

## **Additional submissions between the pre-session and the session of Italy (80<sup>th</sup> session, 14 January – 2 February)**

Geneva, 14/12/2018

Associazione “Comunità Papa Giovanni XXIII” (APG23) would like to present an additional submission regarding the question # 3 of the list of issues (in particular migrant children).

The Italian government has drafted a new law<sup>1</sup> (N. 132/2018) that regulates migration and security. This new law, much discussed and debated at the national level, eliminates the release and renewal of the humanitarian protection permit recognized by the previous law (n°286/1998). Although this new law violates especially the rights of adult migrants, even unaccompanied migrant children are involved with respect to the protection of their human rights. This is especially true for those migrant children that have requested international protection and obtained a residence permit for humanitarian issues; in fact, once they become adults, they fall within the scope of effectiveness of the new law which prevents them from renewing their permits or converting it in permits for study, work or waiting for employment, inevitably jeopardizing their integration and protection path. As stated by the Authority for Children and Adolescents (Autorità Garante per l’Infanzia e l’Adolescenza), the unaccompanied migrant children present in Italy are 12,000, of which 58.9% is about to become adults<sup>2</sup>.

Therefore, APG23 shares the serious concerns expressed by the Authority for Childhood and Adolescence at the Constitutional Affairs Commission of the Chamber of Deputies<sup>3</sup>.

Assuming that the path of autonomy, growth and integration into adulthood, does not occur automatically at the age of majority, APG23 considers appropriate to emphasize that the application of the law n.132 / 2018 infringes the Convention of the Rights of the Child in particular Article 2 (the principle of equal opportunities granted to persons of minor age irrespective of any consideration and therefore of national origin) and Article 3 (principle of the best interests of the child). These two articles are compromised in two aspects of the law where the law provides:

- 1. Repeal of humanitarian protection for neo adults.** Although this new law does not modify the law 47/2017, there are however negative consequences for the unaccompanied migrant children who have obtained humanitarian protection and are found to be of age. If they hold a residence permit for humanitarian reasons, once they have reached the age of majority, they will no longer be able to renew it for humanitarian reasons and will not be

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<sup>1</sup>Law n.132: Conversion into law, with modifications, of the decree-law October 4, 2018, n. 113, containing urgent provisions on international protection and immigration, public security, as well as measures for the functionality of the Ministry of the Interior and the organization and functioning of the National Agency for the administration and destination of assets seized and confiscated from the organized crime. Delegation to the Government regarding the reorganization of the roles and careers of the Police and Armed Forces personnel, 1 December 2018.

<sup>2</sup><https://www.garanteinfanzia.org/sites/default/files/19-11-2018-audizione-decreto-sicurezza.pdf>

<sup>3</sup>[https://www.garanteinfanzia.org/sites/default/files/parere\\_prima\\_commissione\\_.pdf](https://www.garanteinfanzia.org/sites/default/files/parere_prima_commissione_.pdf)

able to convert it into a study, work or waiting occupation permit, as it is allowed to those who have not opted for the path of international protection and are otherwise in possession of a permit for minor age as recognized by article 32 of the law 286/1998. Therefore, these young adults become irregular resident persons. This situation nullifies all the integration work carried out in the reception system foreseen for the unaccompanied migrant children. To overcome this problem, we recommend, as already done by the guarantor, the development of an "ad hoc" permit for unaccompanied migrant children who have become adults in the meantime, which, upon its expiring date, can be converted into a residence permit for study, work or waiting for employment.

- 2. Hotspot retention of children for the determination or verification of identity and citizenship.** Since the new law 132/2018 does not expressly provides the exclusion of detention for migrant children, we are concerned about the fact that in practice there may be detention of unaccompanied migrant children in hotspots, and in particular also of families with minors. Hotspots are unsuitable places for the reception of persons of minor age under Article 3 of the Convention on the Rights of the Child and under Article 5 of the Italian "lex specialis" law 47/2017. Therefore, we recommend the Italian Government to control the application of the rules on detention and accelerated border procedures, avoiding that unaccompanied migrant children, children who have meanwhile become new adults and families with children of minor age, will be detained.

Finally, we want to highlight that there is a large number of unaccompanied migrant children who have applied for an international protection permit (about 9000 in 2017 and almost 3000 in the first half of the current year<sup>4</sup>) instead of opting for a residence permit for minor age. These data reveal that there is no correct application of article 10 of the law 47/2017 that recognizes the issuing of a child's permit for minor age even without the presentation of identification documents, but just on the basis of the minor age as recognized from the circular of the interior ministry n. 10337 of 24 March 2017<sup>5</sup>. Many children have preferred to apply for a residence permit for humanitarian reasons as it was a faster path that allowed obtaining the permit before the age of majority, and did not require identification documents. In addition, the humanitarian permit allowed the issuing of new permits for study, work or waiting for employment even in the absence of identification documents. Instead, an identification document is requested for the conversion of the permit for minor age in permit for study, work or waiting for employment<sup>6</sup>. For these reasons, lawyers and guardians have preferred to request a residence permit for humanitarian reasons for all the unaccompanied migrant children without identification documents. Due to the abolition of the permit for humanitarian reasons in the new law n.132/2018, a huge number of neo-adults, who previously requested residence permit for humanitarian reasons instead of permit for minor age, become irregular migrants since they cannot renew the permit for humanitarian reasons. Furthermore, even if they had required the permit for minor age, now they would be not in the condition to convert the permit for minor age in a permit for study, work and waiting for employment because they have not the identification documents, and it is difficult for them to

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<sup>4</sup>[https://www.garanteinfanzia.org/sites/default/files/procedure\\_rilascio\\_permesso\\_di\\_soggiorno\\_per\\_minore\\_eta.pdf](https://www.garanteinfanzia.org/sites/default/files/procedure_rilascio_permesso_di_soggiorno_per_minore_eta.pdf)

<sup>5</sup>[https://www.asgi.it/wp-content/uploads/2017/11/2017\\_3\\_24\\_Interno\\_10337\\_minore\\_eta.pdf](https://www.asgi.it/wp-content/uploads/2017/11/2017_3_24_Interno_10337_minore_eta.pdf)

<sup>6</sup> D.P.R. 394/99 e available at [https://www.esteri.it/mae/normative/normativa\\_consolare/visti/dpr\\_394\\_1999.pdf](https://www.esteri.it/mae/normative/normativa_consolare/visti/dpr_394_1999.pdf)

recover it. Therefore, we recommend a correct application of article 10 of law 47/2017 and of circular no. 10337 of 24th March 2017 in which the permission for minor age is issued without the presentation of an identity document, but only for the assumption of minority; we also recommend the conversion of a minor residence permit into a permit for study, work or waiting for employment, once the children have become adults, even in the absence of an identification document, to ensure continuation in the integration process.

**RECOMMENDATIONS:**

1. The elaboration of an "ad hoc" permit for unaccompanied migrant children who have become adults in the meantime, which, upon its expiring date, can be converted into a residence permit for study, work or waiting for employment.
2. A government control on the application of the rules on detention and accelerated border procedures, avoiding that unaccompanied migrant children, children who have meanwhile become new adults and families with children of minor age, will be detained.
3. A correct application of Article 10 of Law 47/2017 and Circular No. 10337 of 24 March 2017 in which the permission for minor age is issued without the presentation of an identity document, but only for the assumption of minor age.
4. The possibility to convert the permit for minor age into a permit for study, work or waiting for employment, once the children have become adults, even if they have not an identification document.

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