

Italy

Unaccompanied foreign minors: the new temporary reception measures are discriminatory and unconstitutional

In a letter sent on 28 July 2016, ASGI's president Lorenzo Trucco intervened in the ongoing debate on the approval of "Extraordinary reception measures for unaccompanied foreign minors" envisaged by article 1-ter of the bill to convert law decree no. 113 of 24 June 2016 into law which details urgent financial measures for the territorial bodies and the territory, approved by the Chamber of Representatives [the lower house of parliament] on 21 July 2016, which is currently being discussed in the Senate.

Article 1-ter modifies article 19 of legislative decree no. 142 of 18 August 2015 (the so-called reception decree) which regulates the reception measures for unaccompanied foreign minors: thus, it provides that when there are repeated cases of substantial arrivals in a short space of time of unaccompanied minors, when there are temporarily no places available in the in the government-run facilities for first reception or within the framework of the SPRAR [Sistema di protezione per richiedenti asilo e rifugiati (Protection system for asylum seekers and refugees) a system of centres with small capacities set up by local authorities for the ordinary reception of asylum seekers distributed throughout the Italian territory] and reception cannot be assured by the local council where a minor is, the prefect may arrange, in accordance with article 11 of the same legislative decree, the operation of temporary reception structures exclusively dedicated to unaccompanied minors.

ASGI deems that this possibility may result, on the one hand, in a **strong disincentive for local councils to participate in the SPRAR network** and, on the other, in an **inequality of treatment at the expense of MENAs** which would be discriminatory under various aspects and contrary to the minor's best interest, contravening our Constitution as well as EU and international law.

"The objective and relevant problems arising from the arrival of a very large number of foreign unaccompanied minors in a short space of time and the serious difficulties which Italian authorities are experiencing to guarantee adequate reception to all these minors must be urgently tackled, not through emergency measures featuring aspects which are unconstitutional but rather, within full respect of our Constitution and of EU and international normative frameworks on this issue", ASGI writes in the letter addressed to the institutions.

In the hope that art. 1-ter will be withdrawn from the bill, ASGI asks that **norms and policies to strengthen and make the ordinary reception system for unaccompanied minors more efficient.**

Contents of the letter

The letter sent by ASGI to the Italian institutions on 28 July on “Extraordinary reception measures for unaccompanied foreign minors envisaged by the bill to convert law decree no. 113 of 24 June 2016 into law” is available at

http://www.asgi.it/wp-content/uploads/2016/08/2016_Osservazioni_al_DDL_conversione_DL_113_2016.pdf

The “very serious concerns” expressed by ASGI in this letter include:

- “in cases involving substantial numbers of arrivals of unaccompanied minors in a short space of time, when there are temporarily no places available in government-run first reception facilities or within the SPRAR network and reception cannot be ensured by the local council in which the minor is, the prefect may arrange ... the activation of temporary reception facilities dedicated exclusively to unaccompanied minors”;
- each of these facilities may have a maximum capacity of 50 places. This clearly contravenes the national and regional normative frameworks on reception facilities for minors, which looks to move beyond the creation of large structures to promote communities of family-type care or, in any case, small-sized facilities (laws no. 184 of 1983, no. 328 of 2000 and ministerial decree no. 308 of 2001);
- the structural standards set out for the temporary reception facilities are far inferior to those envisaged in the public notice for projects bids for the first reception of unaccompanied foreign minors, according to which their maximum capacity should be 30 places in compliance with specific infrastructural parameters and subject to authorisation on the basis of the national and regional normative frameworks for minors’ reception facilities;
- reception in large structures leads to a de-personalisation of relations, preventing the creation of family-type atmospheres which children need, apart from making management and mediation when conflicts arise inside centres more difficult, while modes of large-scale reception sometimes lead to negative reactions and hostility by local people.
- the temporary reception facilities will have to ensure the services detailed in an interior minister’s decree which has not yet been adopted for first reception which limits their stay there to the shortest possible time and no longer than sixty days, including identification, verification of their age, information on their rights and the ways to exercise them, also to request international protection. However, such structures do not envisage services for their social inclusion and autonomy (registration in schools or professional training centres, work experience placements, etc.) which are envisaged in second phase reception facilities.
- the new art. 3-bis provision does not set a time limit for the minors’ stay in the temporary reception structures, as it merely provides that reception in such structures “is limited to the time which is strictly necessary for their transfer” to the SPRAR network or other reception structures for minors in the territorially competent local council;

- although the rules for government-run first reception centres for minors (FAMI) set a 60-day limit, they often stay there for considerably longer periods due to the difficulty of finding places in the SPRAR network (in which 1,852 places are available at present while the number of minors in late May 2016 was 12,000) or in local council-run minors' reception facilities. The same problem is likely to arise for the temporary reception facilities.
- as happens for adults in the Extraordinary Reception Centres [CAS], it is likely that minors in the temporary reception facilities will stay there for long periods, or that they may never be transferred into the SPRAR network system. Hence, they will function in practice as second reception facilities as well, but with substantially inferior standards to those set out by the national and regional normative frameworks, as well as those recently approved by the Conference of Regions for facilities for the second-phase reception for unaccompanied minors. These envisage a maximum capacity of 16 places and the commencement of paths for insertion in schooling, professional training, work experience etc.
- minors in temporary reception facilities may never be inserted in such social inclusion pathways, with serious consequences in terms of psychological problems and marginalisation;
- only under-14s are excluded from reception in temporary reception facilities, without even providing specific safeguards for minors who may be particularly vulnerable due to serious psychological problems or being victims of trafficking, exploitation, torture, violence, traumas suffered during migration, abuses, etc., unlike the standards mentioned above for the second-phase reception of unaccompanied minors, which are only applicable to over-16s who are not deemed vulnerable. Hence, for example, a girl who is 14 years old and a victim of trafficking may be placed in a temporary reception facility;
- the preconditions for applying these provisions are defined in a vague manner which allows excessively wide margins for discretion, "When there are substantial arrivals of unaccompanied minors, if reception cannot be guaranteed by local councils in accordance with point 3". Thus, it may happen that authorities from the councils of towns where people disembark as well as those affected by substantial arrivals of unaccompanied foreign minors may declare that they are unable to ensure the reception of minors and ask the prefecture to intervene;
- assigning responsibility for reception to the prefecture is also an incentive for local councils not to participate in the SPRAR system and not to set up appropriate reception facilities for the reception of unaccompanied minors;
- this makes it very likely that the ordinary reception system for unaccompanied foreign minors (within the SPRAR system or other local council-run facilities for minors) will be scaled back to expand the extraordinary reception system, leading to the negative consequences for the safeguard of minors' rights which have been detailed above;

- the local councils' role with regards to minors received in temporary reception establishments is unclear, as the bill simply provides that the facility's management will inform the local council to coordinate it with the services available in its territory;
- the aforementioned provisions envisage a strong disadvantage for unaccompanied foreign minors in comparison with Italian minors, but also in comparison with other unaccompanied foreign minors placed within the SPRAR system and other local council-run reception facilities for minors, on the mere basis of the availability of places, without considering other criteria such as, for example, conditions of vulnerability;
- ASGI deems that this inequality of treatment is discriminatory for various reasons as well as contravening the minors' best interest, contrary to the Italian Constitution and the EU and international legal frameworks;
- the 1989 UN Convention on the Rights of the Child ratified by Italy with law no. 176 of 1991, binds states to guarantee the rights it declares, including protection and assistance for minors who do not have their family relations and their rights to development, health, education, adequate living conditions, participation, etc. – “without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status” (art. 2);
- the UN Committee on the rights of the child has clarified that the non-discrimination principles applies to any minors regardless of their nationality or their residence status (para. 12, General Comment no. 6 (2005) on unaccompanied foreign minors);
- art. 3 of the Convention also states that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”;
- this principle is recalled in relation to the reception of foreign minors by legislative decree no. 142 of 2015, whose art. 18 point 1 states that the child's best interest is a priority when applying reception measures, in order to ensure adequate living conditions for their young age with regards to protection, well-being and the minor's development, including social development, in accordance with art. 3 of the Convention on the Rights of the Child;
- any unfavourable treatment of foreign minors in comparison with Italian minors on the basis of nationality, like any unreasonable inequality of treatment among unaccompanied foreign minors, is unconstitutional as it violates art. 3 of the Constitution as well as art. 117 which requires that legislative power must be exercised by the state in compliance with the obligations arising from the EU and international legal frameworks and obligations.
- the objective and noteworthy problems resulting from the arrival of large numbers of unaccompanied foreign minors in a short time and the Italian institutions' serious difficulties in guaranteeing adequate reception to them must be tackled urgently, not through emergency measures which have unconstitutional aspects but rather, while respecting our Constitution and the EU and international legal frameworks;

- ASGI hopes that article 1-bis will be scrapped from the bill and for norms and policies to be adopted for the purpose of strengthening and making more efficient the ordinary reception system for unaccompanied foreign minors, particularly by increasing the number of available places for them within the framework of the SPRAR system, by releasing adequate funding by the state and the adoption of measures (incentives and/or provisions setting specific duties) to ensure local council participation in the system;
- to effectively tackle the problems linked to the arrival of large numbers of unaccompanied foreign minors in a short space of time, it is urgent to reduce the concentration of reception facilities for them in some regions, most evident in Sicily, which currently offers reception to one third of the total number of unaccompanied foreign minors who are in Italy;
- while the distribution of the reception for adults between regions is agreed in the framework of national coordination meetings involving the regional authorities, this does not apply for the reception of unaccompanied foreign minors. Thus, minors who are not placed within FAMI Centres or SPRAR establishments are in the charge of the local council where they arrived or were found;
- to enable a degree of distribution in the reception of unaccompanied foreign minors between different regions and local councils, ASGI hopes that CAS [extraordinary reception centres] for minors will not become operative but rather, that distribution within the ordinary reception system will be promoted within the national coordination meetings between regional councils;
- for this purpose, an amendment of art. 19 point 3 of legislative decree no. 142 of 2015 is proposed to indicate that if a local council is unable to accommodate unaccompanied foreign minors for reception, they may be transferred to another council identified by the coordination meetings, treating the minor's best interest as a priority. The local councils which provide reception activities in accordance with this point of article 19 will have funding made available to them to do so.
- it should be noted that the possibility for a local council to express its availability to receive two or three unaccompanied foreign minors in a community for minors, without committing to prepare a SPRAR project, may encourage an expansion of the number of local councils which become available for reception and that, after a first limited experience, they may become more open to the prospect of joining the SPRAR system."