



*National Guarantor
for the Rights of Persons Detained or Deprived of Liberty*

President

Contribution of the National Guarantor on the implementation of the recommendations contained in paragraph 35 (unaccompanied minors) of the Concluding Observations adopted by the UN Committee on Enforced Disappearances, published on 10 May 2019 (CED/C/ITA/CO/1)

When considering how to effectively protect unaccompanied minor migrants entering Italy, some critical aspects still need more attention.

One aspect is related to the delay in initiating the guardianship procedure and in granting all the guarantees related to the children's specific vulnerability status (in particular the right to refer young persons to appropriate structures).

Failure to promptly implement all the protections provided for by law can be determined by the full capacity of dedicated reception centres, or by not having assigned a *Place of safety* to the vessel, which has rescued migrants at sea or, as happened during the recent health emergency period, by being quarantined.

On several occasions, the National Guarantor has called upon the responsible Authorities to have the children's fundamental rights never suspended, but rather and in any case them be fully recognised.

Another critical aspect is the unaccompanied minor migrant's right to identity which is entailing the determination of their minor age if unknown or if claimed by the young person or disputable on the basis of their appearance regardless of their declaration.

So, the minors' age assessment procedure is still a critical issue at their arrival on the national territory. After three years from the enactment of the legislative provision to regulate the age assessment procedure¹ when there are doubts about the person's age, a comprehensive and timely implementation of the normative scheme is not yet granted.

The Parliament has established a punctual procedure for ascertaining the age of unaccompanied minor migrants, definitively exceeding the police practices based exclusively on the radiographic evaluation of the wrist. The law established that it is responsibility of the Public Prosecutor's Office at the Juvenile Court to initiate the age determination procedure in all cases in which there is still a grounded doubt about the minor age of a young person². The age assessment consists of a socio-health evaluation conducted in a multidisciplinary and holistic approach and is using the least invasive methods possible being respectful of the presumed age, sex, physical and mental integrity of the person.

¹ Law no. 47 of 7 April 2017, the so-called 'Zampa law', from the name of the parliamentary first signatory in the past Legislature.

²Article 5, para 4, of Law 47/2017 «When there still are grounded doubts on the declared age of an unaccompanied minor migrant, the Public Prosecutor's Office at the Juvenile Court can order socio-medical examinations aiming at the determination of the (young person's) age».



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Having acquired the report resulting from the socio-health assessment, in which the margin of error must always be indicated, the Juvenile Court issues a justified and appealable decision attributing the minor's age. In case of appeal, the judge must urgently decide within ten days.

However, notwithstanding the established and accurate legislative framework, the National Guarantor has observed how its implementation is lacking, especially in the determination of the minor's age where there is the preponderant recurrence to previous practices, without the involvement of the judicial Authority.

In fact, the minor's age assessed through the only wrist X-ray, in order to estimate the maturity of their skeletal structure, is still the most recurrent applied procedure. Certainly, for its rapidity in delivering outcomes but also perhaps for an implicit neo-positivist revival that completely neglects the contribution of social and psychological disciplines that the last century has consolidated, but which seems still not to be implemented by bureaucratic procedures.

Furthermore, the National Guarantor has observed a lack of knowledge about the age assessment procedures both of the police forces and the judges.

In addition, the reception procedure does not always follow the principle established in the law, according to which, pending the outcome of the age assessment procedure, hospitality must be guaranteed by the appropriate first reception facilities for minors provided for by law³.

The monitoring activity of the National Guarantor⁴ noticed the practice of moving people who claim to be minors to a dedicated area of the Immigration Removal Centre (CPR) where persons alleged minors and vulnerable people are together first accommodated. They are transferred to an open facility for young persons only if the outcome of the procedure establishes the minor's age.

Although this practice constitutes a step forward with respect to the retention of minors in promiscuity with adults in the Immigration Removal Centres, there are, however, two kinds of problems. First of all, the permanence of the minor in the CPR, which thus remains in fact deprived of liberty, is somehow in contrast with the general principle of the presumption of minor age implied in the aforementioned law of 2017 which guarantees to refer children to appropriate facilities already at their arrival when the age assessment procedure might be started⁵.

Furthermore, this solution does not seem to completely override the adult/minor's condition of promiscuity: at the time of the National Guarantor's visit, in fact, minors claiming to be children and a vulnerable person over 18 were placed in the dedicated unit.

Moreover, it must be negatively evaluated the practice which emerged during a visit to a *hotspot*, where young persons who claimed to be children were registered as adults. Even after having filled in

³ Art. 5 paragraph 2 of the law n. 47 of 2017: « (...) pending the outcome of the identification procedures, the reception is guaranteed by the appropriate first reception facilities for minors provided for by the law (...) ».

⁴ This refers to the visits conducted to the Immigration Removal Centres and the hotspots in 2019 (the places visited have been deliberately anonymised as the National Guarantor is about to complete the annual report on the visits to be sent to the authorities concerned).

⁵ Ref. Note 2.



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the personal information sheet, a foreign national is further precluded, during their stay at the *hotspot*, the possibility to correct their personal data or to initiate the age assessment procedure.

In fact, the obligation to register a young person who claims to be a minor as a child and upholding the presumption of minor age and the benefit of doubt are systematically violated, with the risk that the young person is eventually retained in the CPR as an adult.

A confirmation of this practice has been observed in a CPR where dozens of people from Lampedusa, there registered as adults, were eventually assessed as minors and, consequently, released after several weeks of undue retention in the Centre.

As well, despite the National Guarantor looks favorably on the reception in dedicated facilities of the young persons submitted to the age determination, it should, however, be observed that this regulatory provision does not override the aforementioned risk of promiscuity. These structures, indeed, can hold persons that have been assessed as adults. Therefore, based on what the National Guarantor observed, in order to avoid the placement of persons whose age is disputed in childcare facilities (i.e. when a person appears as an adult but claimed to be a minor), special units or departments should be dedicated to accommodate this group of persons until their age is assessed.

Furthermore, it is worth noting the practice of registering unaccompanied minor migrants as born on January 1st, when they only declare the year of birth but not their birth day. Thus, the result is that a high rate of minors are recorded and assumed as adults (in fact, such a procedure precludes applying the principle of the presumption of age for all those born during the year considered).

Contribution of the National Guarantor on the remaining paragraphs of the Concluding Observations adopted by the UN Committee on Enforced Disappearances, published on 10 May 2019 (CED/C/ITA/CO/1)

The National Guarantor, while taking a positive note of the many measures illustrated in the extensive follow-up information report, would like to focus on a couple of the Committee's recommendations that have not yet been evaluated by the Italian Government:

a) Measures to prevent enforced disappearance (arts. 16-23)

Ratifying the Convention⁶, Italy committed itself not to «expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance»⁷ and to respect all guarantees regarding transparency and *accountability* in exercising its power of detention.

⁶ Italy ratified the International Convention for the Protection of All Persons from Enforced Disappearance on October 8, 2015.

⁷ Article 16, para. 1 of the Convention.



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In this regard, the National Guarantor, while acknowledging the compliance of Italy with such a commitment, is often concerned about some operations towards countries that recently seem to be less and less accountable under the perspective of risk of forced disappearances.

In particular, a European Parliament resolution⁸, adopted in October 2019, reported a critical situation in Egypt. According to this resolution, that country faced recent anti-government demonstrations carrying out large numbers of arrests, repressive actions and violation of fundamental rights and freedoms, as well as many enforced disappearances of human rights activists and defenders. In the same resolution, the EU Parliament invited States members to ensure the full compliance of any migration agreement with Egypt with international human rights standards⁹.

In 2019 Italy carried out forced return operations of Egyptian citizens: 363 Egyptians were repatriated – 19% more than in the previous year. In addition, forty-eight Egyptians were forcibly sent back to their country over the first two months of this year. Obviously, the relevant Italian authorities examined each individual case before sending back the person concerned. However, the National Guarantor recommended the authorities to pay double attention whenever Egypt is concerned.

b) Implementation of the recommendation contained in paragraph 29 (Safeguards in relation to the detention of migrants) of the Concluding observations

Though requested on many occasions, the National Guarantor is still waiting for the list of the so-called 'locali idonei'¹⁰ – recommendation referred to in paragraph 29 of the Concluding observations, already formulated by the Committee¹¹. The request of clear regulations specifically drafted for the accommodation of persons in these premises is still pending.

To date, the 'locali idonei' have been used without an established specific discipline on the conditions of application of the detention measure. The codification has been at the heart of a discussion between the National Guarantor and the Ministry of the Interior. No further regulatory initiative has been carried out in order to provide at least that the complete list of premises considered suitable could be made public and available to the independent monitoring institutions for them to programme their oversight activities. The circumstance raises some concerns considering that, as emerged from a partial survey conducted by the National Guarantor, in 2019 many Police Headquarters have detained foreign nationals in said 'locali idonei' in alternative to CPRs: nine Police Headquarters¹² held or detained a

⁸ European Parliament resolution of 24 October 2019 on Egypt (2019/2880(RSP)).

⁹ In the document, the European Parliament, in addition to firmly condemning the repression and sending multiple invitations to the Egyptian authorities to cease the current situation and restore the full respect for human rights, the EU legislative body makes an explicit reminder the Member States by stressing «(...) the importance of ensuring that any agreement between the EU and Egypt on migration must strictly comply with international human rights standards, respect the fundamental rights of migrants and refugees, and ensure adequate levels of transparency and accountability».

¹⁰ They are places managed by law enforcement agencies where irregular migrants can be detained when CPRs are at full capacity. Their stay in the 'locali idonei' can be up to 6 days. They were introduced by law-decree no. 113 of 4 October 2018, converted with amendments into Law no. 132 of 1 December 2018.

¹¹ «The Committee recommends that the State party immediately release information about the list of immigration detention centers, ensure all the necessary conditions for access by the National Guarantor (...)».



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total of 377 people, while seven Police Headquarters¹³ used the security suites for detaining 12 people, always in a non-promiscuous manner with people arrested or simply apprehended. Other Police Headquarters¹⁴ have initiated the realization of new 'locali idonei'.

The transit of persons in these 'amphibious' structures, albeit short, took place, therefore, in the absence of an established regulating framework to protect both detained persons and police officers enforcing the detention measure in such an operational context. As the National Guarantor has already had occasion to highlight in the exchange of letters with the Ministry of the Interior, since the detention in the 'locali idonei' is an instrument that can be used by Law Enforcement Agencies only when there is no availability of places in the CPRs, the same conditions of detention and the related implementing regulation provided for these Centres by the Immigration Consolidation Act should be applied.

However, it is evident that a corpus of ordinary rules shall be adapted to the particular detention environment, in order to establish its necessary guarantees regardless of the objective characteristics determined by the contexts and by the short duration of the detention measure.

Rome, 29 July 2020

Mauro Palma

¹² These are the Police Headquarters in Bergamo (79 persons), Bologna (73 persons), Brescia (58 persons), Lecco (1 person), Milan (100 persons), Palermo (6 persons), Parma (38 persons), Piacenza (7 persons), Salerno (15 persons).

¹³ These are the Police Headquarters in Campobasso (1 person), Como (1 person), Frosinone (2 persons), L'Aquila (1 person), Mantua (2 persons), Ravenna (4 persons) and Teramo (1 person).

¹⁴ These are the Police Headquarters in Caserta, Como, Cremona, Modena, Ravenna, Savona, Teramo, Turin, Verbano Cusio Ossola.