

**To:** Special Rapporteur on the human rights of migrants Prof Felipe González Morales – [hrc-sr-migrant@un.org](mailto:hrc-sr-migrant@un.org)

**Subject:** Submission regularization report

**From:** Andrea Maria Pelliconi, PhD candidate in Law at City, University of London; Associate Lecturer in Law at the London School of Economics (LSE); Visiting Researcher at the Max Planck Institute of Luxembourg – [andrea.pelliconi@city.ac.uk](mailto:andrea.pelliconi@city.ac.uk)

**3 Please share examples of promising practices, including ad-hoc programs and permanent regularization mechanisms that your country or region has adopted to promote a human rights-based approach to migration. Please indicate any specific challenges that your country has encountered in regularization processes, with particular attention on how such challenges affect migrant workers, women and girls, children, and other persons and groups.**

Since 2018, Italy has adopted a so-called ‘permit of stay for special protection’ (hereinafter, ‘special permit’) based on human rights considerations, which supplements standards regularization via international protection. This special permit – which substituted and partially enlarged the scope of the abolished ‘humanitarian protection’ – is not permanent, but can be renewed every two years, and allow the recipients to work regularly and take advantage of public services in conditions of parity.

The special permit was introduced by [Law No. 132/2018](#), which modified art. 19 of Italy’s [Consolidated Act on Immigration](#). The conditions for its release were then expanded by [Law-Decree No. 130/2020](#), converted into [Law No. 173/2020](#), enlarging the number of grounds prohibiting expulsion, based on the principle of non-refoulement.

In particular, special protection is granted when the applicant does not fulfil the conditions for other forms of international protection, but removal from the national territory is not possible due to human rights concerns.

The special permit is released in case of at least one of the following conditions:

- 1) if the expulsion or refoulement would expose the applicant to the risk of persecution for reasons of race, sex, sexual orientation, gender identity, language, citizenship, religion, political opinions, personal or social conditions, or refoulement to another State where he is not protected from persecution; *or*
- 2) if there are reasonable grounds for believing that applicant risks being subjected to torture or inhuman or degrading treatment, having regard to the existence, in that State of removal, of systematic and serious violations of human rights; *or*
- 3) if there are reasonable grounds for believing that the expulsion from the national territory involves a violation of the right to respect for his or her private and family life, unless it is necessary for reasons of national security, public order, safety and health, having regard to the nature and effectiveness of the applicant’s family ties, his effective social inclusion in Italy, the duration of the stay in the national territory as well as the existence of family, cultural or social ties to your country of origin.

This special permit represents a positive example of protective mechanisms outside the minimum standards provided for by international refugee law, and beyond the protection afforded by EU standards. While the first condition can be said to be substantially equivalent

to the general protection from persecution, the second condition does not require the applicant to be at risk of personal persecution, requiring just evidence of the existence of serious and systematic violations of human rights (broadly understood). Further, and most crucially, the third condition enables an evaluation of the applicant's integration in Italy based on right to enjoy private life, without further considerations of potential risks in the country of origin.

In practice, particular relevance is often given to the interest of minors belonging to the applicant's family, by virtue of the principle of superior interest of the child. For example, the presence of minors in the territory, their attendance of public schools and general integration in the society, will prevent the parent's expulsion. This is further supplemented by another option, namely the 'permit of stay for assistance of a minor', which is issued to the family member of a minor who is in the Italian territory, upon authorization of the Juvenile Court. It allows you to carry out working activities and when it expires it can be converted into a permit for work reasons.

Furthermore, the right to special protection has been jurisprudentially recognised for applicants who, although lacking relevant indicators of family, social and work integration in Italy, can prove the presence of precarious health conditions which, in case of repatriation, would expose the applicant to a situation of evident vulnerability and would constitute an infringement of the right to health (e.g. Ordinance of the Special Tribunal for Immigration of Milan of 14 April 2021; Decree of the IX Civil Section of the Court of Turin of 6 October 2021).

While the special protection can be understood as a positive step to ensure human-rights based protection of migrants, however, its application in practice can be problematic. In particular, since specific guidelines on the criteria for its release are missing, its issuance is often discretionary and aleatory (especially when it is requested in 'Questura', *i.e.* at the local police headquarter). Clearer criteria to establish, for example, the condition of 'effective social inclusion in Italy' would help create a fairer and more accessible system.

Another shortcoming is that, while the scope of the special protection is generally broader and more inclusive than that of the previous humanitarian protection, there is at least one category of migrants who are left out by the new type of permit – namely, environmental-related migrants and so-called 'climate refugees'. Under the previous humanitarian protection, a temporary right to stay in Italy was to be granted to migrants who left their country of origin due to environmental disasters, climate change and humanitarian emergencies other than war (which would be covered by international protection). The permit would be subject to renewal and could be turned into a work permit of stay. The new special protection, instead, does not appear to be able to capture this growing category of migrants and asylum seekers. As previously flagged by You, the lack of protective frameworks for climate and environment-related migrants is a serious gap in the international protective system.