.³⁴

Another secondary source is the Prime Minister's Decree. This Decree institutes the Committee for Foreign Minors provided for by article 33 of the *Testo Unico*.

This Prime Minister's Decree had been transformed in a regulation with D.P.C.M.³⁵ No 535 9 December, 1999.

The other ministerial and inter-ministerial acts provided for Law No 189, 2002 can also be considered as "secondary Law".

2.4. The new Italian immigration law No 189, 2002, known as Bossi-Fini.

The Bossi-Fini law modifies the provisions of immigration law, set out in d. lgs. No. 286 of 25 July 1998 as well as the implementing D.P.R.³⁶, Presidential Decree No. 394 of 31 August 1999.

This law alters the conditions under which immigrants may enter and reside in Italy. It restricts the possibility of immigrants to reunite with their parents and children in Italy, modifies the mechanisms by which residence status may be realised, and increases sanctions with respect to irregular immigration.³⁷

All non-EU migrant workers are now subject to the same treatment with respect to entry and residence in the country. There is no specific legislation nor any special treatment for refugees.

The Italian educational system considers children who do not hold Italian citizenship and who are resident in Italy as foreign minors.

The Bossi-Fini law refers to article 38, d.lgs. No 286 July 1998. This Decree implements Law No 40 of 6 March 1998. In particular article 13 underlines that all the minors who are staying in Italy have to attend school, and fall under all the current educational laws, that means that they have to take part in

³³ like: the "*Testo Unico*" concerning immigration and the condition of foreign people issued with Decree No 286 25 July, 1998, and all the other dispositions that integrate it. Nowadays this source of law must be integrated by the new Italian immigration law called "Bossi-Fini" (Law No. 189 of 30 July 2002)

This new law has modified by the d. l. No 195 9 September, 2002, modified in law No 202/2002.

The Legislator regulated the case of evacuees from other countries with the legislative Decree number 85, 7 April 2003.

The dispositions of the law No 286 25 July 1998 are fundamental references for the Regions and autonomous Provinces (Trento and Bolzano).

The Legislative Decree are regulated by article 76 of the Italian Constitution.

Const. Part II, Title I, art. 76 Translation by ICL (International Constitutional Law, available at http://www.oefre.unibe.ch/law/icl/it00000_.html, last viewed February, 2005.

Article 76 [Delegation of Legislative Power]

Legislative power may not be delegated to the government unless parliament specifies principles and criteria of guidance, and only for limited time and well-specified subjects.

This Decree discipline particular subjects that need a technical approach.

³⁴ About this point Cesare, M. (1999), 'Il governo dell'immigrazione. La disciplina legislativa ed amministrativa tra programmazione dei flussi, tentativi di integrazione e persistente emergenza', *Rass. Parlam.*, pp 967-1007.

In the Italian legal system an administrative act must be justified by the administrative power. In the author M. Cesare's opinion this act can't be impugned because it is not an administrative act that weighs on the individual rights because it is a general programmatic act.

³⁵ Prime Minister's Decree

³⁶ The Italian executive power has the power to create statutory instruments as Presidential Decree, Ministerial Circulars, Decree Law.

³⁷ available at www.eurydice.org (The information network on Education in Europe), last viewed dated, 29 January, 2005.

the “community school”. Even if immigrant children are irregular immigrants they cannot be deprived of the right to go to school, even if their parents are irregular, the immigrant pupils must be considered as all the other “regular” pupils.

2.5. Legislative Decree number 215 dated 9 July, 2003

This decree gives effect in Italy to the “European Race Directive 2000/43”.³⁸ This directive finds application also in the educational system. The “Race Directive” prohibits all direct and indirect discriminations based on race or ethnic origins or religion.

The word ‘race’ means people with the same physical characteristics, but for many biologists this concept is biologically irrelevant because genetic differences between people of the same race are higher than those between members of different races. For this reason Cavalli Sforza, in 1996, said that it is better not to introduce scientific divisions, based on physical elements, between races.³⁹

The sociologist Laura Balbo, during a conference on the application of the Race Directive in the Italian legal system, said: “Nowadays the race concept can be considered out of date, it’s better to speak about ethnic groups or religious or ideological differences. As a matter of fact the word “race” has a negative connotation in our society, due to the anti-Semitism phenomenon”.⁴⁰

The Italian Circular No 394, 1999 and articles 43 and in particular 33 of Decree 286, 1998 seemed to anticipate this race/directive and this decree. Decree No 215 dated 9 July, 2003 enforces the idea of non discrimination due to race or ethnic differences also in the educational system. Nicola Fiorita, analysing this decree and decree No 216,⁴¹ underlines that article 43 of the Italian Decree 286, 1998 is probably more complete because it does not refer to discriminations based on nationality. This can cause many problems of interpretation because the European legislator does not give the definition of race or ethnic group, so it would be difficult to understand the limits or the cases of application of this Race Directive.⁴²

Even if there are no national legislative reforms planned in the area of immigrant pupils, decree No 215 underlines the duty of the State and private organisms to respect cultural differences, this means that in all public or private schools all pupils must receive equal treatment. This means not only equal treatment for all, but also, as article 3 of the Italian Constitution says, different treatments for different cases.

Amongst the rights in education, there is also the freedom of each family to transmit their values to the children and the rights of immigrant children to know and study their cultural origins. The right to study their own cultural origins is regulated by the D.P.R., Presidential Decree No 722 of 10 September, 1982.⁴³

This right is probably the base of the recent contrasts about the presence of the Christian Cross in public schools of many European countries and of Italy too. In fact some Islamic or non-believer parents asked to take it away from the class-rooms because they considered it to be contrary to their own values. This is an “open contrast” because the Legislator didn’t take position about it, even if the Italian Parliament is studying a project law (No 2531) on the freedom of beliefs and religions.⁴⁴

³⁸ paragraph 1 of art. 3 European Race Directive 2000/43.

³⁹ Bagnasco, A. 1997, *Corso di Sociologia*, il Mulino, pp 400

⁴⁰ Conferences on Race Directive 43/2000, Trento, May 2004.

⁴¹ Decree that carries into effects the European Directive No 78/2000. This Directive disciplines the duty of no discriminations based on religion.

⁴² Fiorita, N’s opinion, available at www.olir.it, last viewed 15 March 2005

⁴³ letter b of article 2 Presidential Decree No 722 dated 10 September 1982. This decree carries into effect the European Directive 77/486.

⁴⁴ About this subject the last decision of the T.A.R. Veneto, Decision No 1110, 17 March, 2005. Decision against of the Cross ‘ removal. Before the Italian Constitutional Court with decision No 389, 2004 refused the removal. In that case the

3. Italian Measures to assure the Right to Education

The Italian laws recognise foreign cultures as a richness for the Italian educational system. Dialogue among differences is not only a duty but it is important for the Italian culture too.⁴⁵

3.1. Children in Italian schools

The topic of immigrant children in Italian law is regulated by administrative law through Ministerial Circulars, and Presidential Decrees. This means that education is regulated not only by the parliament's laws but also by the government's acts.

The practice of restricting admission in schools of immigrant pupils to those holding a residence permit allowing them to remain in Italy to study or work,⁴⁶ was revoked in 1995, and compulsory schooling is now seen as a right and obligation for all immigrant children regardless of their residence permit. In fact to guarantee their right to and in education the action of a "juvenile judge" can be required.

After Italy had ratified CRC, immigrant children nowadays are entitled to benefit from all measures in force in terms of rights to and in education, access to educational services and participation in the life of the school community.

When a child arrives at an Italian school, he or she is placed in the class immediately following the one that he or she has successfully completed in their country of origin.⁴⁷ However, difficulty often arises when comparing both the Italian and the foreign educational systems. It is then necessary for the two different states to reach a diplomatic agreement, but this is sometimes difficult as pupils may come from countries where there are political, economic and war problems, causing the agreement to be much more difficult to achieve.

A more recent Ministerial Circular about foreign minors' entrance in the Italian educational system is No 87, 2000.⁴⁸ This Circular provides for a different treatment between foreign and Italian pupils.⁴⁹ Italian pupils have to enrol in school before the end of January, however, foreign pupils can enrol at anytime throughout the school year. This different treatment is meant to ensure that all immigrant

Constitutional Court said that the question was not about its jurisdiction, because the Cross is a piece of furniture of the schools.

⁴⁵Circular No 205, 26 July, 1990. Available at www.centrostudionordsud.it, last viewed April 2005

"La realtà della presenza di stranieri così come delineata, rende di particolare attualità una nuova e mirata attenzione della scuola alle tematiche connesse all'educazione interculturale quale condizione strutturale della società multiculturale. Il compito educativo, in questo tipo di società, assume il carattere specifico di mediazione fra le diverse culture di cui sono portatori gli alunni: mediazione non riduttiva degli apporti culturali diversi, bensì animatrice di un continuo, produttivo confronto fra differenti modelli.

L'educazione interculturale - si osserva - avvalorata il significato di democrazia, considerato che la "diversità culturale" va pensata quale risorsa positiva per i complessi processi di crescita della società e delle persone. Pertanto l'obiettivo primario dell'educazione interculturale si delinea come promozione delle capacità di convivenza costruttiva in un tessuto culturale e sociale multiforme. Essa comporta non solo l'accettazione ed il rispetto del diverso, ma anche il riconoscimento della sua identità culturale, nella quotidiana ricerca di dialogo, di comprensione e di collaborazione, in una prospettiva di reciproco arricchimento.

E' qui da sottolineare che l'educazione interculturale, pur attivando un processo di acculturazione, valorizza le diverse culture di appartenenza. Compito assai impegnativo, perché la pur necessaria acculturazione non può essere ancorata a pregiudizi etnocentrici. I modelli della "cultura occidentale", ad esempio, non possono essere ritenuti come valori paradigmatici e, perciò, non debbono essere proposti agli alunni come fattori di conformizzazione".

⁴⁶ Ministerial Circular No 400 dated 31 December 1991.

⁴⁷ Art. 2of Ministerial Circular No 205 dated 26 July 1990.

⁴⁸ Available at www.incalciate.it, last viewed 6 April, 2005

⁴⁹ due to paragraph two art. 3 Constitution: substantial equality.

pupils, who arrive in Italy throughout the school year, will be able to exercise their right to education as soon as possible.

Presidential Decree No 394 of 31 August 1999⁵⁰ sets out the procedure for integrating foreign pupils into the Italian school system and gives the basic criteria and guidelines. There is a referent for each school, it can be the school headmaster, who has the duty to control and permit the immigrants' admission.

Where it is possible, foreign pupils are assigned to classes where there are other pupils who speak the same foreign language. However no more than five foreign pupils may be assigned to each class.⁵¹ The introduction of the foreign pupil requires a specific, suitable, didactic method and individual programmes are sometimes necessary.

It is the case that the lack of knowledge of the Italian language could cause the immigrant pupil to be left behind by the rest of the class. Italian, therefore, should be taught with the aim of it becoming the pupil's second language, which they are able to use in a similar way to their mother tongue.

The foreign pupil encounters two main problems when arriving in the school, first of all they have to learn Italian to use in every day life, and secondly they have to learn Italian to use when studying school topics. Usually the pupil's parents speak their original language at home, and this is another obstacle for the pupils to learn Italian quickly.

Each school can arrange language courses in Italian as second language, with projects predisposed by professors, or cultural mediators. From 1990, thanks to the Ministerial Circular No 136, 1990, schools have to offer courses for professors to introduce them to intercultural education.

In Law No 53, 2003, known as Moratti's reform, the legislator never uses the words "foreign pupils", this could be considered not as a mistake but as a choice, the choice to consider all students equally, without ethnic or religious differences and to assure to all pupils their right to and rights in education. However from an intercultural perspective, not underlining the fact that there are many foreign students in Italy, varying cultural backgrounds and origins, could be blind-sighted.

Each school finds many problems in developing concrete intercultural programmes as schools funds have to be used for many activities and some school do not have sufficient money at their disposal to pay for the cultural mediators and professors.

3.2. Italian as a second Language (L2)

The General Directorate for Youth Affairs and the Ministry for Education, Universities and Research has established a working group to organise issues linked to the integration of foreign pupils. This topic is coordinated also by the Institute for Multiethnic Studies (ISMU) and consists of analysing and comparing the results of almost one hundred surveys on this theme.

The General Directorate for teachers' education in the Ministry for Education coordinates the project called "Italian as a second language: language of contact, language of culture".

Another auxiliary project is supported by the Labour Ministry entitled: "School and Immigration", which was established in late 2003, in collaboration with the Ministry of Education, as part of the "Permanent observatory on the condition of immigrants and on the situation as regards reception process and integration in southern Italy".

⁵⁰ This Presidential Decree implements the 1998 Turco-Napolitano Law on immigration

⁵¹ Ministerial Circular No 301 dated 8 September 1989, and Ministerial Circular No 205 dated 26 July 1990.

4. Local actions to carry out immigrant pupils' integration.

For the first time in the Italian legal system, law No 59, 1997, gives importance to the local governments in the educational topics. That means that local governments have been considered important educational decisional centres for the first time. An important role was given to the regional plans to implement education.⁵²

The new Title V of the Italian Constitution gives each regional and local government more autonomy, because, they have concurrent powers in education.

This new role allows each region to respond differently to the multicultural presence in Italian classrooms.

Due to Moratti's Reform⁵³ and an older presidential decree, number 722 dated 1982, each region can choose how to implement intercultural education in the regional and local educational systems.

The number of immigrants in each area of Italy differs quite widely, so every region has a different situation regarding immigrant children and may find different solutions provided that they conform with the government's guidelines.

Different regions have a large variety of projects and proposals to support concrete integration. This is the first step towards promoting effective rights in education for all pupils. Ministerial Circular 106/2002 assigns financial funds to regions to support the teachers and the school operators' training education, for example the cultural mediator.

Hereafter two examples of local actions in Italy in Veneto and in Lombardia (two regions in the North of Italy).

4.1. The Veneto Region's law No 55/1999 and the Holy-cross case

Regional Law No 55 dated 16 of December 1999 on the regional intents to promote Human Rights, a culture of peace, cooperation and solidarity. This law permits the creation of a three year programme aiming to select Human Rights projects which are worthy of public regional funds. The aim of this programme is the immigrants integration into society, with particular attention on the school integration, but also focuses on the dialogue between diversities and the promotion of peace and human rights. There are also projects which can be organised by students with the financial support of the region.

In Veneto, the high percentage of immigrants caused high demand for an intercultural approach. Immigrants also requested the possibility to exercise their religion and to exercise their rights. These problematic issues have also come up also with regard to the Holy cross case, in which it was requested that the holy crosses, in the classrooms, were taken away, in pursuit of the principle of laicism (see articles 2,3,7,8,19 and 20 of the Italian Constitution).

The Veneto's T.A.R.⁵⁴ as the administrative courts of other regions⁵⁵ took an important decision No 56, 2004 about the Holy cross in the classrooms.⁵⁶ With this decision the Veneto's T.A.R. refers to art. 118 of r.d.⁵⁷ 965/24, in which it is stated that the holy cross is part of the "furniture" of the classroom. The Veneto's Court also decided to ask for a preliminary ruling of the Constitutional Court since there was, in its opinion, a contradiction between this law and the principle of laicism.⁵⁸ In its recent

⁵² Cocconi M. (2004), 'L'autonomia funzionale delle istituzioni scolastiche' in Boronovo Re, D. and Cortese, F., *Un diritto per la scuola*, Dipartimento di Scienze Giuridiche, Trento, pp. 198

⁵³ Letter a of art. 1 Law No 53 dated 12 March 2003.

⁵⁴ Administrative Regional Court

⁵⁵ Abruzzo T.A.R. Aquila

⁵⁶ Nowadays in Italy there is an open debate on this topic

⁵⁷ "Regio" Decree

⁵⁸ See the last Constitutional Court's decisions No 508, 2000 and No 327,2002.

decision⁵⁹ the Veneto's T.A.R. ruled that the holy cross could stay in the classrooms as it had historical and traditional meaning in the Italian culture.

4.2. The Islamic classes in Lombardia

In 2004, the proposal of Islamic classes in the Liceo Agnesi, in Lombardia, was made, which caught the attention of both Letizia Moratti, Minister of Education, and of the public opinion.

In July 2004, the educational regional office of Lombardia decided to prohibit Islamic classes because they could be considered as a form of segregation. However, Islamic expert Paolo Branca,⁶⁰ analysed this case and identified that the segregation would have derived, in this particular case, by not allowing Islamic classes. In fact these Islamic children did not attend an Italian school, since their parents prefer to send them to a school not recognised by the Italian legal system. According to Paolo Branca's opinion, the choice of Islamic classes would be a means of integration in the Italian educational system and would carry articles 33 and 34 of the Italian Constitution into effect.

Due to the new title V of the Constitution, schools can decide how to render intercultural education and programmes, but due to Uil-Milan's (one of the three major Italian trade unions) opinion, "autonomy" does not mean the possibility to create ideological classes.⁶¹

Another important example is provided by Vimodrone's school where there are Italian and Libyan programmes in the same school. In fact, the headmaster permits Libyan professors to teach Libyan programmes to Islamic pupils. With the result that there are classes for Italian pupils and classes for Islamic pupils in the same school, but this is possible thanks to a bilateral Treaty between Italy and Libya.

Considering these two examples, we have to emphasise that in the first case a school decides to separate Italian and Islamic pupils without any law, circular or Treaty to prescribe this. In the second case a bilateral Treaty between Italy and Libya, disposed that in the Vimodrone's school the Libyan and the Italian students could attend separate classes.

5. Conclusions

The Italian legal system can be considered a "promotional model"⁶² for in the educational field it promotes the "intercultural education" in the school's programmes and it recognises the right to education for everyone, without distinction based on the racial, religious or ethnic differences.

However the "intercultural education" finds many difficulties in its concrete application, because the school autonomy permits different answers to the multicultural problems in the Italian classrooms. The autonomy means that the regions and the local governments and school institutions sometimes have to face the multicultural problems using their own economic sources.

In the concrete application of intercultural education local governments and schools find many problems because the Circulars and the laws are too general. This can create discriminations between immigrant pupils living in different parts of Italy.

The Italian government, through laws and dispositions, tries to give application to the international standards and to articles 33 and 34 of the Italian Constitution, to assure the right to and rights in education to all without citizenship distinctions. However this is insufficient as there are no fixed procedures to give concrete application to the dispositions. The results are wonderful principles with no application. "How is it possible to bombard schools, headmasters, professors with the need of

⁵⁹ Sentenza T.A.R., Veneto No 1110, 22, March, 2005

⁶⁰ Available at www.orizzontescuola.it 13 July, 2004, last viewed 20 April, 2005.

⁶¹ Available at www.orizzontescuola.it, 15 July, 2004. Last viewed 21 April, 2005

⁶² Toniatti R (1995), 'Minorities and Protected Minorities: Constitutional Models Compared', in Dunne, M. and Bonazzi, T., *Citizenship and rights in multicultural societies*, Keele Universities Press, [place](#), pp 205.

integration through circulars and courses without any concrete help or indication to achieve it?”. This is the first open question that this analysis presents.

Nowadays in Italy there is a gap between Law No 189, 2002, the so called Bossi-Fini Law, with its restrictions, its centres of temporary permanence and the concept intercultural education among pupils and the other dispositions to which this law refers.⁶³ The Bossi-Fini Law is restrictive towards immigrant adults due to the public order principle and the immigration emergency, but it refers to a non restrictive, older law No 40, 1998 (Turco-Napolitano Law) for the educational topics and for immigrant minors treatment.

Another open question that is raised is: ”What about uniformity in the Italian immigration law?”. The Bossi-Fini Law disposes “percentages”, that means a certain number of immigrants in the Italian territory, this number answers to the job needs. In fact this law restricts the possibility of immigrants to reunite with their family in Italy.

Can the public order be more important than the immigrant minors rights? In that case the right to joint their parents? If the answer is “yes, it can”, then the Italian Immigration law called “Bossi-Fini” is probably not a good choice because it refers to a more tolerant law, a law that can be considered inspired by solidarity to immigrant people and to immigrant minors integration.

What can be criticised in the Italian immigration laws is the incoherence of international standards and all the other educational laws, in particular with the principle of intercultural approach. It is difficult to think about a multicultural society if the laws of its legal system contradict one another. It is likely that this contradiction in the Italian legal system is a clear manifestation that the government, like many other European governments, is afraid of immigration, so it has taken a while to harmonise it in conformity with the constitution and international laws.

The Italian legal system needs clearer procedures to assure intercultural education, it needs not only principle but also concrete choices to face the immigration reality in school. The recent T.A.R. of Veneto⁶⁴ decisions about the holy cross in the classrooms seem to be another example of the incoherence in the Italian legal system in these subject: diversities, immigration and education. In fact with this decision the T.A.R. of Veneto say that Italy recognise the laicism principle but the cross has an historical importance. The Constitutional Court with its decisions number 389, 2004 seems to avoid a clear decision on this topic.

The Italian legal system does not have a clear approach to diversities, both the courts and the government demonstrate this difficulty⁶⁵, but the future of a multicultural society needs some concrete and clear answers.

⁶³ See paragraph 2.3.”The Bossi-Fini law No 189, 2002, refers to article 38, Decree Law No 286 July 1998. This Decree gives effective value to Law No 40 of 6 March 1998...”

⁶⁴ available at www.eius.it, last viewed 5 May 2005. Sentenza T.A.R., Veneto No 1110, 22, March, 2005

⁶⁵ available at www.associazionedeicostituzionalisti.it, last viewed 5 May 2005., *Rimoli, F. (Ordinario di Istituzioni di diritto pubblico nell'Università di Teramo)*, 25, January, 2005, *Ancora sulla laicità: ma la Corte non vuole salire sulla croce...*