

ITALY

*MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION
Inter-ministerial Committee for Human Rights
Comitato Interministeriale per i Diritti Umani*

**ITALY'S REPLY TO UN QUESTIONNAIRE ON THE
HUMAN RIGHTS OF WOMEN MIGRANTS**

June 27, 2019

ITALY'S REPLY

Further to your query, Italian Authorities are in a position to provide the following remarks, **for your information only**:

1. Article 1 of Law-Decree No.113/2018, converted with amendments by Act No.132/2018, typifies the forms of protection of a humanitarian nature supplementing international protection (namely refugee status and subsidiary protection), the requirements of which have been identified comprehensively by European Directive 2011/95/EU - The latter being translated in Italy by Legislative Decree No.251/2007, as amended by Legislative Decree No.18/2014.

2. In compliance with international and constitutional obligations, a new hypothesis / category of protection has been identified (Article 32, paragraph 3 of Legislative Decree No. 25/2008, as amended by Article 1, paragraph 2, letter A of the aforementioned Law-Decree) which supplements, by means of a specific residence permit for "special protection", the prohibition of *refoulement* as already provided for by Article 19, paragraphs 1 and 1.1 of Legislative Decree No. 286/1998. In particular, paragraph 1 provides that "in no case the expulsion or refoulement may be carried out towards a State where the foreigner may be subjected to persecution ...". And paragraph 1.1. of the same Article excludes the expulsion or refoulement of a person "to a State if there are reasonable grounds for believing that s/he risks being subjected to torture", besides spelling out that "in the evaluation of such reasons, attention is paid also to the existence in that State of systematic and serious violations of human rights". Therefore, the prohibition of refoulement, as stipulated by Article 19 of Legislative Decree No. 286/1998, in accordance with international standards referred to, is unbreakable.

3. As a consequence, the Territorial Commissions for the Recognition of International Protection, during the examination of the application for international protection, do evaluate the framework of contraindications to repatriation, in accordance with the aforementioned Conventions signed and ratified by Italy, when the requirements of inclusion within the categories of refugees or subsidiary protection holders are not met. At the outcome of this evaluation, the Commissions will send relevant documentation to the *Quaestor* for the issuance of the residence permit under reference of a one-year term, being renewable upon prior opinion by the Territorial Commission, as long as the conditions that justified its release persist. The residence permit will allow work activities, but not the convertibility into a different permit for work purposes, due to its temporary nature linked to the permanence of the conditions of release, without prejudice to the possibility of an undetermined number of renewals.

4. It is worthy of note that the protection deriving from the prohibition of refoulement applies, needless to say, also to those ones who have already obtained international protection. In fact, when revoking or terminating the already recognized international protection, it is the National Commission for the Right to Asylum to be

entitled to assess the need for "special protection" pursuant to Article 33, paragraph 3, of Legislative Decree No.25/2008, which expressly refers to the new provision contained in the amended Article 32, paragraph 3, of the same Legislative Decree.

5. Alongside the special protection, the Law-Decree under reference identifies special cases under which to issue a residence permit for humanitarian purposes. Mention has to be made in particular of the following types:

- i. Residence permit for medical treatment (Art. 1, paragraph 1, lett. G) issued to the foreign citizen, who is in particularly serious health conditions - which would cause a significant prejudice in the event of return to the country of origin or provenance - for the time certified by suitable health certification, in any case not exceeding a one year term (under the phase of first release); and renewable (without any limits) as long as the particularly serious health conditions persist. This permit does not allow to work, given the health conditions of the beneficiary of the permit; and it cannot be converted into a work permit either.
- ii. Stay permit due to natural disaster (Article 1, paragraph 1, letter H), issued in the event of exceptional natural disaster in the country of origin, which does not allow the return and stay under conditions of safety. Should the conditions of exceptional natural disaster remain, this permit of a six-month duration is renewable for a further six months. It allows to work. Nevertheless, due to the temporary nature of the conditions that justify its release, it cannot be converted into a work permit as such.
- iii. Residence permit for acts of particular civic value (Article 1, paragraph 1, letter Q), the release of which by the Quaestor is authorized by the Minister of the Interior, upon proposal of the competent Prefect: of a renewable two-year duration, it allows working activities and can be converted into a work permit. For the type of documents on which the recognition of this residence permit may be based, the Law-Decree under reference recalls Article 3 of Act No.13/1958, in order to identify the acts of exceptional courage already worthy of a reward of a civic value nature (e.g. to save people exposed to serious danger; to prevent or reduce the damage deriving from a serious disaster, etc.).

6. The Law-Decree under reference also places in special cases attributable to humanitarian needs, the pre-existing residence permits issued to victims of trafficking, domestic violence and labor exploitation too, as already regulated in compliance with EU law (Directive 2011/36/EU; Directive 2009/52/EC) or international law (Warsaw Convention; and Istanbul Convention). It is to be emphasized that as for the latter, Law-Decree No.113/2018 - while formally rewriting the relevant discipline when it referred to the case of generic humanitarian permit pursuant to Art.5, paragraph 6 of Legislative Decree No. 286/1998 - leaves them unchanged if compared to the previous normative framework, with regard to both the contents of the recognized protection and the duration and the possibility to apply for them, including the possibility to convert this type of special permits into a work permit.

7. In particular, the special residence permit for social protection purposes is released for the victims of trafficking, upon proposal by the Public Prosecutor or the social services from the local authority concerned, to allow the victim to exit violence and participate in a program of assistance and integration: The residence permit has a duration of six months, and can be renewed for one year or for a longer period, if necessary, for reasons relating to the judicial proceeding; It allows the access to work and study; and can be converted into a permit for work or study purposes.

8. It should be pointed out that the release of the residence permit under reference is not subjected to the victim's willingness to collaborate with the investigative mechanisms. Art.18 of Legislative Decree No. 286/1998 (Unified Text on Immigration, in Italian *TUI*), as amended by Law-Decree under reference, consists precisely in considering the protection of victims of trafficking not as an instrument of criminal action, but as a primary objective to be achieved regardless of their collaboration. This can also be inferred from the possibility that the proposal originates not only from the Judicial Authority but also from the social services of local Authorities, when situations of violence and severe exploitation emerge during the support interventions.

9. Moreover, should the situation of the victim of trafficking emerge during the interview before the Territorial Commissions for the recognition of international protection, Article 32, para.3bis, of Legislative Decree No.286/1998 envisages a specific duty of the Commission to report it to the *Quaestor*, for follow-up measures.

10. The framework of assistance and integration measures established in particular by Act No.228/2003 and subsequent amendments remains unchanged. It establishes a Fund (Art.12) intended for financing assistance and integration programs and for the purposes of social protection referred to in the aforementioned Art.18, besides establishing a special single program of emergence, assistance and social integration, which provides for first aid measures, besides ensuring, on a transitional basis, adequate accommodation, food and health-care and, subsequently, the continuation of assistance and social integration pathways.

- The assistance and integration program, set forth by Act No. 228/2003 and referred to in Article 18 TUI, also expressly refers, for the reception of victims of trafficking, to Article 17, paragraph 2, of Legislative Decree No. 142/2015, on the reception of asylum-seekers.

11. The special residence permit for victims of domestic violence (Art.18 bis *TUI*¹) amended by Article 1, paragraph 1, letter f, of the Decree under reference is issued upon proposal or positive opinion by the judicial authority competent for certain crimes committed in the context of domestic violence, when a danger for the safety of the victim emerges as a result of the choice to exit violence. This permit of a one-year term allows access to work and study and can be converted into a permit for work or study purposes.

¹ Standing for, Unified Text on Immigration.

12. The special residence permit for victims of serious labour exploitation (Art.22 TUI) as amended by Article 1, paragraph 1, letter I, of the aforementioned Decree is issued upon proposal or the positive opinion of the Public Prosecutor to the foreigner who files a complaint and cooperates within the criminal proceedings initiated against his/her employer. It has a duration of six months and can be renewed for one year or for the longer period being necessary for the definition of the criminal proceeding. It allows to work and can be converted into a work permit. Both the discipline and requirements of these last two special cases remain substantially unchanged if compared to the previously existing normative framework - albeit amended from the formal point of view more incisively, whereas previously it had been identified with the indistinct humanitarian permit.

13. Please kindly refer to the data below relating to the first releases of the residence permit for social protection and for serious labor exploitation, respectively, referring to the years 2017, 2018,² and 2019 (as at 10 June 2019), as broken down by gender.

Residence permits released to foreigners victims of labour exploitation and trafficking			
Year	Art. 22 (permit for serious labour exploitation)	Art. 18 (permit for social protection – serious labour exploitation)	Art. 18 (social protection permit – Trafficking)
2017	<i>M</i> 4	<i>M</i> 1	<i>M</i> 197 <i>F</i> 162 <i>Tot.</i> 359
2018 (up to 5.10.18)	<i>M</i> 2	<i>F</i> 1	
	Art. 22 (permit for serious labour exploitation – special cases)	Art. 18 (permit for social protection – special cases)	
2018 (from 5.10.18)		<i>M</i> 3 <i>F</i> 11 <i>Tot.</i> 14	
2019 (up to 10.6.19)	<i>M</i> 4 <i>F</i> 2 <i>Tot.</i> 6	<i>M</i> 29 <i>F</i> 13 <i>Tot.</i> 42	

Source: Ministry of Interior

14. In addition to the protection and guarantees-related provisions illustrated above, Law-Decree No.113/2018 also provides (Article 12, paragraph 1, letter A) that the holders of the aforementioned special residence permits can access the reception services set up by local Authorities pursuant to Article 1 sexies of Legislative Decree

² Please kindly note that the terms concerning stay permits under reference referred to the years 2017 and part of 2018 are different from those ones starting from the period 5 October 2018 (when Decree No. 113/2018 entered into force) until the date of the latest data collection hereunder reported (2019).

No. 416/1989 converted with amendments by Act No. 39/1990 (formerly SPRAR), for holders of international protection and for unaccompanied foreign minors (acronym, UAMs) if they do not access specifically dedicated protection systems, such as the programs mentioned above for victims of trafficking.

15. As for the provisions of the Law-Decree under reference (Art.12), which provide for the reception into the protection System referred to in the aforementioned Article 1-sexies (formerly SPRAR) for the holders of international protection and for the minors, these provisions specify that the asylum-seekers will be welcomed in the centers dedicated to them and activated pursuant to Articles 9 and 11 of Legislative Decree No.142/2015, with the methods envisaged by the aforementioned Decree, which also explicitly envisages specific measures for people with special needs, i.e. for members of vulnerable categories (Articles 10 and 17 Legislative Decree No. 142/2015), in compliance with European standards on the reception of asylum-seekers (Articles 17, 21 and 22, Directive 2013/33/EU, implemented by Legislative Decree No.142).

16. The new Decree also retains the guarantees pursuant to Article 10 of Legislative Decree No.142/2015, i.e. the measures necessary for people with special needs pursuant to Art. 17, in addition to appropriate measures to prevent all forms of violence, including gender-based violence, and to guarantee the safety of asylum-seekers.

- Specifically, people who have suffered damage as a result of torture, rape or other serious acts of violence continue to be guaranteed assistance, appropriate medical and psychological care, according to the guidelines set out in Article 27, paragraph 1-bis, of Legislative Decree No. 251/2007, as prepared by the Ministry of Health and adopted on March 22, 2017.

17. As for UAMs, it is expected that they will remain in the system referred to in Article 1-sexies, even after the coming of age, up to the definition of their protection application (Article 12, paragraph 5-bis, Decree - Law) and, if their application is accepted, for the time reserved to the holders of international protection.

- Within the current legislative framework, the protection and reception measures for those who have come of age can be extended up to the age of 21, upon authorization by the juvenile court, in accordance with Article 13, para.2, of Act No. 47/2017.
- The principle of the best interests of the child informs all Italian legislation (Article 28, paragraph 3, Legislative Decree No. 286/1998), which envisages pathways of inclusion; and regulates, at the coming of age, the possibility of continuing these paths (Article 13, Act No. 47/2017) and the relating conversion of the related stay permit (Article 32, para. 1 bis, TUI).

18. As earlier mentioned, the national legislation implementing the European Directives on asylum recognizes gender-based violence, including on the ground of gender identity, as a cause of persecution (Please refer to Article 8, paragraph 1, letter

d of Legislative Decree No. 251/2007).

19. Under the Asylum, Migration and Integration Fund (AMIF) it is financed ADITUS project, by which IOM provides migrants and asylum-seekers arriving by sea, at ports of disembarkation, hotspot, as well as reception centres, with information on early identification of victims of trafficking and of labour exploitation, besides focusing on the identification of the risks linked to irregular migration.

20. The National Asylum Commission and the United Nation High Commissioner for Refugees (UNHCR) published specific Guidelines for the Territorial Commissions on the identification of victims of trafficking among asylum-seekers, and the referral mechanisms.

21. Adequate reception conditions are ensured to individuals with specific needs, given their vulnerability, in accordance with Article 17 of Legislative Decree No. 142/2015.

22. Specific Guidelines was also adopted by Ministry of Health Decree, dated 3 April 2017, concerning the assistance, rehabilitation and treatment of mental disturbs affecting refugees and victims of torture, sexual harassment and other forms of psychological, physical and sexual violence. This Guidelines, which includes training programs for medical staff, is applicable to asylum-seekers hosted in reception centers, too.

23. In accordance with Article 10 of Legislative Decree No. 142/2015, adequate measures have been put in place to prevent any forms of violence, including gender-based violence and to ensure the safety of asylum-seekers. In this context, it is worthy of note the *National strategic Plan on male violence against women 2017-2020* adopted by the Department of Equal Opportunity at the Italian Presidency of the Council, containing all measures to be implemented at all governmental levels in favor of migrants women, refugees victims of violence, SGBV, labor exploitation, forced marriage, etc.

24. It is also worth mentioning that, within the framework of the multiannual AMIF Project (2017-2020), Line No. 3-*Specific Needs*, UNHCR, in cooperation with the Ministry of Interior, is elaborating some technical proposals for the promotion of standard procedures for the identification of and assistance of individuals with special needs and *referral* mechanisms. In this context, UNHCR elaborated a proposal of specific trainings for reception officers devoted to the identification and *referral* of individuals with specific needs. These trainings will be carried out at the selected Prefectures of Udine, Gorizia and Venezia for the personnel of management bodies at the abovementioned Provinces.

25. The Department for Civil Liberties and Migration of the Ministry of Interior guarantees the unity of the reception system, through a coordination and support action, with the development of guidelines and of structured methodologies, also based on the use of dedicated monitoring mechanisms, and with the support of Department's officers in the inspection activity in order to ensure the necessary sharing of monitoring arrangements among central and peripheral territorial levels.

26. The monitoring activity of the Prefectures is carried out by specially formed inspection teams through the involvement of law enforcement officers, fire fighters, and, more generally, of the representatives of the other Administrations concerned (e.g. local health authorities, local entities, labour inspectorate), in order to ensure inter-institutional collaboration more appropriate for a comprehensive evaluation of the different areas under monitoring activity.