



*The Permanent Representative of Italy
to the International Organizations
Geneva*

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Geneva, 31 May 2019

Madam Special Rapporteur

Following UN Letter dated November 1, 2018, I have the honor to submit Italy's reply to this Communication by the UN Special Rapporteur on the rights of persons with disabilities that have requested Italian Authorities to provide her with information about the alleged restriction of the legal capacity of Mr. Dominique Da Prat, Italian citizen, the alleged denial of the right to choose his own administrator and of the right to manage his own financial affairs, which could constitute a violation of article 12 and article 16 of the Convention of the Rights of Persons with Disabilities.

By this reply, we take the opportunity to reiterate our firm willingness to continue to fully and extensively cooperate with all UN Special Procedures.

Should additional information be made available, allow me to ensure you that we will share it with you as soon as possible.

Please accept, Ms. Balbin, the assurances of my highest consideration.

Sincerely yours,


Ambassador Gian Lorenzo Cornado
Permanent Representative

To the attention of the UN Special Rapporteur on the rights of persons with disabilities

ITALY



***MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION
INTER-MINISTERIAL COMMITTEE FOR HUMAN RIGHTS***

**ITALY'S REMARKS,
IN RESPONSE TO THE COMMUNICATION
(AL ITA 6/2018) FROM THE UN SPECIAL RAPPORTEUR ON
THE RIGHTS OF PERSONS WITH DISABILITIES,
DATED NOVEMBER 1, 2018**

May 29, 2019

ITALY'S REMARKS

Further to letter, dated November 1st, 2018, by the UN Special Rapporteur on the rights of persons with disabilities, Italian Authorities are in a position to provide the following remarks:

INTRODUCTION

Constitutional and legislative framework

1. The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. Indeed, we rely on a solid framework of rules, primarily of a constitutional nature, by which the respect for human rights is one of the main pillars.

2. The recognition and guarantee of the rights of persons with disabilities responds to the "mandatory duties of political, economic and social solidarity" posed by Article 2 of the Italian Constitution.

2. Article 3 of the The Italian Constitution, envisaging the principles of formal and substantial equality at paragraphs 1 and 2, respectively, stipulates as follows: “(1) *All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.* (2) *It is the duty of the Republic to remove those obstacles of an economic or social nature, which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country*”.

3. The general principle of equality, contained in Article 3, poses an obligation incumbent on the State: to move forward the abolition of existing disadvantages and barriers, which particularly affect persons with disabilities. No one may be discriminated because of a disability.

4. With Law 18/09, the Italian Parliament approved the ratification of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, signed by Italy on March 3, 2007. At the same time, the law ratifying the Convention established the National Observatory on the Status of Persons with Disabilities, “*in order to promote the full integration of people with disabilities, implementing the principles enshrined in the Convention [...] and the principles set out in Law 104 of February 5, 1992*” (article 3, paragraph 1).

5. In accordance with the provisions of article 33, paragraph 1, of the Convention, the Observatory, chaired by the Minister of Labour and Social Policies or the Deputy State Secretary, has acted as a focal point for matters relating to the implementation of the Convention on the rights of persons with disabilities and as a coordination mechanism within Government to facilitate related action in different sectors and at

different levels of public administrations. It was based at the Minister of Labour and Social Policies, which performed support functions.

6. By virtue of Law No. 97 of 9 August 2018, concerning the reorganization of competences of ministries, including on the topics of family and disabilities, the Presidency of the Council of Ministers or the delegated Minister for Family and Disabilities exercises the Government's functions concerning the National Observatory on the Status of Persons with Disabilities above mentioned in points 4 and 5.

7. In compliance with Law No. 97/2018, the Department of the Presidency of the Council of Ministers that has been delegated to coordinate all the activities carried out by Public Administrations related to the implementation of Law 104/1992, the promotion of policies for persons with disabilities and the control of the respect of the relevant legislation is now the Department for Family Policies. Consequently, the National Observatory on the Status of Persons with Disabilities above mentioned under point 5 is now

8. With the Decree of the President of the Council of Ministers of October 25, 2018, a specific structure has been created within the Presidency of the Council of Ministers, called "Structure of mission for the policies in favour of persons with disabilities", which serves directly the Minister for Family and Disabilities in his mandate and that has recently started to develop its activities, aimed at promoting the full participation and inclusion of people with disabilities in the social, economic, cultural and political life of the country.

9. The described reorganization of the institutions confirms the growing attention of our country to disability and promotes greater coordination of disability policies, indissolubly correlated with the need to monitor implementation and compliance with the principles of the UN Convention on the Rights of persons with disabilities.

The Support Administration

10. The Support Administration is a security tool that has the "*purpose to protect with the least possible limitation of the ability to act of persons lacking in all or part of autonomy in the performance of daily life functions, by means of temporary support interventions or permanent*" (Article 1 of the establishing Law no. 6 of 2004).

11. The discipline is absolutely in line with the values of the UN Convention and the Italian Constitution, which require the full protection of the rights of the weak, and it seeks to implement, directly and in a modern way, on a legal level, the principles that enshrine the fundamental values of human rights, equality and health (Articles 2, 3 and 32 of the Constitution).

12. The Support Administration, in fact, aims to play a support and promotional position of the person, without prejudice to the ability to act and thus to their own lives, to establish or participate in the definition of the life project.

13. The Support Administrator does not replace the beneficiary, but he only supports him in everyday life, in terms not only related to capital, but also to personal-

existential and health profile. To accomplish his tasks, the Support Administrator must take into account the needs and aspirations of the beneficiary (Article 410 Civil Code), who therefore must always be listened to and directly involved in the definition of his life plan.

14. If necessary and within limits of time and content, the competent judicial authority specifies which activities must be carried out in the name and on behalf of the disabled person, for everything else the person retains his ability to act. Furthermore, the judge performs a guarantee function, as he verifies the correctness of the concrete application of the security measure by the Support Administration, who must write an annual report.

15. The institute of Support Administrator is outlined in such a way as to make the least possible limitation – and not the total exclusion – of the person's capacity to act. According to article 3 of Law No 6 of 2004, amending article 408 of the Civil Code, the person concerned has the right to choose his own Support Administrator.

TURNING TO THE SPECIFIC CASE

16. With regard to the case under examination, the results communicated by the competent offices confirm that all means of protection have been prepared in favour of Mr. Da Prat, in compliance with the constitutional norms and the ordinary legislation.

17. From the events that have happened, it would be rather that, in relation to essential questions such as therapeutic treatment, logistics arrangements and the choice of Support Administrator, the will of the person concerned, often contradictory and unstable, has, in fact, "weakened" the operation of these means of protection with adverse effects on the health of the person concerned.

The Support Administrators

18. First, it presses to highlight that Mr. Da Prat personally represented the need for the appoints of Support Administrator, in the action presented on 7 December 2012, on the difficulty of managing his own substances.

19. The President of the Court in Udine illustrated the numerous subsequent Support Administrators for Mr. Dominique Da Prat, in full respect of his changing willingness.

20. Regard to the obvious difficulties of relationship between Support Administrators who alternate and the beneficiary, it is considered that they did not fail to their specific tasks with regard to Mr. Da Prat.

Assignment of a subsidized apartment

21. The second aspect raised by the Special Rapporteur on the rights of persons with disabilities regards the activity of the Azienda Territoriale per l'Edilizia Residenziale (ATER) of Udine, and in particular the assignment of a subsidized apartment, where Mr. Da Prat claimed that he had been subjected to harassment. He

claimed also the rejection of his request to move to another location, after that he refused to move to a new proposed location because it was deemed by Mr. Da Prat to be in a dangerous neighborhood.

22. On this regard, in accordance with the information provided by the Central Administration health, social policies and disability of the autonomous Region of Friuli Venezia Giulia, we are in the position to report that the ATER of Udine respected the current legislation.

23. It is communicated that Mr. Da Prat, on 15 March 2019, stipulated the lease on the new accommodation assigned to him, which was agreed with the person concerned and with his Support Administrator.

Health Assistance

24. On the last point raised by the Special Rapporteur on the rights of persons with disabilities, it is reported that Mr. Da Prat has been taken in charge by the authorities since the beginning of the pathology manifested and constantly followed.

25. More specifically, on the front of the services activated in favour of the assisted, the National Health System has taken in charge of the person concerned from an early age, to the occurrence of behavioural problems and learning difficulties, activating care and support services through the social health benefits provided by the Child Neuropsychiatry Unit of Udine and by the Consortium for Medical-Psychological assistance.

26. At the age of majority, the person concerned was taken in charge of the Mental Health Center of Udine Nord, which has activated interventions to support the residentiality, autonomy and paths of work stabilization.

27. In particular, regarding the claimed refusal to move Mr. Da Prat to another Mental Health Centre, the Mental Health Centre of Udine Nord informed that he never asked to be treated by another public Mental Health Centre while he asked to be treated by private health professionals.

28. In 2017, the patient subsequently interrupted the treatment at the Department of Mental Health, which however continued in time to renew his willingness to follow Mr. Da Pratt, until the recent convocation of 23 May 2019 of the person concerned and his Support Administrator at the Department's Health Management in order to agree on appropriate methods of care and assistance, to which it has not been given feedback.

29. This shows that the benefits provided by the Health National System have also given priority to the protection of the physical integrity and wellness of the person concerned, focusing on the importance of the continuity of assistance.

CONCLUSION

30. The Italian Authorities take this opportunity to reaffirm their broad commitment to fully cooperating with UN Special Procedures and all other relevant international mechanisms.