



International Covenant on Civil and Political Rights

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Human Rights Committee

Report on follow-up to the concluding observations of the Human Rights Committee*

Addendum

Evaluation of the information on follow-up to the concluding observations on Italy

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| <i>Concluding observations (119th session):</i> | CCPR/C/ITA/CO/6, 23 March 2017 |
| <i>Follow-up paragraphs:</i> | 7, 25 and 27 |
| <i>Follow-up reply:</i> | CCPR/C/ITA/CO/6/Add.1, 21 March 2018 |
| <i>Committee's evaluation:</i> | Additional information required on paragraphs 7[C], 25[C] and 27[B][C] |

Paragraph 7: National human rights institution

The State party should expeditiously establish a national human rights institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

Summary of the State party's reply

The State party points out that a new parliamentary term began in March 2018. The Interministerial Committee for Human Rights, in its capacity as national mechanism for reporting and follow-up, is committed to working towards the establishment of a fully independent national human rights institution.

Committee's evaluation

[C]: The Committee regrets that no information was provided on specific measures taken to establish a national human rights institution in compliance with the Paris Principles. The Committee reiterates its request for information and its recommendation.

Paragraph 25: Migrants, asylum seekers and refugees

The State party should:

- (a) Implement Law No. 67/2014 with a view to abrogating the crime of irregular entry and stay;

* Adopted by the Committee at its 129th session (29 June–24 July 2020).



(b) **Refrain from carrying out the collective expulsion of migrants, ensure that all expulsion orders are based on an individual assessment of each migrant's situation, taking into account the person's special protection needs, ensure that bilateral and multilateral agreements are applied in such a way as to guarantee full respect of Covenant rights and strict compliance with the principle of non-refoulement, and suspend any agreement that does not include effective human rights protections;**

(c) **Ensure that immigration detention is only applied for the shortest period possible and as a measure of last resort, after it has been determined, on a case-by-case basis, to be strictly necessary, proportionate, lawful and non-arbitrary;**

(d) **Strengthen its efforts to increase the number of available places in reception centres and take all measures necessary to improve, without delay, the conditions therein;**

(e) **Fully implement the standard operating procedures at hotspots and provide in all first-level reception centres information and legal aid, where necessary, in relation to the pre-identification and identification procedures and the asylum procedure.**

Summary of the State party's reply

(a) The State party cites Legislative Decrees No. 7 and No. 8 of 2016. Legislative Decree No. 7 established a tort claim subject to pecuniary sanctions to replace certain criminal offences. Legislative Decree No. 8 converted crimes previously punishable by pecuniary sanctions into administrative offences. Under Legislative Decree No. 8, crimes punishable by a pecuniary penalty only are expressly excluded from the decriminalization process, in particular non-compliance with removal orders issued by the police and irregular entry and stay in Italy;

(b) Collective expulsion is not provided for in the Italian legal system. The law currently applicable, the Unified Text on Immigration, allows for expulsion on a case-by-case basis, while Decree-Law No. 89/2011, converted into law by Act No. 129/2011, introduced an expulsion mechanism of gradually increasing intensity. Article 13 of the Unified Text limits the expulsion of foreigners who have exercised the right to family reunification, and article 19 prohibits the expulsion of certain categories of foreigners. Local police offices are instructed to evaluate carefully the situation of any foreigner staying irregularly on the national territory, and to conduct interviews with a view to reporting any vulnerability or need for protection.

All bilateral and multilateral agreements relating to immigration and asylum that have been signed by the State party constitute binding legislation within the national legal framework, in full compliance with the principles of human rights and non-refoulement. Article 19 of the Unified Text prohibits refoulement of persons to a State where they risk persecution;

(c) Any immigration detention measures must be validated by the judicial authority within 48 hours of execution. Such detention may be authorized for a maximum of 30 days, extendable by judicial decision for an additional 30 days. A judge may grant further extensions, though the period of detention may not exceed 90 days.

Article 14 of the Unified Text allows for such detention only as a last resort and in cases in which no less severe measures are available. Recourse to detention is dependent on specific prerequisites being fulfilled, as well as requiring prior judicial validation and being subject to mandatory time limits. Article 13 of the Unified Text allows for alternative measures to detention in some cases;

(d) No information provided;

(e) The State Party reiterates information provided in its written replies to the list of issues (CCPR/C/ITA/Q/6/Add.1, para. 43), namely that standard operating procedures have been transmitted to prefectures and police headquarters of municipalities in which hotspots are located. The State party also emphasizes that the standard operating procedures are fully applied at hotspots and adequate information is provided to migrants.

Committee's evaluation

[C] (a), (b), (c), (d) and (e): The Committee notes the information provided by the State party but regrets that the measures were taken before the adoption of the concluding observations. The Committee therefore requests information on measures taken since the adoption of the concluding observations to do the following: (i) implement Law No. 67/2014 with a view to abrogating the crime of irregular entry and stay; (ii) refrain from carrying out collective expulsion of migrants and ensure that the requirement under the Unified Text for case-by-case assessments prior to expulsion is honoured in practice; (iii) ensure non-refoulement of expelled migrants; (iv) ensure that immigration detention is only applied for the shortest period possible and as a measure of last resort, after it has been determined, on a case-by-case basis, to be strictly necessary, proportionate, lawful and non-arbitrary; (v) increase the number of available places in reception centres and improve the conditions therein; and (vi) ensure that the standard operating procedures are applied in practice.

Paragraph 27: Unaccompanied minors

The State party should:

- (a) **Ensure that the age assessment procedure is based on safe and scientifically sound methods, taking into account the children's mental well-being;**
- (b) **Review the guardian assignment procedure to ensure that each unaccompanied minor is provided with a legal guardian in a timely manner;**
- (c) **Ensure adequate conditions for unaccompanied minors in reception facilities, including their segregation from adults;**
- (d) **Take the measures necessary to prevent the disappearance of children and to find the whereabouts of those already missing.**

Summary of the State party's reply

(a) The State party reports that, since the entry into force of Act No. 47/2017, the Department of Civil Liberties and Immigration, of the Ministry of the Interior, and the Ministry of Health have agreed upon an age assessment procedure, which, after being accepted by all the institutional stakeholders involved, will be submitted to the State-Regions Conference for approval. The European Commission is considering financing a project to standardize the procedure under the current regulations, pending its approval.

Article 19 bis of Legislative Decree No. 142/2015, as introduced by Act No. 47/2017, provides for the requirements of the age assessment procedure. Article 5 of Act No. 47/2017 states that if doubts persist with regard to age even after assessment, the child is to be presumed to be a minor for the purposes of the law;

(b) Legislation stipulates that the tutelary judge must provide for the appointment of a guardian within 48 hours of notification by the receiving authority. Article 11 of Act No. 47/2017 provides that a list of "voluntary guardians" be compiled at each juvenile court to recruit private citizens to take on the protection of unaccompanied foreign minors. The National Ombudsman for Children and Adolescents monitors the training and recruitment of guardians for unaccompanied minors.

Under Legislative Decree No. 220/2017, the competence for opening and managing protection for unaccompanied minors was transferred from the ordinary court to the juvenile court, with a view to guaranteeing the timely appointment of guardians;

(c) Act No. 47/2017 envisages a single reception system, whereby unaccompanied foreign minors are welcomed into reception facilities prepared exclusively for them. A decree issued by the Minister of the Interior in 2016 established procedures relating to the reception of unaccompanied minors and to services to be provided in both temporary and government reception centres;

(d) Unaccompanied minors who go missing are usually attempting to continue their migration route towards a different destination. Under national law, a foster person in charge of an unaccompanied minor is required to report immediately to the police if the minor goes missing, in order to facilitate a prompt search initiative. The Department of

Civil Liberties and Immigration has been promoting a project entitled “Pilot Action for Unaccompanied minors: Early Recovery Interventions (PUERI)” since 2017. The project will help to identify reception pathways for unaccompanied minors and to ensure assistance for them and their integration.

In addition, under Act No. 47/2017, a national information system on unaccompanied foreign minors has been established, with a view to compiling reports on unaccompanied minors present on the national territory by all relevant bodies or authorities and the findings of age assessments conducted by the judicial authorities. Access to the system by the authorities will facilitate, through data cross-referencing, the identification of unaccompanied minors who have escaped reception measures but are still present in Italy.

Committee’s evaluation

[B] (a), (b) and (d): The Committee welcomes the new provision that, in case of doubt with regard to age, a child is to be presumed to be a minor for the purposes of the law. The Committee also welcomes the interdepartmental agreement on an age assessment procedure. The Committee requires information on the following: (i) the content of the procedure; (ii) the status of its pending approval by the State-Regions Conference; and (iii) the status of the project currently under consideration by the European Commission.

The Committee welcomes the measures taken to review the guardian assignment procedure, including the recruitment of “voluntary guardians” and the transfer of competence to juvenile courts. The Committee requires information on the following: (i) efforts made by the National Ombudsman for Children and Adolescents to effectively train and oversee volunteer guardians; (ii) the specific measures taken to recruit private citizens as volunteer guardians; and (iii) the impact that the transfer of competence to juvenile courts has had on the average waiting time for unaccompanied minors to receive guardians.

The Committee welcomes the measures taken by the State party to promote the project on early recovery interventions and to establish the national information system on unaccompanied foreign minors. The Committee requires information on the following: (i) measures taken to use the system to facilitate searches for missing unaccompanied minors; and (ii) the rates of disappearance of unaccompanied minors both before and after the implementation of the project on early recovery interventions.

[C] (c): The Committee regrets the lack of specific information on the conditions for unaccompanied minors in reception facilities. The Committee reiterates its request for information, particularly about the segregation of unaccompanied minors from adults in reception facilities, and reiterates its recommendation.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party’s next periodic report.

Next periodic report due: 29 March 2022.
