

## **Response**

### **of the Italian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Italy**

**from 7 to 13 June 2017**

The Italian Government has requested the publication of this response. The CPT's report on the June 2017 visit to Italy is set out in document CPT/Inf (2018) 13.

Strasbourg, 10 April 2018

ITALY

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

**ITALY'S OBSERVATIONS ON THE REPORT  
BY THE COMMITTEE FOR THE PREVENTION OF TORTURE OF THE COUNCIL OF  
EUROPE,  
FOLLOWING ITS MISSION TO ITALY  
(6-13 June 2017)**

**Rome, March 5, 2018**

## ITALY'S OBSERVATIONS

In order to provide a comprehensive assessment of the situation concerned, Italian Authorities deem it is important to consider, as follows:

### A. "HOTSPOTS"

(Paras.11 et ff.) The provisions introduced by Decree-Law, dated 17 February 2017, No. 13, converted with amendment by Act, dated April 13, 2017, No. 46, foresee, after Article 10-bis of the Unified Text on Immigration (acronym in Italian, TUI)<sup>1</sup>, the insertion of a new Article 10-ter, which is intended to define, from a legal standpoint, the structures called "Hotspots".

It is worth-stressing that migrants are placed at Hotspots if they are traced after landing, for the purposes of first aid and pre-identification or if they are traced when being under an irregular position on the national territory<sup>2</sup>.

As regards the procedures for the stay of foreigners within the facilities under reference, please refer to the content of the SOPs<sup>3</sup>, which stress that: "*The period of stay in the facility (Hotspot) - since the entry - must be the shortest possible and consistently with the normative framework in force*"<sup>4</sup> and that "*Persons who have expressed his/her willingness to apply for international protection or relocation are finger-printed and registered within Eurodac framework, by Vestanet system, under category 1, and will be then transferred to a reception center (regional hub), as soon as possible*".

In fact, once the procedures established and regulated by the SOPs have been completed, migrants who intend to apply for asylum are distributed on the national territory according to the allotment plans established by the competent Department for Civil Liberties and Immigration, in agreement with the Prefectures-UTG concerned. Unfortunately, this type of stay of migrants within the Hotspot could last longer if there is a shortage of places at the dedicated reception facilities. On the other hand, as for those migrants at Hotspot who do not show their will to apply for international protection, the procedures aimed at consular identification and repatriation are launched. In this regard it is important to stress that, in such cases, for "repatriation" we intend to refer to the institute of *rejection* (provided for by Article 10 of Legislative Decree No. 286/98) - and, more precisely, to "*deferred rejection (respingimento differito)*".

Within the Italian legal system, the refusal of entry at the border (*respingimento alla frontiera*) is an administrative measure introduced by the national Legislator pursuant to Decree-Law, dated 30

<sup>1</sup> Please compare with Article 17 of Decree-Law, dated 17 February 2017, No. 13, as converted by Act No 46/2017

<sup>2</sup> From a historical standpoint, *mutatis mutandis* it might be useful to recall the stay of migrants at the then CSPAs, which were meant for first aid, assistance and medical care of people just rescued at sea in accordance with DPR No 394/1999 (Implementation Rules of the Immigration Act). At this type of Centre, migrants were allowed to move both within and outside, the facility as well as to hold free contacts with the outside. Against this background, by attaching specific attention to the concrete circumstances of the case, the ECtHR indicates *inter alia* <<Article 5 § 1 (f) provides an exception to that general rule, permitting States to control the liberty of aliens in an immigration context. As the Court has remarked before, subject to their obligations under the Convention, States enjoy an "undeniable sovereign right to control aliens' entry into and residence in their territory" (see *Amuur*, § 41; *Chahal*, § 73; and *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, §§ 67-68, Series A no. 94) (See *Saadi vs UK GC dec. 29.1.2008 § 64*).

<sup>3</sup> The Standard Operating Procedures, the so-called SOPs, which result in an operational guidance of the activities carried out within the Italian Hotspots, have been drafted by the Department for Civil Liberties and Immigration and the Department of Public Security, in line with EU decisions and with contribution from European Agencies, including Frontex, EASO and Europol, as well as from UNHCR and IOM.

<sup>4</sup> At present, Police staff must carry out pre-identification and identification activities with photo and finger-printing within the time lapse set for detention for identification purposes (*fermo per identificazione*) - therefore, within 12/24 hours

December 1989, No. 146, as converted with modifications by Act, dated 28 February 1990, No. 39, by which (Article 3, paragraph 3), it provides for the obligation for the border Police offices to refuse foreigners who presented themselves at the border without the specific requirements enlisted in the same law. This provision then found its place in Act dated 6 March 1998, No. 40, where, with Article 8, the measure of rejection has been better regulated.

Under paragraph 1 of the aforementioned Article 8, the Legislator reiterated, in essence, the case of refusal of entry at the border (introduced in 1990), while in paragraph 2, it was intended to introduce the measure of the so-called rejection by the *Quaestor*, specifically providing that "the rejection with escorting to the border of migrants is ... ordered by the *Quaestor*:

- a) when, migrants entering the territory of the State, without undergoing border controls, are stopped at the entrance or immediately after;
- b) when, under the circumstances referred to in paragraph 1, they have been temporarily admitted to the territory for public safety purposes".

The normative framework above described has been reflected in Legislative Decree, dated 25 July 1998, No. 286 (better known as "Turco-Napolitano Law"), which results in the Unified Text on Immigration and Provisions on the Situation of the Foreigner, Article 10.

The aforementioned rejection at the border (*respingimento alla frontiera*) - consistent in the past with the principles and indications of the EU with regard to the implementation of the Convention implementing the Schengen Agreement - currently underpins the Schengen Borders Code (as contained in EC Regulation 562/2006), in particular Article 13.

The above Regulation, at Annex V, Part B, has introduced the "Uniform model of rejection at the border", adopted by all Member States in order to standardize, at the EU level, the mechanism and the requirements for the adoption of the rejections at the border measure.

The aforementioned Article 10 envisages the national category of the so-called *rejection measures*. At the second paragraph, it indicates the rejection measures as arranged not by the border authority but by the Head of the competent Police Headquarters, namely *Quaestor*, against those foreigners who, by entering the territory of the State and avoiding border checks, are stopped at the entrance or immediately after; or that, in the same circumstances, have been temporarily admitted to the territory for public safety purposes: the so-called "deferred rejection (*respingimento differito*)".

This last case must be considered causally and temporarily connected to the tracing of the irregular foreigner in the imminence of the entrance and of activities that at that given moment refer, including those ones that take place in the Hotspots and, which follow, as mentioned, the tracing following the landing, for the purpose of first aid and pre-identification.

It might be deemed that the national Legislator, in regulating the institute of the so-called "deferred rejection", intended to bring it together, as regards nature, to the so-called immediate rejection: configuring them both as measures aimed to deal with illegal immigration in proximity of the border. For this reason, the provision of the *Quaestor* who provides for the deferred rejection does not require the intervention of the Judicial Authority in the form of the validation of the compulsory escorting to the border of the foreigner.

From a procedural standpoint, the two types of rejection can be associated with each other by the speed. This speed - the legislator has wished to confer to the procedures underlying the institute of the rejection - is confirmed by the fact that, in the cases in which there are obstacles to the immediate escorting of the foreigner to the border, the latter can be conducted in the appropriate Centers (CIE in the past, now *CPRs*) pending the removal of the impediments and **only after validation of the Judicial Authority** - in full respect, therefore, of the safeguards applied with regard to cases of restriction of personal liberty pursuant to the general provisions on expulsions (Article 14 TUI).

(Point 15) In the port of Augusta (SR), notably in the area visited by the Committee, construction work is under way for the implementation of a properly equipped Center.

(Point 19-23) A tender procedure is under way for the renovation of the two residential facilities in Lampedusa Island Hotspot, as damaged by an arson. Moreover, INVITALIA Agency - on the basis of a specific Agreement signed on 28 May 2015 – was asked to draw up the contract notice for maintenance services operators.

(Point 21) At present, the refurbishment of sanitary facilities is being finalized and in a few days it will be completed in all sections. So far, the removal of the metal fencing was not considered. Nonetheless, the recommendation will be examined for the appropriate assessments.

(Point 24) As a rule, foreign nationals are transferred from Hotspot within 48/36 hours. In the specific case of Lampedusa Island, it may happen that foreign nationals remain for a longer time due to bad weather or adverse sea conditions; as for other places in Sicily, the organization of transfers can require longer time due to large-scale and repeated landings.

(Point 29) The new Tender Specifications, approved by a ministerial order, dated 7 March 2017, as subsequently amended by a ministerial order dated 10 July 2017, requires the managing authority to provide for the first healthcare services, which include basic preventive measures, syndromic surveillance and appropriate medicinal products for contagious diseases, such as scabies. However, at the Hotspots, topical treatment only is presently available.

(Point 30) All managers of reception Centers must draw up and keep an updated medical record for each foreign national. As for the Hotspot in Pozzallo, the Prefect will be soon informed so as to ensure that manager complies with this obligation.

(Point 39) The reception Centers provide for telephone cards.

(Point 40) Since last June, when CPT delegation visited Italian Hotspots, the influx of migrants to Italy arriving by sea, and consequently the number of UAMs in the Hotspots, has decreased significantly making the transfer of UAMs to dedicated shelter facilities more rapid. Nevertheless, the Department on Civil Liberties and Immigration is engaged in strengthening UAM reception capacity both in first- and second-line facilities.

(Point 41) As Act No. 47/17 has come into force, the Department on Civil Liberties and Immigration and the Ministry of Health have agreed upon an Age Assessment Procedure in respect of the principles set by the new legislation; the procedure shall be agreed by all institutional stakeholders involved and then submitted to the Conference State-Regions for approval. Meanwhile, different age assessment procedures are carried out in respect of the current regulations; at Lampedusa Island and Trapani

Hotspots, during the period Aug.1, 2017 - Dec. 31, 2017, an INMP<sup>5</sup> Unit (a National Institute promoting health and fighting diseases due to poverty) had been operational and had conducted a multidisciplinary process to assess the age.

At present, the European Commission is considering the financing of the project SAVE, proposed by the Ministry of Interior, the Ministry of Health and INMP, which envisages the presence of INMP staff and operators of Local Health Units (acronym in Italian, ASL) at every Hotspot so as to standardize the age assessment procedure, under the current regulations, pending the approval of the said Procedure by the State-Regions Conference.

More specifically, regarding the new multidisciplinary age assessment procedure, two legislative measures, both adopting the new procedure to identify UAMs' age, have been published: Decree of the Presidency of the Council of Ministers, dated November 10, 2017, No.234 "Regulation on the mechanisms to determine the age of unaccompanied minors, victims of trafficking" and Act dated 7 April 2017, No. 47, on "Measures regarding protection of foreign unaccompanied children". Moreover an harmonized Text of the "Protocol for identification and multidisciplinary holistic assessment of unaccompanied minors age" has initiated its own path for subscription within State-Region Agreement.

## **B. CLOSED REMOVAL CENTRES (CPRs)**

(Paras.42 et ff.) Legislation governing the *CPRs* has, over the years, been the subject of various amendments, the most recent of which was introduced by Decree-Law No.13/2017, converted into Act No.46/2017. This resulted, in the course of 2017, in the work to consolidate and increase the assets of existing *CPRs* and of available places. At present, places are divided as follows:

- Bari: 126 places
- Brindisi: 48 places
- Caltanissetta: 96 places
- Potenza: 152 places
- Rome: 125 places
- Turin: 147 places

More specifically, six Closed Removal Centers (*CPRs*) are operational, with an overall capacity of 580 places; the *CPRs* are located as follows:

In Apulia Region, as of 13 November a *CPR* is operational in Bari with 126 places and another in Brindisi with 48 places; in Sicily, the *CPR* in Caltanissetta with 96 places is not operational since 10 December 2017; in Piedmont Region, the *CPR* in Turin has 147 places; in Latium Region, the *CPR* has 125 places for women only; in Basilicata, Palazzo S.Gervasio *CPR* with 32 places is operational as of 10 January 2018.

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<sup>5</sup> The Institute is a public authority, monitored by the Ministry of Health, with the task of promoting activities of assistance, research and training for the health-care of migrants and of fighting diseases due to poverty. In accordance with Decree No. 158/2012, amended into the Law No. 189/2012, this Institute is defined as the National Reference Point for all issues relating to socio-assistance of migrants and to poverty, and as the National Center for Health-Care Cultural Mediation.

Renovation work is under way for increasing the reception capacity of the CPRs with the implementation of 158 additional places in CPRs of Turin and Rome where the whole male section will be again operational.

(Point 47) As already mentioned, the CPR in Caltanissetta is not currently operational due to a recent arson. Therefore, as soon as the renovation work starts the Committee's recommendations will be taken into consideration.

(Points 48 – 50) The Closed Removal Centre of Ponte Galeria, located near Fiumicino Airport, consists of two sections, one for women and the other one for men. Currently, since a fire occurred in December 2015, the units of the male section are unusable. Therefore, out of a total capacity of 250 seats, at the time of the visit the Centre housed 71 women, 49 of whom were asylum-seekers.

About the structural suitability of the Centre, the delegation assessed the overall acceptable inner conditions. The housing units, which include rooms with four or six beds per each, have been judged sufficiently spacious, bright and airy. Both the rooms and the attached toilets have been considered adequate. Similarly, critical issues relating to common spaces and facilities did not emerge from the report. However, the Committee has deemed necessary to suggest some ordinary maintenance operations, such as painting the walls, installing of new shower heads for some showers and a more incisive recovery of the area from the presence of dipterans, given that - since the Centre is located in a swampy area - weekly disinfestations did not seem to solve the problem. On the point, it is under way a project for the functional adaptation of the Centre, providing for some substantial redevelopment interventions dedicated to: the restoration of the male section; the reclamation of the marshy area; and, in general, the restructuring of all the buildings, in order to guarantee comfortable and decorous living conditions, as well as adequate standards of health and safety.

The delegation also noted, positively, that the guests of Ponte Galeria can freely circulate within the perimeter of the centre, enjoying throughout the daytime the common areas and, at fixed times, the sports field. According to the report, however, except the weekly Italian language course and the possibility of attending a small library, it seems that the guests are not involved in any activity aimed at training and empowerment the people. In this regard, it should be noted that the Technical-Economic Commission, established at the Prefecture with the purpose of monitoring the companies entrusted with the management of the Centres for migrants, already lamented, on the 28<sup>th</sup> of March 2017, the need to extend the educational and recreational offer, urging the manager to provide for this. At present, according to the records of this Office, the activities organized by the managing body should include a series of screenings of feature films in the original language, a series of meetings aimed at training guests in the care of their person, a plan of physical activities, and a number of activities dedicated to games and self-narration. Since, however, no evidence emerges from the Committee's report on the real implementation of such activities, the Office concerned has decided to recall the managing body to its responsibilities in training and socialization of the guests of the Centre.

With regard to health and personal care services, overall the quality standards of the Centre have been considered satisfactory by the Committee. The good performance of the services is also due to the operational Protocol signed by the Prefecture, on the 12<sup>th</sup> of November 2015, with the ASL Roma D, which made it possible to guarantee full access to the diagnostic and therapeutic services of the National Health-Care Service. However, as noted by the aforementioned supervisory Commission, the Committee has pointed out the need for the medical records of the guests, kept at the CPR, to be

complete with all the medical reports and to be made immediately available to be consulted by the person or his attorney.

With regard to the legal information service, from the interviews it has emerged that, despite the staff of the Centre gives usually information on the legal status of the persons withheld, not all were fully aware of their rights and obligations, including the right to use the free patronage. The improving of the legal advice had already been requested by the supervisory Commission, which recommended the preparation of a dedicated form, to be included in the social folder of each of the guests.

Moreover, in order to contribute to legal literacy and orientation in the centre, the Prefecture signed, on the 20<sup>th</sup> of March, a protocol with the associations Centro Astalli, Comunità di Sant'Egidio, A Buon Diritto, and Slaves No More, currently being implemented.

In detail, in addition to identifying as a priority objective the correct acquisition by guests of a full awareness of the international protection, the Protocol prescribes that the partners support the detained people in the effective understanding of their legal status, with particular reference to the discipline on repatriation and on legal protections from trafficking. Finally, it has recently been authorized by the Office concerned, the access of the Guarantor of the inmates of Regione Lazio.

As for the security conditions inside the Centre, the delegation expressed appreciation for the preparation of the staff and for the ability to interact with the detained persons, recording the absence of incidents of violence, both by the operators towards guests, as much as among the guests themselves. Similarly to what has already been reported by the supervisory Commission, however, the Committee noted the lack of an internal procedure for reporting incidents, as well as the need to prepare a central register for them, allowing the competent authorities an immediate control over the conditions of security of the centre, and on the vulnerabilities of the guests. About the remarks above mentioned, the Office concerned of the Ministry of Interior has already informed the managing body, urging it to adapt the service to the Committee's recommendations.

The Committee also expressed concerns about the reasonableness of certain restrictions, considered disproportionate if they are commensurate with the objective of guaranteeing security at the Centre. In this regard, the above Office has already proceeded to sensitize the Immigration Office of the Police Headquarters, which is responsible for the adoption of measures to ensure public order and security in detention centres, according to the regulation laying down the "Criteria for organization and management of the Centres for identification and expulsion" (currently, CPR), about the possibility and the opportunity to modify the list of interdicted objects in the Centre.

(Point 50) On the basis of the SOPs, Hotspots are not equipped with recreational areas, and leisure activities are not provided for due to the short stay of foreign nationals in such facilities.

(Point 53 et ff.) In case a person detained requests for a medical examination in order to assess alleged ill-treatment occurred in the CPR, it is the doctor's professional duty to take into due consideration the request and to draw up an objective report to the competent authorities. The detainee has the right, at any time, to receive a copy of his medical file.

Inside the CPR in Turin, medical examinations are conducted in compliance with confidentiality requirements as regards the custodial and security staff, with the exception of a specific request of doctors for personal or detainee's safety reasons.



(Para. 67) In accordance with legislation in force, unaccompanied foreign minors cannot be forcibly returned nor be detained in CPR. However, in case a migrant held in the CPR is claiming to be under age and the judge has ordered the age assessment, the migrant is transferred in a reception facility dedicated to minors, pending the outcome of the age assessment procedure. As far as the procedures carried out in assessing the age, please refer to information above provided under the section devoted to “Hotspots”.

### **C. HOLDING FACILITIES AT ROMA FIUMICINO AIRPORT**

(Paras.69 et ff.) As anticipated to the Committee, renovation works are about to be completed at the Immigration area of Fiumicino Airport Terminal 3- Extra Schengen area, with significant improvements for the foreigners to be returned, from both qualitative and quantitative standpoint.

On a more specific note, mention has to be made of the following: The square meters for that area have been doubled. Moreover, the area under reference has been completely renovated in particular in terms of furniture (benches, seats, *chaise longue*), with the introduction of entertainment devices (TV sets and magazines), which are at disposal.

About meals, the procedures aimed to ensuring their supply are being implemented either by the carriers or, on their behalf, by the company managing this Airport.

In conclusion, the Italian Authorities take this opportunity to reiterate their willingness to fully and extensively cooperate with the Committee on Prevention of Torture and confirm to remain seriously seized of this matter.