



REFERENCE:GH/fup-129

4 August 2020

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 7, 25 and 27 of the concluding observations on the report submitted by Italy ([CCPR/C/ITA/CO/6](#)), adopted by the Committee at its 119th session in March 2017.

On 23 March 2017, the Committee received the reply of the State party. At its 129th session (29 June to 24 July 2020), the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Addendum 4 (see [CCPR/C/129/2/Add.4](#)) to the Report on follow-up to concluding observations (see [CCPR/C/129/2](#)). I hereby include a copy of the Addendum 4 (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. Given that the State party accepted the simplified reporting procedure (LOIPR), the requests for additional information will be included, as appropriate, in the list of issues prior to submission of the seventh periodic report of the State party.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Marcia V.J. KRAN

Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

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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*

<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 State party's reply

The State party pointed out that a new Parliament had been elected in March 2018, and referred to an interministerial committee for human rights, noting its capacity as a national mechanism for reporting and follow-up. The committee was 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 concrete measures taken to 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). 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;

(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;

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



(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 receptions centres information and legal aid, where necessary, in relation to the pre-identification and identification procedures and the asylum procedure.

Summary of State party's reply

(a) The State party cited Legislative Decrees No. 7 and No. 8 of 2016. Decree No. 7 established a tort claim subject to pecuniary sanctions to replace certain criminal offences. Decree No. 8 made crimes previously punishable by pecuniary sanctions only administrative offences. Decree No. 8 explicitly excluded crimes punishable by a pecuniary penalty only from the decriminalization process, in particular non-compliance with removal orders issued by the police and irregular entry and stay in Italy, but the State party suggested that the decrees opened up “interesting new scenarios for future criminal policy.”

(b) The Italian legal system does not provide for collective expulsion. The law currently applicable – the unified text of provisions concerning immigration and the legal status of aliens (TUI) – allows for expulsion on a case-by-case basis, while Act No. 89/2011 established a mechanism for expulsion with increasing intensity. Article 13 of the text limits expulsion of a foreigner who has exercised the right to family reunification; article 19 prohibits the expulsion of certain categories of foreigners. The State party reported that members of the local police force are instructed to assess the situation of any foreigner who stays irregularly on the national territory, and to conduct interviews with a view to reporting any vulnerability or need for protection.

The State party reported that all ratified bilateral and multilateral agreements in the immigration and asylum sector were binding legislation within the State's legal framework and complied with the principles of human rights and non-refoulement. Particularly, article 19 of the text prohibited refoulement of persons to a State where they risked persecution.

(c) The State party reported that a judicial authority was required to validate any immigration detention within 48 hours of its 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 not exceeding 90 days.

Article 14 of the text allows for detention only as a last resort and in cases in which no less severe measures are available. The State party reported that recourse to detention was dependent on specific prerequisites being fulfilled, prior judicial validation and mandatory time limits. Article 13 of the text allowed for alternative measures to detention in some cases.

(d) No information provided.

(e) The State Party reiterated information provided in its reply to the list of issues ([CCPR/C/ITA/Q/6/Add.1](#), para. 43), namely that standard operating procedures had been transmitted to police prefectures and headquarters of municipalities where hotspots were located. The State party also emphasized that the standard operating procedures were applied fully in all hotspots, where “adequate information” was also provided to migrants.

Committee's evaluation

[C]: (a), (b), (c), (d), (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 (i) to implement law No. 67/2014 with a view to abrogating the crime of irregular entry and stay; (ii) to refrain from carrying out collective expulsion of migrants and to ensure that the TUI requirement of case-by-case assessments prior to expulsion is honoured in practice; (iii) to ensure non-refoulement of expelled migrants; (iv)



to 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) to increase the number of available places in, and to improve conditions in, reception centres; and (vi) to 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 State party's reply

(a) The State party reported that, since the entry into force of Act No. 47/17, the Department for Civil Liberties and Immigration and the Ministry of Health had agreed upon an age assessment procedure, which was to be agreed upon by all institutional stakeholders involved and then submitted to the State-Regions Conference (*conferenza Stato-Regioni*) for approval. The European Commission was considering financing a project to standardize the procedure pending its approval.

Article 19 *bis* of Legislative Decree No. 142/2015 provided for the requirements and procedures for the age assessment procedure. Article 5 of Act No. 47/2017 stated that, in the event that doubts persist with regard to age even after assessment, the child would be presumed a minor for the purposes of law.

(b) The State party reported that a tutelary judge was required to provide for the appointment of a guardian within 48 hours of receipt of communication from the receiving authority. According to article 11 of Act No. 47/2017, a list of "voluntary guardians" was to be established at each juvenile court to recruit private citizens "to take on the protection of unaccompanied foreign minors". The National Ombudsman for Children and Adolescents monitored the training and recruitment of guardians for unaccompanied minors.

Legislative Decree No. 220/2017 transferred competence for opening and the management of protection for unaccompanied minors from ordinary courts to juvenile courts. The State party reported that the transfer would guarantee the timely appointment of guardians.

(c) The State party reported that Act No. 47/2017 envisaged a single reception system, where unaccompanied foreign minors were welcomed into reception facilities prepared exclusively for them. A Decree of the Minister of the Interior of 2016 established procedures relating to the reception of unaccompanied minors and to services to be provided in both temporary and government reception centres.

(d) The State party reported that unaccompanied minors often went missing because of their attempt to continue their migration route towards a different destination. According to national law, a foster person in charge of an unaccompanied minor was required to report immediately to the police if the minor went missing, in order to facilitate a prompt search initiative. The State party also reported that the Department for Civil Liberties and Immigration had been promoting the Pilot Action for Unaccompanied Minors: Early Recovery Interventions (PUERI) project since 2017. The project would help to identify reception pathways for unaccompanied minors and to ensure assistance for them and their integration.



In addition, Act No. 47/2017 had established a national information system for unaccompanied foreign minors to compile reports and age assessments by all relevant bodies. The State party reported that access to the system by the authorities would facilitate, through data cross-referencing, the identification of unaccompanied minors who had escaped reception measures but were still present in Italy.

Committee's evaluation

[B] (a), (b), (d): The Committee welcomes the new provision that, in case of doubt with regard to their age, children would be presumed to be minors for the purposes of the law. The Committee also welcomes the interdepartmental agreement on an age assessment procedure. The Committee requires information on (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 of 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 (i) efforts made by the Ombudsman for Children and Adolescents to effectively train and oversee volunteer guardians; (ii) the concrete measures taken to recruit private citizens as volunteer guardians; and (iii) the impact of the transfer of competence to juvenile courts on the average waiting time for unaccompanied minors to receive guardians

The Committee welcomes the measures taken by the State party to promote the PUERI project and to establish the national information system for unaccompanied foreign minors. The Committee requires information on (i) measures taken to apply 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 PUERI project.

[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 addressed by the State party in its next periodic report.

Next periodic report due: 29 March 2022.
