

Mandate of the Special Rapporteur on the rights of persons with disabilities

REFERENCE:
AL ITA 6/2018

1 November 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of persons with disabilities, pursuant to Human Rights Council resolution 35/6.

In this connection, I would like to bring to the attention of your Excellency's Government the restriction of the legal capacity of Mr. **Dominique Da Prat**, Italian citizen, who has been denied the right to choose his own administrator and the right to manage his own financial affairs, which could constitute a violation of article 12 and the right to be free from exploitation, violence and abuse, in violation of article 16 of the Convention of the Rights of Persons with Disabilities.

According to the information received:

Dominique Da Prat is an Italian citizen born in Liestal, Switzerland, on 19 September 1980. Few months after his birth, he was brought to Italy by his grandparents from his mother side and raised in Udine. In 2000, Mr. Da Prat was voluntarily admitted to the psychiatric center of Udine Nord due to symptoms of acute depression and anxiety and received treatments as a patient for nine months. After his discharge, he was regularly assisted by the same center through ambulatory care involving regular meetings with nurses and psychiatrists.

From 2000 to 2013, Mr. Da Prat lived with his mother, but when she was admitted to a retirement home, he had to leave their apartment. In 2013, based on a request from members of his family, the competent Court of Udine nominated an administrator (*amministratore di sostegno*) for Mr. Da Prat. Mr. Da Prat was never consulted on the nomination of his own administrator, as the first and subsequent administrators were chosen by his family members.

In 2014, the Azienda Territoriale per l'Edilizia Residenziale (ATER) of Udine assigned a subsidized apartment to Mr. Da Prat in Via Reconquista 3.¹ Mr. Da Prat moved to the new apartment in 2014, but since 2015, he has been subjected to harassment, including physical aggression, from a former detainee who lives in the same building in Via Reconquista 3. This person is known in the neighborhood for threatening people with violence and intimidation. Fearing retaliation, Mr. Da Prat has never officially reported the threats to the police

¹ The ATER is a separate accounting entity that works to better respond to the primary housing needs of citizens, with particular regard to those who do not have the possibility to access the private housing market.

station, in spite of the fact that the man is already known to the authorities following a complaint filed by a group of neighbours living in the same building.

Mr. Da Prat's fears of being aggressed adversely affected his mental health and exacerbated his anxiety, which made it unbearable for him to reside in his apartment. In 2016, he submitted a request to ATER to be moved to another location. The request was accepted. However, the new apartment's location was deemed by Mr. Da Prat to be in a dangerous neighbourhood, and he refused to move to that new proposed location. Since 2017, Mr. Da Prat moved to the residence of a friend and was unwilling to go back to his apartment, fearing aggression from his neighbour. He kept requesting ATER to move him to another location, in a neighborhood where he feels safe, but his requests were rejected.

Mr. Da Prat received psychiatric treatment at the mental health center of Udine Nord since 2000. However, in the last five years, he reported that he was not able to talk with the doctor in charge but only to the nurses. In 2017, he asked to be transferred to another mental health center to be better supported. His requests were refused on the ground that he could only receive psychiatric treatment at the closest center to his place of residence (in this case, in the North of Udine). It is reported that staff from the center in Udine Nord threatened Mr. Da Prat that he would be placed under guardianship if he kept asking to change center

In March 2017, Mr. Da Prat's administrator requested the judge of the Competent Court of Udine to be replaced. A new administrator was nominated, but after few months, he asked to be re-assigned to another beneficiary. In March 2017, Mr. Da Prat received a new administrator. Since 2017, Mr. Da Prat has not been able to manage his own funds and has needed his administrator's authorization to withdraw even small amount of money at ATMs.² Moreover, he has not been given explanation on unauthorized money transfers from his own bank account, which he noticed when receiving bank statements. In April 2018, a new administrator was assigned to Mr. Da Prat, after the previous one resigned. Mr. Da Prat was not consulted and when he asked if he was given the option to choose his own administrator, he was told that it was not possible.

In July 2018, Mr. Da Prat's administrator triggered a guardianship proceeding. At the hearing on 17 August 2018, the procedure was cancelled by the judge for lack of reasons justifying the guardianship. A new administrator was assigned in September.

Without prejudging the accuracy of these allegations, I express concerns that the legal capacity of Mr. Da Prat is being restricted. Mr. Da Prat has not been able to nominate his own administrator, or to have a voice in the process, and is prevented from controlling his own financial resources. Furthermore, in the accommodation provided by ATER, Mr. Da Prat is exposed to the risk of violence.

² Mr. Da Prat worked as an assistant chef in a restaurant, with a regular contract, from 2011 to 2017 and earned a regular salary.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide details on what steps your Government has taken to review its legislation on legal capacity, including developing supported decision-making arrangements.
3. Please provide detailed information on the measures taken by your government to ensure the monitoring and accountability of administrators.
4. Please explain the measures adopted by your government to make sure that persons with disabilities are free from exploitation, violence and abuse, in accordance with article 16 of the CRPD.

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Annex

Reference to international human rights law

In connection with these allegations and concerns, I am respectfully drawing the attention of your Excellency's Government to the applicable international human rights norms and standards relevant for persons with disabilities, including the rights to equal recognition before the law, which constitute Italy's international human rights obligations under the conventions it has ratified.

In this regard, the Convention on the Rights of Persons with Disabilities (CRPD), acceded by Italy on 15 May 2009, provides authoritative guidance in relation to the promotion, protection, fulfilment and enjoyment of all human rights and fundamental freedoms by persons with disabilities. The Convention has adopted a human rights-based approach recognizing that all persons with disabilities, including those with psychosocial disabilities, should enjoy all human rights and fundamental freedoms on equal basis with others.

Article 12 (1) reaffirms the right of persons with disabilities to be recognized as persons before the law. Article 12 (2) recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all areas of life. Article 12 (3) requires States Parties to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. Article 12 (4) outlines the safeguards that must be present in a system of support for the exercise of legal capacity. Finally, article 12 (5) requires States to ensure the rights of persons with disabilities with respect to financial and economic affairs, on an equal basis with others.

The Convention recognizes a universal legal capacity to all persons with disabilities. Persons with disabilities should have access to appropriate support to exercise their legal capacity and not to be restricted in its enjoyment. I emphasized in my study on the right to legal capacity (A/HRC/37/56), that states must abolish and prohibit all regimes of substituted decision-making, including guardianship and administration. According to the Committee on the Rights of Persons with Disabilities, these regimes can be defined as systems where the legal capacity is removed from a person, a substitute decision-maker is appointed by a third party and/or a decision-maker acts on a "best interests" standard. Reversely, a supporter cannot be appointed by a third party against the will of the person concerned, and support must be provided based on the will and preferences of the individual.

In this regard, an administrator should not be appointed against the will of the person concerned. When persons with a disability voluntarily decide to be supported by an administrator to manage their financial and economic affairs, they should be allowed to select the administrator of their choice, and every decision should be taken with their consent. According to the information received, Mr. Da Prat cannot choose his own administrator and he is not consulted nor is his consent sought when having to decide about the health treatment he prefers to receive or when managing his own bank account. This situation indicates severe and seemingly unjustified restrictions to his legal capacity.

Article 12 (5) requires States parties to take legislative, administrative, judicial and other practical measures to ensure the respect of right of persons with disabilities to manage and control their resources on an equal basis with other citizens. Mr. Da Prat should have access to all his financial affairs, he should be consulted about any money movement on his account, any such movement should be explained by his administrator and duly justified, and restrictions to his bank account should be prohibited. Mr. Da Prat has the right to manage his own financial resources and have access to his bank account, on an equal basis like any other autonomous citizen. The approach consisting in denying persons with disabilities legal capacity for financial matters must be replaced with support to exercise legal capacity, in accordance with article 12, paragraph 3. The administrator cannot substitute Mr. Da Prat in the management of his financial resources and must obtain his consent for all financial transactions.

Similarly, article 12 has been interpreted authoritatively by the UN Committee on the Convention on Disabilities, that States parties should respect an individual's will and preference in relation to health treatments.³ Persons with disabilities have the right to opt for other treatments, on an equal basis with others. Consequently, Mr. Da Prat's request to be treated to another psychiatric institution, with which he feels comfortable, should be given due consideration by the medical staff in the psychiatric center of Udine Nord.

Article 16 of the Convention affirms that States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse. In the current accommodation provided by ATER, Mr. Da Prat is subjected to possible threats of violence and abuse, which exacerbate his health conditions. The ATER should take into consideration Mr. Da Prat's intention to change accommodation and his need to be free from abuse and violence, as he has both legal personality and legal agency to express his reasons. On an equal basis with others and given the availability of suitable accommodations, the ATER should take into consideration his request to be moved to a safer location.

Last, I express deep concerns on the fact that, in retaliation for Mr. Da Prat's exercise of his rights, he was threatened to be put under guardianship by his administrator. This form of pressure should be strictly prohibited. As stated in my report on legal capacity, State parties must prohibit and abolish substitute decision-making regimes, such as the guardianship.⁴ Whenever these regimes still exist, they should not be used as a form of retaliation to undermine an individual's capacity to express his rights.

³CRPD, General Comment No. 1 (2014), para. 41.

⁴ A/HRC/37/56, at para. 26.