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**National Guarantor
for the Rights of Persons
Detained or Deprived
of Liberty**



Report to Parliament

2017

CREDITS

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During a year of activity

2016

February

1

The National Guarantor for the Rights of Persons Detained or Deprived of Liberty is

appointed. The President of the Italian Republic appoints Mauro Palma and Emilia Rossi, respectively, Chairman and Member of the National Guarantor for the Rights of Persons Detained or Deprived of Liberty's Board. It is the first step towards the implementation of the newborn Institution.



3

The body of Giulio Regeni is found. The dead body of Giulio Regeni, an

Italian student, is found in Cairo. The young student disappeared on 25 January, on the fifth anniversary of the popular protests in Tahrir Square. The body was found with signs of torture. Italy is asking to shed some light on the circumstances.



5

Attacks on Aleppo: thousands of Syrians have escaped.

Thousands of Syrians have abandoned their homes in the territories under the rebels' control in the Aleppo area, after Bashar al-Assad's offensive, backed by Russia. 60 thousand Syrians are prompted to flee.

19 **The Commissioner for the overcoming of the Judiciary Psychiatric Hospitals**

(OPG) is appointed. The Council of Ministers appoints Franco Corleone Commissioner for the overcoming of the Judiciary Psychiatric Hospitals. His mission is to shut the doors of the Judiciary Psychiatric Hospitals in Piedmont, Tuscany, Veneto, Abruzzo, Calabria and Apulia and to guarantee the opening of the REMS, health residential facilities for the implementation of security sanctions in each Italian region.

March

3 **The appointment of the Board members of the National Guarantor for the Rights**

of Persons Detained or Deprived of Liberty has ended. The President of the Republic has appointed Daniela de Robert as the third member of the National Guarantor. Thus, its board is fully-fledged and operational.

7 The National Guarantor's first visit. The National Guarantor is carrying out its first visit to the Trapani hotspot, during which the Guarantor has acted as an institution for the safeguard of peoples deprived of their personal liberties. This activity also sets up its cooperation with the Ministry of Home Affairs.

8 The meeting with the Standing Committee on the evaluation and implementation of Schengen The National Guarantor meets in Rome with the Schengen Committee for debating on Italy implementation of the 2008 European Directive on Immigration.

 **9 The Council of Europe closed the pilot judgment procedure against**

Italy for overcrowding in prisons. The Committee of Ministers is closing the examination of the Torregiani and Sulejmanovic cases, the two pilot judgments delivered versus Italy by the European Court of Human Rights in 2009 and 2013 for insufficient living space accorded to prisoners in detention cells – less than 3 sq m of personal space. In the decision, the Committee of Ministers positively welcomed “the response given by the Italian authorities to the Torreggiani and Others pilot judgment through the adoption of major reforms aimed at solving the problem of prison overcrowding and the significant results achieved to date in this area”.

14

First coordination meeting of the regional Guarantors led by the National

Guarantor Held in Rome the first meeting, which gives way to the coordinating activity of the regional Guarantors. The National Guarantor introduces his office.



20

EU-Turkey statement on migration flows Enters into force the

statement between the European Union and Turkey to stop flows of migrants and refugees towards Europe. The agreement foresees the return of all migrants irregularly arriving in Greece, the relocation to Europe from Turkey of 72,000 Syrians, following the “one in, one out” principle (for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU), the visa liberalisation for the Turkish citizens, the disbursement of 3 billion euros supporting funding to Turkey.



22

Brussels bomb attack Brussels is under attack. Two bombings in

Brussels Zaventem airport, with 10 casualties. After a while, another bomb strikes in a metro convoy in Maalbeek, very close to the European Commission main building: 20 victims. The two attacks, for which ISIL has claimed responsibility, have stricken the heart of Europe.

April

2

Ad hoc visit to the PI in Oristano The National Guarantor delegation is visiting the high security units at the “Oristano-Massama” prison after having received reports highlighting multiple structural concerns, space management issues and rehabilitation activities.

4

Meeting with the High Security prisoners held at the PI in Padua Mauro Palma and Daniela de Robert meet some inmates held in the high security unit in the “Padua - Due Palazzi” prison. The meeting has been promoted by the prisoners’ journal “Ristretti Orizzonti”.

4

Meeting with the *Granello di Senape* association in Venice Meeting with the *Granello di Senape* association to establish cooperation with the National Guarantor.

5 **Ad hoc visit to the PI Santa Maria Maggiore in Venice** A National Guarantor's delegation visits the Venice prison to assess the structural conditions of the establishment and the hard relationships with the community and local bodies.

10-15 **First National Guarantor's regional visit: the Calabria region** The National Guarantor has chosen the Calabria region to be the first scheduled regional visit. In addition to visits to prison facilities for adults and youth offenders, the National Guarantor has paid visit to some police detention cells. The visit has been the occasion for institutional meetings with the head of the regional council Cabinet, the extraordinary Commissioner of Health, the city of Catanzaro mayor.

12 **Meeting with the Antigone association** The National Guarantor meets the *Antigone* association to establish some cooperation relationships.

15 **Meeting with the Commander General of the "Carabinieri" Corps** Meeting with Tullio Del Sette, Commander General of the "Carabinieri" Corps. The National Guarantor introduces its activities and outlines the main aspects of their cooperation concerning the detention cells managed by the "Carabinieri".

18 **Second coordination meeting of the regional Guarantors** It is held in Rome the second meeting of the National Guarantor with the regional Guarantors to outline the critical events detected in the various regions.

18-19 **The National Assembly on the execution of sentences ("Estates-General") ends up its activities.** The National Assembly on the execution of sentences wraps up on its working activities with a two-days meeting held at the "Rome – Raffaele Cinotti" prison auditorium. A year, which has seen more than 200 prison practitioners, experts, and representatives from the Third sector outlining the guidelines for a reform of the Prison Act.



20 **Breivik wins his lawsuit against his lengthy solitary confinement** The Oslo court ruled that Anders Breivik, the mass killer on island of Utøya in

2011, in which 77 people were murdered, has been “subjected to inhuman or degrading treatments”, for his long-term solitary confinement of almost five years.

May

2 Visit to the family-centered group homes for incarcerated mothers in Rome

A National Guarantor’s delegation visits the facility which the city of Rome, together with the Prison Service, has destined to the reception of incarcerated mothers with children. The facility, being the first one in Rome, is about to be fully equipped and furnished

6 Ad hoc visit to the PI in Trento

A delegation of the National Guarantor visits the prison institution in Trento, after press released news. As per received news, the Guarantor lodges a complaint with the public prosecution office.

7 Visit to the gay-housing unit at the PI in Gorizia

A National Guarantor’s delegation visits the gay-housing unit at the prison institution in Gorizia, reported as a unit at risk of discrimination.

10 The Justice Secretary, Andrea Orlando, meets the National Guarantor

The Secretary of State for Justice meets the National Guarantor Board. The visit is the occasion to report on the first implemented visits at the prison establishments and on the Guarantor’s action lines.

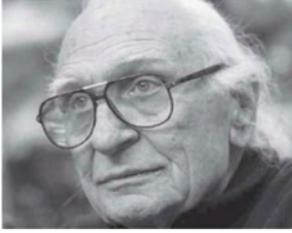
17 Visit to the mental health and patient safety unit in Lecce

The National Guarantor visits the mental health and patient safety unit at the prison institution in Lecce, so to evaluate its material conditions and foster, before its launch, the adoption of a protocol with the local health service.

19 First forced return monitoring by a chartered flight

A National Guarantor’s delegation carries out a forced return monitoring to Tunisia. The forced returnees are all Tunisian nationals, who firstly arrived in Lampedusa. Before flying to Hammamet, the flight arrives in Palermo, for an assessment with the Tunisian Council. The delegation follows all the phases until returnees are entrusted to the Tunisian Authorities

19 **Meeting with the Association for the Prevention of Torture (APT) in Rome** A delegate from the Association for the Prevention of Torture (APT) meets the National Guarantor. A cooperation relationship is established between the two.



19 **Marco Pannella has died** Marco Pannella, founder and leader of the radical party, has died at the age of 86: well-known for his fights for civil rights, against the death penalty and the respect for the human rights of detainees.

23 **Ad hoc visit to PI Bollate in Milan** Visit to the PI Bollate in Milan. A delegation meets a single prisoner to verify the conditions emerging in various reports.



24 **Greece is dismantling the occupied refugee camp in Idomeni** Greece has started operations to evacuate around 8,400 migrants, coming from Syria and Iraq. They had encamped in Idomeni, close to the Macedonian border. 400 officers have been involved. The evacuation has been carried out peacefully.

26 **First forced return monitoring by a commercial flight** A National Guarantor's delegation performs the first forced return monitoring of a Peruvian national, on a commercial flight. The monitoring is also an opportunity for visiting the police premises at the Fiumicino airport.

26 **Ad hoc visit to PI in Paliano** Visit to the prison institution in Paliano where a variety of rehabilitation activities are delivered, such as working, cultural and recreational.

31 **Third coordination meeting of the regional Guarantors** The third coordination meeting with the regional Guarantors is held, with the participation of Santi Consolo, the Head of the Prison Department Administration. The agenda foresees the discussion on the

Residences for the Execution of Security Measures (REMS) and the safeguard of health in prison.

June

7

Launching of the National Guarantor website The National Guarantor's website www.garantenpl.it is launched. In addition to pieces of information on the Guarantor and its activities, reports after visits and recommendations to the institutions are here published.

9

Our President of the Republic Sergio Mattarella, meets the National Guarantor

The President of the Republic, Sergio Mattarella, welcomes the National Guarantor Board. It is the first meeting after the Guarantor's appointment: an official investiture and an institutional confirmation.

14

Meeting with the National Guarantor for Children and Adolescents The

National Guarantor meets Filomena Albano, to set up some cooperation relationships.

16

Meeting with the associations *Lasciateci entrare*, *Carta di Roma* and *Usigrai*

The National Guarantor meets representatives from the associations for discussing on mass media restricted access to facilities housing migrants.

20-21

Visit to the Immigration Detention Centre (CIE) in Brindisi and to

the hotspot in Taranto First visit to facilities housing migrants. In Brindisi, a delegation is visiting the CIE: many critical issues have been reported, both relevant to the structure and information access.

21

Prison officers' training The National Guarantor and its activities are introduced

at the training course addressed to staff working at prisons' ID office, programmed by the Prison Administration Department. The Guarantor has shown a video on the officers' training on the role of the National Guarantor (to be used also in other training activities).



23

Great Britain votes to leave the European Union After the

Leave victory, Great Britain prepares for leaving the EU. Political crisis and shock waves reverberated through financial markets and global economy.



28

Bomb attack at the Istanbul airport. Two suicide

bombers blow themselves up at the Atatürk airport in Istanbul. Around 40 victims and 140 injured. It is reported a Jihadi group of at least seven terrorists was responsible for the terror attack. Flights to/from the Turkish airport are cancelled.

28/6-5/7

Interregional visit to the “Triveneto” The National

Guarantor visits the regions of Veneto, Trentino Alto Adige and Friuli-Venezia Giulia. During the visit, it carries out the first follow-up visit to PI in Gorizia: the general prison climate appears improved, while there is still a risk of isolation and exclusion for prisoners in the gay-housing unit.

28-29

Frontex training meeting in Warsaw An in-depth study on forced

return monitoring practical methodologies and a broaden exchange of best practices are at the heart of the meeting, promoted by Frontex in Warsaw, which sees the participation of National Preventive Mechanisms from different countries and other stakeholders.

July



14

Terror attack in Nice Massacre in Nice. Along the

Promenade des Anglais, a truck is driven at high speed into a crowd celebrating the 14th of July national day celebration: 84 victims, 18 heavily injured. ISIL claims responsibility for the attack.

14 **Frontex flight monitoring** First monitoring on a joint return flight of Nigerian nationals, organised by Italy and coordinated by Frontex, with the involvement of Belgium and Switzerland.

21 **New forced return monitoring in Tunisia** A National Guarantor's delegation carries out the monitoring on a chartered flight of the Ministry of Home Affairs for the return of some Tunisian nationals.

28 **Ad hoc visit to PI Regina Coeli in Rome** Visit to the VIII unit of the PI Regina Coeli in Rome. The unit is in highly deteriorated conditions.



29 **Alessandro Margara has died** Judge Alessandro Margara has died at the age of 86. He has been inspiring the Prison Act reform, which is acknowledged one among the most modern prison reforms in Europe.

August

1 **Visit to the mental health and patient safety unit in Civitavecchia** Together with the Director-General of the local health service, a National Guarantor's delegation visits the mental health and patient safety unit at the prison institution in Civitavecchia.

2 **Meeting with the President of the Chamber of Deputies** The President of the Chamber of Deputies Laura Boldrini welcomes the National Guarantor Board. She shows interest and appreciates all activities so far implemented, in such sensitive environments, as that of the deprivation of liberty and of migration.

2 **Nessuno tocchi Caino** The National Guarantor meets the Association *Nessuno tocchi Caino* so to set up some cooperation relationships.

3 **Call for candidates** The National Guarantor is launching a call for candidate to recruit staff. The Office is enlarging to 16 units.



6 **Tension in Ventimiglia** Escalating tension between police, migrants and no borders. A demonstration by activists has been blocked. A policeman dies of heart attack.

11

Ad hoc visit to PI in Arezzo The National Guarantor's Chair, Mauro Palma, together with Alessandra Guidi, chair of the Arezzo province, visits the prison institution to assess the state of the art of structural renovations of which most units are unusable.



24

Earthquake in Amatrice (Abruzzo). An earthquake devastates Amatrice and the surrounding areas. 250 casualties and hundreds injured.

September

8

Meeting with the Chief of National State Police The National Guarantor meets Franco Gabrielli, chief of police, to present the Guarantor's activities in the field of deprivation of liberty.

13

Ad hoc visit to PI in Cuneo Visit to the prison institution in Cuneo, to the wing which was firstly hosting inmates under the 41bis prison regime. This wing has been lately discarded, due to its inadequacy and then reassigned, in the same conditions, for the use of high security inmates.

15

Meeting with the Chair of the Inter-ministerial Committee on Human Rights (CIDU) Meeting with Fabrizio Petri, chair of the *Inter-ministerial Committee on Human Rights*, to establish cooperation relationships.

15

Meeting with cardinal Gianfranco Ravasi The National Guarantor meets the Chair of the Pontifical Council for Culture, Gianfranco Ravasi.

18-19 **Training seminar in Verbania** The first National Guarantor's training seminar is held in Verbania: forced returns and respect of human rights; the asylum system in Europe, the Italian legislation on refusals of entry and expulsions.



19 **UN General Assembly on migrants and refugees**

For the first time the UN General Assembly is meeting to talk of the migrant crisis, and agree on a plan to face together common challenges.

20 **Ad hoc visit to PI in Verbania** On the occasion of the training seminar, the National Guarantor visits the local prison institution.

October

3 **Visit to the hotspot in Lampedusa** A National Guarantor's delegation visits, with some journalists, the hotspot in Lampedusa on memorial day of the 2013 shipwreck.



7 **The Nobel peace prize is awarded to Juan Manuel Santos** The Nobel

Norwegian Committee awards the peace prize to the Colombian President Juan Manuel Santos for his "decisive efforts" in ending a ten-year conflict with the FARC. The prize is dedicated to all who have fought with him for peace, during the years.

12 **Meeting with the President of the Senate** First meeting with the president of the Senate Pietro Grasso. The National Guarantor Board presents the work done.

13-14 **Participation in the Osce NPM meeting in Vienna** A National Guarantor's delegation participates in an evaluation initiative on the preventive mechanism

introduced by the Optional Protocol to the Convention against Torture (OPCAT), after ten year from its adoption.



13

Antonio Gutierrez is appointed UN general secretary The UN

general Assembly chooses Antonio Gutierrez, former Prime Minister of Portugal and an ex-Refugee High Commissioner, as the ninth UN secretary. He is the first European to hold this task.

16

Ad hoc visit to PI in Voghera After some reports arrived at the Guarantor's office,

the Guarantor pays a visit to the prison institution in Voghera to verify the conditions of an imprisoned person.

16-21

Regional visit to Liguria The Liguria region, which is lacking the

regional Guarantor, is the one chosen for a new National Guarantor's visit. Due to its geographical position at the border, the attention is focused on the high percentage of foreign nationals in prison and on its territory, with a targeted visit to Ventimiglia and Campo Roja.



24

The "Jungle" in Calais is dismantled The big tent-

camp evacuation in Calais- France is started. It is hosting around 6,000 migrants, among whom women and many minors. The evacuation lasts a week time.

29

Meeting with the disabled inmates in Parma Visit to the wing hosting disabled

inmates in the prison institution in Parma.



31

Earthquake in Umbria and Marche A night of fear in

Umbria and Marche. A 6.1-6.5 magnitude earthquake makes the earth shake again. Hundreds of building collapses and around twenty injured people are reported.

November

2

Meeting with the Union of the Italian Penal Chambers (UCPI) The National Guarantor meets the Union of the Italian Penal Chambers Association to establish cooperation relationships.

3

Second monitoring on a Frontex flight to Nigeria Second monitoring on a joint return flight of Nigerian nationals, organised by Italy and coordinated by Frontex. On board some migrants from Belgium, too.



3

New shipwreck off the coast of Lampedusa Still another shipwreck off the island of Lampedusa: dispersed 239 people in a boat, which has sailed from the Libyan coasts with bad weather conditions. Five ships arrived to rescue survivors, who were then moved to the island.

6

The regional Guarantors' meeting dei Garanti regionali A new meeting with the regional Guarantors to explain on the possibility of becoming part of the National Preventive Mechanism (NPM).



6

The Jubilee of prisoners Pope Francis celebrates the Jubilee of prisoners' mass in St. Peter's. More than a thousand prisoners are attending: «In prison, let respect for the human dignity become higher».

7-17

Participation to the escort training course in Nettuno Two employees of the Guarantor's office participate as inspectors in the "12th training course for National Police officers to be employed in escorting services during repatriations". The course is held at the Training school for Inspectors of the National Police in Nettuno. At the course, the Guarantor is giving a lecture on the respect of fundamental rights during force return operations.

9 **Visit to the high security women inmates in PI in Latina** A National Guarantor's delegation visits the high security wings for women in the prison institution in Latina.

16 **Cortile dei Gentili** The National Guarantor's speech during the initiative *Il cortile dei Gentili*, on the topic "Punishment and Hope".

22 **Training meeting at the Police Academy** Chair Palma lectures on the National Guarantor and the protection of fundamental rights to the police senior officers.

22 **Ad hoc visit to YOI in Bologna** The YOI "Pratello" in Bologna is visited to verify the facility structural and overcrowding conditions.

22 **Ad hoc visit to PI in Ivrea** The visit carried out at the prison institution in Ivrea highlights difficulties in relationships between prison direction, prison police and inmates. Some situations are under the attention of the public prosecutor office.

23 **Training meeting of medical staff working in facilities for migrants – Catania** Training meeting with some doctors working in facilities for migrants. The National Guarantor lectures during the course on "Health care and migration: a trans-cultural approach", promoted by the European project CARE – Common Approach for Refugees and other migrant's health.

24 **Training seminar on the Muršić judgment** The National Guarantor is setting up a seminar on the Strasbourg ECHR Grand Chamber judgment on the case *Muršić v. Croatia*. The judgment redefines the assessment standards for violations of art. 3 of the European Convention on Human Rights in penal settings.

25 **Meeting with the National Forensic Council (CNF)** The National Guarantor has started, together with the National Forensic Council the drafting of a Mutual Implementation Protocol.

28 **Regional visit in Campania** A scheduled National Guarantor's visit to a part of the Region Campania. For the first time, the Guarantor visits a military prison (in Santa Maria Capua Vetere) and a family-centered group home for imprisoned women in Avellino.

28

Follow-up visit in Venezia The National Guarantor visits the prison institution in Santa Maria Maggiore for a follow-up. Some critical conditions still continue.

December



4

Van de Bellen in the new Austrian President The Republic of Austria appoints its new President. It's Van de Bellen, a strong pro-European economist and academic. While claiming his refugee roots, he declares that he will go ahead in his commitment aiming at supporting freedom, equality and solidarity principles.

5

First training course addressed to student judges The National Guarantor lectures at the first group of 50 student judges during the Ministry of Justice internship.

6

Meeting on the new Frontex regulation Participation of a representative from the National Guarantor Office in the *Fundamental Right Officer* seminar on the new regulation promulgated by Frontex.

7

A delegation from the Albanian National Preventive Mechanism (NPM) meets the National Guarantor The Albanian autonomous and independent Ombudsman and its Board meet the National Guarantor's staff. The Albanian delegation participates in the final day visit in the region Campania. With the Ombudsman, who also has NPM functions, the National Guarantor establishes a cooperation relationship.



12

The new executive Gentiloni is appointed In the aftermath of the no victory referendum result on constitutional reforms and the resignation of the prime minister Matteo Renzi, Paolo Gentiloni is appointed as the new prime minister.



13

The Calais wall is completed

The “Great anti-migration Wall of Calais” has been erected in three months. It has been programmed and funded by UK, with France backing the operations.



13

Aleppo under siege

A never-ending agony for the capital in Northern Syria. Government forces are about to retake control over Aleppo. Reported terrible abuses on civilians, still trapped inside the town.

14

Meeting of the local Guarantors Coordination meeting of municipal, provincial and regional Guarantors.



19

Berlin attack

A truck is driven at high speed into a crowd at the German capital's Christmas market. 12 victims and many more injured. Very high terror threat levels around Europe.

21

Meeting with the Undersecretary for Health

Meeting with the Undersecretary for Health Vito De Filippo. The National Guarantor Board describes its mandate regarding the protection of the right to health of people deprived of their liberty.

January

1

Istanbul attack Tragic bloody New Year's Eve in Ortaköy - Turkey on the Bosphorus rivers. A hooded man opens fire on a crowd in a nightclub: 39 victims and at least 70 injured.

10-13

New seminars with judges The National Guarantor is holding other training meetings with over 200 student judges from the Ministry of Justice.

13-19

Visit to the hotspots and the Immigration Detention Centres (CIE) in Sicily and Piedmont The National Guarantor ends up its visit to all hotspots and Immigration in the country. In Sicily, it also visits the "hub" of Villa Sikania. During its stay in Lampedusa, the delegation follows rescue operations after a shipwreck off the shores of the island of Lampedusa.

14-19

Thematic visit at police stations During the visit to the hotspots and CIE, a delegation visits the detention cells managed by the Police; in particular, the police headquarters of Caltanissetta and Trapani, the "Carabinieri" station of Pozzallo (RG), the police station San Paolo in Turin.



20

Donald Trump is the new US President Donald Trump signs as US President. In his inaugural address, he talks of the nation's re-launch, unemployment and of the necessity to defend US borders.

20

Monitoring of a Frontex return flight to Lagos New monitoring on a return flight of Nigerian nationals, organised by Italy and coordinated by Frontex.

February



2

The French National Police assaults a young man from

Paris suburbs. Riots in the French suburbs after a young man was arrested and assaulted by Police officers in Paris.

3

Louvre terror attack In Paris a man tries to enter the Louvre Museum armed with a machete. Soldiers respond to the attack and the aggressor is wounded.

6

Meeting with SIMsPE First dialogue between the National Guarantor and the *Italian Society for prison medicine and health care* in view of a cooperation relationship.

7

Meeting with the mental health Forum The National Guarantor meets the mental health Forum on the issues linked to the protection of mentally ill people's rights and on the monitoring activity on the Involuntary treatment (TSO).

8

Meeting with the Italian Association of Young Lawyers In Cosenza, the National Guarantor meets the Italian Association of Young Lawyers to establish a cooperation relationship.

9

Visit to a therapeutic community A National Guarantor's delegation visits the therapeutic community *Sorella Luna* in Santa Maria di Galeria (Rome) in the framework of the monitoring activity on detention facilities.

14

Opening ceremony of the judicial year of the National Forensic Council

(CNF) The National Guarantor participates in the opening ceremony of the judicial year celebrated by the National Forensic Council.

14

Meeting with the NPM Observatory in Paris The National Guarantor participates in the meeting with the National Preventive Mechanism Observatory.

15 **Meeting with the Supervisory judges in Rome** Chair Mauro Palma meets the judges of the Supervisory Court and its Acting Chair in Rome.

16 **Study day to the Court of Appeal in Rome** A study day on “Immigration, integration and terrorism” promoted by the AREA judge association at the Court of Appeal in Rome.

17 **Meeting with the Head of Cabinet at the Ministry of Home Affairs** Meeting with the Head of Cabinet Mario Morcone and the Head of the Department for Civil Liberties and Immigration Gerarda Pantalone to outline forms and modalities of cooperation in the field of the Guarantor’s monitoring activity.

23 **Monitoring of a Frontex return flight to Lagos** Fourth monitoring on a return flight of Nigerian nationals, organised by Italy and coordinated by Frontex.



A guaranteeing institution

In Italy, the recently established National Guarantor for the Rights of Persons Detained or Deprived of Liberty places itself in an international framework, which is increasingly attentive to prevent situations that may evolve in a lack of protection of the individual rights of restricted persons, rather than the even-though-inevitable reaction to detrimental behaviours, which have already occurred.

Its appointment is bringing to completion a multi-leveled system of protection through a network of monitoring and preventive mechanisms in global, European and national fields.

The international environment

1. Monitoring for preventing

The National Guarantor is a collegial independent Authority safeguarding the rights of persons deprived of their liberties.

The National Guarantor is a collegial independent Authority safeguarding the rights of persons deprived of their liberties. It follows the example of the Ombudsman, which the Swedish Constitutional Law provided for the first time in the nineteenth century (*Regerisform*, 6th June 1809): it is a forerunner of all guaranteeing institutions granting protection to citizens against abuses and irregularities by the Public Administrations. During the years, some ‘thematic’ Ombudsmen have developed, especially in situations in which the individual’s vulnerability is wider when concerning its relationships with the State, indeed as in the whole field of the deprivation of personal freedom. Italy has come to establish the National Guarantor at the end of an action which started in 1997. Its crucial stages were primarily the implementation of experimental local bodies – therefore called *Garanti territoriali* [*Territorial Guarantors*] – which aims were to promote, stimulate and control: they were gradually defined by regional laws; secondly, the Action Plan, which was drafted in response to the Strasbourg Court’s “pilot judgment” in the case *Torreggiani and Others v. Italy* (8 January 2013). Finally, the Italian ratification of the Optional Protocol to the UN Convention Against Torture, when, as well known and taken into consideration afterwards, each State Party had to establish an independent national mechanism

to examine the treatment of the persons deprived of their liberty in places of detention as well as their fair conditions. These three stages have gradually led to the definition of the National Guarantor and its legislative framework.

The Guarantor can be seen within that large-scale groove which involves the entire international community, where earlier mechanisms promoting and protecting human rights have been present for years

Been established by a Decree-law at the end of 2013, the National Guarantor becomes operational only in March 2016, after the President of the Republic had appointed its Board and set up its Office. A set of laws has defined it an independent mechanism, which *a*) carries out a non-judicial control on all places restrictive of personal liberties, *b*) can start a process on its own, while attempting to intervene *ex-ante* in situations and contribute in overcoming current issues, *c*) provides recommendations in a cooperative manner.

From this standpoint, the Guarantor can be seen within that large-scale groove which involves the entire international community, where earlier mechanisms for the promotion and protection of human rights have been implemented since years, especially those responsible for the prevention of torture and inhuman or degrading treatment or punishment, and for monitoring over the strict prohibition of those practices.

Indeed, both the *UN Committee Against Torture* (hereinafter referred as CAT) and the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (hereinafter referred as CPT) date back to the 1980s. The *UN Convention against Torture and other cruel, inhuman or degrading Treatment or Punishment*, concluded in New York on 10 December 1984, has designated the CAT as a *monitoring body*. In Article 1, this Convention opens with its meant by the word torture: it is a definition, which many countries - except Italy - will use to delineate torture as a crime in their Penal Code. Thus, the Committee is established to monitor the implementation of the provisions included in the Treaty: mainly, it is still a proactive body, which acts on complaints - if it receives credible information about the practice of torture in a State Party, works closely with other States and respects confidentiality obligations; however, it has no power to visit detention centres on a regular basis.

This last progress happened within the Council of Europe, where the Committee of Ministers adopted the *UN Convention against Torture and other cruel, inhuman or degrading Treatment or Punishment*, on 26 June 1987, which came into force on 1 February 1989 and established the CPT, the true archetype of the National Guarantor. Indeed, the CPT constitutes an independent, non-judicial (it acts side by side with the European Court of Human Rights, and provides a complement to it), preventative mechanism (it intervenes in advance to contribute in reducing any possible critical effects) that acts in its own name and provides recommendations, then, a standard mechanism. The CPT monitors a variety of detention centres through a regular system of visits, and has unrestricted access to places information and persons. Its activity is based on the principle of cooperation with the Authorities of the Member States and it is inspired by a strict duty of confidentiality. The States Parties are required to establish a constructive dialogue with the CPT, thus to consider its recommendations: if they do not cooperate or follow its recommendations, the Committee can release confidentiality and make a *public statement*.

Over the years, this model has proven to be so effective that UN has replicated and made it stronger all over the world. The UN General Assembly adopted the *Optional Protocol to the Convention against Torture*

and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred as OPCAT) on 18 December 2002, entering into force on 22 June 2006 (as regards Italy, on 3 May 2013). Within the CAT, a further Committee of Experts has been designated by the Optional Protocol called *Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (hereinafter referred as SPT). It broadly mirrors the CPT model, but the number of States Parties is significantly higher (83 countries ratified the OPCAT, by the time this report was drafted). The Protocol, therefore, has required the Member States to establish a *National Preventive Mechanism* (hereinafter referred as NPM), which is an independent body having the same powers and functions as the Subcommittee. Thus, it has unrestricted access to documents, places and persons so to keep constant observation and control over places where individuals may be deprived of their liberty, in order to detect their critical aspects and remove their causes before the situation evolves negatively.

Hence, in Europe a three-level system for protecting persons deprived of their liberties has been accomplished. At national level the NPM, at regional and European level the CPT, at global level the SPT: they all share the same objectives and achieve the needed consistency in adopted standards. Italy indicated the National Guarantor for the Rights of Persons Detained or Deprived of Liberty as its own NPM.

2. Article 3 – ECHR. Negative and positive obligations

In the Council of Europe, the European Convention on Human Rights (ECHR) has a core role, and inside it, its Article 3 fixes a crucial principle, which is translated in an absolute and binding obligation: «No one shall be subjected to torture or to inhuman or degrading treatment or punishment». Never, in no case and for no reason. Neither for preventing the perpetration of crimes (*Tyler c. UK*, 1978) or for saving the life of other persons (*Gäfgen v. Germany*, 2010).

The European Convention on Human Rights (ECHR) has a core role, and inside it, its Article 3 fixes a crucial principle, which is translated in an absolute and binding obligation: «No one shall be subjected to torture or to inhuman or degrading treatment or punishment».

The ECHR Article 15 explicitly excludes possible derogations from Article 3, while allowing the Member States to temporarily derogate from obligations under the Convention in time of war or other public emergency threatening the life of the nation. Thus, respecting the prohibition made clear in this article is an overriding obligation.

Nevertheless, its language is rather general: it has no specific category, also in order to avoid the exclusion from the obligation of new or scarcely conceivable cases during the drafting of the Convention. The Court case-law explains the meaning of torture

and other cruel, inhuman or degrading treatment or punishment, in accordance with the ECHR case system. Although they are not clearly distinguishable in the ratified text, these three terms remind us of a variety of implications in inflicting pain on a person deprived of his liberties. Some conceptual terms, which are held together by their severity and absolute unacceptability: however, the first one refers to an intention, the others result from some contributory causes that are excluding any strong will of inflicting pain. Recently, this aspect has been particularly stressed in the Court case-law, where the violation was evident, even without intention, as result of situations, objectively exceeding the level of pain, physiologically inherent to allowed punishment or degrading treatments. In these cases, the Court held that detention conditions

indeed were triggering anguish and humiliation, so to cause feelings of suffering, fear, inferiority and degradation of the inmates' personality. In particular, these developments in the case-law led over time to consider some forms of prison overcrowding as a proof in violation of Article 3, and to consider the strong inadequacy of the living space per prisoner as inhuman or degrading treatment (the most recent judgment being from the Grand Chamber, *Muršić v. Croatia*, 20 October 2016).

The obligations imposed by this article are not limited to those negative ones, expressed in the prohibition of inflicting torture and punishments or inhuman or degrading treatments, but rather they develop in a positive dimension.

Member States are stringently obliged to pursue reported violations, through adequate legal provisions and prompt effective investigations, and verified violations, through punishments consistent with the severity of the breach. Moreover, it requires stringent obligations to prevent them from happening.

This dimension requires that Member States are stringently obliged to pursue reported violations, through adequate legal provisions and prompt effective investigations, and verified violations, through punishments consistent with the severity of the breach. Moreover, it requires stringent obligations to prevent them from happening. To that aim, the State must put in place an internal system of remedies, with preventive and compensatory effect, which can stop breaches and address any harmful outcome. Regarding Italy, this dimension powerfully emerged in the case of the said “pilot judgment” *Torreggiani v. Italia* and our Country has responded by providing remedies in Articles 35-bis and 35-ter of its Prison Act, and achieving a positive evaluation from the Council of Europe for having complied with the Court requests. In this preventive situation, the National Guarantor for the Rights of Persons Deprived of their Liberties finds its reason for being established.

3. The Return Directive and the infringement procedure

The judgment of the Strasbourg Court was not the only sentence, which set questions and deadlines to our Prison Act and required interventions to redefine its own regulatory institutions. In the EU context, Italy has recently dealt with the full transposition of some directives, particularly in relation to the European migration policy. The adoption of Directive 2008/115/of the European Parliament and of the Council of 16 December 2008 on “common standards and procedures in member states for returning illegally staying third-country nationals” provoked much controversy in Europe. By some people, said Directive was considered as expression for a “Fortress Europe”, implicitly declining applications from persons fleeing from war, environmental disasters and unsustainable conditions and migrating to the European Union. That EU, which had already envisaged the “Right to life” in Title I - *Dignity* of the Charter of Fundamental Rights, thus reiterated that each individual has the right not only to have his biological life respected, but also to live in dignity.

Others noted that, although it was provided that a foreign national, who is the subject of a return procedure, could be held up to eighteen months, this time limit was established to put a remedy to existing situations in Countries, which Prison Act did not have provisions for a maximum time limit as regards that type of liberty deprivation.

Even in the difference of views, a mutually agreed element was the positive evaluation on the provision for an independent and effective monitoring system for forced returns (Article 8, paragraph 6). Italy has transposed the Directive in its national set of rules through the Decree-Law 89 of 22 June 2011, converted with amendments into Law 129 of 2 August 2011. However, this independent monitoring system was not established in parallel. The European Union started an infringement procedure (2235/2014) against Italy in 2014, also in relation, among others, to the incorrect transposition of the Return Directive. Mainly, the European Commission observed the inadequacy of the monitoring system, in particular in terms of independence of the provided body with respect to the Executive.

As meanwhile the National Guarantor was established by Decree-law 146 of 23 December 2013, converted with amendments into Law 10 of 21 February 2014, as an Authority independent from the Executive, which annually reports to the Parliament, Italy assigned to this new institution the task of establishing the forced return monitoring system.

The National Guarantor must ensure that all forms of deprivation of liberty are enforced in accordance with the Constitutional Charter, with the International Conventions on Human Rights, ratified by Italy, with rules and regulations. Thus, the National Guarantor must also verify the respect of fundamental rights of third-country nationals, who are subject to measures restrictive of their individual liberty, restricted in detention centres or compulsorily deported. This function was also reconfirmed in the provision recently adopted by the Government (Decree-law 13 of 17 February 2017) which restates the Guarantor's power of access and verification process, and increases the number of facilities for people held under deportation orders. The forced return monitoring function of is, thus, inserted in the guaranteeing institution's legislative framework.

Since March-April 2016, the monitoring activity has been started, while also implementing a complex set of actions aiming at defining all contexts in which of reception, support to voluntary returns and actual implementation of forced returns are occurring. Therefore, at this time, there are all preconditions for closing the infringement procedure, as regards this aspect.

4. Positively getting out of procedures and judgments

Although they considerably differ from one other, the two parallel events - one regarding the obligations deriving from a treaty concerning the protection of fundamental rights and freedoms, such as the ECHR, the other relevant to an unanimously made commitment in terms of Directive for all EU Member States – they show how supranational indications can become the driving element towards positive changes in national legislations. Even when these indications do take the form of a judgment, as in the case of the “pivot judgment” in 2013, imposing on Italy the development of an *Action Plan* to remedy some structural shortages of its own detention system.

The Committee of Ministers of the Council of Europe decided to close the execution of the judgments of the European Court of Human Rights concerning prison overcrowding by adopting the Resolution

CM/ResDH(2016)28, on 8 March 2016, after having positively assessed the enforcement of the *Plan* introduced in the six months after the judgment. Mainly, the reasons for this decision were up to the achieved reduction of the gap between prison population numbers and place capacity of the prison system, and to the establishment of “a system of domestic remedies, preventive and compensatory, as requested by the Court. However, a strong point of this *successful result* has been the establishment of a national independent monitoring mechanism on penal facilities”, which was positively acknowledged by the Committee. Thus, indeed, the National Guarantor, which last board member was appointed some days before (on 3 March), and was about to be fully operational a couple of weeks later (on 25 March).

Indeed, if the well-known *Torreggiani* “pivot judgment” had the merit of highlighting a systemic and structural issue regarding prisoner numbers and shortage of effective domestic remedies, Italy had treasured the guidelines provided by the Court and triggered a reform, which horizontally crossed the execution of sentence system. In fact, after the final sentence, the Prosecutor established a committee with the task of drawing up an Action Plan required by the Court. In the aftermath of the final judgment, in fact, the Ministry had established a Commission to draft the Action Plan requested by the Court. This plan was based on four main steps: a) some regulatory interventions, aimed at decreasing flows of arrivals and at strengthening community sentences; b) some measures to change prison building plans and move to a renovating plan on existing penitentiary institutions rather than starting plans for new prisons; c) some organisational and management interventions aimed at implementing open regimes, with gradually reconsideration of the cell as it was originally conceived: a place for “overnight” and not a place where to spend most part of the day; d) the set-up of a system of remedies, preventive and compensatory. The Committee of Ministers of the Council of Europe has supervised the execution procedure for about three years, at the end of which, having acknowledged the plan results, it showed its appreciation for started reform pathways and for the achieved results in terms of reducing overcrowding. The amelioration of the material general detention conditions and all measures adopted to overcome this issue have been also appreciated.

However, if the matter regarding Italy’s international obligations was closed, the issue of maintain the system under control is still open and in particular it remains so far unanswered the need for implementing a model of detention fully oriented towards the purposes the Constitutional Charter assigns to punishments. Especially a system, which shall significantly reduce its appeal to custodial sentences and shall open at various and useful alternative measures and sanctions. What remains is that the implemented solutions to the issue, after the supranational censoring judgment, allowed us to start a debate on how and why to punish and which processes can repair the laceration on the social tissue left by each crime.

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The Guarantor's origins

5. Powers and obligations of the Guarantor

The legislative framework under which the National Guarantor operate is quite articulated, because it follows from three different regulatory tools working at different levels: first of all, the primary legislation, which established the National Guarantor; secondly, the primary legislation on the ratification of the OPCAT, which designated the Guarantor as the Italian NPM and, finally, the appointment of the National Guarantor as monitoring mechanism for forced returns, communicated to the European bodies. The Ministry of Justice decree was added to these instruments and, taking into account the several functions assigned by these instruments, it provided regulatory indications about its functioning. It is therefore appropriate to follow those legal provisions so to adequately sketch functions, powers and obligations of the National Guarantor.

The Italian Permanent Mission to International Organizations in Geneva designated the National Guarantor as NPM on 25 April 2014.

On 25 April 2014, the Permanent Mission of Italy to the International Organizations in Geneva designated the National Guarantor as NPM, by communicating it to the SPT. This appointment has bridged what was established by the national primary legislation and what derived by the OPCAT, which, at articles 17-23, figures out powers and obligations of the National Preventive Mechanisms. Thus, in the preamble to law-decree 36, dated 11 March 2015, the Ministry of

Justice refers to the OPCAT articles 17-23, while regulating the structure and composition of the Office of the Guarantor and providing the Guarantor with a self-regulatory code. If, for example, the national primary legislation has been in some way “cautious” in defining the Guarantor’s access to some structures, the UN Protocol clarifies its unconditioned freedom in terms of time and procedures to be implemented during the Guarantor’s visits to any detention centre. But, after all, if the national primary legislation is silent towards some institutional dialogue to be open even on a confidential basis, the OPCAT calls for this institutional approach, which is quite different from the even important approach of any non-governmental organization.

The issue of the forced return monitoring runs parallel. It is not subjected to any clear regulation except that deriving from the function itself of the monitoring, namely to combine efficiency and scrupulous respect for the dignity and the rights of returnees. The common aspect between the forced return monitoring and those two determined by the previous regulatory tools is that they are all addressed to restricted persons and the means of transport used to repatriate them to their country of return is conceived as a detention space.

The articles in the self-regulatory Code establish the National Guarantor’s characteristics and its Office functions. The self-regulatory code has been adopted by the National Guarantor Board on 31 May 2016. The Board was appointed by the President of the Republic through two law-decrees: on 1 February (for the appointment of the Board’s Chair and one Board member) and on 3 March (for the appointment of the second Board member). Article 2 of the Code mentions the Guarantor’s functions, specifying *inter alia* that:

- It regularly assesses the condition of persons deprived of their liberties and restricted in places set out in article 4 of the OPCAT (also considering mobile places).

- Its activities are aimed at effectively improving conditions and treatment of persons deprived of their liberties and at preventing torture, punishments or cruel, inhuman or degrading treatments, by proposing, when necessary, the enhancement of any protection measures. Said protection measures are established through exchanges of information and mutual collaboration with the SPT and other preventive national mechanisms in other States Parties, which have ratified the UN Protocol;
- It prepares the annual report on its implemented activities, which contains the necessary recommendations, and is sent to the President of Republic, to the two branches of the Parliament, to the Constitutional Court and also to the ministries involved in the Guarantor's activities. The Guarantor's annual report – such as this present one – gives the opportunity to make comments and provide useful information to national decision-making bodies.

Without any interference, the National Guarantor freely fulfils its mandate, by performing in an independent way its institutional tasks, mainly aiming at the protection of persons detained or deprived of their liberties (Article 3 of the Code). Indeed, its activity guidelines are a) the complete independence in performing its activities, in compliance with the OPCAT principles, b) the cooperation with other institutions, and c) the setting up of social relations through the local Guarantors network and a tight cooperation with associations and the third sector.

Obviously, due to its preventive function, the Guarantor 'interlocutors' safeguard is outright, especially if they are restricted: in article 4(2), the Code states «The Guarantor strives to avoid that an authority or a civilian can order, apply, allow or tolerate a sanction against a person or an organisation for having given the Guarantor any true or false information. The Guarantor will strive so that this person or the organisation does not undergo any kind of prejudice».

In addition, article 35 of the Prison Act states that the Guarantor may receive any generic complaint (that is non-judicial) from a detained person. This is a task, which has been widely welcomed by the prisoners' community, but you will know more about this function in the forthcoming sections of this report.

Thus, as regards prison settings, the Code defines preventive, supervisory, conflict and critical events solving functions, before they may arrive to perform actions against the rights of the people involved. As regards other areas of the deprivation of liberty, it defines the Guarantor's role as an external 'eye', having the power to access, get information and provide suggestions in order to put into practice in situations what regulations say about the protection of detained people. The forced return monitoring function runs parallel to these activities and it covers a large and varied area. It also opens up to a different perspective, where the principle of *non-refoulement* is mainly applied. This principle is often expressed but not as much respected by European countries, which tend to accept mere declarations of intent from countries of return, rather than to take any cogent commitment in the matter.

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In a nutshell, the National Guarantor

- is a non-governmental and independent public institution;
- is not a judicial institution but it works as a complement to the judiciary;
- is a preventive mechanism which timely interventions are carried out to reduce critical events; it autonomously works on its own initiative;
- monitors all detention centres through a regular scheduling of visits;
- has unrestricted and unexpected access to sites – which are autonomously chosen– to information and persons, with whom it can hold confidential interviews without visual or aural control. After the visits, the National Guarantor drafts a report, containing comments and recommendations, which is sent to the relevant Authorities responsible on the visited facilities. In the spirit of collaboration, these Reports are embargoed for a certain period, during which is given to the Authorities the opportunity to reply to the several remarks. At the end all documentation is published on the Guarantor’s website.

6. The deprivation of liberty

The unavoidable problem, which a deprivation of liberty monitoring system shall tackle, is definition. First, of the size of its own control area, in terms of identifying which restrictive conditions are recognisable as actually privative of liberties; when this deprivation process is starting within a monitoring or investigating procedure. Moreover, which natural rights are reduced by this condition and, instead, which remain intangible because they shall be carefully protected.

Replying to the first question means defining the National Guarantor’s scope of action. Indeed, it shall monitor the deprivation of liberties, by visiting the different sites where that deprivation is carried out. By replying to the second question, we define the Guarantor’s contents of its activities, as well as its observation parameters and consequential actions and recommendations.

The unavoidable problem, which a deprivation of liberty monitoring system shall tackle, is definition. First, of the size of its own control area, in terms of identifying which restrictive conditions are recognisable as actually privative of liberties; when this deprivation process is starting within a monitoring or investigating procedure. Moreover, which natural rights are reduced by this condition and, instead, which remain intangible because they shall be carefully protected.

It is possible to define the deprivation of liberty through a style, which is of Anglo-Saxon’s empirical memory: it is carried out when a person is restricted in a place they are not allowed to leave. I may appear trivial, but if we outline it in the many ways where it can occur, a plurality of situations are to be defined. In fact, it certainly includes a sentence, both in terms of preventive custody as of execution of a sanction, even when it may be enforced under different forms other than imprisonment: still, it involves closed communities, where a person can be restricted after a justice’s decision; it includes home detention, which can become critical in view of a further inclusion of the subject in his/er pathway to social reinsertion.

However, it also includes police custody and arrest carried out by law enforcement officers (national police, “Carabinieri”, and others), which - for a short period of time - can hold a person in a closed

place s/he is not allowed to leave. Thus, not only the National Guarantor has the task to visit law enforcement holding cells – including the local ones for the temporary detention of people - but also its task cannot be only limited to places where people are allowed to overnight. Its control shall also be on waiting and interviews rooms, where they still are in a condition of deprivation of liberty. With regard to the places where the deprivation of liberty has its origin, it must be noted that the Guarantor’s task of monitoring and assessing may also be carried out on the means of transport used for carrying a person to a police station or a similar place, because the deprivation of liberty is executed from the first moment when a person is not allowed to free movement.

The third significant monitoring area of the National Guarantor is on premises used for holding, temporarily or not, irregular third-country nationals. Either are they Centres for a temporary stay, where they wait for removal – which formally are detention centres – or are they temporary, closed and controlled places, for photo-signalling and identification. In this case, as well, despite its simple wording, the question refers to that definition which revealed shared interpretation difficulties. Since the 90s, some European Countries stated that closed Centres for irregular migrants could not be seen, in principle, as wholly depriving liberties. Indeed, as those countries argued at that time, the detained migrant was given the possibility of leaving the entry country; thus, his/her deprivation was not fully restrictive but only related to his/her freedom of movement in the holding State territory.

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In 1996, a European Court of Justice judgment (*Amur v. France*) removed these interpretations and nowadays, these Centres - as well as airport transit zones, for people who are not allowed to entry the Member State territory and for those who are refused entry, are certainly included in the NPM range of action. Nevertheless, this debate highlights the unclear border which sometimes separate the restriction of liberty from its overall deprivation, because limitations are often *de facto* deprivations, even if it is not qualified as such in any set of rules. The National Guarantor has the task of identifying the irregular border of these limitations and of extending the protection of its monitoring to greater areas, still subjected to many difficulties. For example, this happens in another area of competence of the National Guarantor—even though a targeted monitoring has not been implemented so far, different from a study activity on the topic. It deals with the facilities for elderly or disabled persons, which may span from a nursing/health care structure where a person is held on a voluntary basis, of the person itself or of a trustee, to a place where a person is held against his/her will, sometimes with the addition of the deprivation of his/her legal capacity and freedom of action.

Undoubtedly, this is an area with a great deal of caution and, only in recent years, the CPT itself has started to visit these support facilities—generically specified as social homes—, while evaluating case-by-case if the presented situation was privative of the patients’ personal liberties or not. This area of analysis specifies the Guarantor tasks regarding compulsory health treatments, which summarize the notion of deprivation of personal liberties

How to give the right direction to all activities in this second area - i.e. the protection of rights and thus, to give the parameters to observe, analyze and monitor the sites where liberties are restricted – is established by the ECHR since 1950 and in recent years, in Europe, by the *Charter of Fundamental Rights*, which has now the same legal value as the EU founding Treaties.

It is not to be underestimated the acute perceptiveness of those who, more than 60 years, during a Council of Europe meeting at his very early stage, wanted to translate the Universal Declaration of Human Rights in a binding treaty and to let it be a common commitment for all European Countries. Firstly of a few, later of an increasing number of countries until the opening to central and eastern countries, after the fall of the Soviet system. Indeed, after this past commitment, it is now possible to hold tight on Governments some principles and subsequent obligations. These are core business for those who have the task of cooperating to effectively ensure people's rights. Notwithstanding any attempt and temptations against the protection of rights, which are frequently associated with the shared need of efficiently countering serious phenomena of crime, from international terrorism to organized criminal networks, managing huge traffics, including human trafficking. In the name of an allegedly greater impact of counter actions, they are developments that tend to consider the respect for fundamental rights and their guarantees as an extreme obligation, which is better to bypass, and as theoretical positions of the past not too much appropriated to the harshness of the present.

Undoubtedly, to contain and counter these positions, a continuous cultural action is, first of all, requested. It will help in making a timid society perceive that the rigorous protection of any human right— not considering its condition of irregularity, illegality and of guilty — is the most effective device, to fight against those who want to affirm the logic of power and to avoid any civic society transformation in a war between opposing groups. It is also appreciable as the most effective tool to counter such phenomena, and, also, the most effective one to repress these phenomena. But, in addition to some cultural actions, it is essential what is coming from the mutual acknowledgment of a set of principles, which are translated in rights and in the corresponding obligations through a Treaty - such as the ECHR and the EU *Charter of Fundamental Rights*, and stand for the identify cards of all States Parties. They also limit the possibility for the States Parties to take decisions following the direct internal consensus — while giving longer dimension to policy choices.

The National Guarantor's own commitment is to put into practice all these facets in everyday life, often acting merciless against possible drifts.

7. Returns

In addition to the constituent activity of the organism, the task of monitoring forced returns has been subsequently entrusted to the National Guarantor. The migrants' returns to their native countries are at the heart of European policies for managing immigrations.

As already pointed out, in addition to its institutional activity, the National Guarantor has been entrusted with forced return monitoring tasks. The migrants' returns in their native countries are at the heart of the European policies on migration management. Because of the increase of migratory pressures, this aspect has gained importance in recent years and has developed in three forms: voluntary returns, assisted voluntary returns and forced returns. In this latter case, the third-country nationals returns are managed by law enforcement agencies.

The broad scope of application of the definition “detention centre” applied by the international legislation would be sufficient for attributing the National Guarantor, as NPM, the responsibility for monitoring forced returns, at least during all phases when a person is restricted in his/her free movement and is forcibly accompanied to other places. However, as already stated, the National Guarantor’s mandate has been strengthened by the implementation of an efficient monitoring system, which gives an overall view on the policies carried out in this area, and ultimately enhancing the system of human rights and dignity safeguard.

The National Guarantor’s mandate has been strengthened by the implementation of an efficient monitoring system, which gives an overall view on the policies carried out in this area, and ultimately enhancing the system of human rights and dignity safeguard.

This has given way to an independent and transparent evaluation system, and the definition of a strategy framing some activities such as the visits to facilities and the single interventions in a larger range of parameters and their measuring. The overall implementation of the monitoring system is held through a) the drafting of guidelines for carrying out activities, b) the creation of a team of monitors with specific expertise, c) the systematic collection of information on the spot, d) the elaboration of some analysing documents, d) the definition of recommendations to mainly combine efficacy and protection and e) the establishment of forms of systematic collaboration with the competent Administration. Among these, there is the participation of the National Guarantor to training courses for monitors employed in forced returns as external observers. In that occasion, the National Guarantor could give suggestions on how to better redistribute hours dedicated to each training sessions and topics (information on rights, monitoring activities, communication and meditation skills, reasonable and necessary use of force).

8. The requested training

Urging and opening dialogue and debate, acting being convinced that your actions will result in a change in mentality and practice, foster the improvement of the standards on the safeguard of human rights. In this perspective, the National Guarantor is committed to promote the dissemination of knowledge on the rights of persons deprived of their liberties, under any form and area, and to encourage awareness of guaranteeing national and supranational institutions.

In this first year, the National Guarantor has boosted on dialogue and cooperation at different levels to achieve this goal: with the different institutions engaged in the performance of its own mandate; with the stakeholders, from different areas of competences, to exchange problems and legislative or juridical new approaches; with its own staff through analytical activities and refresher training seminars.

Some joint training activities have been, therefore, started: with the National Police Force, the Prison Police, the Justices' Academy and the Ministry of Justice for the internship training of judges, the National Institute for Health, Migration and Poverty (NIHMP), the three Universities of Rome, the Directorate-General for training of the Prison Administration Department and the Regional Prison Directorate-General for Latium, Abruzzo and Molise. A number of training activities has thus been implemented. It is the first set of joint activities, which will continue and intensify in the future.

The starting of joint training curricula to help interactive relations of those who have been charged of one of most critical public action, such as the deprivation of persons' liberties, and have to monitor the scrupulous protection of the rights of the involved persons, may be decisive in building up a shared culture, which may also extend from the specific to the social area.

The starting of joint training curricula to help interactive relations of those who have been charged of one of most critical public action, such as the deprivation of persons' liberties, and have to monitor the scrupulous protection of the rights of the involved persons, may be decisive in building up a shared culture, which may also extend from the specific to the social area.

For this reason, in this year, the National Guarantor has proposed a synergic approach to its mandate, while considering all public institutions as an overall "island chain" for the implementation of tasks assigned to each of them by the Constitution. Thus, refusing the logic of separated and non-interacting 'islands', which are not able to consider themselves as parts of the same system.

To offer moments of reflections and stimulus to all institutions, the general public and the area professionals and to improve the protection of rights and the treatment of persons involved, the National Guarantor has then started some cycles of seminars and in-depths on relevant topics. They are internal training seminars, however open to a limited number of interlocutors: the materials

produced on these occasions are to become the subject of thematic periodicals. The first seminar covered the technical-juridical aspects of the recent judgment *Muršić v. Croatia* (20 October 2016) by the ECHR Grand Chamber. It was a judgment that examined the ratio between the operational capacity of a prison, its over-crowding and inhuman or degrading treatment. Maria Cartabia, vice-President of the Constitutional Court was entrusted with the general introduction.

Finally, a residential refresher training seminar has been addressed to the National Guarantor's staff. It was organised in collaboration with professionals of the International Center for Migration Policy and Development (ICMPD), the Italian Council for Refugees (CIR) and the Association for Legal Studies on Immigration (ASGI) and it was held in Verbania. During its two-days meeting, the following topics have been studied: the respect for the fundamental right during forced returns; the European asylum system and the current regulatory changes, the Italian Law on refusals of entry and expulsions.

Another part of the seminar was dedicated to the definition of criteria and drafting methods of reporting on the National Guarantor's visits.

9. The Office and its rules

Thus, within the framework established by the Ministry of Justice law-decree of 11 March 2015, such as the *Regolamento recante la struttura e la composizione dell'ufficio del Garante nazionale dei diritti delle*

persone detenute o private della libertà personale, and the self-regulatory Code, which the National Guarantor has itself approved, the guiding principles of its activity have been defined. They are based on the fully independence of behaviours, the respect of the OPCAT, the absolute secrecy concerning preliminary investigations, staff competence and professionalism.

Article 4 of the Code established these principles and stated that the Office has the duty to suddenly communicate the notifications of charges to persons deprived of their liberties or in prison, which it comes across while carrying out its institutional tasks, to the judicial authority.

Therefore, the components of the Office have as tasks to directly deal with institutions and, especially, to maintain continuous relationships with the other governmental departments and local administrations involved in the National Guarantor's activity. Obviously, these relationships are exercised in a context of autonomy and independence, because the Guarantor's staff has been recruited after a call for candidate published on the Ministry of Justice's website. After having determined the selection criteria and the value to be assigned to each indicator, the Guarantor Board has completed the recruitment and selected its staff. The staff, thus starting this activity - new for everyone -, carried out by the National Guarantor in this first year, is seconded to the National Guarantor and released by each administration, except for each staff component's source of remuneration.

Currently, with an official coordinating each unit's activity according to the instructions given by the Board, the Office is articulated in seven organizational units each with the following tasks:

Secretariat-General: general affairs and administrative management; staff missions implementation and management and their budget monitoring.

Information system: IT functions associated with data collection and organisation, website analysis and management.

Deprivation of liberties in criminal matters: monitoring custodial situations for both adults and minors; monitoring community's measures and implementation of security measures, also liaising with Supervisory judges.

Deprivation of liberties by Police forces: monitoring the deprivation of liberties in law enforcement activities and relationships with different Police forces.

Deprivation of liberties and migrants: monitoring the deprivation of liberties deriving from the Migrants Act; monitoring detention facilities and forced returns.

National and international relations, studies: analyzing the evolution processes in Italian and European legislations relevant to the Guarantor's range of action; relationships with the local Guarantors, at national level and supranational organisations acting in the protection of persons deprived of their liberties.

Support to the Board: directly collaborating with the Board in the agenda scheduling and institutional relationships; instructing non-jurisdictional complaints ex article 35 of the Prison Act.

Currently, the Office is articulated in seven organizational units:

- Secretariat-General;
- Information system;
- Deprivation of liberties in criminal matters;
- Deprivation of liberties by Police forces;
- Deprivation of liberties and migrants;
- National and international relations, studies;
- Support to the Board.

The analysis of the nursing and caring facilities for disabled, for vulnerable and hospitalised persons deprived of their legal capacities or with reduced legal capacities, and also the analysis of the involuntary treatment have been temporarily entrusted to the Board with the support of a member from the Office staff. This choice has been justified by the need for arranging this part of the work, also through relevant contacts with organisations operating in this area, before starting visiting facilities and patients. They will be scheduled in the second year of activity.

10. Communication and the website

As the National Guarantor function is not limited to monitoring what exists but it necessarily aims to project and predict any possible changes, the Guarantor's contribution is fundamental raising in the society a less timorous and extended common sense to investing in human and financial resources able to reply to crimes not with exclusion, but with a likely gradual reinsertion of the offender in the community, which is respectful of the feelings of the victims and able to reduce, at the same time, the risk of relapse.

This approach calls for the commitment of several actors: those who establish the modalities of sanctioning crimes; those who are claimed to issue judgments and sentences; those who shall enforce sentences and look forward execution goals; finally, those who work outside the penal system and shall foster positive pathways in the community.

Indeed, this latest aspect requires the commitment of local bodies, which is currently difficult to display or at least it is not consistently appearing. This is also due to the fact that this aspect is paying for a common sense, which is oriented to not realizing or not wanting to realize rather than to understanding how to heal social wounds. For this reason, it is important the contribution given by the National Guarantor to build upon any diffused cultures, starting from languages - too often characterized on the media, in particular social networks, by the offenders' sense of destruction and by the unwillingness to interpreting that need of healing social wounds, entailed by each crime.

The concept of punishment, running through sentences 'posted' on social networks and often on the media headlines, is mainly based on an impossible remuneration, which would like to assign a function of continuity - with wishes of private revenge - to the State. The legal provisions, established on the pushes of emotional feelings, and targeted to obtain an immediate consent - certainly do not help in straightening this distorted idea of the objective of punishments.

For this reason, the National Guarantor has considered to fully engage in communication. Its institutional communication shall mostly rely on to the use of online tools. Obviously, during this first year's activity, it was only possible to start a new experience and much more is to be developed and systematized in the forthcoming year.

The National Guarantor's existing online communication is aiming at managing, developing and boosting relationships with that public interested in its institutional activity. This is done through a common form of interaction and web access.

The Guarantor's website (available at www.garantenazionaleprivatiliberta.it and www.garantenpl.it) is active since 7 June 2016 with the purpose to describe its *mission* and regulatory origins, to give visibility to its implemented activities and institutional communication, to become a reference point on the issue of the rights of restricted persons and to report on visits, monitoring and following recommendations to administrations, including those involved in forced returns. To this purpose, all

reports produced in the occasion of visits, and their relevant answers, issued by the concerned Administrations, are published on the website.

The online institutional communication represents an interactive channel between an organization and its users. The online availability of any institutional communication service allows the maximum level of spreading, friendly access, transparency, interactivity, comprehensiveness and service customization. Thus, a change is necessary in the institutional website, and, after a year of activity, from an initial information platform, a showcase, it can evolve into a 'place of communication', where all actors employed in the field of the deprivation of liberties are going to meet. Most of all, the Guarantor's website shall become a virtual desk, an instrument for internal communications, and shall support the management of the local Guarantors' network.

Thus, a change is necessary in the institutional website, and, after a year of activity, from an initial information platform, a showcase, it can evolve into a 'place of communication', where all actors employed in the field of the deprivation of liberties are going to meet.

At the moment, some Prison Administration Department circular letters are published on the website, but its document archive needs to be extended on all matters of interest of the Guarantor's activities, and contain a systematic collection of recommendations, drafted after visits. In addition, it shall provide an area dedicated to the local Guarantors' activities. A special section shall be reserved to forced return monitoring. Finally, as social networks have become an indispensable arena for communication and debate with public administrations and the public, on 13 December 2016, the National Guarantor has activated a Twitter profile (@GaranteNPL) and a WordPress blog (garanenpl.wordpress.com), where press releases are published.

11. Still developing

Some organizational issues are still open. During this year, a large part of the Office activity was taken by the necessity to equip the Guarantor's premises, which is on two floors of the same building and still lacking room compared to the staff determined by the ministry decree, and by its IT system services, including those for the protected access to data from the Administrations involved, for staff time tracking and for document filing. Such a complex office implementation has been also experienced in staff administrative management: the Guarantor's assigned staff is still depending on the original Administrations as regards remunerations while it is fully at the Guarantor's disposal, who is the only one to deliberate on the employment of its administered staff, without interference. Finally, even the management of resources assigned to the National Guarantor - by the national budget act - required the definition of some guidelines, as the Guarantor cannot directly carry out accounting functions. It is not executing costs through an independent cost centre, whose responsible are the Prison Administration Department Offices.

There is no doubt that these aspects are typical of a totally new institution and of its overall starting management. From one side, they are requiring some regulatory adjustments but, on the other, they have not at all affected the accomplishments carried out in this first year: neither on the National Guarantor's decisional independence nor on its implemented activity efficiency.

However, it is evident that the number of applications arrived to this new guaranteeing institution and all references given to its functions have increased during this year, due to the Guarantor's operational results in its first year of activity. From different standpoints, one has seen in this new institution the possible 'external eye' for the analysis and protection of its functions, having a bearing on the rights of persons, individually and socially vulnerable. To this increasing demand, the Guarantor has generously replied with scheduled visits, studies and communication activities, which has allowed service time *extra ordinem*, compared to the one envisaged in staff employment contract, however still uncovered by an appropriate remuneration.

For this reason, in the forthcoming year, it is deemed advisable to act both in favour of an increase in the number of human resources to be assigned to the Office and towards their multidisciplinary profiles. It is hoped, in particular, that the current structure may evolve into a complete acknowledgment as a systematic independent "Authority", operating in a different, but crucial field, just like other regulative authorities in the field of market, information and other aspects of public life.

The network of Guarantors

12. The local Guarantors

Before the National Guarantor was created, several local guaranteeing Institutions (at regional, provincial and municipal levels) were born, starting from 2003.

Before the National Guarantor was created, several local guaranteeing Institutions (at regional, provincial and municipal levels) were born, starting from 2003. The first ones were created by regional acts, the second by legislative instruments approved by each province Council, others by the mayors' decisions. In these past years, the local Guarantors have not only represented a fundamental presence on the territory, for the protection of the

rights of persons deprived of their liberties, but they have also started a productive debate on the National Guarantor new institution.

In some cases, the initial approach strongly centered on detention in criminal matters has progressively extended to other forms of individual deprivation: a network was created, thick in representatives who can be spotted in the map in Chapter 8 of this report. This extended network constitutes a resource, to which refer both the National Guarantor establishing law-decree (Article 7(5)), where it is stated that the National Guarantor shall "foster collaborations with the *Local Guarantors*", and the text attributing NPM role to the National Guarantor, stating that "*The new Guarantor for the rights of persons detained or deprived of personal liberty, established by Law n. 10/21 February 2014, will coordinate the net of local Guarantors, formed by institutions already in place or to be set up at regional and city levels*". Thus, the net, coordinated by the National Guarantor, is a valuable instrument to effectively and promptly carry out actions these Institutions are proposing in the prevention of all forms of ill treatment or of conditions contrary to human dignity, in the protection of the rights of deprived persons and the continuous monitoring on developing situations

in several detention centres. Deprivation of liberties in penal settings, and also all detention forms determined by security management, and more in all situations entailing limitations of liberties during migration procedures or during any forced return.

During the first year of activity, the gradual harmonization of this network has been focused on the Regional Guarantors. However, it is noted that nowadays the regional network does not completely cover all the Italian territory. Indeed, there are six regions without a Guarantor: Basilicata, Calabria and Liguria (together with the autonomous Province of Trento) are not provided with a legal provision establishing each own Guarantor, whereas Abruzzo, Molise and Sardinia - since some years - have been provided with a provision designating their Guarantor - they have not ever since ratified nominations. The National Guarantor sent some *Guidelines* to those Regions, not yet equipped with a legal provision on the institution of the Guarantor, so to have the provision, autonomously adopted, consistently fitting the purposes of the developing network.

It is noted that nowadays the regional network does not completely cover all the Italian territory. Indeed, there are six regions without a Guarantor: Basilicata, Calabria and Liguria (together with the autonomous Province of Trento) are not provided with a legal provision establishing each own Guarantor, whereas Abruzzo, Molise and Sardinia - since some years - have been provided with a provision designating their Guarantor - they have not ever since ratified nominations.

Moreover, there is also a problem of legal fragmentation. The framework of the Regional Guarantors current establishing acts, indeed, reveals that the needed consistency is not only to be referred to the overall presence of Guarantors on the Italian territory, but also to the legal provisions entrusting them with their mission scope of action, their independence from the political power, and their secrecy management. Independence and autonomy from the political power mainly imply that appointments shall not be decided by the executive and their duration shall not be connected with the Government's permanence or the regional set of rules: regional legislations in Abruzzo and Sicily are not to be considered, because, respectively, the Guarantor is in charge until the termination of the Regional Council mandate and it is appointed by a regional President's decree. To protect the Guarantor's independence, a second mandate is not allowed: the majority of the regional set of rules do not comply with this restriction.

In this setting, the National Guarantor's coordination task is just in its contributing to the creation of a consistent system in the several Regions with such a wide mandate, which establishes the National network of the Local Guarantors as an overall NPM. It has access to all facilities, to documents and persons in the relevant territories, and proposes similar work methods and dialogue with the local Administrations, both in a confidential way, or by publishing results of its implemented activities. This is much more relevant after law-decree 13 of 17 February 2017, which provided, *inter alia*, the opening of detention centres for migrants, on whom an expulsion order is pending, in which the National Guarantor shall monitor the safeguard of rights and dignity in the facility and of procedures. The possibility to regionally delegate this function may be essential for the efficacy of its mission.

As regards the municipal and provincial Guarantors, it is necessary to point out that their territorial proximity with detention or restrictive facilities is an important factor, also in consideration of the knowledge contribution the local Guarantor can ensure on the overall environmental, social and institutional setting. Most contributions which arrive to the regional or national Guarantors come from the continued and close work done by those who visit local detention centres; especially, contributions on deprivation in penal detention, which is often the Guarantors' main scope of action. However, this closeness needs protection from a risk of promiscuity, especially in smaller cities. That is a relationship of proximity with Authorities and Institutions that might undermine independence and autonomy. In their establishing decrees, these institutional bodies must look for the needed provisions that might help them avoiding the repeated occurrences of mixture or conflicts with local Authorities or Institutions involved in activities, such as, for example, conditions of incompatibility with occupational, professional, commercial and entrepreneurial activities or with some of them.

The broad mission to be attributed to the Guarantor at the different levels - not only limited to prison system monitoring - also implies that the scope of its activity and competence shall become its functional exclusive goal and shall not be confused with other - nonetheless important - safeguarding objectives. For this reason, the National Guarantor has reservations about the tendency, in some regions, to provide Guarantors with multiple assignments. They are often associated with the ombudsman, and their protection of the rights of persons deprived of their liberties becomes part of the whole protection range of action ensured by the ombudsman - without any specification in different protection areas. Notwithstanding the positive results achieved in some similar experiences - including in Lombardy, Friuli-Venezia Giulia, Marche, Molise and Veneto, in the National Guarantor's opinion the social minority aspect - peculiar to persons deprived of their liberties, their specific needs, the real impossibility of referring to other social support networks, as it happens for free individuals, determine the peculiarity of this subject. It shall be addressed with exceptional professionalism, targeted attention, analytical identification of each action instruments and not be considered in a more generic area of protection of persons in disputes.

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In this way, the solution on an ideal single Guarantor for the rights of persons, approved by the regional Council in Tuscany, being the coordinator of specialised Guarantors - including that for persons deprived of their liberties - needs to be followed with particular emphasis so avoid tearing apart the specific intervention of each single Guarantor, beside the shared necessity for some coordination activity.

The relationship with the supervisory judges

13. Complementarity in control activities

We all agree on the principle that detained persons are bearers of guaranteed constitutional rights, which cannot be waived or suspended. This is stated in articles 2(1), 3 and 21 of the Constitutional Charter them, when it refers to rights that are addressed not only to citizens, but to the human being, to the individual. Prisoners bear rights, which cannot be reduced to the rank of legitimate interests. And, as it has been stated in different occasions, the full constitutional awareness of freedom and human dignity can only be achieved when it is completely cancelled the assumption that the suspension of liberties - due to detention - also implies exposing offenders to special rules.

The problem of *taking rights seriously*, according to the famous book written by Ronald Dworkin more than forty years ago, raises the problem of supervision. As it is known, the core function of supervision and monitoring in prisons is entrusted to judges responsible for the execution of sentences. Article 69(1-2) of the Prison Act explains this function: a central role, which, however, has become weaker because of the high number of cases in charge of the Supervisory judge's offices and less central due to the fact that, most exclusively, its function is that of judge of the alternative measures to imprisonment. The Supervisory judge – in the words of Franco Maisto, many years ago - is no longer the judge as it was conceived, “in and with”, but it has become a “third” judge.

What happened in Italy, with the Strasbourg judgment on overcrowding is the evident consequence of this change in the judges responsible for the execution of sentences' function. Despite their high professionalism, they did not take any position or make decisions that could enhance awareness of the Institutions on the phenomenon, which was about to manifest. Even in this occasion, the judgment of the Strasbourg Court had a positive effect: that of focusing attention on prison conditions, minimum standard for personal living space in prison to be guaranteed, and also to correctly impose on Administrations to take measures to stop existing violations.

The complementarity between monitoring local conditions and fulfilling control tasks, also on the basis of such monitoring outcomes, is conceived as an element for the setting up of a more efficient system to solve problems relevant to almost unacceptable detention conditions. Hence, the complementarity between the Guarantor's and the judges responsible for the execution of sentences' activities.

However, it is not possible to give responsibility on such an issue, namely the “close” control of the different situations - to the sole activity of overloaded Offices with shortage of resources. For this reason, the complementarity between monitoring local conditions and fulfilling control tasks, also on the basis of such monitoring outcomes, is conceived as an element for the setting up of a more efficient system to solve problems relevant to almost unacceptable detention conditions. Hence, the complementarity between the Guarantor's and the judges responsible for the execution of sentences' activities.

Therefore, on the occasion of its visits to prison establishments, the National Guarantor's representatives deem essential to contact the probation justice, to have his perspective of detention life in the visited prison, collect suggestions about potential critical events and build upon a mutual approach to solve them.

Moreover, the National Guarantor's representatives have a look at the register log for the Supervisory judge's visits to the monitored prison establishment, and make distinctions between implemented visits to control on prison management and ensure the exact enforcement of sentences following rules and regulations, and visits for direct interviews with inmates or for single-judge court hearings in view of permissions considered by the Prison Act. A particular attention is given to the risk that videoconferences might reduce the presence of the Supervisory judge to the prison establishments.

14. The Guarantor and the inmate's complaints

Another complementarity between the Guarantor and the Supervisory judge is applied in case of the inmate's complaints, as per article 35 of the Prison Act. This Article provides that prisoner "*may forward petitions or complaints, orally or in writing, even in a sealed envelope to a) the prison Governor, the regional prison Director-General, the Head of the Prison Department and the Justice Secretary; b) the judicial and health care authorities visiting the prison establishment; c) the National Guarantor or the regional and local Guarantors of the prisoners' rights; d) the Chair of the Regional Council; e) the probation justice; f) the Head of State*". It is well known that the Constitutional Court declared it unconstitutional where it is not providing those restricted in their personal liberties with judicial protection against the Prison Administration decisions, which might be damaging their rights (Const. Court decision 26/1999).

The remark on the lack of judicial protection of rights, which risk is the right degradation to legitimate interests, remained unheard for many years. In the aftermath of the Action Plan developed in response to the *Torreggiani and Others v. Italy* judgment, art. 35bis on the judicial complaint to the Supervisory judge has been introduced.

The management of generic complaints is still debated and might be solved through the complete cooperation with the subjects these complaints are targeting. This aspect emphasizes the real field of action for a close cooperation between the Supervisory judges and the National Guarantor. This last can offer solutions to conflicts, which are less aggressive of the rights of persons, and yet in need of careful evaluation.

The opportunity given to go into details on the individual's problems which are particularly requesting protection, and also are to be considered as indicators of spread critical events, runs parallel with the National Guarantor's collective monitoring activity, such as its visits to prisons without previous permission.

In 2016, the National Guarantor classified 108 complaints under article 35(1), n.4, submitted in writing by restricted persons in prisons or in alternative measure (62 cases positively solved or filed after having processed, 46 applications are pending and waiting for the final decision, when this Report has been drafted)

Other 126 applications have been itemized in "general communications" (65 processed and filed cases, 61 cases are pending and waiting for the final decision), which were considered as expressions

of the willingness of applicants, often a relative or an association, to inform the National Guarantor of situations to be taken into account for protection, but not falling into the right to complaint.

The most frequent concerns and applications, appreciable of some pushing and conciliatory actions provided by the national and supranational legislations to solve the proposed cases, were mainly dealing with applications for

- a) being transferred to prisons closer to their relatives,
- b) the health care system (insufficient or inadequate treatments, incompatibility with detention),
- c) visits from relatives and contacts with the community (visual, on the phone, interviews with the National or local Guarantors),
- d) applications aiming at being assigned to detention units with reduced levels of security (reclassification)

The filing and the *nomen iuris* (“report” or “complaint”) shall itemise the critical event in individual, structural or in need of juridical in-depth.

Such a distinction is also very important either for the case further starting process or for its filing. The set of rules has not provided a case processing which is pledging the Guarantor’s expressed recommendations. Nevertheless, the National Guarantor’s persuasive, conciliatory, but pressing, determinations, might build up a corpus of the so-called *soft law*, which the international scenario has shown to be particularly efficient in the solution of complex situations, heavily affecting the individual’s living and their own approach to daily life. Even though, they might not be considered as decisive in single cases, which are demanding a targeted and judicial action.

Some communications on abuses have also been received. In respect of them, the Guarantor has begun some confidential enquiry processes to set the basic reliability requirements for the Public Prosecutor’s office been informed. In some of these cases, the started process has involved the Guarantor in the visit of the prison concerned with the communication, and in the collection of supporting documentation on the critical case. For example, reports on what has been observed during the visits to Ivrea, Voghera and Trento prisons have been loaded on the website: these were cases the Guarantor had decided for a useful investigation by the prosecutor’s office, also to clarify on conditions which otherwise could shed negative lights on a whole community of professionals.



Sanctions and Freedom

Describing a detention system means, first of all, providing an overview of the current situation, including numbers, structures, problems and successes. For this reason, we thought to divide all these sections in three parts: first, a descriptive one, about the features of the system and then two following, which outline, respectively, the positive and weaknesses of the current state of the art.

Features of the current penal detention

15. Structural answers to the European Court of Human Rights

A key point of the Action Plan, which was developed to comply with the judgments issued by the ECHR on overcrowding in prisons (Sulejmanovic v. Italy in 2009 and mentioned the Torreggiani judgment), is the fact that all actions taken were, indeed, stable and they affected some structural pivot issues. Thus, most of them were not exceptional and emergency measures..

A key point of the *Action Plan*, which was developed to comply with the judgments issued by the ECHR on overcrowding in prisons (*Sulejmanovic v. Italy* in 2009 and the mentioned *Torreggiani* judgment), is the fact that all actions taken were, indeed, stable and they affected some structural pivot issues. Thus, most of them were not to be considered as exceptional and emergency measures. They just changed some features of the Italian penal and penitentiary system, in response to the ECHR judgments.

The intervention included, first of all, the introduction of new alternative measures, the removal of the main obstacles for accessing them - even for offenders convicted for any serious crime, the more rigorous limitation in the

use of remand in custody, the introduction of some forms of decriminalization, though moderate.

Therefore, first of all two legislative devices, which led to the increase in numbers of the prisoners have been repealed or modified. The first one was the act establishing the impossibility to have access to alternative measures for recidivists, no matter the nature of the committed crime. The act resulted in a huge presence of persons who committed street crimes on the street, serial killers, prisoners characterized by a strong social marginalisation and most of all in need of alternative to strict exclusion. The second one established the detention for illegal stay on the national territory (Legislative Decree 286, dated 25 July 1998). Detention was lately replaced with a fine, after the EU Court of Justice first judgment, which deemed it in conflict with the European Return Directive (Judgment of 28 April 2011. Hassan El Dridi). However, it should be noted that the repeal of that decree has not been accepted yet. The National Guarantor hopes that they will proceed in that direction.

The third amendment, which had an impact on the implementation of the ECHR requirement, regarded the law on drugs and it was the amendment aiming at excluding minor offences, which provision was set out in article 73(5) of the Presidential Decree 309/90. It was introduced later through two Decree-laws (146/13 and 36/14), including an important reduction of the maximum and minimum sentence, and the implementation of the Constitutional Court judgment of February 2014 (Constitutional Court 32/2014). This declared that the regulations of the Decree-law 272, of 30 December 2005, were unconstitutional because they had deleted the distinction between different categories of drugs: the result was the reintroduction of the relevant different sanctions set out in the previous law, the so-called “Jervolino-Vassalli”.

Moreover, the reform set out a wider range of alternative measures to detention and the introduction of a *diversion* system, which foresees probation for lesser offences that is to comply with a social reinsertion programme entrusted by the judge, following in the footsteps of the experience in the juvenile justice system. Finally, they made the use of pre-trial detention a less automatic measure than it used to be, giving priority to house arrest or non-custodial pre-trial supervision measures.

As already mentioned, one of the measures taken was exceptional because it sets a time limit to the new legislation. It is the «special early release», which for five years has enhanced the discretionary decision on term reduction – in accordance with set conditions – by 75 days instead of 45 days each six month of good time and an effective participation in the rehabilitation program. The measure has been planned just for a five-year period from 2010 to 2015, and it clearly aimed at reducing prison population numbers.

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16. System data

The measures taken had some effective results. If in 2013, at the time of the *Torreggiani* case, prison population was over 62 thousand (62,536), in the following years it led to a gradual prisoners evacuation in penal institutions: 53,623 in 2014 and 52,164 in 2015. However, in

2016, this trend changed with a slight increase in presences, which on 31st December were equal to 54,653, and on 14th February 2017 were 55,713; therefore, an increase of 1,000 prisoners. If we compare data at the end of January 2016 and those at the end of January 2017, there is an increase of 6.2%. On 14th February 2017, the detention rate (number of prisoners present within a fixed date in relation to the national population which Eurostat assessed to be 60,665,551 in 2016) was 92 (on a hundred thousand inhabitants), lower than the previous years; for example, in 2010 it was 112, but still slightly increasing, even though it complied with the value of 100, which represents the average of Western European countries.

This is an alarming sign that it should not be underestimated, although perhaps it is partially physiologic. Thus, in December 2015, the short-term measure of the special early release – that for five years increased the reduction of the sentence term granted to inmates participating in their rehabilitation programme, by increasing the discount on time served from 45 to 75 days – was expired. The return to normality certainly led to an increase of time spent in detention, consequently, a slowdown in releases.

Furthermore, after a period of many years of gradual reduction, the number of arrivals in prison has raised again from 45,823 in 2015 to 47,342 in the last year, with an increase of 1,500 persons.

Furthermore, after a period of many years of gradual reduction, the number of arrivals in prison has raised again from 45,823 in 2015 to 47,342 in the last year, with an increase of 1,500 prisoners. Therefore, the incidence rate of arrivals on the country population (number of arrivals in relation to the number of inhabitants) raised from 75 to 78 per 100,000 inhabitants. Probably, to better understand this, it should be taken into account the lack of police

detention cells availability, which the National Guarantor has reported during its visits. This is concerning all police forces and, as a consequence, the person is brought in custody, also for extremely short periods. In this way, the so-called “revolving doors” are once again applied to detention: the person stays just for one night in prison, and it causes a serious damage both for the individual, who in most cases could avoid this problematic experience, and for the detention system which has to carry out a series of useless administrative tasks, such as record registration or finding a place in a cell.

Therefore, this is an escalating situation, although it is still under control, due to some concerns on numbers (it should be noted that in the 9 days from 14th to 23rd February there had been an increase of 145 prisoners). A positive development is in the increased number of measures alternative to imprisonment, which have achieved an almost numerical equality with prisoners, with 34,827 convicts who on 31st January 2017 served time outside prisons. This is really important if we consider that in the middle of an emergency they were slightly over 16,000 and sentenced prisoners are 35,400.

The data of the so-called “diversion for adults”, which is a *diversion* system really in alternative to the criminal sanction system, and it also means a different way to respond to one’s own criminal behaviour, not only in a negative but also positive way. The cases increased from 2 in June 2014 (recently introduced) to 503 at the end of that year, then 3,969 in June, after a year from its implementation, to reach 6,557 at the end of 2015 and 9,090 at the end of 2016.

Concerning overcrowding in prisons, data are far from being satisfying. It is true that nobody is currently put in a prison cell with less than 3 square metres gross living space per inmate: in January 2013, more than 7,500 prisoners were living in said conditions. However, very often we are merely happy with this outcome, though we are considering it as the regular standard required and not the minimum condition below which it appears evident the violation of article 3 of the ECHR. On 23rd February, the estimated operational capacity is of 50,108 places. In Italy, it is reckoned in accordance with living standards applied to civil houses which set out 9 square metres per person and 5 sq m per each additional guest. The standard is higher than the one recently fixed by the CPT which establishes 6 square metres of living space per person and 4 per any person added. However, it is important that a standard fixed is respected, especially in an environment whose core activity should be “re-educating” on the respect of rules. If a rule is deemed to be too extensive, we should modify it and make it closer to European standards; if we keep it as it is, then we should respect it. The issue of prison capacity plays an important role if we take into account the high number of unusable cells or wings because they are impracticability or under renovation; on 23rd February they were up to 9.5%. In Sicily, every 1 in 5 cells is impracticable, but there are extreme cases such as the prison institution in Pistoia where 47 cells are not available out of 57, or in Arezzo, a situation reported since several years, only 17 cells are available out of 101.

Security measures deserve a specific mention. Concerning remand prisoners, as stressed since long time and reviewed by the National Assembly on the execution of sentences (“Estates-General”), the double-track system is to be considered as an experience of the past. Examples include the penal labour colony, which are actually empty cardboard boxes because there are no projects of real and paid work in place. The recent amendment implemented by the Decree-law 52 of 31st March 2014 (law 81/2014), which sets a maximum limit to the detention security measure, removed the problem of the so-called “white life sentence”, a term used by inmate-patients for indeterminate confinement. However, for the most vulnerable and weakest groups of the internees, the risk to go back to a custodial security measure for breaching supervision conditions is high.

A step forward was taken with the permanent closure of the Judicial Psychiatric Hospitals (OPGs) and the opening of regional structures, the Residences for the Execution of Security Measures (REMS). The appointed Commissioner gave an important contribution to overcome the oppositions raised. However, some problems remain, such as the fact that the Umbria region chose not to have its own REMS and requests will be submitted to Tuscany region. As established at the Joint Conference, held on 26th February 2015, this decision could damage the right to medical assistance in the area closer to the inmate’s place of residence and family, and to make more relevant the right to be assigned or transferred to places in the residence territory for those who are under a security measure. For this reason, the National Guarantor invited the President of the Umbria region to reassess the situation and to take possible actions. On the other side, Liguria acted positively. They have opened a temporary REMS in February 2017 at Villa Caterina in Genoa, awaiting for the opening of another REMS in Calice, in the province of Savona.

In February 2017, the total number of patients assigned to the REMS were 569 with a capacity of 604 places. The data in the Second Semester Report – 19 August 2016- 19 February 2017, highlighted by the appointed Commissioner, about 415 releases, showed and confirmed the effects of law 81/2014, which has established that the security measure cannot exceed the maximum sentence prescribed for the committed crime.

The issue of the temporary security measures, which currently foresee the assignment to a REMS, is still open. These measures are increasing, and therefore, places in said facilities are no more available; in October 2016, 241 measures were not executed for lack of places. Still to be clarified if REMS are the adequate place for persons whose juridical responsibility is yet to be addressed or if they are reserved to those convicted to a security measure. The latter solution seems to be much in line with the principle of “taking care” as the basic one of said structures. Moreover, it is necessary to start a debate with the Judiciary on the increase in number of temporary security measures that occurred in the last year.

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Also the approach of juvenile justice system is based on the principle of last resort for custodial measures applied to young offenders. Thus, up to 15th December 2016, minors and young adults in charge of the youth offender service were 8,435 (897 are in youth offender communities, 6,962 are in charge of social services for minors and 109 attend multifunctional day centres) of which only 459 are detained in YOI and 8 in first line reception centres. In addition to these, there are 446 minors in probation and 48 under alternative measures in the community.

Thus, up to 15th December 2016, minors and young adults in charge of the youth offender service were 8,435 (897 are in youth offender communities, 6,962 are in charge of social services for minors and 109 attend multifunctional day centres) of which only 459 are detained in YOI and 8 in first line reception centres. In addition to these, there are 446 minors in probation and 48 under alternative measures in the community.

However, during the visits to YOIs, some critical problems were spotted related to the presence of young adults in the institutions (Decree-law 92 of 26 June 2014, which became law 117/2014). We are all aware of the aim of the act, that is to avoid that very young offenders could pass through the adult penal system with the risk of encouraging connections

with criminal networks. However, the visits often shown a reality which was not equipped to offer differentiated spaces, activities and pathways for such a different range of age from 15 to 25. The need to develop adequate projects according to age and organize spaces that can give the opportunity to implement these projects is the only cure able to avoid either a difficult mixture or the request by over-18 youth offender to be moved to a penal institution for adults, as if this possibility could be the expression of their emancipation process.

17. Two interactive departments

The latest organization of the Ministry of Justice and the birth of the Department of Juvenile Justice and in the Community, along with the Prison Administration Department, is a tangible confirmation of the public service will to change its sentence enforcement policies and follow those standards established by the European Probation Rules, adopted by the Committee of Ministers of the Council of Europe.

The new Department seeks to create an integrated reality of juvenile and community justice, with the aim of unifying the two systems, by valorising the broad juvenile justice experience in community sentences and diversion programmes. Its future is in the creation of a broad and effective *probation* service, able to bridge the gap between Italy and the main European countries that have considered probation as their main device in the execution of sentences in this sector. This context should also be included the developments in requirements to access alternative measures, the introduction of diversion measures for adults, the extension measures alternative to imprisonment and the use of community work.

In this renewed dimension, the enforcement of sentences in the community is losing its traditional ancillary and subordinate dimension and, as already happened for the youths, it is going beyond the perspective given by the ‘alternative’ measure. For young offenders, indeed, the custody is the extreme, last and residual resort, with only 459 prisoners in the YOI out of a total of 8,435 in charge of the juvenile justice service.

Therefore, this new dimension is addressing developments and extensions to be applied to the system of *community sanction* for adults. It is a set of measures implemented through a strong dialogue with local communities, which, in this way, become the main actor of the enforcement of sentences having as objectives the enhancement of the offender’s awareness, an effective social reinsertion and a perspective in line with the principles of restorative justice, by overcoming the current ‘prison-centered’ view. Moreover, in this way, local communities themselves are involved in the awareness process.

The fact that two different perspectives – one focused on the juvenile justice, the other on the enforcement of sentences in the community for adults – are both managed by a single Department represents a still pending challenge. This last can be won through the promotion of an osmosis, capable of enhancing the juvenile experienced system, and ‘influencing’ the adult’s, as it already happened with *probation*. The language is to change, too. The current one, full of words like “alternative”, with reference to measures or sentences, and “external”, concerning their enforcement, seems to give indeed centrality to detention, a pivot measure for the whole system, also at a linguistic level.

The second challenge derives from the desire of guaranteeing a cultural homogeneity of the two Departments, the one focused on the enforcement of sentences in the community and the other focused on the enforcement in custody: the risk of greater distance between the two would mean to stress the restraining feature of the second one.

To achieve this objective, it has been decided to offer the same training activities, in order to guarantee a harmonious cultural environment, even though diversified. It is a 'triangular' system with the two Departments united by a common training centre.

In order to give responses to reasonable safety requirements by citizens, Italy seems to move towards a new sentence enforcement pattern, which will focus on recidivism, as set out by the first basic principle of the European Probation Rules (*Recommendation R(2010)1*): "Probation agencies shall aim to reduce reoffending by establishing positive relationships with offenders in order to supervise (including control where necessary), guide and assist them and to promote their successful social inclusion. Probation thus contributes to community safety and the fair administration of justice".

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18. The difficulty in homogeneity of the adults' prison service

One of the difficulties, which Italy is always to face, in answering to complex international assessments on its penitentiary system for adults, is related to its heterogeneity. In considering some positive factors, it is still difficult to provide a uniform overview. Moreover, this feature is also true for other systems in our country, for example the education or hospital and healthcare systems. However, what is striking in the penitentiary system is the lack of clarity in policies on the enforcement of sentences and is given to practitioners, who too often have to face new situations without understanding which is the overall vision of the sentence execution system which is to be applied. It is true that a lot has been done through the National Assembly on the execution of sentences ("Estates-General"), which goal has been to sketch an overall hypothesis on why and how shall we punish. The overview, however, fails to be expressed during daily life and both positive and negative experiences are too often related to the individual prison officer or to the local available supporting activities. The huge differences and the heterogeneity at different levels, which still today, characterize the penitentiary system, are such that two very near institutions, situated in the same region and in the same city, such as PIs Marassi and Pontedecimo both in Genua, seem to belong to two different worlds.

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- and is currently used - is the relapse rate or the lack of disciplinary issues, if an evaluation on the efficiency of the system is carried out. However, even if these indicators are important and significant, they alone are not enough.

From the same working tables of the National Assembly on the execution of sentences (“Estates-General”), it has emerged several issues which could be expressed in parameters describing the system: from the use of living spaces in penal institutions to the relationship with the local communities; from productive working activities (not provided by the prison Administration) to rehabilitation programs; from a variety and plurality of available treatments to the healthcare management and so on.

Therefore, the work of the National Guarantor is to establish standards in these different sectors, by collecting Recommendations drafted after visits to prison institutions. A contribution to bring homogeneity back to the system, by promoting best practices and the many positive experience, which otherwise would risk isolation.

19. Facilities of different sizes, construction period and use

An element of strong heterogeneity of the Italian detention system concerns its facilities, their living spaces, and the implicit logic in their building plans.

In Italy, the number of detention facilities accommodating adults and minors is currently of 207 state-owned assets (190 for adults, 17 for minors), of different sizes, built in different periods, and often for different purposes, and with different project technologies and philosophies. The structural pattern has been shaped between the end of eighteenth beginning of nineteenth century, causing then in the second half of the last century the alienation of prison from the urban area and the decision to displace prison facilities in the rural area. This decision has been made by taking into account any relation with local mobility plans and the gradual socio-health and cultural services relocation.

The National Assembly on the execution of sentences (“Estates-General”) has highlighted that the innovative criteria for locating a new prison institution in an active context must necessarily readdress the issue of its wall perimeter, its control/access points, of physical relationships with the context, by giving priority to the connection to the urban territory, thus overcoming separation and isolation of prison infrastructures from the city. All prisoners are as well citizens; for this reason, the mayor, the council members and the authorities in general are their representatives, too, and they must represent them concretely. However, the National Guarantor during its visit to the prison institution in Santa Maria Capua Vetere, situated in the rural area of the city, noted that prison staff and the inmates’ family have huge difficulties in arriving to prison, as it is not well connected by public transports. The same difficulty has been reported in Tolmezzo and Sanremo prisons – just to mention some cases reported during recent visits. This lack of connections makes these institutions’ mission inconsistent with their objective of social rehabilitation.

Therefore, today the panorama on prison infrastructures do not seem to be completely uniform. It is diversified with reference to their construction periods, displacement, space organization, and implied vision of what can be done in these spaces. In addition to the difficulty in describing the sentence enforcement pattern in the Italian penitentiary system in terms of perspectives and programmes, there is a similar difficulty in finding uniformity in architectural settings in which these programmes are to be implemented: from the small and obsolete prison institution in Bolzano, to the high-tech prison establishment in Trento. From the PI in Sondrio, planned for 29 prisoners, to PI Poggioreale in Naples, planned for more than 1,600 people.

The state of the art also shows that over time many prison facilities have undertaken structural changes, which, in some cases, have transformed the original project, often following too much strict project and technological choices due to the necessity to give rapid responses to the need of new places.

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regions and to Sardinia, has highlighted some weaknesses in this respect and thought of how to plan interventions for a different organisation of living spaces, especially concerning those projects, which are not yet completed.

It seems necessary to plan the recovery and rationalization of current real estate, through a plan of significant conversions of parts of buildings to new purposes by giving priority to spaces for training, culture, work. It will give way to a real adaptation of penal institutions to a Constitutional Charter-oriented sentence enforcement pattern.

An example could explain: is it possible to discuss on love and family visits in prison, as set out in the bill still debated in Parliament, and at the same time not considering to plan spaces suitable to those purposes in the building plans that are going to be realised?

20. The different 'detention regimes' for adult prisoners

The detention circuits - and the corresponding 'detention regimes' - are also heterogeneous and far from each other. From one side, and for specific groups of prisoners, they comply with the European prison rules (Recommendation Rec (2006) 2)) and the Council of Europe Recommendation concerning dangerous offenders (Rec (2014)3), on the other, they go far from them in a significant and worrying way.

For all, segregation that leads to passiveness is the most applied principle, and the enforcement of sentences does not always appear to be focused on constitutionally established standards, namely the respect of the sense of humanity and the prisoner's rehabilitation. It should be noted that legal basis of the separation principle is only the one contained in article 14 of the Prison Act, where it is established that regrouping in sections is ordered with special regard to the opportunity of implementing a «common rehabilitation programme» and «to the need of avoiding reciprocal dangerous influences». However, over the time, different detention circuits for the management of sentence enforcement regimes have been introduced in the 190 prison institutions for adults, by assigning those considered “dangerous” to the so-called “high-security” wings; the less dangerous to the “medium security” wings and to the so-called ‘detention sub-circuits’ (‘close’ sections within “medium security” wings). They have been all introduced by the Department of Prison Administration through circular letter 355603, of 15th October 2013, on *Modalities of enforcing sentences*.

In the field of sentence execution regimes, a particular distance is noted between “high-security” and “medium security” wings, in terms of protection of the right to equally receive rehabilitation programmes, which has to be granted to each prisoner. Indeed, as mentioned by the Constitutional Court (judgment 204/1974) there is «a mandatory requirement for the legislator to take into account not only the rehabilitation objectives of the sentence, but also to provide all suitable devices and forms, respectively to implement and guarantee them».

Moreover, the problem of distance is much evident when we consider the maximum security regime ex article 41bis, where the explicit suspension of «normal conditions for treatment» has not to be understood in the simultaneous suspension of the fundamental rights of the person and the measures taken must exclude scrupulously this easy alteration.

During his visits to the “high-security” sections, the National Guarantor has had the opportunity to ensure that in some situations those prisoners have been offered significant occupational therapies, by breaking down the barrier, which separates them from the common prisoners.

During his visits to “high-security” wings, the National Guarantor has had the opportunity to ensure that in some situations those prisoners have been offered significant rehabilitation activities, by breaking down the barrier, which separates them from the common inmates. On the other hand, in other situations the difference between daily detention living in these wings and the one in the “medium security” wings leads to two different ‘worlds’ fulfilling distant logics, which an external observer can hardly consider as responding to the same constitutional principle.

The National Guarantor gave particular attention to detention circuits addressing inmates so-called ‘protected’, by finding very often the paradox that the protection required by this

typology of inmate is inevitably translated with isolation and desocialization. This is an unacceptable imposition for persons that are subjectively vulnerable or need pro-active interventions. The gay-housing unit in Gorizia – which the National Guarantor has requested to be closed, after having tried some sort of integration actions – is an example of this degeneration. Likely, detention wings for offenders having committed heinous offences, particularly reprimanded by the public, who are not targeted by positive interventions to rethink

their past criminal behaviour and guarantee a higher security to the public, once there are released. Instead, they are simply secluded.

21. The language used with never-adult inmates

An unusual indicator, but experienced by a lot of observers who visit prisons is a closed internal system of the language. It is a merely infantilizing system. A legendary example is the use - and the abuse - of words with the diminutive suffix “ino”, such as “spesino”, “scopino”, “rattoppina”, used for inmates doing daily works inside prison institutions, are some among other conventional examples. Other terms such as “mercede”, “lavorante” or “sopravvitto”, or also “permessante” or “liberante” are specific to the Italian penitentiary system and are not used in the common language in the outside world. This contradicts the indication in the European prison rules, which provide that life in prison shall approximate as closely as possible the positive aspects of life in the community. This makes the inmates’ rehabilitation process more difficult, by alienating them from the social reality also in the use of the Italian language.

Many language terms are specific to the Italian penitentiary system and are not used in the common language in the outside world. This contradicts the indication in the European prison rules, which provide that life in prison shall approximate as closely as possible the positive aspects of life in the community. This makes the inmates’ rehabilitation process more difficult, by alienating them from the social reality also in the use of the Italian language.

Contrary to normal expectation, these words are not a sort of jargon of prisoners, but they are normally used by prison staff (prison governors, rehabilitation officers, psychologists, prison police officers, sometimes also by supervisory judges and we can find them also in some official documents of the prison administration. To apply for a release licence, the inmate shall use the so-called “domandina” (literally “little application form”), which expresses a lack of respect for the man or woman who has submitted application, and a sense of devaluation of the application itself (on which sometimes depend the individual’s liberty), the diminutive suffix used to compare it to a sort of caprice. It should be noted that the answer to this application is not called “rispostina” because nobody would dare define the prison governor ruling in this way, even less the prosecutor’s or the Supervisory Court’s.

Nevertheless, language is just one of the expressions of the inclination to trigger the inmate’s infantilizing process. The pattern based on the offender’s taking-responsibility while serving his term seems to be an exclusive prerogative only of some institutions. Others, on the contrary, have a system aimed at depriving persons of their capacity and right to decide for themselves, to manage their daily life, to walk around the prison without being accompanied even for short time displacements, to participate in the community activities scheduling, to be actively involved in the life of the prison institution.

In this system, the sole prerogative, which remains for prisoners is applying, filling out “domandine”, and have hope of receiving something: from employment to visits, from a single cell to the access to an education programme, from release licenses to the participation to the activities provided by the institution. They submit applications and someone else decides. If

they do not receive back, they use the other language they know and is recognised in prison establishments, too. They make their bodies scream, through self-harm, suicide attempts or simulations. It should be also noted that this system causes persons to consider all the denials as an abuse, while nurturing the inmate's victimization and feeling injustice. This is the exact opposite of the process of the offender's taking-responsibility.

The experience gained in the framework of juvenile justice with a widespread use of *diversion*, *probation* mechanisms and enforcement of sentences in the community, confirms the effectiveness of the programs of the offender's taking-responsibility. The very high percentage of positive outcomes of *probation* confirms this approach. The importance of implementing offender's taking-responsibility programmes is confirmed also by data on the effectiveness of reinsertion pathways based on progressive phases in which the shift from custody to freedom is happening through alternative and community measures. In this respect, it is worthwhile to recall some academic studies indicating an important reduction in relapses into crime when the inmate achieves liberty through a gradual process of self-awareness and self-responsibility.

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22. The increasing attention to radicalisation

In outlining the current features of the Italian prison system – of other European countries, we cannot ignore some of the most analysed and observed phenomenon, which concerns many prison systems: the risk that prisons may become a nurturing place for radicalization towards violent extremism and terrorism. Individuals with structurally weak personalities, who may be considered vulnerable to those who seem to offer stronger identities, though living the same difficulties and showing resent. A fake personality, but a robust one. Several persons, who have been responsible for very severe terrorist attacks in Europe in the last period, especially in France, starting with the massacre at the offices of satirical magazine Charlie Hebdo magasin attack, have been serving time in prison, medium or short sentences, in good conduct. Nonetheless, they were nurturing a feeling, which drowned their sense of initial exclusion in their membership to a network, capable of offering an overall identity, powerful and demanding self-sacrifice.

It is the responsibility of contemporary sociologists to explain how an old phenomenon of deathly sublimation and a recent phenomenon of armed attack to state power through the killing of individuals can have been combined so to appear as an expectation for contemporary youngsters, bearers of an anxiety of violent purification. It is up to the responsibility of psychologists studying communities that are cohesive in projecting the sense of meaninglessness in the desire of maximum incidence, to understand the feeling of hate which could foster these attitudes. It is the responsibility of those who have the task of preventing these situations to ask themselves about possible places where they may develop, daily nurturing themselves and trying to build up networks of new members.

The prison can be one of the places where these processes can be triggered. More in general, closed environments are *places of vulnerability* where there is a risk of radicalization. In closed environments, people tend to identify themselves in different groups: the same typology of crime, the same country of origin, the same alleged ‘persecution’ feeling, no matter what it is, the same group considered as target of current negative values (see media campaigns attacking religious beliefs). Therefore, prisons are at risk of being a special place for narratives from that outside world, which is building on such weak identities (the small group to which one belongs is echoed in a great deed, carried out by others in the outside world).

For this reason, not only communication networks have positively developed among different correctional Administrations, and analysis and projects have been shared, but also, in Italy, a particular attention has been paid to the issue, despite its very small numbers. Attention has been addressed to inmates who have been already involved – and sentenced - in proselytism activities leading to violent radicalization and those who are under control because of some behavioural changes in this direction.

The Council of Europe, too, continually pose an attentive eye on the phenomenon expressions in its constituent 47 countries, and contributed to analysis with the drafting of its *Guidelines for prison and probation services regarding radicalisation and violent extremism*. This is a tool to outline a strategy approach in prisons. There are two key principles underpinning the guidelines. The first one regards the fact that overcrowding, lack of personnel, overall bad conditions in prisons increase the risk of self-victimization and foster the sense of exclusion from an external ‘enemy’. Therefore, the first way to reduce the risk of radicalization is the positive management of a prison, with the opportunity of proposing material conditions respectful for any individual. The second principle is on this strategy: only a prison institution - that offers a wide activity programme, giving the inmates the possibility to be active, to move and feel involved - is effective elements in getting to know what is about to develop in each individual and in his relationships with others, and which are the underlying dynamics. A prison, which leaves prisoners in their cells for most of the day, is not offering knowledge tools to its staff to understand which situations are arising.

Overcrowding, lack of personnel, overall bad conditions in prisons increase the risk of self-victimization and foster the sense of exclusion from an external ‘enemy’. Therefore, the first way to reduce the risk of radicalization is the positive management of a prison, with the opportunity of proposing material conditions respectful of any individual.

Starting from these two principles, it is necessary to develop –and in Italy it has been done to a large extent –a multi-directional strategy: a) the identification of signs (and here the linguistic and cultural skills are fundamental) on radicalization pathways by offenders who have arrived to prison and not defined in their belonging to a specific prisoner group, are, often vulnerable; b) the management of those who are already radicalized prisoners (European countries are different in their choices to disperse them in many prison institutions or else to segregate them in specific wings or prison establishments); the implementation of deradicalization programmes (because a decision is never to be considered a final decision, the more if it is violent and

insane); the preparation for release of radicalized persons, who are often serving very short sentences (and, therefore, providing information to the outside to monitor reinsertion and protect the community); the implementation of all abovementioned actions in the full respect for all binding requirements established in the article 3 of the ECHR.

A set of actions for such not a simple strategy, which is being implemented and of course characterizes, beyond figures, the attention paid to prison in this difficult present days.

23. A permeable system

The Italian prison system is increasingly identifying itself in a performed transparency, mostly because it is very much permeable to the community and the public. This is a feature –and also a strength – of the Italian detention system. Since 1998, the national association *Antigone*, the Observatory on prisons of the Union of the Italian penal chambers, the regional and municipal Guarantors of the right of detained persons, members of Parliament, Italian Radical party delegates and all people entrusted by the Department of Prison Administration in compliance with article 117(2) Prison act, carry out periodical visits. They are overall monitoring activities that help in breaking through the barrier between ‘outside’ and ‘inside’.

A step forward that has been taken in order to coordinate the visits of members of parliament in prison is the foundation, both at Chamber of Deputies and at Senate, of an Intergroup of members of parliament interested in the issue of sentences and prison.

An important step towards some kind of coordination of MPs’ visits to prisons is the establishment of an *Intergroup* of MPs, in both the Chamber of Deputies and the Senate of the Republic , interested in the subject of punishment and of prison. The two *Intergroups*, managed by Mario Marazziti and Luigi Manconi, respectively, pointed out the need of coordinating their visits to the institutions with the National Guarantor, in order to receive suggestions and give useful

information for it to carry out its task of monitoring and surveillance. The system permeability to the outside world plays an important role in the offender’s social inclusion process and, of course, it is not limited to the access of persons and associations. More and more it takes the form of experiences open to the public, such as restaurants, theatre plays, cultural and sport activities. An extraordinary example is the catering and tourism vocational college, which has been set in inside the PI in Volterra – thus, not in common college establishment - and is addressed both to free and detained students; they attend educational and training activities together, by sharing daily experiences.

This experience inside-outside prison is unique in Europe. The project of education and training has been launched by the Pisa province and by the PI governor, has been an idea of the “Ferruccio Niccolini” college headmaster in Volterra. Inside this prison institution, the project “Carcere come luogo in cui incontrarsi” has also started, in cooperation with *Slow Food*, theme

nights are organised where guests are invited to enjoy delicacies prepared by the inmates, who illustrate recipes taken from the oldest regional tradition and from cooks' country of origin food culture. A catering course, which, therefore, improves the students' skills through a proper education course, for which training *on the job* is at the same time a prerequisite and an additional value.

An important experience of catering in prison has been launched in 2015 at the PI Bollate in Milan, which became a model for the Italian penitentiary system. The innovative system of social reinsertion of prisoners is represented by the restaurant *InGalera*. Started inside the prison walls, it has opened to the public and offers the opportunity of - literally - have dinner in prison and tasting dishes cooked by inmates. The key point of this experience is the desire of bringing together prison and the community, to know each other more closely and overcome prejudices. The same happens in Turin with *LiberaMensa*.

A high quality experience is the production and sale of *Giotto* handmade patisserie at the PI "Due Palazzi" in Padua, a plant with several sale points throughout the country, which is both a school for professionalism and life. For those who would like to know more about products "made in jail" and purchase, *Freedhome* in Turin offers a complete range of products availability: it is the only store of this kind.

▲ Positive aspects

24. The dialogue between the "Estates-General" and the reform

The first positive aspect of this last year has certainly two main events, which have taken place on 18th and 19th April. In those two days of debate, with a very large presence of public institutions, from the President of the Republic to several ministers, the final documents of the eighteen working tables of the National Assembly on the execution of sentences ("Estates-General") were presented, thus concluding almost a year of discussion, which involved more than two hundreds experts from different cultural areas and professionals, united by the desire of reflecting on the penal system and building together a more useful framework to respond to offences, in the respect of all those who have been involved:

The event "Estates-General" had basically a dialogic approach regarding a legislative action: the draft legislative proposal on the reform of the Prison Act, which was included in a more comprehensive provision (C 2798 – S 2067), still under debate at the Senate, because the issues addressed in the draft reflected on the action points outlined in the measure.

victims, offenders, the overall social context. During those two days, the *Final Document* was also presented, drawn up by the Coordination Committee.

The importance given by the work of the “Estates-General” to dignity and rights of prisoners (see the *Final Document*, chapter 4, page 11) can be specifically found in the provisions establishing the recognition of the right to conjugal visits and the proposed provisions aimed at the respect for human dignity through «the offender’s taking-responsibility process, the nearness of prison life to life in the community, the dynamic security».

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These are, therefore, connected actions not only because they were launched simultaneously, between 2014 and 2015, but also because they are aimed at achieving the same goal of reforming the enforcement of sentences system, by modifying it in a effective and fully satisfactory way in terms of the principles established by the article 27 of the Constitutional Charter, and the goal of promoting a cultural development in the country, which would allow the reforms to be accepted and shared.

From its first version until the current one, despite some amendments made by the Parliament which – to be noted – reduced the original reforming scope of the bill on some crucial points, the enabling act for the reform of the penitentiary system has included the fundamental and qualifying aspects of the working tables of the “Estates-General”.

It is common knowledge that they have developed their final proposals on different action plans: the legislative one is aimed at contributing to the innovative framework, issued in the enabling act; the administrative one has the aim of setting up a new management model for the enforcement of sentences system, which includes the restatement of the rules aimed at organizing internal and external management; the cultural one aimed at promoting the social perception of meaning and value of sentencing.

According to these prospects, the guiding lines of the bill are outlined as follows:

- Simplification of procedures;
- Revision of the prerequisites for accessing alternative measures to incarceration, so to facilitate in their use;
- Removal of automatisms and obstacles, which prevent the full implementation of individualised rehabilitation programmes;
- Prison work enhancement, to be considered an essential device to effective social reinsertion pathways. (*Explanatory memorandum* issued on 23.12.2014).

The importance given by the work of the “Estates-General” to dignity and rights of prisoners (see the *Final Document*, chapter 4, page 11) can be specifically found in the provisions establishing the recognition of the right to conjugal visits (art.36(n)) and the proposed

provisions aimed at the respect for human dignity through «the offender's taking-responsibility process, the nearness of prison life to life in the community, the dynamic security» (art.36(r)). They are provisions that qualify the reform draft at a political level for the values expressed and for the innovative scope of the entire system to which it is related.

The National Guarantor wishes that the Parliament could promptly approve the reform bill, because of its importance on the penitentiary system and, from several aspects, for its relevance in the framework of the overall set of rules, also made of, yet divergent, expectations (such as the ones increasing the mandatory minimum sentence for lesser offences).

25. The decline of the double segregation of the 'mentally disordered offender'

A cultural change, as well as a change of the personal conditions of those involved, took place in the year of activity of the Guarantor, the definitive closure of the Judicial Psychiatric Hospitals (OPG) and the opening of thirty Residences for the Execution of Security Measures (REMS), even if they have been opened in provisional facilities in many cases.

Many 'actors' have contributed to achieve this outcome, starting from those who, through a targeted CPT visit, showed at international levels the unsustainability of conditions which those structures were experiencing. From those actors who worked in a tailored Committee, chaired in 2010 by the then senator Ignazio Marino, and made clear to the public those conditions and had the powerful support of the then President of the Republic Giorgio Napolitano, and the Justice Secretary Paola Severino. This last proposed the decree-law on the decline and closure of the Judicial Psychiatric Hospitals (converted into Law 9/2012 and modified through a later decree, converted into Law 57/2013). However, a substantial contribution was given by the current Justice Secretary, Andrea Orlando, who did not further delay their final closure (Decree-Law 31st March 2014 No.52 converted into Law No.81/2014), by setting the deadline of 31st March 2015. Since then, a coordination group has been set up, having together the Ministry of Justice, the Ministry of Health and the representatives of regions and the autonomous provinces of Trento and Bolzano. The group aim was to work on setting aside those structures and have the territorial mental health services providing the medical intake of inmates with mental disorders. This process concretely took off only through the last year commitment of the Special commissioner for the decline of the Judicial Psychiatric Hospitals Franco Corleone, who was also the regional Guarantor for the persons deprived of their liberty in Tuscany, which monitored the individual situations in order to achieve the final objective on 20th February 2017. All hospitals were closed and 30 REMS were opened, now accommodating 569 patients.

Today we can say that it gave way to a process that started forty years ago with the “Basaglia Law” (law 180/1978), which led to the closure of the psychiatric institutions. By the words of the legislator, it showed that «we can make it different, because there is another way to address this issue, also without restraining measures». This law, of civil innovation for our country, remained incomplete concerning that judicial psychiatric system, which survived for all these years. This happened because it was based on the fears of the ‘crazy criminal’ and had applied to those convicts, not responsible for their criminal action, a double level of total institutions: the detention and mental hospital total institutions.

Today we can say that it gave way to a process that started forty years ago with the “Basaglia Law” (law 180/1978), which led to the closure of the psychiatric institutions. By the words of the legislator, it showed that «we can make it different, because there is another way to address this issue, also without restraining measures».

For this reason, the OPG closure has a cultural dimension to be consolidated and we have to make it live completely, also inside some communities sometimes fearful to host in its own territory the ‘residences’ recently opened. This positive dimension is enhanced by the fact that law 81/2014 introduced also other elements, considering a) the restrictive measure in REMS as a last resort, to be decided only when there are not other adequate measures to ensure suitable cares and consider the inmate’s dangerousness, which cannot be deduced by the inmate’s life conditions; b) the length of such a measure, as of other security ones.

Today, we can say that the inmate’s mental health is going to be treated as it is like many other illnesses, which he may suffer during his lifetime. In this way, the penitentiary institution is addressing mental disorder not starting from the diversity standpoint, but from its seriousness and the need to identify the best way to safeguard the inmate’s health. This is not an easy process, with many obstacles at its start. Nonetheless, it is part of an innovation process of civilization of our system.

26. The evolution of prison staff and its professionalism

Since 1975, the set of rules on the execution of sentences focused on a multi-faceted penitentiary intervention. In the course of the years, the system has hardly worked on staff training, in order to improve the image of penitentiary practitioners. Today we can say that, if compared to other European countries, the Italian prison staff professionalism, who operate at different levels in prison and probation settings, is expressing a strength in our system.

True to say, the efforts for an integration of skills and dialogue among practitioners, who ‘look at’ the system from different standpoints, should also be enhanced, because the separation of functions does not suit the management of prison complexities: the enforcement of sentence system, in prison and in probation, is always highly complex.

True to say, the efforts for an integration of skills and dialogue among practitioners, who ‘look at’ the system from different standpoints, should also be enhanced, because the separation of functions does not suit the management of prison complexities: the enforcement of sentence system, in prison and in probation, is always highly complex. Those local experiences made in connection with universities, also in defining initial and in-service training programmes, all go in this direction. In particular, mention is given to

the well-established experience of the *Master in Prison Act and the Constitutional Charter*, implemented in collaboration with the university of “Roma Tre”, the Prison Administration Department, the Department for Juvenile and Community Justice, which was actively boosted by the *Istituto Superiore di Studi Penitenziari*, today placed within the Directorate-General for training, now addressing for prison staff from the two different departments.

This approach is also reflected on improvements to be given to different professionals. In the training field, the intention is to plan a uniformed *lifelong learning* programme (together with *e-learning*), which takes into account the prison system instability and the possible implementation of new technical and operational tools during the enforcement of sentences (for example, electronic tagging). Considering the implementation and valorisation of human resources, the enhancement of practitioners professional skills will be provided - for example, skills required in preventing violent radicalisation and implementing exit strategies – or will be increased in number in some sectors so to boost exchanges among practitioners with different skills.

To achieve these goals in the different settings, despite shortage of financial resources, agreements with different *stakeholders*, local bodies, sport and NGOs are to be signed. In the training sector, it is particularly important to promote other agreements with universities and reinforce those already existing.

27. The remarkable support of the Third sector

The reduction in direct government actions aimed at balancing social diversities, and this is the current scenario in most States, highlights the auxiliary role of some local non-profit organizations in the orientation and implementation of social policies. The social welfare model, which is increasingly gaining ground, tends to reduce expenses while ensuring efficiency, through the productive rehabilitation of citizens, the enhancement of time exchange activities at the community disposal, supporting activities to actors responsible for some services: everything is made to ensure the outcome evaluation and the standardisation of performances and protocols.

The non-profit organizations are operating, from healthcare, to social and economic in many sectors. The non-profit activity play an important economic and social role in the territory; it guarantees products and public services, and at the same time, it creates employment.

Although it reflects a general tendency - widely spread in the civil society, the presence of non-profit organizations in prison settings has a specific value: it does not replace the action of the prison Administration, but it is a way to open the total institution to free society.

In the penitentiary system, the voluntary service has a long tradition and is a specific feature of the Italian system. It is particularly operational and rich in activities; it plays an important role of daily support; it ensures several cultural activities and a range of socialisation opportunities for prisoners, such as sport, leisure activities, education, accompanying service for those who will benefit of release licenses, social and work reinsertion at release, organization of activities during visits and promotion of the rights of prisoners.

Voluntary organizations become important for the enhancement of the prisoner's self-determination, who, through activities in planned projects, strengthens his own personality. The presence of voluntary work – which requires consolidated education, training and no improvisation – is also a useful element for the implementation of the strategy countering violent radicalisation in the prison institutions. By involving the external society, the volunteer assistants, chaplains and imams, we protect religion from proselytism and risky radicalised prisoners.

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Numbers available on the Ministry of Justice website, updated to 15th March 2017, show how farsighted the Prison Act provisions have been, in dedicating two articles to volunteering in prison (articles 17 and 78). The most significant data is that, in the last decades, it has played a role of “bridging” gaps between inside and outside, by increasingly working with almost 200 associations. In recent time, important actions have been taken in order to promote structured, and not individual, working modalities: the Operating Protocol on the Statute and working modalities of volunteering in prison, signed in 2014 between the Prison Department and the National Conference on Justice Volunteering, accredited partner on behalf of the Association of volunteers.

28. A focus on minors, children of incarcerated parents

The protection of family ties and relationships with parents has been always considered a fundamental element of the rehabilitation programme, as envisaged in the Prison Act.

In recent years, the attention towards parenthood of prisoners has been growing and changing, with the aim of not only promoting the preservation of relationship between parent and children

during detention, but also reinforcing the prisoner's responsibility as a parent, especially towards minors, and implement concerned staff training activities.

In this context, in September 2016, the Ministry of Justice has renewed the *Protocol-Charter of fundamental rights for children of incarcerated parents*, which focuses on maintaining any emotional tie with imprisoned parents. On 21st March 2014, the Charter was signed for the first time, as a Memorandum of Understanding between the Ministry of Justice, the National Ombudsman for Childhood and Adolescence and *Bambinisenzasbarre* ONLUS. It is the first agreement of this kind in Europe, which commits the prison service to face the

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needs of minors who access any prison premises to visit their incarcerated parents. It intervenes on spaces and modalities for an efficient reception and addresses to many actors involved by the issue (from minors to parents, from prison officers to other staff). It also foresees training courses for prison officers and in support of parenthood necessities of prisoners.

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Needless to say that if, on one side, much has been done in the daily management of parenthood issues, on the other hand, there are still many prison institutions in which visit rooms are unfriendly and often unsuitable, with neither a small place furnished for children and many more prisons have no open space for family visits. Although video calls have been allowed by circular letter 0366755, dated 2nd November 2015, from the Prison Department, they have been implemented in very few prison institutions, despite the positive results achieved in places where the provision was applied. In the female prison institution Giudecca in Venezia, for example, some incarcerated mothers have been allowed to do homework assignments with their children via Skype, with a return of happiness for both mothers and children. This is an example to be fostered, valorised and disseminated. However, worthy of notice is what happens in practice, where the protection of such significant and stable ties between parents and children is too often hindered by rules and by the prison management, and they sometimes become the real obstacles.

Considering the relationship between mothers and children, on 31st January 2017, imprisoned mothers with children were 35 with 40 children. Out of these, 19 mothers and 19 children of them were accommodated in prison nurseries, while 16 mothers and 21 children were in the Attenuated Custodial Institutions for Mothers (ICAM). The problem of children in prisons is a critical issue, which requires solutions.

However, it should be observed that ICAMs are not the proper solution, especially when they are situated in suburban areas or far to be accessible or are hosting few mothers with their

children. The risk, in this case, is isolation of imprisoned mothers, the separation from the family and the difficult children's inclusion in the social environment and with children of the same age.

About prison nurseries, together with equipped, comfortable and well related with the community, there are others completely unsuitable: the nursery in the prison institution in Avellino is named such, just because the "nursery-cell" for mothers and children is simply a double cell, in the female wing, but it is deprived of any needed for the care of such young children. Nevertheless, a positive element is the presence in the female wing common spaces of a comfortable, coloured and equipped nursery, in which some paediatric nurses are working; however, unexpectedly, imprisoned mothers are denied entry. Moreover, the prison nursery has never started any cooperation with the local open nursery. Actually, children live in the common detention area, in unequipped cells, in an environment, also difficult for adults, without relationships with schools and local organizations; while imprisoned mothers are set-aside in enjoying with their children the only fit room or the open children-friendly playground.

A positive remark goes to the opening of the *Casa di Leda* in Rome, after a long development. This is a protected family-centered group home for female offenders under home detention orders, or community order. In October 2015, the capital's local administration signed a protocol with the Prison Administration Department and the home is now accommodating the first mothers with children.

29. Positive responses to the introduction of the diversion system

The introduction of the legislative tool on the suspension of judgment with a *diversion* programme for adults has changed significantly the cultural penitentiary perspective, while bringing our sentence enforcement system closer to the European models and to the concerning recommendations issued by the Council of Europe (particularly, Recommendations R(2010)1 and R(92)16).

Its introduction in the penal context of adults has results on the development of the probation system. It enhances the rehabilitation contents of non-custodial and community measures, while requiring the defendant to be diverted into a programme, which may consider to perform community service work, make restitution to any victim, and pay fines.

In the last three years, in juvenile justice, numbers on the suspension of judgment with *diversion* programmes remained unchanged, varying of some hundreds in between years (on 31st December 2016 there were 3,581 cases, against 3,340 of the previous year), while in the adult

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setting, the use of the recent legislative tool has become clear. It has recorded an increase from 511 cases in 2014 to 9,090 on 31st December 2016. In the same year only 3.7% of the diversion programmes resulted in an unsuccessful completion of programme requirements, the case is not dismissed and it returns to court. In the juvenile setting, too, the percentage of positive completions is high and failures to complete diversion are 16.4% of the total number of cases, in 2015 (last available data).

These situations confirm that the direction taken by the legislator in 1988, by the Presidential Decree 448, of 22nd September on the protection of youth offenders through the diversion system, thus guaranteeing the defendant an evolutionary process far from prison, was right and applicable to adults. At that time, the legislative provision recognised the core and specific aspects of any rehabilitation programme and saw in the suspension of judgment, a taking-responsibility process about adopted criminal behaviours. By this means, the legislative tool limited the resort to legitimate detention, with its stigmatising effects.

At that time, the objective of promoting the community dimension of punitive measures and the convict's re-joining his social and emotional contexts appears to be relevant as ever and positively extended to adults. The introduction of legislative tools alternative to custody allows prison system to go beyond the impracticable prisoner's scientific observation inside the prison institution and the risk of producing a mere "storage" of people, for whom a tailored rehabilitation programme is almost impossible as they are unknown to prison staff.

30. Juvenile justice, a system that works

In the juvenile justice, the tendency to refer to the implementation of the restorative justice principles, with reference to the notions of responsibility, problem solving and a negligible address to the penal system, reveals a positive pathway, which should be implemented also in the adult system.

The gradually decrease of arrivals at YOIs, with an average daily prison population of around 473 inmates, is a representative indicator of a process, increasingly aware of the full deployment of two pivot principles in the juvenile justice: custody as last resort, where in the juvenile justice non-custodial measures are given priority, as being considered more appropriate for the educational and rehabilitation process – and the individualised educational plan. After all, the right insight of this system has been also demonstrated by results from investments in educational and community activities, notably the suspension of judgment with *diversion* programmes that - as already observed - has recorded successful rehabilitation outcomes and consequently decreased rate of relapses into crime and less costs.

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The advanced consideration of alternative measures to custody, that reduce relapse into crime and increase social security, shall simultaneously commit the Juvenile Department in building on non-custodial opportunities tailored on each youth offender and, above all, on robust tangible life chances (housing, employment, education, counselling), helping to prepare them for a life after they get out.

Department of Juvenile Justice in collaboration with the University of Perugia). The full-bodied correlation between the early youth offender's intake by the social services for minors and the decrease in re-offending is much evident. On one hand, the overall decrease of arrivals to YOIs makes it possible for prison staff to tailor programmes to the individuals; on the other, it urges a reflection on this type of facility in the juvenile setting. Given the strong relation with the increased rate in re-offending, it is high time we should think something different for juveniles deprived of their liberty, though few in numbers. Something capable to hold tight the restorative component and the imperious re-educational purpose of punishment.

The advanced consideration of alternative measures to custody, that reduce relapse into crime and increase social security, shall simultaneously commit the Juvenile Department in building on non-custodial opportunities tailored on each youth offender and, above all, on robust tangible life chances (housing, employment, education, counselling), helping to prepare them for a life after they get out. An example in this direction is the project “Young Adults”, to which both the probation and the juvenile justice systems are committed in taking care of a particular group of youth offenders, crossing both sectors, that of sentenced young adults.

31. Building on educational pathways

When custody goes beyond its restrictive dimension and convert into chances for growth and enhancement, with the perspective of social reinsertion, important educational pathways may be experienced, in its multiple forms and practices. This is what has occurred in some Italian prison institutions.

In this perspective, the “Higher Education Prison Centres” surely have a leading position. They were born from the initial commitment of volunteers, which played a central role in putting into practice the Prison Act principles on the key role of education within the so-called “treatment” activities. Over the years, an increasing number of activities have been implemented and are now present in Tuscany, Lazio, Triveneto, Calabria, Abruzzo, Piedmont, Emilia-Romagna. Moreover, higher education agreements are concluded by the Prison Administration Department and its regional Prison Directorates-General with the Universities of Palermo, Sassari, Alghero, Tempio-Nuchis and Nuoro, Brescia, Milano-Bicocca, Lecce, Catania, Udine and the “Leonardo da Vinci” off-campus University of Chieti. The hope is that this would soon translate into a “systematic” methodology and not only into important and meaningful experiences.

Since the early eighties, equal importance was accorded to theatre activities in prison, which have been over the time taken on new meanings, methodologies and objectives: theatre activities, rather than performances, the prisoners’ theatrical and creative laboratories, relationship function and self-care are all central. In addition, the fact that theatre has become a precious medium to let the community know about life in prison, both through theatre performances held in prison institutions and open to the public, and through some prisoners’ theatre pieces performed in local theatres. Ever since, theatre in prison has multiplied, and the Prison Administration has opened some spaces, has backed experimental and educational projects, has promoted forms of cooperation with local and cultural associations, and drafted specific protocols.

Excellent examples are those made by the *Compagnia della Fortezza* of the prison institution in Volterra, maybe the first and most well-known, certainly the one which has directly involved the community, and the *Teatro libero* of the prison institution Rebibbia in Rome, which over the years has attracted tens of thousands of spectators at prison venues or the *Laboratorio teatrale* of the prison institution in Saluzzo. Moreover, since 2014, each 27th March, in conjunction with the *World Theatre Day* of the UNESCO International Theatre Institute, the “Prison Theatre National Day” is celebrated to draw attention on the importance of these activities, a Country positive and unique experience.

From a different viewpoint, related to the acquisition of skills for the culture industry, the daily press review by *Ristretti Orizzonti* is worthy of notice. It is sent to institutional readers and others. Over the years, it has become the point of reference for information about prisons; moreover, the inmate involved are receiving training that puts together their vocational training and their possibility to think of their daily life in prison.

Particular attention deserves the “European Study Centre” in Nisida, which objective is that of

«building a shared knowledge system on social education practice communities operating in European countries in the field of justice juvenile services. It would provide a reference framework of rules, social action models and response modalities to juvenile deviance implemented by European Union countries». The Centre has gathered national experiences of cultural building conducted by artistic, music and creative writing workshops which testify how the individual's artistic expression, especially for its creative potential, foster enhancement and promotion of the prisoner's personal resources.

▼ Weaknesses

32. Mental disease in prison institutions

As already mentioned, with the decline of the judicial psychiatric hospitals (OPG), internees, under a psychiatric security measure (now, both temporary and definitive), are accommodated in the new REMS. These facilities cannot host people whose mental disease and consequential illness appeared while serving term in prison or any case after having considered the juridical responsibility for the crime committed. For such internees targeted “mental health and patient safety units” are provided in some prison institutions, distributed on a nationwide basis so to cover the whole country.

As already mentioned, with the decline of the judicial psychiatric hospitals (OPG), internees, under a psychiatric security measure (now, both temporary and definitive), are accommodated in the new REMS. These facilities cannot host people whose mental disease and consequential illness appeared while serving term in prison or any case after having considered the juridical responsibility for the crime committed.

These units are places managed by medical staff, mainly psychiatrists. They provide for each patient a medical intake plan, which foresees some progressive treatment steps, different from case to case and its relevant disease escalation. Treatment phases are aiming at a gradual and supervised return to the community (slowly reduced pharmaceutical treatment or, where necessary, involuntary medical treatment phases compulsory health treatment phases, possible intake into the Psychiatric Diagnosis and Care Service, possible gradual intake into protected communities to prepare for release).

In brief, all facilities must be suitable to a specific medical treatment and in these facilities medical staff takes on a strong visibility and responsibility, even within the overall security carried out by the prison institution where the unit has been started.

However, people there restrained are after all subjected to the rules governing the opportunity to recover and be dismissed, through the various measures provided by the Prison Act and the two “phase programmes”, the one where the doctor is responsible, the other where the Supervisory Judge is taking responsibility: both cannot harmoniously overlap.

Mental health and patient safety units should not take the form of a claustrophobic place. They should differ from mere detention wings and be an environment rich in stimuli for the internee’s recovery from his mental disorder.

Beyond this aspect, which is basically regulatory, the National Guarantor’s visits to the units showed some obvious criticalities and the lack of any implementation activities, which were decided at the beginning. First of all, their form: these mental health and patient safety units should not take the form of a claustrophobic place. They should differ from mere detention wings and be an environment rich in stimuli for the internee’s recovery from his mental disorder.

Moreover, sometimes they are recorded as open and operational in some prison institutions with prisoners assigned to them, but in practice they only exist on the map. The risk is that people are put in a common detention wing or in solitary confinement (as it is the case of the prison institution in Velletri, at the time the Guarantor was monitoring a case).

The confinement of people who are difficult to manage in common detention cell blocks, when there is no possibility to accommodate them in said special units, where mental disease can be treated, is not a theoretical hypothesis: it is grounded on reports from the National Guarantor’s visits or on cases referred to its Office. All that much can achieve absolute and intolerable stages in the treatment of vulnerable and sick people, which may be adequately defined as “inhuman” and “degrading”, adjectives used by ECHR. Even if intentionally concise and impersonal, some reports published on the National Guarantor’s website account for circumstances which open to some dialogue with the Prison Administration Department (one for all the Voghera PI report, and also, just to add another one, that Triveneto report, concerning the prison institution in Vicenza). Furthermore, great concern is arising from the so-called “cella liscia”, an isolation cell which contains no furnishing and no services at all. The Guarantor found them in too many prison institutions, out of the medical area. They were presented by the prison officer in charge as ordinary cells where critical events are managed and solved. This is a practice that is venting on non-medical staff, often on prison police officers, the management of situations that require, instead, expertise and medical responsibility. A practice that is confirmed in those 159 recommendations given to personnel, often by healthcare manager, or after his endorsement, in year 2016 to place a troubled prisoner in a room with no furnishing and to put him under «direct-line-of-sight surveillance».

Furthermore, the said units have to be opened only after the drafting of a detailed Protocol with the local healthcare service so to define a regular psychiatric assistance scheme and the real medical intaking of detained patients: whereas, a positive remark goes to the prison institution in Lecce that, despite the availability of well-equipped premises, clearly distinguished from detention blocks, was waiting for the protocol to be signed and the facilities to be open afterwards. In other cases, there were available infrastructures lacking the minimum healthcare requirements, to the extent that it was not easy to call them “mental health and patient safety units” for the monitoring of people with some sort of mental disease, ex article 112 of the Enforcement regulation (D.P.R. 230/2000), such as the unit provided in the prison institution “Giuseppe Panzera” in Reggio Calabria or else the one in the prison institution in Belluno.

Finally, all activities implemented in this special units, to be set out in accordance with medical staff and psychologists, should always be aiming at the patient’s recovery perspective, at his pathway to be fulfilled, at his return into society, and never at his neglect.

Following these parameters, the National Guarantor has often urged, in the aftermath of its visits, the implementation of a radical review of the approach to the deprivation of liberty of people suffering from mental illness, not only with regard to the respect we owe to their disease, whatever is the crime committed, but also in consideration of the need to protect an overall balance within the prison institution and not to overcharge prison staff working in said units with an unjust and inadequate workload and emotional exhaustion.

However, the National Guarantor could not refrain from raising some doubts on the fact that in two prison institutions and, according to the official situation monitoring system of such events, only in those ones - physical restraint with wrist and ankle shackles or with strings were used, three times in one, four in the other, in units classified as “monitoring”.

33. Self-harm and suicides

Very little can be added to self-harm in prison, a well-know phenomenon: it is often regarded as the last cried words from those who cannot speak anymore, including those who do not understand spoken languages, nor have the opportunity to express themselves, if not by inflicting self-injuries. The language of those ‘without words’, however, shall question a guaranteeing institution that is considering the right to understand, and therefore to exist, of an individual, with his own thoughts and expressions, at the core of the holistic system of people’s human rights. For this reason, the 8,540 self-harm episodes in 2016 and the 1,262 occurred in 2017, up to now on February 25, are particularly worrying figures.

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Similarly alarming are numbers on attempted suicides (1,006 in 2016 and 140 from the beginning of year 2017): on one side, they reveal the need to thank those who, with great professionalism, have been capable to avoid the worst, on the other, they raise questions about the inmate’s assignment – often about their isolation – about the possibility of using instruments, even rudimentary, to put into practice their wish, about the implicit deficiencies, even if not based on fact, in the observation and understanding of the individual. As well as they raise questions on the true willingness behind the action, or its being an expression of a non-verbal language or of a negotiation on the run.

The number of deaths in prison – everyone should have the right to die as a free man – are also worrying: 71 in 2016 and 17 since January 2017). Are they due only to an ineluctable event, a delay in the fatal medical diagnosis or a delay in decisions to be taken or validated, also in case of gradually degenerative health conditions? And to what extent the evaluation on the offender’s crime and, therefore, on external repercussions on decisions for his transfer to a civil hospital, is involuntarily or indirectly having its effects, before it is too late?

The number of deaths is even more worrisome when it comes to suicides. No one is allowed to interpret an individual’s fatal action and, then, be sure when saying that it was avoidable, that there are other people’s responsibilities or similar statements, which are frequently given after these events have occurred. Therefore, it is never permissible to deprive a person of the uniqueness feature of his own extreme action; never more, to ascribe to others the responsibility for what has happened. Therefore, no strategy can totally exclude the possibility that such events may occur. However, it is beyond any doubt that environmental and context conditions have an impact on it: and if they do not have negative outcomes, such as becoming the ‘cause’ for the action, certainly on the contrary, they could act in positive and become a chance to avoid

the extreme action. Then, in analysing the issue of suicides in prison, while indicating them as criticalities, we are not expecting to give elements that are determining the phenomenon, but factors that would have helped in reducing the risk. This is true especially for a country, such as Italy, which is experiencing quite a low rate of suicides in the community, if compared to that of other European countries, and is as well detecting an increase in suicides in detention facilities twelve more the number. Other Countries have higher rates than Italy, but this parameter is also high in the community: what matters is the multiplication factor occurring when the analysis is transferred from outside inside. And, in Italy, such a factor is really excessive.

In 2016, prisoners that committed suicide were 40, and already in the first two months of 2017 the number of suicides in prison tell us of a problematic trend in this year, too: 12 suicides until 1st March, thus in just 57 days; nine of them by hanging, two of which only in the weekend while data are processed. Still an alarming critical situation which, as it is written in the Directive by the Justice Secretary of 2nd May 2016, calls for a greater prevention and response policy, also expressed in its title of *National Response Plan for the prevention of suicides in prison*.

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The Directive has addressed some issues like the prisoners' assignment in prison institutions, in order to limit the contextual factors, which may have an impact on personal choices, the role of *peer supporters* capable to assess signs of discomfort, and prison staff targeted training. All is set within a Plan designed to define step-by-step objectives in lessening the phenomenon and to create discussion groups for the identification of critical phases in the implementation of the Plan. According to the Guarantor, in carrying out the Directive a systematic "acceleration" is necessary, together with the need to set up actions, their timing and modalities. In the governmental directive, special attention is paid to what are called *passive transfers*: a topic, which is still considered extremely critical. It will be examined further in this Report.

Detention conditions, the environment, the confinement concerns, the deprivation of liberty are all factors impacting the fragility of individuals who are entering prisons already with their burden of vulnerabilities. It is therefore necessary to provide systematic and well-defined guidelines offering the prisoner not only a corrective intervention, but conversely a positive prevention programme. Confinement and surveillance cannot be considered as preventive tools.

34. Inappropriate assignment of some prisoners

The lack of places in prison facilities provided for by the set of rules, and, in other ways, the still present inexcusable practices in prison management are the circumstances, sad to say, that determine the critical general phenomenon of the inappropriate assignment of some prisoners, the Guarantor has recorded in the prison establishments visited in its first year of activity.

One weakness is relevant to those prisoners who, after having served their time, have to execute a security measure: they are assigned to a penal labour colony or to a Care and Surveillance Centre, therefore, an extension of imprisonment since internees are often held in the same prison institution, sometimes, in the same detention cell and unit.

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The phenomenon has been detected during the regional visit to the Triveneto and, in particular, to the prison institution "Due Palazzi" in Padua, and the one in Trento (both reports are published on the National Guarantor's website). Nevertheless, those cases have become a significant portion of those 295 internees who are only formally held in penal labour colonies (data updated to 31st December 2016).

This is an incongruity in contrast not only with the basic principles on security measures which, regardless of any discussion on its feasibility with the doctrine of a modern criminal law, do not allow to enforce them in a prison institution, in the absence of specific conditions appropriate to each measure. Above all, the said incongruity amounts to a violation of the rights of the internee, whose custodial sentence is illegitimately delayed.

This weakness becomes more and more problematic when it deals with, as observed in Trento and Genua prison institutions, internees affected by mental disorders and further charged with a security measure - therefore, to be released from prison and be transferred to a REMS, in compliance with law 81/2014. However, at the time of the visits, they were still held in prison. In similar cases, the illegitimate hold in prison is in substitution of the hospitalization in a health facility in the community, to which the patient has the right to be admitted.

Another weakness is the common practice to assign an inmate under special surveillance, in compliance with art. 14bis of the Prison Act, or against whom a disciplinary sanction has been imposed, to the so-called "celle lisce", that are isolation cells which contain no furnishing, other than a bed, and sometimes a table and a stool, and where it is the violation of the inmate's right to a treatment that is addressing the principles of humanity and respect for the human dignity the deprivation of prisoner's treatment rights in accordance with human principles and dignity (159 of these kind of assignments were observed in 2016).

As already said, these practices have been reprimanded by the Italian case-law (see, *inter alia*, ruling SIUS 2011/1690 by the Supervision Court of Bologna issued on 27 September 2011) as well as by the supranational guaranteeing institutions for their being in contrast with the legitimate grounds on the enforcement of sentences (article 27 of the Constitutional Charter, article 3 of the ECHR and article 1 of the Prison Act). Yet they are widespread on the national territory as it has been observed by the Guarantor during its visits to the prison institution "Ugo Cariddi" in Siano (Catanzaro) and the one in Ivrea - both published on the Guarantor's website - which have determined decisive recommendations, timely adopted by the Prison Administration Department.

35. Overlapping of legitimate sanctions causing illegitimacy

This weakness, here analysed, is the frequent situation when there is the combination of sanctions determining from one side the suspension of all rehabilitation rules and regulations and on the other the inmate's solitary confinement. However, what is debated is not the legal and formal legitimacy of each sanction but the impact of the cumulative application, which produces, in short, a situation very similar to a "inhuman and degrading treatment" prohibited by article 3 ECHR.

The combined enforcement of the suspension of the treatment and the special surveillance regimes both provided for in the Prison Act, respectively in articles 41bis and 14bis, sometimes also applied to day-time isolation, provided for in section 72 of the Penal Code, produces some non-stop confinement periods, occasionally for many years, which seriously affect the psychological

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and physical integrity of the prisoner. All this has been observed by the Guarantor during the visit at the prison institution in Tolmezzo and recorded in the report on the regional visit to the Triveneto. In that occasion, the National Guarantor met a prisoner who, due to the overlapping of said sanctions, was placed in solitary confinement since six years in a so-called "reserved area", and the access to any form of community activities has ever since been denied – a "reserved area", which legitimacy the National Guarantor is strongly doubting. The physical, health and psychic detrimental effects on this prisoner are recorded in the mentioned Report.

This situation is due also to the interpretation established in the administrative practice of custody, according to which the combination of the two regimes is determining the solitary confinement of the prisoner being sanctioned. This is an interpretation, which has no legal grounds, since neither the suspension of the treatment regime referred in article 41bis of the Prison Act, nor the special surveillance regime referred in article 14bis of the same Act, entail the sanctioned prisoner's total isolation from any form of community activities. This has been also indicated in the Supervisory Courts' case-law and in the most attentive published studies on the subject, which have thus indicated that «the solitary confinement of a prisoner under special surveillance regime has no legal grounds and goes against the principles of the prisoner's right to be humanly treated and the respect for his human dignity» (communication on the Bologna Supervisory Court's ruling on 27.09.2011, *cit.*).

Similar considerations are concerning the enforcement of daytime confinement provided for in section 72 of the Penal Code that the penitentiary administration practice has interpreted with the total segregation from any form of community activities, in particular when it is linked to the regime referred to in article 41-bis of the Prison Act.

In this regard, it is noted that, if on one hand, it is recognised legitimate the compatibility of the prison regime with the principles stated in Article 27(3) of the Constitutional Charter in that "the sentenced person, on whom such regime has been imposed, is allowed to spend some time with others" (Court of Cassation, Section I, ruling no. 9300, dated 26.02.2014), thereby excluding that the solitary confinement consists of the total deprivation of any form of community activities; on the other hand the European Committee for the Prevention of Torture has always expressed serious misgivings about the sanction of solitary confinement being ordered by the criminal court and, since 2004, it has urged to review the relevant criminal legislation in the light of the above remarks (CPT/ Inf (2006) 16(91)) and reiterated on the same point in its most recent Report after its visit in 2012 (cfr. CPT/ Inf (2013) 32(98)). The CPT requests are rooted in the generally accepted principle that "imprisonment is in its own right and potentially harmful aggravations of a prison sentence as part of the punishment are not acceptable". (XXI CPT General Report, 10.11.2011, part dedicated to solitary confinement. §56-64).

On this point, the National Guarantor agrees with the report drafted by Table XVI of the National Assembly on the execution of sentences ("Estates-General") and grasps the opportunity to herein explicitly supports the proposal in the drafted report (§5, Annex 4) to amend the law so to make solitary confinement (so called *isolamento diurno*), respectful of the constitutional principles on the human aspect of punishment and the respect for the right to health.

36. The many weaknesses of transfers

Transfers are a critical issue in prison's daily life: desired transfers are difficult to be obtained, the "passive" ones, the undesired, are difficult to be avoid. These latter, passively experienced by the inmate, do not often offer the effective guarantee of continuing the rehabilitation process (education, university, culture, family ties), sometimes started with difficulty. First of all, it should be remembered that the Prison Act, in compliance with article 42, on transfer of inmates, sets out that they may be transfer "for serious and substantiated security reasons, for reasons relevant to the prison institution, for reasons of justice, health, education and family "and that " the principle of transferring subjects to institutions close to their family residence should be facilitated". Article 83 of the Execution Regulation (D.P.R. 230/2000) also sets out that "in case of transfers for reasons other than justice or security, account shall be taken of requests made by detainees and internees in relation to their destination". Therefore, it may be helpful, unfortunately, to reiterate that our Prison Act does not provide for transfers on disciplinary grounds, which, therefore, are forbidden.

Furthermore, as recalled by the Justice Secretary in his Directive on the Prevention of Suicide (May 2, 2016), the European prison rules clearly outline rules on assignments and transfers. In particular, Rule 17 (point 3) states: “As far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another”. In the Commentary on this Rule (remembering that Commentaries are “an integral part of the Recommendation”) it is stated that: “It should be recognised that detainees have a direct interest in decisions about their allocation. They should therefore be consulted as far as possible and reasonable requests acceded to, although the final decision is necessarily that of the authorities. Such consultation should take place before they are allocated or transferred, although this may not always be possible with initial allocations that are routinely to the local prison or are made to meet the needs of continuing criminal investigations. If, in exceptional cases, requirements of safety and security make it necessary for prisoners to be allocated or transferred before they can be consulted, the consultation should take place subsequently. In such cases there must be a real possibility of reversing the decision if the prisoners had good reason for being allocated to a different prison.”

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In consideration of the cases examined during the several regional visits, the National Guarantor may conclude with reasonable certainty that this indication is still entirely disregarded and bureaucratically applied in the least remarkable way.

As regards to transfers for reasons of justice, imposed by the judicial authorities conducting the criminal proceedings, considered that D.P.R. 230/2000, article 85(5-6), states that: “judicial requirements being fulfilled, the subject is brought back to the prison institution where he was assigned prior to trial”, the Guarantor considers that, respecting the prisoner’s desire and his or her personal situation, also intended as the need to rely on an adequate defence, during trial and between hearings, the defendant’s place of detention shall be the same as where the trial is held.

Certainly, on the same level of consideration shall be put the need to continue the rehabilitation plan and the necessity to fully comply with the right to counsel of each prisoner. The evaluation of the prisoner’s desire, expressed through a specific request to the judicial authorities conducting the criminal proceedings, together with the request for a maximum time limit between one hearing and another can be valuable tools to consider both needs and to give priority to the defendant’s desires.

Lastly, it is important to emphasise, differently from what was often observed, the need for giving continuity to the prisoner’s rehabilitation programme in case of a transfer to another institution and the evaluation of all elements noticed when serving time in the assigned prison.

Another weakness is relevant to the management of transfers of some difficult and challenging inmates. As the National Guarantor observed during several visits, some detainees are transferred from a prison institution to another by following a logic that is of pushing away all difficulties. Institute to another with an approach that tends to remove difficulties. Actually, this

approach causes only a displacement of concerns to another prison institution; above all, it goes against the prison administration commitments in getting to know more closely the prisoner it has in charge and to take care of his or her personal situation and outline the individual sentence plan. The majority of the circulars by the prison Department have all recently focused on these aspects. The gap between what is prospected in theory and on a general standpoint and what is done in practice is enormous

It is worth recalling that the transfer issue is one of the greatest weaknesses of the current situation in prison institutions and that it may also become a source for discontent from detainees, their families and prison staff. It deals with the reasons why some requests for being transferred are not fulfilled, the criteria following which some prison directions are requesting transfers – for reasons of getting rid of difficulties – and, lastly, the criteria followed for future allocations of prisoners being transferred in reason of order and security. Too often, these last ones are not taking seriously into account the prisoner's rehabilitation process started, his or her family needs and other factors essential to his/her positive reintegration in the community.

37. Eradicating violent behaviours

No topic better than mistreatment is described with linguistic hyperbole, when debating on sentence enforcement and prison. Social networks are packed with posts on everyday brutality occurring beyond the smoky glasses of the deprivation of liberty. Symmetrically, others are ready to state that there is a subtle project to discredit some state servants. The utmost defenders of these latters take position against the introduction of an offence that gives a name, defines, and sanctions any violent, wanted and finalized behaviour towards people which custody they are responsible for. To the extent that they almost implicitly would defend their honour. Instead, they do not know that the honour of those who act in the name and on behalf of the State is based properly on the capacity of transparency, on the will to suitably prosecute those who attack this value with their violent behaviour towards prisoners.

So it is sometimes difficult to reasonably think about violence behind the bars of a total institution such as prison. A place where violence exists. A place where violence is not a daily practice. A place where it is clear the message of total unacceptability of violent behaviours and must continue to be as such. It should be also a place capable to look into itself, without being afraid of any wickedness that may have settled in the system.

Therefore, it is always wrong to endorse any superficial assessments. It is incongruous to see abuses in prison as a daily practice, just as it is wrong not to see them in the cases - luckily rare - where they occur.

The central issue is not the number of cases; it is rather the tacit, dull climate that is felt when the cases occur and which prevents to isolate the few violent individuals, to the detriment of the whole system. A bounce ahead in breaking down the situation is to be done, starting with the adequacy of the investigations to be carried out for each case.

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This aspect involves different actors having different functions and responsibilities. In particular physicians, who are required to thoroughly report on any evidence of abuse (in a comprehensible form) detected on the patient's body, on the reasons the patient is giving for

such evidences, and to point out any inconsistency may arise between what has been reported and the signs spotted during the doctor's visit. It also engages prison governors and prison police chief officers and the evaluation of their competence in detecting signs, nipping them in the bud, as well as sending regular messages, addressed to forms and behaviours, that there is no tolerance for such actions. Lastly, it involves the prison administration in order to describe internal investigation rules in compliance with the standards repeatedly set out by the ECHR in outlining an 'effective' investigation in a case of mistreatment. Eventually, it brings into play the Public Prosecutor's Offices so that they can scrupulously comply with the principle to avoid assigning investigation tasks to people belonging to the same police force of those been investigated, which is not currently happening. Moreover, it also questions the National Guarantor, who has not hesitated to report some cases to the Public Prosecutor's Offices, due to their function of constant monitoring and because they could help in affecting prison officers' cultural backgrounds and isolate those few whose behaviour offends the vast majority of officials who works with professionalism, in the frame of legality and often with personal passion.

38. Skepticism about technology

Technology pervades people's lives in various ways: communication, both private and institutional, is increasingly using Internet, and even the selection of workers is done by having a look to the candidate's profile on social networks. The lack of skills to work and use ICT, to use Internet, as well as the illiteracy in the sector's terminology, which is constantly used by the media, have restricted access to services. Moreover, due to the rapid and steady technology development, a person with a basic technological literacy, after a while, may become illiterate if not constantly trained and updated.

In Italy, technology illiteracy is quite widespread and the causes are varied and in some cases structural. It mostly derives from the lack of basic knowledge, due to socio-economic and cultural factors, as well as the shortage in appropriate training, information and service plans. Therefore, it is increasingly necessary to raise awareness in the use of technology to foster

social and job inclusion.

This is especially true for those who experience detention. Yet, the world of detention seems to be stand still in a pre-technology era, which has affected both its work organisation and the “rehabilitation pathways” offered to inmates, as well its daily rules and regulations, which are itemised in circulars written in an outdated Italian language, echoing a past of quill and inkwell. After all, the overall Public administration is struggling in getting up-to-date in new technologies and changing its mind-set, which is essential to manage better the opportunities offered by technology and innovation.

In this situation, however, technology training should be considered as a vital value in the enforcement of sentences aiming to social inclusion. Instead, among those who can establish rehabilitation offers to prisoners is steadily present a paradoxical fear of a possible misuse of technology, which might compromise security. Limitations in the use of technology do not only affect the use of most sophisticated technologies. Consequently, the use of personal phones in prison is subject to anachronistic restrictions. Phone calls are discouraged – while selected Committees have requested to increase the number of phone calls in their recent recommendations on the execution of sentences. Mobile phone calls are submitted to restrictions, sometimes impossible, and videoconferences with family members and legal advisers are not encouraged, if not in isolated praiseworthy cases. Likewise, e-mail is still struggling to replace the traditional one in prisoners’ correspondence.

A linear relation with the present will not be possible if we do not change languages and attitudes towards what innovation and technology may offer. Rather than drive away from technology, it is valuable to examine the opportunities that the new technology products can suggest, otherwise the present will continue to be outside the prison walls.

39. Confusion/mixture between protection and confinement

During its visits to prison institutions, the National Guarantor realised that the community of prisoners could be described as a real microcosm of social minorities. This current situation opens to a serious debate on the class, ethnic, sexual orientation discrimination of the Italian prison system.

The living conditions of the LGBTQ minority, restricted to special detention units, and often secluded with people convicted for particularly serious crimes, such as paedophilia (almost wanting to consider homosexuality or transsexuality a crime in itself) are made more difficult by the prison environment. This particular allocation is often explained as a ‘forced’ assignment, which main purpose is the protection of said inmates (in everyday life they are the ones most subject to acts of intolerance, discrimination and sexual abuse) and to establish order and security in the prison institution.

Unfortunately, sexual violence behind the bars is very much present, and LGBTQ prisoners are more likely to become victims of violence - although it is not possible to be sure exactly to what

extent, because there are no official data on the number of rapes and on other cases of sexual violence in the Italian prisons. Protective housing in prison, however, cannot be considered the solution to such a risk: detainees located in protective units will serve their time in prison in even harsher living conditions.

The National Guarantor believes that LGBTQ's segregation from other prisoners results in a severe violation of their dignity and this is why it is important to find alternative solutions to safeguard all inmates.

Placing LGBTQ in prison in protective custody, for their own safety from homophobic abuses, can prevent them, regardless of the intentions of those who have thought of it as a solution, from participating in rehabilitation programmes and from enjoying those rights recognised to other prisoners. This weakness was thoroughly observed during the National Guarantor visit to the gay-housing unit in the Triveneto region, within the prison institution in Gorizia. The form of protection assured to LGBTQ was, in fact, a form of segregation, of forced isolation, which was preventing contacts with the community of prisoners, and deteriorating their physical and psychological conditions.

The kind of protection that a prison institution should grant, if a form of protective custody has been established for this category of prisoners, is the one which does not hamper the prisoners' participation in daily activities. A prison condition, which is, thus, inclusive of reinsertion activities: in a nutshell, the prisoner's full involvement in his or her sentence plan. Therefore, if for their safety it is deemed necessary to hold those prisoners in dedicated cells during their rest time, located in the same prison institution they have been assigned, this decision must not consist in the provision of an *ad hoc* detention condition where to place prisoners on grounds of their sexual orientation. A provision of this kind would cause not only an illegitimate discrimination against the single person but also an unjustified segregation condition, which is detrimental to the prisoner's dignity, recognized to any person, regardless of his/her detention condition.

On this matter, the Guarantor, much concerned about the weaknesses relevant to the use of protective custody for gay prisoners, sent a recommendation to the prison Department (see the Triveneto regional visit report) in order to involve these category of prisoners in daily activities and under normal conditions, and in respect of their sexual orientation.

Even with regards to transsexual detainees, we believe that detention conditions should envisage activities aiming at the prisoner's re-socialisation and re-education regardless of one's own sexual orientation. At the same time it should provide for appropriate means of 'protection' in order to prevent any discrimination and/or violence. For ensuring the best possible protection of these persons, the National Guarantor has underpinned the possibility of placing transsexual detainees in female prison institutions or where there are units for female prisoners, taking into account their treatment needs and wider forms of safeguard. On the other hand, however, questions would arise on some custodial aspects: for instance, in female prison units surveillance is granted by female custody staff, who, for physical and anatomic features of this category of prisoners, may not be suitable to execute all those prison services (think of body searches, for instance) normally implemented by male guards.

40. Gender-based aspects

Female prisoners represent a small percentage of prison population. On 31 January 2017, they were 2,338, out of a total of 55,381 inmates, which corresponds to 4.2%. But, on the contrary, their weaker criminal attitude, far from being considered as a positive value, often turns into an aggravating factor.

In general, we may say that detention has always been conceived for men and applied to women.

Due to very low rates in prison population, they risk to become invisible and insignificant for the prison system.

Female prisons are, indeed, only four in throughout the national territory (Trani, Pozzuoli, Rome-Rebibbia, Venice-Giudecca): they have a prison population capacity of 537 places and a female prison population of 589 women up to 31 December 2016. The other 1,749 female prisoners are held in 46 detention units arranged in male prison institutions. The fact that there are few penal institutions for female prisoners is one main reason determining the geographical confinement of female detainees and a *de facto* violation of the principle of being imprisoned in a facility nearer to the prisoner's family/community. This issue becomes evident in many cases: in case of assignment to a mental health and patient safety unit (in seven regions, they are no such facility for incarcerated females: Lombardy, Veneto, Friuli Venezia-Giulia, Trentino Alto-Adige, Apulia, Calabria and Sardinia), to maximum security units (concentrated in just a few regions: Emilia-Romagna, Lazio and Sicily).

Furthermore, apart from the four female prison institutions, it should be noted that female units in male prisons are likely to be, once again because of their few numbers, some secondary units where women have less living and collective spaces, fewer facilities and fewer opportunities than men. In the prison institution "Pontedecimo" in Genua, for example, women are housed in double cells, while men are in single cells; differently from men, they do not have an exercise court; in male units, prisoners have their common rooms on each floor, while in the female unit recreational activities are delivered on the housing unit aisle. And also employment activities seem to be stereotyped, therefore, women work in the kitchen and as tailors, while men are applied to ITC and printing activities. This gap is unacceptable and should be bridged as soon

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as possible, by overcoming conventional gender-based work-training schemes. The challenge is to build on efficient social reintegration pathways and encourage gender-mixed employments, in view of an integrated employment-training-productive chain, as in a system of ‘communicated vessels’ aiming to a real gender equality and to the acquisition of skills for job opportunities once released.

Whilst appreciating the Prison Administration’s efforts to overcome old and discriminating gender-based cultural patterns, the issue of incarcerated women calls for a quantum leap in a cultural perspective that recognises the existence of gender differences and gives specific elements to female detention. In fact, the same rehabilitation programmes for women and men do not deliver equivalent outcomes.

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41. The difficult allocation of resources and the plans in shortage of resources

The complex new organisational process of the Prison Administration Department has interested the managerial, the administrative and the prison police staff. Though being determined by spending review plans and by the transfer of all competences in probation and alternative measures and sanctions to the newly born Department for Juvenile and Community Justice, the new set-up has contributed to not too much adequate staff reductions. With reference to national data on some professionals, its first assessment is still not positive (see the *Ministry Report on the Administration of Justice – year 2016*, 543-733).

Up to 31 December 2016, the gap between staff foreseen and in force, in the numbers of prison managers and professionals, other than prison police, was of 2,017 staff less than the foreseen 6,386; concerning prison police, the gap between staff foreseen and in force was of 5,463 staff less than the foreseen 41,253. In the Department for Juvenile and Community Justice, too, such an inconsistency in staff numbers is recorded, especially in the administrative, the accounting and the rehabilitation staff.

This weakness is more relevant in the Offices for the enforcement of alternative measures and sanctions in the community, because it is more relying on alternatives to imprisonment and on the recent introduction of new substitutive community sanctions and the *diversion* system. In fact, these offices have the task to start assessments on the offender’s family and his social context, to draft rehabilitation plans, to monitor the enforcement of alternative measures, to draft periodical and final reports to the Supervisory Court: all tasks have experienced an incredible increase in number if compared to past years. The interest in providing significant resources for these offices, to be added to the *National Budget* for the next three years, as well as an increase in the number of subcontracts with some experts (ex article 80 of the Prison Act.

ibidem, p. 612) represent a limited reassurance with respect to the feasibility of several opportunities in favour of followed or pending cases.

The deflationary measures and the increased opening to alternative and community measures, the introduction of the new *diversion* system applied to adults, the training of staff aiming at the increase in professional skills and the multidisciplinary of interventions, and the participation in the 2014-2020 European programmes for the funding of some projects on social inclusion of convicted persons are all intermingled aspects that look for immediate adjustments in the number of human, financial and material resources in the long run, while at present, they can make sustainable the system workload and its multi-faceted started projects, having as objectives both the training of staff training and the rehabilitation of prisoners.

42. Staff discomfort

Since the beginning, the National Guarantor for the Rights of Persons Detained or Deprived of Liberty has clearly stated to consider itself as being a part, though an independent, and not the 'counter-part' of the complex system of the deprivation of liberty. In particular, the deprivation of liberty in the prison setting.

It is demonstrated by the interest, expressed while in visit to a prison institution, to hold meetings with all staff, to visit the dedicated spaces and activities planned for the staff wellbeing. Among the places reserved to staff, visited by the National Guarantor, there are, for example, the rooms for staff recreational activities, the conference rooms, the prison coffee shop, the staff canteen or the gym courts. Unfortunately, these spaces are not arranged in all prison institutions or, if they exist, they are all in one or few polyvalent spaces. Some of these spaces were not well maintained and in decay, where only improvements have been their wall painting (made by inmates under article 21 of the Prison Act). The same can be said for staff compounds: in some prisons, the general hygiene and structural regulations are not even applied, such as, for example, the lack of fire stairs (just to name two, the older Genova-Marassi's staff compound is below acceptable standards, while the one in Reggio Calabria-Arghilla has the same design and logic, whit bars and cameras, of a cell block).

It can be highlighted that staff compounds in the North of Italy are much more used because staff there employed is mainly seconded and composed of young officers, in service since short time and coming from the South. They are still suffering their departure from their native sites, do not want to be integrated in their arrival cities and have not lost their hope to return to their roots. The opposite occurs in staff compounds in the South of Italy, which are often little used: the majority of staff is now back to its native region, due to the many years of service, and is

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approaching retirement, to arrive as soon as possible. This great difference in expectations and hopes is negatively affecting work and organizational management.

The practice of recruiting staff from the armed forces is carrying weight on the prison police

The practice of recruiting staff from the armed forces is carrying weight on the prison police corps: this staff has gone through some military training – sometimes aiming at being employed in missions abroad in dangerous and war scenarios. Indirectly, this former training is going to affect at least the first years of staff service in a different Administration and with a different mission.

corps: this staff has gone through some military training – sometimes aiming at being employed in missions abroad in dangerous and war scenarios. Indirectly, this former training is going to affect at least the first years of staff service in a different Administration and with a different mission. It could have its effects in creating some rigidity in the overall management of the prison institution, with the consequent shrinking in the “rehabilitation” offer, and discomfort of the seconded professionals in relation to their training and habit set-up.

Making this passage from a military to a civil corps is not that simple. Its unresolved condition can also affect the prison police officer’s relationship with other professionals. This is why it is important to focus on multidisciplinary continuous training curricula and on common discussion practices in dealing with the weaknesses of working and living in a prison institution.

An important aspect of prison police officers’ discomfort is also related to difficulties in building on knowledge and evaluation of the work beyond the bars in the outside world. The stereotyped prison police officer, whose task consists of a mere sight surveillance, a supervised accompanying service, and the opening and locking of cells, is also reflected in the media language (“prison guard”, “penitentiary guard” or “jailer” are often heard words). A language that does not take into account the change in the staff’s professional profile over the last forty years, the task and the specificity of the work carried out, the proximity with the detainees, which provides for direct knowledge elements, thus contributing not only in the service management, but also in exploring and balancing the offender’s social reinsertion in the community.

The National Guarantor has perceived this discomfort and had evidence of it in meetings with front liners. Its symptoms are in the *burnout syndrome* increase in recent years as well as the remarkable figure of six suicides counted in 2016 (and more than one hundred since 2000). Without analysing the individual experiences that may have led to such dramatic circumstances, it should be noted that a more widespread and precise information delivered to staff on the role the new guaranteeing institution can play in reducing expressed problems. From managing the difficult balance security and rehabilitation, in a working environment where people’s suffering and frustration are uninterruptedly, daily and directly breathed. The Guarantor’s task is also to contribute to the staff’s well-being, in the different aspects from its training to the improvement of its working conditions, to solving those situations that can be the source of personal discomfort and develop in negative issues. A role already partly played in its first year of activity and which is to be enhanced and better specified.

43. Facilities for the enforcement of alternative measures to imprisonment: their structural inadequacy

The Committee of Ministers of the Council of Europe with the above mentioned Recommendation R. (92) 16, referring to the Anglo-Saxon term community sanction, gives the following definition of alternative or community measure/sanction: ‘sanctions and measures that keep detainee within community and imply a certain restriction of freedom through the imposition of conditions and/or obligations and which are carried out by the bodies required by provisions currently in force’.

In Italy, alternatives to imprisonment were introduced more than forty years ago, with the Prison Act, and then were gradually expanded, after eleven years, with the approval of Law 663/1986 (the so-called “Gozzini Act”). Thus, a well-defined regulatory framework that has developed over the years and has determined one of the weightiest transformations in the overall sentence enforcement system.

However, the effectiveness of those measures should not be restricted to some best practices and to the staff’s commitment. It also requires suitable facilities. The admission to any alternative to incarceration, despite the offender’s request is reflecting the conditions and rights demanded by the measure, is often hampered by the lack of places availability in dedicated structures that could offer housing services to the granted inmates. Such a situation becomes an obstacle in obtaining permission leaves, which is a first step towards the process of social rehabilitation and reintegration.

Particularly disadvantaged are socially vulnerable offenders: poor and non-natives, with difficulties in accessing prison benefits due to the lack of family, housing and employment relationships on the territory. The access to benefits and measures becomes therefore a right only on paper, and far from being applied. In this manner, the discrimination already present and experienced in the outside world continues – and it is boosted - within an institution that should be based on the principle of equality in the enforcement of a sanction. Its execution becomes a reproduction and a fast-track element of the prisoner’s social minority. This issue calls for local bodies’ responsibility: public/private dedicated accommodations may offer a valid solution but they are few and those available have place shortages. Investments in this sector, if it may appear too expensive in the short term, in the medium-long run it will be economically sustainable and advantageous, because it helps in decreasing costs, which otherwise will fall into the whole welfare system. And these costs will be incurred for the future of an individual, who will live on the edge of society and whose life is experiencing multiple detentions.

In Italy, alternatives to imprisonment were introduced more than forty years ago, with the Prison Act, and then were gradually expanded, after eleven years, with the approval of Law 663/1986 (the so-called “Gozzini Act”). Thus, a well-defined regulatory framework that has developed over the years and has determined one of the weightiest transformations in the overall sentence enforcement system.

Concerning drug addictions (on 30.06.2016, the prison service provided data on drug addicts in prison, being 13,561 in psychotropic substances, including 4,292 foreign nationals, that's 25.08% of prison population), the current place shortage in recovery communities is well-

The Ministry of Justice has signed several implementation protocols with some regions and Supervisory Courts aiming at carrying out actions in support of reinsertion programmes for sentenced prisoners.

known. If it is true that the legislative provision does not establish that a rehabilitation programme is to be implemented in a residential rehabilitation centres, it is also true that in practice the Supervisory Courts, while assessing the inmate's profile, do not consider satisfactory the network of non-residential drug addiction support services. It is therefore desirable an financial commitment in support of recovery communities.

The Ministry of Justice has signed several implementation protocols with some regions and Supervisory Courts aiming at carrying out actions in support of reinsertion programmes for sentenced prisoners; in particular, the enhancement of current residencies accredited for the implementation of residential therapeutic or psychological rehabilitation programmes, suitable for housing detainees with drug related problems.

Nonetheless, the number of drug addicts in prison, who had access to alternative measures, has even decreased, from 3,259 to 2,991 prisoners up to 31.12.2016. And this is a puzzling message.

44. Supervision on communities

The emphasis on alternative *measures* as a “model to be followed” – at least until custody will be considered central to punishment and any consistent system of alternatives is still to be implemented – is recording a positive trend, especially in this historical moment when associations and private enterprises give a relevant subsidiary contribution to the improvement of housing facilities. Recently, the ministerial directive, issued on 28 September 2016, has paid great attention, especially to the “juvenile justice environment”, to the need to survey the selection methodologies of targeted prisoners and to the continuous assessment on the quality of provided services. On the same level of support is the reform of the Offices for enforcement of alternative measures in the community. Through the decree of the President of the Committee of Ministers 84/2015, they have become part of the Department for Juvenile and Community Justice.

The National Guarantor believes that interventions should be carried out also in support of communities having care for adults, as they contribute to the implementation of the treatment programme for the rehabilitation and reinsertion of prisoners. The Guarantor has sometimes received Sometimes which implement treatment programme for rehabilitation and inclusion. Guarantor's reports show inefficiency relating to control and organization, which inevitably fall within the management and educational area of the whole service. The main cause is the public expenditure restraint including cuts in external enforcement of sentence, which, due to the lack

of resources and staff, are forced to ration intervention and coordination actions for supervision to prevent criticality in alternative detention places for adults. Worthy of note also is the difficulty of certain local body to assume all accreditation activities at Community level (for example, it was discovered during the visit to Calabria region that the regional authority ensures the payment of fees only for 18 months) resulting in a shortening of treatment.

The National Guarantor's visits are to be as well included within this context of necessary supervision and possible support, as an additional tool for monitoring the trend of prisoners' living conditions in the visited communities – even if within the limits given by random monitorings or by received information. Its task is to collect eventual inadequate situations and to promote a mutual resolution action.

45. Home detention without future prospects

Home detention orders have considerably increased in recent years, going from 24,448 in 2015 to 30,379 in 2016. This is a significant step forward in reducing the core aspect of custody and restoring the defendant to his normal life, when this is possible and positive. However, this measure has some weaknesses and, perhaps, it may be defined as the 'less rehabilitative' provided in the Prison Act. A home detention measure, voided of any rehabilitative principle, considered as a mere box of bans and obligations, and as a means imposed by deflationary needs, produces some social dynamics, which are resulting from a demand for punishment. Moreover, by denying the chance of any reinsertion prospect to the defendant, on whom a home detention order is imposed, also means to forget all about the prevention of recidivism since the measure becomes a mere supervision, in a situation of real loneliness and impoverishment of social relations: the person is deprived of any form of support.

The National Guarantor reiterates the need to resume the measure's rehabilitation purpose. If from the precautionary standpoint the absence of prospects is justified with the temporary and provisional nature of the measure, during the enforcement of the alternative measure, the interruption of all educational and training pathways, started when in prison, is conducive to a general impoverishment of the opportunities offered to the individual. For this reason, modalities should be provided to allow the defendant to continue the activities started also by travelling from his residence.

The National Guarantor reiterates the need to resume the measure's rehabilitation purpose. If from the precautionary standpoint the absence of prospects is justified with the temporary and provisional nature of the measure, during the enforcement of the alternative measure, the interruption of all educational and training pathways, started when in prison, is conducive to a general impoverishment of the opportunities offered to the individual.

Difficulties were encountered when it was proposed to execute a home detention order in an ascribed community, since these facilities are not always available to the reception of those who have applied because of the rigorous controls they are subject to by law enforcement officers.

Those controls may affect the implementation of activities and cause some difficulties to staff there working.

Beside any weakness on such a measure contents, there are also concerns on the modalities to access it. These aspects have been previously tackled in this Report and refer to a greater involvement of local bodies. Indeed, some categories of inmates, especially foreign nationals and homeless, are *de facto* excluded from applying to this measure because of the lack of suitable references relevant to family ties, housing and employment.



Migration and Freedom

Trying to understand the overall situation of irregular migrants deprived of their liberty in order to reach a clear framework is extremely difficult, since it constantly changes its main features, such as the number of structures, their peculiarities and distribution throughout the country.

The following paragraphs will provide an overview on the current situation, describing its strengths and weaknesses, and the challenges faced by the National Guarantor during its first year of activity.

The changing structure, along with the scheduled implementation of new and more functional centres, will shape different procedures for next year. Its analysis parameters, however, will remain the same.

A specific section of this part of the Report is devoted to a survey on forced return flights.

■ Overview on the current situation of migrants deprived of their liberty

46. Deprivation or restriction of liberties: some numbers

Over the last few years, the Immigration Detention Centres (CIE), created after the new identity given to the Centres for Temporary Detention – also called CPT or CPTA - (Decree-law 92, issued on 23 May 2008, article 9), gradually decreased both in their number and in their capacity as reception centres.

CIE (Immigration Detention Centre)

Over the last few years, the Immigration Detention Centres (CIE), created after the new identity given to the Centres for Temporary Detention – also called CPT or CPTA - (Decree-law 92, issued on 23 May 2008, article 9), gradually decreased both in their number and in their capacity as reception centres: in 2011, 13 structures were available throughout the national territory, with a total capacity of 1,901 migrants. In January 2017, only four of these centres (Turin, Rome, Brindisi and Caltanissetta) were actually in activity, with a total capacity decreased to 359 places. Therefore, their role in implementing returns turned out to be quite marginal: on average, only half of irregular third-country nationals - been accepted at the CIE - is actually repatriated: in the first 9 months of 2016, out of the 1,968 people held in these centres only 876 (44%) have been repatriated.

Ever since they were created, CIE have always reported several damages caused by ‘guests’, as well as some protests against the poor living conditions of people held in the structures, many of which resulted in serious cases of self-harming. In these years, verifications and investigations on CIE, promoted by the Parliament and by NGOs, duly and clearly reported the inadequacy of such structures, along with serious gaps in the procedures followed for the detention of irregular foreign nationals subject to a return order. The overall organisation of the structures, much alike that of a prison with nets and barriers, along with the lack of activities -people often can but wait for time to go by - are often accompanied with a total impermeability to the outside world, far more significant than in a prison institution. They have often been the object of investigation by the CPT and they have even lost their positive aspect of being managed by private social associations.

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The main critical issues observed by the National Guarantor during its visits to the four operating CIE all throughout 2016 and in the first months of 2017, ten years after the data collected by the De Mistura Committee (*Committee for the assessments and strategies of the Immigration Detention Centres*, promoted by the Ministry of Interior in January, 2007), are essentially unchanged, both regarding “the presence inside the CPTA (today called CIE) of many situations very different one from another both for their legal and public order aspects and the human and social conditions of detained people. [...] former inmates subjects to simple return orders following the loss of their residence permit [...] weak and vulnerable people”; and the structural and organisational issues: “[...] many centres are structured in such a way that the various parts of the building, such as those for accommodation or internal services, are isolated one from the other. [...] As a matter of fact, these situations limit, or even prevent, people from accessing spaces for listening and socialising, thus creating conditions of total passivity and inactivity in everyday life [...]”.

Although the constitution of the new Detention Centres for Repatriations on a nationwide basis, being a reformulation of the former CIE but significantly different, provided by decree-law 13, issued on 17 February 2017, article 19, has not been fully implemented at the time of this Report (25 February 2017), it has been reiterated the National Guarantor's competence in exercising powers of access and supervision over the centres given by legislation. Evidently, powers and obligations relevant to its designation as NPM are also effective on these new centres depriving persons of their liberty. Now, however many perplexities arise, on the fact that, in lack of agreements on readmission to third countries, the percentage of repatriations over the overall number of expulsion orders might considerably increase the current numbers: in the first nine months of 2016, only one out of four of the 3,737 foreigners repatriated from Italy came from a CIE. Many repatriations were, indeed, implemented directly at the hotspots in the form of "postponement of removal", a new term introduced by the European Migration Agenda in May 2015.

Hotspot

The hotspots currently operating in Italy amount to four, three of which are located in Sicily: Lampedusa (500 places), Trapani Milo (400) places, and Pozzallo, in the province of Ragusa (300 places). The fourth is in Taranto, Apulia (400). Their overall capacity, therefore, amounts to 1,600 places. This figure was provided by the official data of the European Commission (*Hotspot State of Play*); the real available places however, are less, due to maintenance and restoration interventions. For instance, during its visit to the hotspot in Pozzallo, on 17 January 2017, the National Guarantor found that the overall number of places actually available was no more than 240.

Even though they correspond to physical places, the hotspots were originally conceived as an operational approach – the European Commission does indeed refer to them as “hotspot approach” –, with two main objectives: identification and “classification” of irregular migrants according to the three main categories of relocation, political asylum and rejection/expulsion. Up to now, *hotspots* proved to be very efficient in the identification process (through photo-signalling and insertion into the Afis and EURODAC systems) with percentages close to 95% of people arrived to the structures. Nevertheless, without an effective relocation policy, they often turn out in irregular reception centres, especially for vulnerable categories – such as minors. They also lack a proper legal framework for their regulation and for the legal protection of people during their detention in those structures beyond the time needed for their identification. Surveys carried out during visits to every hotspot operating on the national territory have revealed that people often remain detained for more than a week while waiting to be relocated or moved to a structure which responds to their needs. Moreover, very different legislations, or better, practices, regulate the freedom of movement of foreigners in the hotspots: in Lampedusa and Trapani they are essentially detained, while in Taranto and Pozzallo they are free to move in and out.

Any project for the enhancement and enlargement of these identification and expulsion facilities should consider these peculiarities, both relevant to the judicial framework of detention, and to the

material conditions in which it takes place, bearing in mind the many individual differences which characterise migrations pathways and experiences.

47. Unaccompanied minors: numbers and issues

According to the United Nations High Commissioner for Refugees (UNHCR) data, 25,846 unaccompanied young migrants (referred to with the acronym UMM, Unaccompanied Minor Migrant) arrived in Italy in 2016: more than 70 per day, almost 14% of the overall arrivals. A relevant number, both absolute and relative, given that in 2015 it was 12,360, that is, 7% of the overall arrivals. The increase has been clear ever since the first months of the year, but the peaks were reported in July and October, with 3,515 and 3,771 respectively. October was indeed the month with the highest number of UMM over the last four years.

These minors come mainly from Eritrea (3,714, a 24% increase compared with 2015), Gambia (3,119) and Nigeria (2,932). However, the highest percentage of UMM come from Egypt: 58% of the overall arrivals.

Differently from other countries, unaccompanied minor migrants who arrive in Italy cannot be returned, except for reasons of law and order or National security, or if their family reunion is to be preferred as a priority in the interest of the minor. According to the *Convention for the Rights of the Child* (1989) and the *Charter of Fundamental Rights of the European Union*, which are now, as we all know, applicable on the same basis as other European Treaties, Italy considers UMM as vulnerable and in need of protection. Reception is provided for them in the first and second line reception Centres, which are purposely targeted for assisting minors until the age of majority is reached (in this paragraph, these structures will be referred to as “Centres”, but they are not to be confused with the several structures for the detention of adults).

Data provided by the Ministry of Labour and Social Policies show that the number of UMM in the Italian Centres, in November 2016, amounted to 17,245, twice the amount of the previous year. This led to an overcrowding of the Centres, with resulting difficulties to assign minors who were arriving day after day. Therefore, their stay in the *hotspots* is frequently extended, while they wait for another available Centre to be spotted. The situation is understandable but unacceptable, and it requires immediate action, even though the problem cannot be conceived as a proper emergency, yet. The protection of minors requires quick responding.

Another issue is the UMM’s age determination process. On 6 January 2017, the Decree of the President of the Council of Ministers 234 (d.p.c.m.), issued on 10 November 2016, entered into force, establishing common procedures in the age determination process of unaccompanied minors victims of trafficking. It consists of multidisciplinary procedures, run by trained staff and which take into account the UMM’s ethnic and cultural differences. This process goes beyond a mere X-ray of the wrist, a determination method which has a wider margin of error. The National Guarantor hopes that such a procedure will be implemented for all UMMs. Still relevant to the determination of age, another aspect should be underlined. When minors do not know their exact date of birth, but the year only, they are registered as born on the 1st January. This might entail some risks for those minors close to their 18th birthday, as they might be considered as adults, though they are not. For instance,

at the end of January this year (2017), the National Guarantor remarked that in at least one *hotspot* minors registered as born on 1st January 1999 were classified as adults, as if, against all odds, they were all born on that day; there is a high probability that at least some of them, even if not many, are still minors.

As for adult migrants, for many minors Italy is not so often their final destination, but merely a country of transit in their land route towards other European countries. This may be one of the reasons for the high number of minors escaping the reception Centres and impossible is to track them. According to the Ministry of Labour and Social Policies data, in November 2016, Italy lost track of as many as 6,058 minors (almost 38% of the total received minors) already registered in the Centres. Most of them came from Egypt (1,513), Eritrea (1,326), and Somalia (1,242).

As for adult migrants, for many minors Italy is not so often their final destination, but merely a country of transit in their land route towards other European countries. This may be one of the reasons for the high number of minors escaping the reception Centres and impossible is to track them. According to the Ministry of Labour and Social Policies data, in November 2016, Italy lost track of as many as 6,058 minors (almost 38% of the total received minors) registered in the Centres.

48. Procedural safeguards and right to appeal

Today, while waiting for the conversion of the decree-law 13, issued on 18 February 2017, the only form of restriction of third-country irregular migrants' liberty is their detention in one of the Immigration Detention Centres, provided for by the law. These centres can host foreign nationals who are detained in application of the Legislative Decree 286 - article 14, of 25 July 1998 and are awaiting repatriation, and the asylum seekers, possibly hosted in dedicated facilities, when they comply with the conditions stated in the Legislative Decree 142 - article 6, issued on 18 August 2015.

The requirements, procedures and aims of these two specific types of detention are radically different. At the same time they are both brought back to the roots of article 13 of the Italian Constitutional Charter, as they both concern measures depriving an individual of his or her own liberty.

Therefore, the supervision on the legitimacy of measures undertaken by law enforcement authorities and of the following requests for their extension – presented on a regular basis by the public Administration within the deadlines allowed – pertains to Judicial Authorities (respectively, to magistrates and to single judge courts) and mainly consists in verifying the existence of the conditions for the detention. Both the jurisdictional proceeding for validation of acts and the decision proceeding on the extension of the measure have the same guarantees of the adversary hearing, that is, the compulsory presence of the legal adviser and the party's rights in a hearing (for reference, see the last judgement Court of Cassation. no. 12709, of 20.06.2016, civil section VI-1).

Still about participatory rights, it is worth saying that the Italian legislation has not adopted neither the provision of article 15(3) of the Directive 2008/115/EC (the so-called "Return Directive") nor that of article 9(5) of the Directive 2013/33/EU (the so-called "Reception Conditions Directive"), which

grant the possibility for a detained migrant to ask for a review of his or her detention order. Such an omission allows multiple and contrasting interpretations about the feasibility of these provisions in the Italian system. Therefore, it allows the party to promote a review of the detention order also out of the scheduled extensions available to the Administration.

Application or postponement of the detention orders, as well as those who require migrants to be escorted to the national border by law enforcement authorities, can only be appealed before the Court of Cassation, which will not temporarily suspend their enforcement.

Conditions and procedures for detention are provided for by the above-mentioned articles 14 and 21 in the Decree of the President of the Republic 394/1999. Exception made for what is provided in article 7(5) of the legislative decree 142, of 18 August 2015, they are not included within the definite jurisdiction of the judge responsible for detention, except for those conditions included in article 7, par. 5 of the Legislative Decree no., when the suitability of detention measure with the health conditions of the person is subject to evaluation. Additionally, detained migrants are not afforded an effective remedy of appeal against decisions as the one given to inmates held in the national prison institutions in compliance with the prison act.

The permanence in hotspots is not considered as detention, and therefore it does not give way to any legal protection as the one brought about in the case-law on the deprivation of personal liberty. It must therefore comply with given limits and guarantees, in compliance with the current legal framework and rights to liberty provided for in article 5 of the ECHR.

Apart from the detention in an Immigration Detention Centre, as in the above-mentioned cases, the Italian legislation is not foreseeing other forms of administrative detention applicable to irregular migrants. The permanence in hotspots is not considered as detention, and therefore it does not give way to any legal protection as the one brought about in the case-law on the deprivation of personal liberty. It must therefore comply with given limits and guarantees, in compliance with the current legal

framework and rights to liberty provided for in article 5 of the ECHR.

49. Deprivation of liberty during forced returns

Pursuant to article 3 of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 (also known as “Return Directive”), the return of migrants whose stay is illegal may be “obliged” through a procedure of “removal” consisting in the “physical transportation out of the Member State”. This must happen “in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations” (article 1). Moreover, article 5 of the Directive states that when implementing the Directive, “Member States shall take due account of: a) the best interests of the child; b) family life; c) the state of health of the third-country national concerned; and respect the principle of *non refoulement*”.

Pursuant to article 3 of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 (also known as “Return Directive”), the return of migrants whose stay is illegal may be “obliged” through a procedure of “removal” consisting in the “physical transportation out of the Member State”.

The Directive, however, gives the Member States full decisional autonomy on the implementation of the rules therein provided when a removal decision concerns people rejected at the national borders, or people who have been stopped or caught while crossing the border, or else who are subjects to a removal as a criminal law sanction or as a consequence of a criminal law sanction, or who are subjects to an extradition order (article 2).

In this situation, if voluntary departure does not take place, article 8 of the Directive entails directions for the removal of irregular third-country nationals, that is to say the use of “all necessary measures”, including, as a last resort, coercive measures (point 4), if the person to be repatriated resists removal. Such measures, which must be considered as a last resort, shall be “proportionate and shall not exceed reasonable force” (*ibidem*). The same paragraph states that “coercive measures shall be implemented as provided for in national legislation in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned.”

The risk of breaching liberties, rights, dignity and physical integrity during forced returns is such that article 8(6) of the Directive states that “Member States shall provide for an effective forced-return monitoring system”. In Italy, it is the National Guarantor for the Rights of Persons Detained or Deprived of Liberty that is appointed to this task.

Some coercive measures implemented in the wake of a return of a third-country national, with irregular residence permit, may also include detention for the purpose of removal under chapter IV of the Directive (articles 15 et seq.), which states that, “unless other sufficient but less coercive measures can be applied effectively [...], Member States may only keep in detention a third country national who is the subject to return procedures” (that is, the person deprived of his or her liberty), “in order to prepare the return and/or carry out the removal process,” when the person is likely to abscond or when they avoid or hampers the preparation of return or the removal process.

The Directive enshrines that detention “shall be for as short a period as possible and only maintained as long as removal arrangements are in progress”, “shall be ordered in writing by administrative or judicial authorities”, and shall “take place as a rule in specialised Detention Facilities” (Prisons may

however be taken into consideration if necessary, provided that third-country nationals are kept separated from ordinary prisoners, pursuant to article 16(1).

Legal protection and conditions are provided for by the law all throughout detention, especially in the case of families and minors.

It is evident the need of a mechanism to counterbalance the resulting deprivation of rights of third-country nationals, all the more so since they often result from a breach of the administrative regulation and do not represent a criminal law case.

Both the overall situation depicted by the analysis of the European directive on returns and the survey on the range of tools and measures that can be employed in order to put into effect return orders clearly reveal the need of a mechanism to counterbalance the resulting deprivation of rights of third-country nationals, all the more so since they often consist of a breach of an administrative regulation and do not represent a criminal law case. Moreover, when detention is not necessary

(in Italy, the detention order is subject to the decision of the Judiciary, in this case, a magistrate), an administrative authority decides both on a return order and on the use of coercive measures. Such a situation eventually requires a strong monitoring mechanism in order to prevent a potential *vulnus* to the system of fundamental rights enshrined in national and international body of rules.

50. Return flights and the European coordination. The role of Frontex

The so-called "joint" return operations, which involve the return of third-country nationals from the territory of two or more Member States, started in 2004, following the adoption by Italy of the Council Decision 2004/573/EC, of 29 April 2004 on the organisation of joint flights. Such a procedure involves one Member State which organises the flight, and one or more Member States which take part in the process. The Organising Member State is responsible for some tasks typical of a responsible national authority, such as select the air carrier, obtain the relevant transit authorisations, define the operational details and procedures and determine, in agreement with the participating Member States, the number of the escorts which is appropriate in relation to the number of third-country nationals to be removed and so on. As a general principle, however, a participating Member State shall ensure the presence of some representatives. In the same way, each participating Member State shall ensure that returnees hold valid travel documents and that each country shall make sure that returnees possess the necessary papers and that diplomatic and consular Authorities have been alerted.

The *Common guidelines on security provisions for joint removals by air*, annexed to the Decision, provide very clear provisions on how to implement each one of the different phases of the return procedure, both in respect of the returnees' state of health, who need to be declared "*fit to fly*", and regarding the preparation of the escorts, which shall not be armed and shall have a distinctive emblem for identification purposes. The *Guidelines* also state that, at least during transportation to the airport and stay in the airport, returnees "should be briefed regarding the enforcement of their removal" and

that “disruptive behaviour” may lead to the use of force and coercive measures. In this case, even though the escorts come both from the Organising Member State and from Participating Member States, only those of the organising MS are allowed to the use of coercive measures, the others being limited to the use of self-defence. Another controversial issue in the matter of protection of rights is the need for security checks: the *Guidelines* states that “all returnees shall undergo a meticulous security search”, but no further specification is provided.

The use of coercive measures is allowed only on individuals who refuse or resist removal and in due respect of individual rights of the returnees (therefore, there is an ongoing debate on the accustomed use of means of restraints such as “wrist strips” on all returnees). All coercive measures should be proportionate and not exceed reasonable force (any measure that compromises or threatens the ability of the returnee to breath normally is forbidden, and so is the use of sedatives to facilitate the removal), preserving the dignity and physical integrity of the returnees and in compliance with the principle of “no removal at all cost”. The organising Member State and each Participating Member State shall agree on a list of authorised restraints in advanced of the removal operation. At least one medical doctor and one interpret should be present on a joint flight.

The *Guidelines* further provide indications for the handover of the returnees upon arrival, which shall take place in adequate premises of the airport of destination and, as a general principle, returnees shall not be handed over to local Authorities on board the aircraft (which, it has been observed, is very often the case).

Incidentally, it can be observed that these procedures applied to the organisation of joint flights, effective on a European level, herein briefly presented, have eventually “inspired” other international agencies, especially with regard to the organisation of forced returns on national chartered flights. Among other tasks, the European Agency Frontex (European Border and Coast Guard Agency, created between 2004 and 2005) is responsible for supporting Members States during joint return operations such as those previously described. Upon request of the MS promoting a return operation, the Agency coordinates the overall organisation; in other words, it acts as an intermediary among the concerned Member States, cooperating with several participating authorities – without questioning on the merits of the return order. Therefore, with the aim of creating a common framework for European return operations, the Agency published two papers: the *Code of Conduct for Joint Return Operations* and the *Best Practice Guidelines*.

The European Agency Frontex is responsible for supporting the Members States during joint return operations.

The *Code of Conduct* shares the same principles of the *Guidelines*, reiterating the respect of fundamental rights (article 4), the need to seek cooperation with returnees (article 5), and the exceptional nature of the use of coercive measures: “Coercive measures may be used only when strictly necessary on returnees who refuse or resist removal, or in response to an immediate and serious risk of the returnees escaping, causing injury to herself/himself or to a third party, or causing damage to property” (article 6). Furthermore, different from the *Guidelines*, which are less specific,

the *Code* devotes an entire chapter (Chapter IV) to the definition of a monitoring system, to its aims and its peculiarities, integrating what is provided for in article 8(6) of the 2008 “Return Directive”. According to the *Code of Conduct*, failure by a Member State to provide an effective monitoring system could lead to the postponement or cancellation of the participation of the Member State in breach of the joint operation. Regarding the “effectiveness” of the monitors, in their role of guarantors of the humanitarian needs in operations and of the respect of fundamental rights, the *Code* prescribes that all monitors “must have access to all relevant information concerning the Joint Return Operation” (article 41, point 2).

A Frontex official participates to each joint operation in order to ensure the compliance to the *Code of Conduct*. Joint operations are co-funded by the Agency. In 2016, its budget amounted to 250 million Euro, while in 2017 it was increased to 300 millions. A great part of this budget – about 66 millions – will be used for return operations and, therefore, for joint return operations and all relevant activities.

▲ POSITIVE FACTORS

51. Rescue operations at sea

About 334,000 people arrived over the last two years, with an increase of 18% between 2015 and 2016. According to UNHCR data, in January 2017, 4,245 migrants reached Italy by sea regardless of adverse weather conditions – most of them arrived in Sicily (3,861).

Since 2011, the number of migrants who reached the Italian coasts from the Mediterranean increased significantly. About 334,000 people arrived over the last two years, with an increase of 18% between 2015 and 2016. According to UNHCR data, in January 2017, 4,245 migrants reached Italy by sea regardless of adverse weather conditions – most of them arrived in Sicily (3,861).

Precarious transport conditions and potential dangers along the journey led to a high number of deaths during these years. Between October 2013 and January 2017, 13,288 migrants have reportedly died in the attempt of crossing the Mediterranean. At the beginning of 2017 (January), the UNHCR reported 230 deaths at sea, most of them in the Italian seas. Such a high figure (368 migrants died in the sinking, off the island of Lampedusa on 3 October 2013, one of the deadliest accidents ever reported) caused an intensification in the operations for “search and rescue” in order to assist the boats (inflatable, fishing and wooden boats, in poor conditions and seriously over-crowded).

To this end, in 2013 and 2014, the Italian Navy and the Italian Air Force implemented the operation *Mare Nostrum*: a humanitarian operation aimed at rescuing migrants at sea, also in international

waters. Then, from November 2014, the operation was superseded by a less costly Frontex operation called *Frontex Plus*, lately *Triton*. Coordination of operations of rescue at sea by the European Agency Frontex – which at the same time was monitoring central Mediterranean borders such as *Hermes* and *Aeneas* in the Ionian – led to a new approach which was oriented to ensuring national borders, instead of the previous humanitarian approach. For instance, according to operation *Triton*, ended on 31 December 2015, international waters were only monitored as far as 30 miles off the Italian coast, therefore significantly reducing its scope. During rescuing operations, besides the Italian Navy and the Italian Coast Guard, in this scenario, other ships from foreign NGOs participate, such as *Proactiva Open Arms*, *Medicins sans Frontières*, *Sea Watch*, *Sea Eye* and more.

One of the main critical issues of the overall situation is that on one hand these operations for the search and rescue may appear as an ‘incentive’ to cross the sea and therefore indirectly foster criminal human trafficking; on the other hand, however, by limiting the rescue operations to the sole navigation rules, thus to commercial and non commercial ships, which, close to vessels in need, are bound to help them, entails some risks, such as proving insufficient due to the great amount of migrants, and even dangerous, seen that many ships such as oil tankers are not equipped for rescuing “barges”. As a consequence, serious accidents may occur during the approaching phase (such as that on 18 April 2015, when the collision between a vessel transporting migrants and a commercial ship trying to rescue them in the Sicilian Channel causing numerous casualties, and the disappearance of many others, ever found).

Following this accident, Italy conducted a new international operation called *EUNAVFOR MED Sophia* aimed at countering human trafficking through a system of training addressed to the Libyan coastguards. Operation *Sophia* will go on until July 2017. Meanwhile, another Italian Navy operation called *Mare Sicuro* was launched to protect assets and strategic interests on the Mediterranean routes facing Libya; this is likely to show a new approach to the issue, more security-oriented and less focused on the search and rescue aspects. This idea seems to be confirmed by the international research report *Death by Rescue*, published on 18 April 2016 by the “Forensic Oceanography” of the London University, which underlines the relationship between the decrease in planned search and rescue operation and the increase in the deaths across the Mediterranean.

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On the background, another issue is emerging that is, the rigidity of national legislations in legal migration, visa systems, and regularisation procedures, which indirectly contribute to illegal migration. This situation should be faced through legislative interventions aimed at suitably responding to an issue that has since long evolved into an emergency.

52. Reception phase

By signing a Memorandum of Understanding between the Ministry of Foreign Affairs, the Ministry of Interior, the Comunità di Sant'Egidio, the Federation of Evangelical Churches and the Waldesian Table, a pilot project was approved consisting in the implementation of a “humanitarian corridor” that allows 1,000 vulnerable subjects coming from Lebanon (Syrians), Ethiopia (Eritreans) and Morocco (sub-Saharan) to arrive to Italy. A “good route” which began in 2016 and will be running

The humanitarian corridors represent an advisable practice since they grant protection of migrants' dignity and human rights.

all through 2017. The 1,000 selected migrants will be granted legal access to Italy with a humanitarian visa and the possibility to apply for asylum later on. The project, entirely funded by the non-profit and voluntary sector, includes some activities for social and work reinsertion, as well as accommodation. Such a reception modality, still undergoing verifications, grants migrants “international protection” from the perils of crossing the sea and from the risks of being exploited by human traffickers.

On 12 January 2017, the Ministry of Interior and the Director for Migration Policies of the Ministry of Foreign Affairs signed a new MoU with the Italian Episcopal Conference (which will be represented by *Caritas Migrantes* and the Comunità di Sant'Egidio) to open a humanitarian corridor in favour of 500 refugees from Eritrea, Somalia and South-Sudan fleeing their homes because of conflicts.

The humanitarian corridors represent an advisable practice since they grant protection of immigrants' dignity and human rights. Nonetheless, at present they are an exceptional reality in the vast panorama of reception activities in Italy. The immigrants' reception scenario is now running on a double track, in which the reception activities deployed to face the emergency phase, the so-called Extraordinary Reception Centres (CAS – Centro per l'accoglienza straordinaria), have been mainly interested by immigration flows instead of the regular accommodation facilities, like the Protection System for asylum seekers and refugees (SPRAR – Sistema di protezione per richiedenti asilo e rifugiati). Be enough to note that, already in 2015, of the 114,400 asylum seekers, about 70% was hosted by the CAS network while 30% by the SPRAR. In a nutshell, they are tourist accommodations used as facilities for housing extraordinary flows of immigrants; they are spotted by the prefectures, together with local bodies, through agreements with the social sector and, thus, hotel accommodations (in respect of the national tender regulations). The permanence in such structures should be limited to the reception time before the asylum seeker is transferred to the second line reception centres as the ones in the SPRAR system.

These latter (which represent the ordinary reception system) are funded by the Ministry of Interior, through the National Fund for the asylum policies and services (FNPSA - Fondo nazionale per le politiche e i servizi dell'asilo). The SPRAR system was born in 2002, in the wake of a protocol agreement signed by the Ministry of Interior, the Mayors' National Association and the UNHCR. An approach based on massive reception plan providing accommodations in houses and apartments – of different sizes, from tiny to large – up to 30 places – which, in 2015, has presented 430 project for a total of 21,613 places mainly offered by local bodies (376), while the rest being upheld by the social sector associations and NGOs. In November 2017, according to official data provided by the Ministry of the Interior, the overall projects being approved were rising to 652 and the local project managing bodies were reaching 555. They are structures which, during the years, have seen their importance and their role in the asylum seekers' reception national system growing, after the massive increase in the number of immigrants arriving to Italy and the overflowing reception in the Asylum Seekers Reception Centres (CARA – Centro di accoglienza per richiedenti asilo) and the Reception Centres (CDA - Centro di accoglienza).

So much so that, even though these facilities were originally designed only as reception centres for migrants who had been granted international protection, they are currently widening their ranges. At the moment, groups hosted in the SPRAR facilities include asylum seekers from CARAs and CASs, individuals already granted international protection, and vulnerable groups such as victims of trafficking, the elderly, the disabled and minors.

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The SPRAR system has also incorporated the system for the reception of unaccompanied minor migrants, who have significantly increased in recent years. In November 2016, of the 652 approved projects, 99 were targeting unaccompanied minors, with a total of 2,039 places. Special reference to the fact that the SPRAR system is a proactive reception approach, which not only provides physical and material arrangements for migrants, but also offers a range of opportunity but also offers a range of programmes for social and labour integration which include legal advise and support, social, labour and housing orientation, support and inclusion.

Other structures, like the CARAs, are based on a different approach: as an instance, the Mineo facilities in Sicily host about 4,000 in a building formerly used as a military station for soldiers in Sigonella, where refugees and asylum seekers are employed as cheap labour in local agriculture, defenceless victims of several episodes of exploitation and the so-called “caporalato”, as laid out in the report “Filiera sporca”.

The CARAs, the Reception Centres (CDAs), the Centres for first aid and reception (CPSA – Centri per il Primo Soccorso e Accoglienza), along with the *hotspots*, created for different purposes but eventually used for the same goals, still represent residual reception approaches – less than 10% of the asylum seekers reception national system. However, if compared with other structures such as the

CARA in Mineo, they should not be underestimated, especially with regards to the safeguard of the migrants' rights.

In brief, considering the increasing figures of asylum seekers arrived to Italy, the long procedures for examining all applications, the transformation of Italy from transit country to country of destination - both due to the closing of the Schengen Area in many European countries and to the rigidity of the "Dublin Regulation", while considering the high percentage of rejections, which amounts to 60% yearly, the system seems at a standstill, where migrants benefit are integrated *de facto*, but excluded *de jure*, therefore producing a never ending condition of illegality even after years of integration programmes. Such an irregularity can lead to situations where both the rights and the safety of migrants are threatened.

53. Municipalities implementing good practices in migrants' reception

As mentioned above, in order to carry out an in-depth survey on reception policies and practices, and to identify both positive and negative elements, it is necessary to bear in mind that great migratory flows to Europe are by now a structural phenomenon, not an incidental one. This clarified, our country needs to confront with the evident difficulties resulting from this situation. UNHCR data show more than 65.3 million people fleeing from conflicts, famine, lack of rights and care. 40.8 million of them moved within their original Country, while 21.3 are exiled: 4.9 million from Syria. Migrants who reached the Italian coast in 2016 amounted to 181,436, compared with the 153,842 arrivals in 2015 and the 170,100 in 2014 (<http://data2.unhcr.org/en/documents/download/53633>). Migratory flows increased throughout 2016 following the closure of the Balkan route with the building of walls and barriers. The narrowness and hostility of countries like Hungary, who erected barbed-wire fences, or Britain, who build the wall of Calais to prevent irregular migrants from reaching the British coast through the Channel, or France, who sealed the border gates with Italy, are signs of a part of Europe, which is deaf and blind when confronting emergency. The *de facto* failure of the relocation scheme, the two-year plan foreseeing the distribution in many EU countries of 160,000 migrants applying for international protection - Syrian, Iraqi and Eritrean, arriving to Greece and Italy, is itself a symptom: almost two years later – as reported by Dimitris Avramopoulos, the European Commissioner for Migration – in January 2017, only 2,917 migrants have been relocated from Italy.

So, while Europe is struggling to open its borders and to define a common policy on migration issues, Italy proves once again to be a welcoming country. 181,436 migrants arrived by sea in 2016 and 176,554 hosted in the various structures, which also include basic reception facilities like the SPRARs.

So, while Europe is struggling to open its borders and to define a common policy on migration issues, Italy proves once again to be a welcoming country. 181,436 migrants arrived by boat in 2016 and 176,554 hosted in the various structures, which also include basic reception facilities like the SPRARs.

Besides episodes of rejection such as that of Gorino, in the province of Ferrara, where in October 2016 some citizens rejected 12 refugees allocated to the small town by the Prefect, many other communities show their support to migrants and have made of their reception policy an opportunity for development and growth. The most renowned are those cities which eradicated depopulation due to emigration through refugee intakes. Today, they amount to 94 small towns which have been given new life, both from a social and human standpoint, as well as for their economy promotion: the abandoned houses of the historical centres are now inhabited again, and local arts and crafts are flourishing along with those coming from the refugees country of origin. This model was adopted by several small towns like Satriano (Catanzaro), Santorso (Vicenza), Sant'Alessio in Aspromonte (Reggio Calabria), Chiesanuova (Turin), Santa Marina (Salerno) Riace (Reggio Calabria) and Capua (Caserta). Since the arrival of refugees and asylum seekers, all these cities have reactivated their services, reopened their schools and revitalised their local activities. From Brianza to Treviso, from Busto Arsizio to Palermo, from Terni to Sesto Fiorentino, many areas have accepted the presence of immigrants and the projects created to help them integrate: so many examples that prove how reception is yet possible, and even positive.

54. Photo-signalling: the European requests and the persuasion strategy

The migrants' photo-signalling has become much vital for the functioning of the common European asylum system and, in particular, of the *Dublin Regulation*. The recording - in the European EURODAC system - of biometric data of foreign nationals requesting international protection and of some categories of illegal migrants, in connection with their illegal crossing of an external border, have not been rejected or are present within a European country, makes it possible to determine the European Union country responsible for examining an asylum application and for effectively monitoring the migrants' movements on the European territory.

Time and again, the European Union has made repeatedly invited Italy to meet obligations deriving from the “EURODAC system”, requesting the adoption of procedures for forced identification and ultimately defining the *hotspot* approach as the operational system to implement activities for pre-identification and photo-signalling in the wake of the docking of ships, along with sea rescue and assistance operations. Italy has actually implemented such a system granting photo-fingerprinting identification, without amending the former legislative framework regarding coercive powers enforceable for identification by law enforcement authorities.

In accordance with the legislative decree 286 of 25 July 1998 (article 6(4)), taking photo-fingerprint data is established by law, but the use of force to collect them is forbidden. Thus, the only occasion which is envisaged in the Italian legislation (article 349 of CCP) - and allows the use of forced identification on a person who is not detained or imprisoned - is not even applicable. As per now, in order to boost all activities of photo-signalling, Italy has chosen to strengthen information and cultural mediation services, also in cooperation with international humanitarian organizations such as the UNHCR and *Save the Children*. The task for mediators and other front liners is to inform, explain and help people understand the situation in order for them to be aware and responsible in meeting their obligations towards the communities of Countries to which they have turned for help.

The main issue, which is asking for great commitment, in the hotspots, also reported by the National Guarantor in its surveys as unsatisfying, is a constant attention to activities of support and assistance in the course of the identification process, in full respect of the detainee’s physical integrity and human dignity, but also in order to ensure migrants a full and clear understanding of the procedures for first entry.

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55. Mediation and mutual understanding in the *hotspots*

A significant number of cultural mediators in the *hotspots* is crucial, since linguistic and cultural obstacles are the main factor for migrants' vulnerability. By preventing them from being informed and understand, those obstacles jeopardise all their other rights.

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In particular, as for the right to be informed on the possibility to request for international protection, the law provides for explicit guarantees for the protection of foreigners at borders or in the pertaining transit zones at the reception facilities or in the Immigration Detention Centres. Both the Italian and European court

rulings have established that a lack of preliminary information may constitute a substantial obstacle to effectively exercise the right to apply for asylum, thus determining the illegitimacy of the migrant's return decision.

Ever since the creation of the *hotspots*, the Department for Civil Liberties and Immigration of the Ministry of Interior gave utmost importance to legal information on the possibility to apply for asylum already in the first stages of reception by providing for the presence of international organization such as the UNHCR and IOM (International Organisation for Migration) aimed at granting an effective protection system through their own cultural mediation services (see, for instance, the hearing of the *Selected Committee on identification and reception systems, as well as on conditions of detention of migrants in reception centres, reception centres for asylum seekers and in the immigration detention centres* of 3 December 2015 and circular of 8 January 2016 by the Head of the Department for Civil Liberties and Immigration of the Ministry of Interior, Prefect Mario Morcone).

Among the humanitarian organisations in the *hotspots* is *Save the Children*, whose activities of information and mediation is dedicated to minors through an approach addressing their specific needs and vulnerabilities.

Besides professional international organisations, there is also a significant number of mediators in the ranks of operators from the Ministry of Interior and the European Agencies Frontex and EASO (European asylum support office). Their job is to support law enforcement authorities during the whole *hotspot* procedure, especially in the pre-identification and photo-signalling phases, with the very delicate task to gather the first essential details on the stories and human conditions of migrants, and to grant information and understanding of rules and procedures vital for accessing fundamental rights.

Investing in human resources to face as many critical issues as possible, especially those determined by cultural and linguistic differences in the *hotspots* is essential and must be extended also to common follow-up activities aimed at verifying the actual understanding of implemented procedures and given information. Several factors, such as a high number of people, their physical and psychological weakness due to travel conditions, individual vulnerabilities related to, among other things, education

levels or not knowing the languages spoken by mediators, are inevitably relevant in causing the need for systematic assessment on the effectiveness of all mediation activities for a real protection of fundamental rights of people.

▼ WEAKNESSES

56. Price paid for unrescued lives

Once again, the Mediterranean proves to be the most lethal route for migrants. Exact data are hard to find, but according to the UNHCR, migrants headed to Italy dead or lost at sea in 2016 were 5,096, an average of 14 people per day. The first months of 2017 were a tragedy, with 254 victims, although 1,500 people were rescued and brought ashore. These are default data that do not account for all those lost and for the corpses never found.

Despite the deep efforts of the Italian Coast Guard, which faces extreme weather conditions every day in order to save thousands of men, women and children, the price paid in human lives is still unacceptable.

Dead people are mainly youth at the height of their strength, the strongest ones who were able to survive the first part of their journey. Most of these people do, indeed, come from sub-Saharan countries, after long and dangerous journeys where they become victims of all kind of violence and abuses. Only the strongest ones can endure this. Women are almost inevitably raped. They cannot swim, so they drown and their bodies are washed upon the shores of European countries, such as that of little Aylan. They die of thirst, hyperthermia, suffocation, but also as a consequence of chemical burns due to contact with a mix of fuel and sea water, which pool in the rubber boats, and soaks clothes of those on board. Victims also include many children: about 660 children were reported to have died at sea in 2016.

Crossing the sea is made even more dangerous by the trend of departures over the year, which is changing. If the climax is usually reported during the summer, in 2016 it occurred later in the year, with cooler temperatures: more than 27,000 arrivals in October. On the other hand, Libyan human traffickers feel no remorse in sending ships and rubber boats through hard weather and sea conditions, which led to a higher risk of shipwrecking and more difficulties for rescuers to do their job.

Therefore, it is evident that countries urgently need to boost new pathways in the admission of refugees, such as resettlement, private sponsoring and family reunion, so that they do not have to resort to such dangerous crossing journeys in the hands of traffickers.

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57. EU faults

The *relocation* represents the attempt by the European Union to implement effectively the principles of solidarity and fair sharing of responsibility among the Member States, which should be at the basis of a European policy for asylum and immigration.

The *relocation* represents the attempt by the European Union to effectively implement the principles of solidarity and fair sharing of responsibility among EU Member States, which should be at the basis of a European policy for asylum and immigration (articles 67 and 80 of the *Treaty on the functioning of the European Union* – TFEU). However, the program for the distribution of migrants in need of international protection from Italy and Greece to other European countries proved even more inefficient. Moreover, it was itself but a feeble attempt, since it only concerns asylum seekers of those nationalities for which the rate of international protection guarantees is equal to or more than 75%, according to the quarterly

survey of Eurostat data, and currently temporary (up to September 2017). This program was thought as one of the most important innovations towards a wider sharing of responsibilities with the common system of asylum, both in the matter of meeting obligations in the identification of migrants at borders, and of the distribution of reception duties for those requesting international protection. In the Agenda approved on 13 May 2015, while requesting that those Countries which are on the “frontline” fully implement the rules on fingerprinting registration through the so-called “hotspot approach” upon the arrival, the European Commission also ruled that the other Member States should bear the responsibility for a quota of asylum seekers photo-signalled in Italy and Greece (in a first moment, also in Hungary), as an exception to the “Dublin Regulation”.

The Commission’s reports on the actual implementation of the *relocation* plan, which were carried out almost monthly since 16 March 2016, all show failing results of the distribution plan, only in part tempered by a slight improvement of the situation over the last period (Seventh Report of 9/11/2016 and Eighth Report of 8/12/2017) and by regular contribution of some States.

The main issue appears to be the extremely low number of places provided by Member States, which is significantly below the established quotas (see Council Decisions 2015/1523 of 14/09/2015 and 2015/1601 of 22/09/2015), and the fact that some States did not meet any obligation as for *relocation*. On 31 January 2017, 16 months after the program began and about 8 months from its end, of the 34,953 *relocations* expected by Italy, only 2,916 did actually take place (source: statistics of the Ministry of Interior).

Problems also concern the time taken by the procedure, which mainly depend on responses from the receiving State and, at times, on the systematic need for additional security checks.

As a result, many months may pass from the moment of the request for *relocation* to when the procedure is established and the *relocation* implemented (up to six months, according to the Commission report on *relocation* of 8/12/2016). This leads to a longer period of uncertainty for migrants, threatens their confidence in the system and increases the risks of absconding (according to the data of Ministry of Interior, 227 candidates to the program absconded after having submitted their application).

Data and figures about the implementation phase of the *relocation* are clear. They should play a pivot part in the assessment of States' framework commitment on migration, avoiding giving way to power relations and have as result a substantial waiver of the solidarity and cohesion principles entailed in the Treaty.

58. Current situation in the CIEs

Established in 1998, the Centres for temporary detention, later called Immigration Detention Centres, CIEs, Centri di Identificazione ed espulsione (the recent decree-law 13 issued on 17 February 2017 renamed them Immigration Removal Centres, that's CPRs, Centri di Permanenza per il Rimpatrio) are detention facilities where third-country nationals without a regular residence permit are held.

Detention in the CIE is decided by the chief of police and validated by a Magistrate within 30 days (with the possibility to extend it up to 90 days), «when it is not possible to immediately enforce the expulsion order with escort to the border or the refusal of entry, due to temporary situations, which have impeded the preparation for the return or the enforcement of removal [...] ». Despite third-country nationals are held in the CIE with the status of 'detained' or 'hosted', their detention resembles an imprisonment, since they are deprived of their personal liberty and are subject to restrictive measures both in regard to contacts with the outside world and to their freedom of movement within the facilities and the possibility to own personal objects. By doing so, the CIE introduced in Italy a system of 'administrative detention', which causes individuals infringing an administrative regulation, such as lack of the necessary residence permit, to be deprived of their personal liberty.

At the moment (23 February 2017), there are four operating CIE in Italy, in Brindisi, Caltanissetta, Rome and Turin. The old CIE of Bari and Gorizia are not available due to restoration works, while those of Bologna, Crotona and Milan remain closed. Due to this shortage, the above-mentioned decree-law decided for a significant increase of the CPR on a nationwide basis.

Article 14 of the decree-law 286/1998, as amended by Law 189/2002, §2, establishes that in the CIE third-country nationals are held and «the necessary assistance and full respect of their dignity is granted». Basically, no matter in which facility they are held, migrants deprived of their liberty should always be able to exercise three fundamental rights: the right to have access to a legal adviser, the right to have access to a physician, and the right to contact the family or a third person of their choice to inform on the situation.

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A high number of those held in the CIE come from prisons: either they are subject to administrative and/or judicial orders of removal, or the Administration has not been capable to identify them while in custody. Therefore, unfortunately, there is a wide variety of backgrounds and situations in the CIE: besides former inmates, there are asylum seekers who apply only after being subject to a removal or

rejection order, and people who have been in Italy for a long time and became irregular after their residence permit has expired, including, at time, minors who have just turned 18, and so on. This ‘melting pot’ situation should be tackled by establishing different ‘pathways’ that take into due consideration such deep differences. Moreover, there is a strong paradox in the fact that asylum seekers are held in detention facilities up to 12 months, while the current legislation is envisaging a maximum of three months. A significant increase in asylum requests, together with following increase of court appeals, has led to longer time spans to come to a decision, so that migrants are further disadvantaged.

Furthermore, the current situation of the CIE does not allow for the implementation of the right to be fully informed on the personal situation of being deprived of one’s own liberty, since, according to the National Guarantor surveys, legal and cultural mediation services are still inadequate.

The functioning of the CIE is allotted to structures selected after some tender requirements, provided for by the Ministry of Interior in 2008. Through a public tender, the prefectures select a managing Body with which they sign a three-year non-renewable agreement whose content refers to the above-mentioned requirements.

In this regard, it is worth underlying that the functioning of the CIE is allotted to structures selected after some tender requirements, provided for by the Ministry of Interior in 2008. Through a public tender, the prefectures select a managing Body with which they sign a three-year non-renewable agreement whose content refers to the above-mentioned requirements. The successful bidder in the tender is usually a private Body, which offers the best value for money. In fact, this indicator usually bring forward low quality standards, with a risk of providing services below the international standards.

In this matter, Member States should take account of the European Committee for the Prevention of Torture rules (CPT standards) so to meet obligations established by the ECHR and the Charter of Fundamental Rights of the European Union.

59. CIE regulation and control over its management bodies

On 20 October 2014, the Ministry of Interior issued the “*Standards on the organisation and management of the Immigration Detention Centres established in article of the legislative decree 286, and further amendments*” within the CIE with the purpose of ensuring consistency in rules and reception levels for the internal organisation of the Immigration Detention Centres (CIE). As a general provision, the Regulation provides for the full compliance with the fundamental rights, starting from the right to be informed of rights and obligations, the conditions of detention and the internal rules of the community in detention facilities. The task of informing detainees, in a language they can understand, is taken over by the Management Body staff supported by a cultural linguistic mediator. We have already reported on the critical issues arisen in the implementation of the so far described regulation mainly due to understaffing or mere distribution of information material.

The Regulation is setting out rules on the various stages: medical examinations, reception at the CIE, length of stay and release date, open the migrant’s medical file. In fact, in each CIE a health care facility should be provided and equipped with a list of required items. The ratio should be that of

ensuring emergency healthcare and basic medical treatments, also considering the vulnerabilities related to the abuses and tortures conceivably suffered by the subjects in their home countries.

The signing of MoUs with health care facilities is also promoted in the Regulation in order to guarantee access to specialist examinations and diagnostic-therapeutic screenings. Equally, the Regulation sets out in detail the organisation of a number of services, including the storage of personal belongings, the canteen service, the premises used as accommodations, the correspondence and the recreational activities. Finally, it regulates access to the CIEs, the procedures for conducting visits and safety matters. The tasks of the Management Body include, among others, constant verification of the proper functioning of the CIE with the obligation to immediately report any malfunctions and/or damages that occurred within the facility to the local Prefect's office.

The overall regulatory framework shows that Prefectures are responsible for choosing the Management Body while also assessing its service offer and suitability. Moreover, they are required to check the situation in the facilities. Notwithstanding the Regulation, the critical issues related precisely to the CIE management have not been solved completely since the standards established at central level are not always fulfilled, so that major inequalities persist throughout the national territory. Prefectures should perform periodic monitoring of the actual living conditions inside the CIEs, taking into account the abovementioned CPT standards. Notably, the people there detained should be accommodated in Centres designed specifically for this purpose and managed by suitable and qualified staff. Facilities should further have sufficient space and enable activities such as to encourage relationships among detainees. They should also have an overall appearance that does not give, as far as possible, the impression of being a prison like facility.

60. Hotspot: a juridical limbo

The *hotspot* approach, defined by the 2015 European Agenda on Migration, consists in channelling all arrivals into some equipped landing areas where the procedures for health screening, pre-identification, registration, photo-signalling and fingerprinting are carried out. The data shall be sent to the EURODAC system within 72 hours as provided in the EU Regulation 603/2013. At national level, reference should be made both to the circular of the Ministry of Interior of 6 October 2015 and to the operational guidelines contained in the document Standard Operating Procedures (SOP) and drawn up by the Ministry of Interior with the contribution of the European Commission, Frontex, Europol, EASO, UNHCR, IOM. However, in the absence of specific legislative provisions, the legal status of hotspots is still unclear and undefined. They find themselves in a sort of juridical limbo, an intermediate structure between first line reception centres and the Immigration Detention Centres. Detention in the *hotspots*, as well as its conditions and length, is not determined by the Judicial Authority although it is affecting the personal liberty of individuals, and should therefore be adopted in compliance with Article 13 of the Italian Constitutional Charter that has the absolute jurisdiction and statutory reserve on the matter.

There is a variety of critical issues resulting from this specific situation. The length of stay in the *hotspots* is indefinite and left to the discretion of the authorities responsible for the Centres. It is

indicated to be “as short as possible” but often, especially in the past, there have been cases of resistance to photo-signalling or difficulties in finding possible locations, which might have protracted the migrant’s stay. Furthermore, There are not common guidelines observed in the different hotspots about the freedom of movement of migrants outside the detention facility, after being photo-signalled: in two cases (Taranto and Pozzallo) they are free to leave the facility and then come back, while in the two other cases (Lampedusa and Trapani) they stay closed in the hotspot.

In some cases, the facilities designed to accommodate people for a short period proved inadequate with regard to the delivery of services, particularly in the case of unaccompanied minors who may stay for longer periods, while in search for a suitable hosting location. These facilities do not always respect the right of migrants to be informed as regards, for instance, their application for international protection. Indeed, albeit the presence of a mediator, the pre-identification phase, consisting in a short interview (filling in the so-called “information hand-out”) when migrants are asked, in the aftermath of a traumatic landing, to briefly state the reasons why they have arrived to Italy (work, family, asylum etc.), risks to prevent migrants from being granted a different and definitive legal status in the future.

In this respect, it should be noted that the decree-law 142/2015, adopting EU Directives 2013/33 (on the reception of applicants for international protection) and 2013/32 (on granting international protection), is triggering protection at a stage preceding the formal recording of the asylum application. Indeed, as provided in article 10(4), it states that foreign nationals cannot be subjects to return decisions if they have applied for asylum. Clearly, in order to be able to express their willingness to apply for asylum, third-country nationals shall be fully informed, in a language they can understand, on reception procedures, the opportunity to contact humanitarian organisations etc. The Italian Court of Cassation has also decided on the matter (Civil cassation, section VI, ordinance 5926, 25/3/2015). It has stated that the responsible authorities have the duty to provide migrants with all the necessary information on their right to apply for international protection, to guarantee interpreting services, under penalty of rejection and detention orders invalidity. The confusion of the moments following the landing and the rapidity with which the identification procedures are carried out (sometimes without any consideration for the refreshment needs of the people landed) jeopardise the compliance with this principle.

61. Lack of consideration for the migrant’s life project

The asylum-seekers entering the European territory are not allowed to choose which country will be their final destination and where they can apply for protection. The European Union has established clear and precise obligations that do not consider, with the exception of some cases, the migrant’s life project and the opportunity to complete self-determination. The hosting countries “keep record” of some elements of the personal identity of migrants, which are of evidence for the police, and are used for monitoring the mobility of third-country nationals within the Union and for checking whether a person have submitted asylum applications in different countries. The common policy adopted on this issue under Article 78 TFEU focuses on Regulation 604/2013 of the European Parliament and of the Council of 26 June 2013 – the so-called “Dublin Regulation”- laying down the criteria and

mechanisms for determining the Member State responsible for examining an application for international protection.

Except the relevance of some family ties with people already present in other states of the Union and exception made for some other unusual situation in everyday practice, the criterion, which finds greater application, is to give responsibility for handling an asylum claim to the first country of the Union where the asylum seeker has entered. To implement its criteria, this "Dublin mechanism" generates a tedious system of procedures of taking in and back asylum seekers among different Member States, before determining the transfer of the applicant to the competent country and, if there is a significant risk of absconding, also their provisional detention (Article 28 of the mentioned Regulation). The system therefore strongly restricts the freedom of movement of asylum seekers within Europe with obligations applicable even after the international protection is granted.

The regulation has been revised several times; today its third edition is applicable and the debate on a further revision is open. In the proposal for amendment presented by the Commission on 4 May 2016, the hierarchy of the "Dublin criteria" has been confirmed, with a strengthening of the rule that confers responsibility to the State of first entry and a turn of the screw on the rules penalising the so-called "secondary movements". The applicants' migration project continues to be ignored by European policies, as well as the issues concerning easier reception procedures that could be if migrants – seeking or been granted international protection - could arrive to the chosen destination and rely on a network of social relationships and relatives that are already in place.

Italy will have to play a crucial role for a change of pace compared to the "Dublin system", or to organize and accept without reservation the fact that it will not be only a docking haven.

The road to negotiations is narrow but Italy with its 8,000 km of coastline - like Greece - will have to play a crucial role for a change of pace compared to the "Dublin system", or to organize and accept without reservation the fact that it will not be only a docking haven.

62. Non-availability of facilities for minors

In 2016, an increase of arrivals of Unaccompanied Minor Migrants (UMM) has been recorded, 6,133 of which have passed through the *hotspots*, corresponding to 9.3% of the total arrivals in a year and nearly three times more than the number of minors who arrived in 2015.

These figures are significant and have created several difficulties especially at the reception phase. Connected to their vulnerable conditions, is the need to be immediately transferred to the first line reception centres and avoid permanence at the *hotspots*. This necessity clashes with the shortage of places available at the reception centres. According to the Department for Civil liberties and Immigration, the period of time they remain in the *hotspots* ranges from 5 days in Trapani to 15/20 in Pozzallo.

Therefore, the process is long and the facilities are not suitable, too: tents in Taranto, bars and gates in Trapani, decaying rooms and toilets in Lampedusa. Here, during its visit on 3 October 2016, the National Guarantor met a dozen very young Nigerian girls who had been in the centre for more than one month; whereas in the *hotspot* of Pozzallo, visited on 17 January 2017, nine minors were staying in the reception centre to turn 18 soon afterwards.

Municipalities manage the reception system. Nevertheless, following the agreement reached by the State-Region-Local Representatives Assembly on 10 July 2014, the Ministry of Interior, together with the Asylum, Migration and Integration Fund (AMIF), has implemented some highly specialised UMM first reception Centres. So far, 19 of them have been opened, each with a capacity up to 50 people, for a total of 950 minors. They are dedicated to immediate assistance and first aid operations for a maximum period of 60 days, and they are located in nine different Italian regions: Piedmont, Tuscany, Liguria, Emilia-Romagna, Apulia, Basilicata, Campania, Calabria and Sicily.

Their distribution on the Italian territory is uneven, with Sicily having the lion's share with more than 7,000 arrivals, followed by Calabria, Emilia-Romagna and Lombardy with more than 1,000 UMM and shortly after Latium with 900 minors.

However, there have been reports of unacceptable circumstances in UMM reception, where minors have been left abandoned with no cultural, recreational or educational activities carried out. Furthermore, the number of those who have disappeared highlights the resulting stress and suffering situation: 6,561 according to the Ministry of Labour and Social Policies. This is the number of those not returning to the *ad hoc* Centres for minors and become untraceable within the territory.

63. Absence of an independent control on facilities beyond CIEs and *hotspots*

The reception facilities are under the control and monitoring of the Department for Civil liberties and Immigration of the Ministry of Interior. In compliance with Article 20 of the legislative decree 142, issued on 18 August 2015, they are also carried out through the Prefectures that may in turn

The reception facilities are under the control and monitoring of the Department for Civil liberties and Immigration of the Ministry of Interior. In compliance with Article 20 of the legislative decree 142, issued on 18 August 2015, they are also carried out through the Prefectures that may in turn rely on local social services.

Considering the broad scope the reception system is upholding, its fragmented nature and the vulnerability of arriving subjects, it seems appropriate to open a reflection on the adequacy and the congruence of the supervision. It is entrusted exclusively to those responsible for the organisation of the system itself and is limited to the verification of the quality of the services provided and their compliance with the standards of reception and assistance required by law. The reception

centres are open and do not determine in any way the detention of people there accommodated, but still there are a number of obligations that limit the liberty of those detained. Breaching these rules may result in a withdrawal of material reception conditions (see Article 23 of the mentioned

legislative decree). The obligation to return to the facilities at night, the prohibition of arbitrary departure, the serious consequences of non-compliance with the rules of the centres, constitute a framework of restrictions limiting the liberty of people, a sort of mitigated deprivation of liberty.

This current situation calls for some kind of guarantee in the form of an independent supervision capable of balancing the rights of the people detained and the interest in maintaining order and discipline within concerned facilities. This need becomes particularly urgent if considering the risk of unpredictability that may arise in the case of such severe consequences – as is the right to material reception conditions. Indeed, they derive from the rules of the accommodation centre, which are not under the legislative framework, and are subjects to the sole responsibility of a third party, that is the facility management body. The failure to provide the possibility for users to lodge a complaint, through an administrative action on possible violations or shortages, contributes to worsen the situation.

As it has been reported from recent history, the lack of formal procedures to assert their own rights within the reception facilities may lead to forms of protest and violent behaviours, which inevitably compromise the legal position and the future of those engaged. In this respect, also in the list of recommendations made to Italy in 2013, UNHCR encourages “[...] to establish mechanisms aimed at consulting asylum-seekers hosted in reception facilities and at facilitating their active participation [and] to introduce [effective] complaints mechanisms”.

The lack of formal procedures to assert their own rights within the reception facilities may lead to forms of protest and violent behaviours, which inevitably compromise the legal position and the future of those engaged.

64. Facilities impermeable to media

Information is by definition an instrument of control and a guarantee of transparency. It is no coincidence that journalists are defined the “watchdogs” of power. This role becomes even more relevant with respect to those institutions that are not easily accessible from the outside, as are the places where individuals are deprived of liberty.

While in penal institutions access to the media has become more flexible for some time now, albeit the unavoidable limitations due to the respect of prisoners’ privacy, this situation is still unresolved in immigration centres, whether they are CIEs, *hotspots* or hubs. The circular 1305 of the Ministry of Interior of 1 April 2011 on the access to immigration centres, grants entry permission “exclusively to the following organisations: United Nations High Commissioner for Refugees (UNHCR), International Organisation for Migration (IOM), Italian Red Cross, Amnesty International, Médecins Sans Frontières, Save the Children, Caritas and other associations having ongoing projects with the Ministry of Interior carried out in the reception facilities, and supported by national and European funds” effectively excluding journalists “so to avoid hampering the on the spot activities”.

In response to this circular, several organisations launched the campaign *LasciateCIEntrare* after Article 21 of the Italian Constitutional Charter guaranteeing the freedom of the press. For journalists, gaining access to these centres is extremely difficult and it may take a very long time: feedbacks from the Prefect, subject to the Ministry of Interior permission, may be received even a year later. On 3

October 2016, on the occasion of the memorial day for the boat tragedy occurred in 2013, after negotiations between the National Federation of the Italian Press (FNSI) and the Ministry of Interior, a group of journalists obtained authorisation to visit the *hotspot* in Lampedusa. It was the very first time the press could access a *hotspot*, as these facilities are usually off-limits to media. On that event, the delegation was also accompanied by a member of the National Guarantor Board. No video cameras, cameras or recorders. It has even been thought of prohibiting any contacts with the hosted people, if not after a formal disclaimer (required for audio or video recordings). Nevertheless, it was the very first step, currently the only one.

The exercise of the right to freedom of the press is not in fact guaranteed in these areas. Over the last few months, several denials of access to CIEs, especially to those in Turin and Ponte Galeria, have been reported from Press Associations. It was a missed opportunity to raise awareness on a world that is otherwise “smoky” and at the same time, it may feed unfounded suspicions there is something to be hidden

The exercise of the right to freedom of the press is not in fact guaranteed in these areas. Over the last few months, several denials of access to CIEs, especially to those in Turin and Ponte Galeria, have been reported from Press Associations. It was a missed opportunity to raise awareness on a world that is otherwise “smoky” and at the same time, it may feed

unfounded suspicions there is something to be hidden. On the contrary, good cooperation with the media - while respecting the needs of people hosted and working in the centres - would contribute to a deeper knowledge of migration flows, of migrants themselves and of the problems and resources overall employed. This may help the country to know and confront with the challenge of migration, in the light of facts and evidences, rather than speculations.

The combination of illegal aspects and the lack of transparency on the overall system often lead to the obvious conclusion that illegality is the norm, that the respect of people’s rights is not guaranteed and that abuses are widespread. A sound cooperation with media, to be intended as instruments of democratic control, may on the other hand help in identifying positive aspects and critical issues, thus enabling increasing standards of people’s rights in our country.



65. The Guarantor monitoring role

As already mentioned, a further competence of the National Guarantor is related to the monitoring of forced returns, after provisions in Article 8(6) of Directive 115/2008/EC of the European Union.

In order to clarify the specificity of this competence, it should be noted that on 21 October 2014 the European Commission sent a letter of “formal notice under Article 258 TFEU” to the Foreign Minister, on various issues including the fact that Italy, according to the above-mentioned article of the directive, should establish an effective forced return monitoring system. Indeed, in accordance to the European Commission, Article 8(6) of the Directive was asking for transposition in an internal law specifying the activities, the terms, the independence, the frequency of monitoring and the rights and obligations of the national body responsible for the forced return monitoring. Therefore, in order to ensure an effective monitoring on the Authority executing the return order, the monitoring body and its members shall benefit from the explicit guarantee of independence with respect to any pressures or instructions from the executive (*nemo monitor in re sua*). Incidentally, Italy identified the *Coordination and monitoring Committee* as this national body, a committee set up under Article 2-bis of the legislative decree 286 of 25 July 1998, internal to the Ministry of Interior. This exact position led the European Commission to consider the proposal as inappropriate. Thus, after the Commission launched an infringement procedure against Italy, at a second meeting, held at the Presidency of the Council of Ministers, the representatives of the Department for European Policies and of the Ministry of Interior proposed the National Guarantor for the Rights of Persons Detained or Deprived of Liberty as the monitoring body, so to meet the requirements of effectiveness and independence requested by European Commission.

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By letter 5007-2/A2014-001564/IX, dated 9 December 2014, the Office of Legislative Affairs and Parliamentary Relations at the Ministry of Interior attributed to the National Guarantor the jurisdiction with regard to forced return and, given that primary legislation regulates the mandate and the functions of this body, the practical modalities for implementing monitoring are specified in the self-regulation code that the Guarantor has adopted. Subsequently, on 15 December 2015, the Legislative Office of the Ministry of Justice, in communication 6.1.6-9 AI, agreed with the Ministry of Interior on 9 December 2014, about the decision on the National guarantor as monitoring body of forced returns. On 12 March 2015, the Presidency of the Council of Ministers informed that the European Commission considered the appointment of the National Guarantor as the body responsible for forced return monitoring to be satisfactory, with reference to the independence of such a body.

With the appointment of the National Guarantor Board (February-March 2016) and the start of its Office activities on 25 March 2016, this independent body could effectively perform its role of national authority for forced return monitorings.

This determination did not immediately bring the infringement procedure to an end. The monitoring body was then subject to hearings and cognitive activities, implemented by the *Schengen Committee*, which aimed at evaluating and verifying the actual independence and workability of the National Guarantor. The Committee audit seems to be concluded successfully during the first months of 2017 and the infringement procedure regarding this sensitive issue will probably be soon outreached.

66. Different monitoring operations

In fulfilling its mandate as a National Authority responsible for forced return monitoring operations under Directive 115 / EC of 2008, the National Guarantor shall carry out its monitoring of different typologies of operations. Namely, it monitors both the organisational arrangements and means of transport, and the overall number of foreign nationals involved in a single operation, who are subjects to individual removal order.

In particular:

- a) *Monitoring of chartered flights*. These are dedicated flights, organised by the Immigration Service of the Central Direction for Immigration and Border Police, when there is a need to deport a large number of foreign nationals of the same nationality. Such flights are only possible if the organising country - in this case Italy - has been granted authorisation from the third country concerned and there is a written agreement signed, such as a "Readmission Agreement" or a "Police Cooperation Agreement". These flights are used for the repatriation of a number of people that can even amount to 30. Considering that the ratio between flight escort and returnees is 2 to 1, these operations may involve 100 -110 people including, compulsorily, a doctor and a nurse made available by the Central Health Directorate of the State Police. Albeit having signed readmission agreements with several non-European Union countries, Italy mainly operates return charter flights to Tunisia. 43 charter flights were operated in 2016, for repatriating 1,094 expelled Tunisians. Additionally, a return flight to Sudan operated in August 2016, with 40 Sudanese expelled nationals. **On 19 May and 21 July 2016, two monitorings were conducted by the National Guarantor on this type of flight.**
- b) *Monitoring of joint return chartered flights (Joint Return Operation - JRO)*. These are operations involving various Member States of the European Union or the Schengen area for the repatriation of nationals of the same nationality (operations laid down in the Decision of the Council of the European Union 573 of 29 April 2004). These are operations coordinated by the European Agency Frontex, which also co-finances 100% of costs incurred by the organising country for the air carrier or up to 75% in case the operation is involving the national Asylum Migration and Integration Fund of the European Union, managed by the Ministry of Interior. Also in such operations, a formal readmission agreement with the third country concerned, and an explicit provision that other countries of the European Union or of the Schengen areas can be involved in these return flights as participating Member States with their own returnees, are required. In joint flights, each country participates with its own escort personnel that is entrusted with the responsibility on the returnees. As in the case of charters (see above), the escort will receive a previous specific training for this type of service, although in the case of non-joint national charters untrained officers are allowed whenever there is shortage in trained escort personnel to perform the service. The organising country ensures the presence of medical staff on board and throughout the duration of the operations. Italy, as organising Member State, promotes this type of return flights to Nigeria. There were 6 joint flights to Nigeria in 2016, for a total of 151 Nigerian

returnees. **The National Guarantor has conducted four monitorings of this type of flights on 14 July and 3 November 2016, and on 26 January and 23 February 2017.**

- c) *Monitoring of commercial flights.* In this case, the forced return takes place in commercial scheduled flights, also with police escort personnel. Therefore, situations arise where the returnees travel towards their own country together with other passengers of a commercial flight. These are operations mostly involving a single returnee or, in any case, a maximum of 3 or 4 returnees. 955 foreign nationals, for a total of 879 flights, have been repatriated in 2016 following this procedure. **The National Guarantor carried out the monitoring of a Peruvian national repatriation on a commercial flight on 26 May 2016, although this was limited to the pre-departure phase until the boarding was completed.** During 2017, monitoring of this type of flights will be increasing, although the presence of other passengers on boards ensures to this procedure a higher degree of “social control” than that of “dedicated” chartered flights, thus reducing the need of a monitor on board the aircraft.

- d) *A particular case: the Collecting return operations.*

This type of returns provides for selecting a dedicated aircraft for the repatriation service by the organising country, but in this case, the police escort is supplied by the returnees’ original country. Therefore, the handover of returnees takes place on the aircraft and the foreign escort brings its expelled nationals to their destination. Italy promotes this type of repatriations to Egypt. During 2016, 12 collecting operations, for a total of 508 Egyptians repatriated, have been carried out. **Until now, the Guarantor has not operated any monitoring of this type of flights.**

The National Guarantor shall carry out its monitoring of different typologies of operations. Namely, it monitors both the organisational arrangements and means of transport, and the overall number of foreign nationals involved in a single operation, who are subjects to individual removal order.

67. What monitoring-a-return procedure implies

Forced return consists in the compulsory physical transport of a person outside the territory of the State, if the person is subject to an expulsion order or entry-ban decision. The scope of application of the National Guarantor monitoring system is concerned with the protection of the rights of foreign nationals, who are subjects to a removal order, which is to be coercively enforced, regardless of whether it is issued against the breaching of rules relevant to the immigration act or as a penal sanction or consequence of a penal sanction or, lastly, under extradition procedures.

The monitoring strategy identified by the National Guarantor takes into account the methodology employed in the systems previously established by the European Ombudsmen on behalf of their respective countries. More specifically, on the basis of a shared approach, a forced return operation is divided into various phases, depending on the different modules of the operating sequence. For each phase, specific risk factors and protective measures shall be guaranteed and taken into consideration in order to prevent and counteract any possible violations of human rights. The monitoring activity, depending on the peculiarities of each operation, may involve one or more phases of the overall forced return procedure. These are articulated as follows:

- a) Detention phase. To make the forced return procedure a success, foreign nationals subjects to it can be detained under Articles 15-17 of the Directive of the European Parliament and of the Council 2008/115/EC of 16 December 2008 (Article 14 of legislative decree 286/1998). The detention, exclusively aimed at the compulsory removal of foreign nationals from the national territory, is an integral part of the forced return procedure and it is subject to the monitoring activity. During this phase, the monitoring activity is especially aimed at verifying the compliance with the legal guarantees for the protection of foreign nationals deprived of personal liberty, under an entry-ban decision/ expulsion order in view of the forced return or escort to the border by law enforcement authorities. At this stage, the monitoring process consists in the analysis – also *ex post* - of the documents contained in the foreign national's personal file, made available by Police headquarters and/or Immigration Central Direction of the Department of Public Security of the Ministry of Interior. The monitoring is aimed at identifying those critical points connected to specific aspects of the operation (such as access to justice, right of defence, compliance with the terms, the existence and effectiveness of the detention order, validation by the judicial authorities, the existence of prohibitions of expulsion or refoulement, compliance with the guarantees connected to the access to international protection and with the *non refoulement* principle etc.) and making recommendations in terms of prevention.
- b) Pre-return phase. This phase begins about 24 hours before departure, within the centre where the foreign national is detained, and involves monitoring of those activities carried up until the transfer to the place of departure, depending on the means of transport used (aircraft, ship, bus, train) or, if the case, to a neighbouring detention centre. During this time, the monitor may have access to personal files, is present when the returnee is informed about his forced return or verifies whether and how this information is provided. In any case, the monitor shall observe and take part in the operations conducted in the detention centre until the foreign national is moved to the place of departure or a neighbouring temporary detention centre (for instance, previous safety checks, escort personnel meetings).
- c) Pre-departure phase. This phase may start at the temporary detention centre or at the place of departure and continues until boarding is accomplished. It concerns, for instance, the observation of the phases related to previous safety checks, the escort personnel briefings, the terms of detention inside the waiting rooms of the departure stations (such as airports *waiting rooms*), and the possible use of means of restraint.
- d) Transport phase. In this phase, the monitor shall get on board to monitor during the whole journey (by air, sea or land depending on the means) until the arrival in the return destination also monitoring, when possible, the immediately following operations (for instance, the handover to the authorities of the country of destination).

As regards the methodology, the monitoring activity provides for some sample checks of forced return and it is, from time to time, focused on one or more phases of the whole monitored operation.

68. The role of Frontex: its Regulation

With the adoption of new Regulation 1624 of 14 September 2016, the European agency Frontex, now renamed *European Border and Coast Guard Agency*, has further increased its role and powers

regarding the European integrated management of borders. Within this scenario, two areas are interwoven with the monitoring competencies and powers granted to the National Guarantor: the management of migratory flows in the so-called *hotspots*, and the question of forced returns, for which Frontex may take on the coordination or direct organisation of operations, in agreement with the Member States (Article 8(1)(i) and (l) of its new Regulation).

As regards Frontex participation in the *hotspots*, the Agency deploys its personnel and technical equipment resources to assist the operations of selection and gathering of information on migrants and their migratory routes, as well as for their photo-signalling and fingerprinting together with the local Police. In addition, Frontex, in cooperation with the EASO (European Asylum Support Office) and the National Authorities, lays down an initial orientation and information procedure in favour of the people in need of international protection or willing to apply for it. Therefore, this is only a ratification of the role that Frontex has played since the launch of the *hotspot* approach within the Standard Operating Procedures that are to be applied to the Italian *hotspots*. Those procedures affect sensitive issues related to the protection of fundamental rights such as the need for international protection, the *screening* that is the selection of third-country nationals through migrants pre-identification and recording, as well as fingerprinting.

However, in the recitals of the new Regulation is shown (recital 14) that “the extended tasks and competence of the Agency should be balanced with strengthened fundamental rights safeguards”. In this regard, the same Regulation stresses the need for the Agency to develop and implement a strategy for monitor and ensure the protection of fundamental rights within the operations that it coordinates or which it takes part in, mostly through boosting its mandate and providing its fundamental rights officer with adequate resources, namely an institutional figure within the Agency itself (recital 48).

However, from the National Guarantor point of view, it is in matters of repatriations that the most relevant changes have been carried out and some considerations shall be made. With articles 27-28 of the new Regulation, Frontex retains a 360° role as regards to assistance, technical and operational coordination, financing and co-financing of repatriation operations by leasing itself the aircrafts needed for the procedures or proposing to the Member States to coordinate and organise directly a return flight. Article 28(6) requires that “every return operation shall be monitored in accordance with Article 8(6) of Directive 2008/115/EC” and that “the monitoring [...] shall be carried out by the forced-return monitor”. In this respect, with the subsequent Article 29, the Agency shall, after consulting the fundamental rights officer, constitute a pool of forced-return monitors from the bodies, which carry out forced-return monitoring operations in their own countries, in accordance with Directive 2008/115/EC. Therefore, these monitors are made available by Member States as per annual bilateral negotiations and agreements with the Agency, and

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they are deployed as on-call monitors of forced return operations at European level. The Regulation provides that the forced-return monitor shall submit a report on each forced-return operation to the executive director, the fundamental rights officer and to the competent national authorities of all the Member States involved in the given operation. The “friction” is evident between the necessary independence and autonomy of monitor and compulsory on board monitors on every return flight, as well as the constitution of a pool of monitors employed by an Agency that, at the same time, coordinates, finances and directly organises return flights.

The National Guarantor, in this context, decided to positively join the request received from the Agency through the *National Contact Point*, recommending two of its representatives for constituting the so-called pool, although with regards to a limited number of monitoring such as not to affect its

The National Guarantor, in this context, decided to positively join the request received from the Agency through the National Contact Point, recommending two of its representatives for constituting the so-called pool, although with regards to a limited number of monitoring such as not to affect its own operations and mandate on a nationwide basis.

own operations and mandate on a nationwide basis. Similarly, it joined the participation in a further innovation introduced by the new Regulation concerning the establishment of a complaints mechanism for preventing the violation of human rights within the operations coordinated and co-ordinated by Frontex.

The National Guarantor had regarded as more appropriate and relevant to the mandate and status of independent monitoring bodies, initiatives aimed at counteracting the wider tasks and competences entrusted to Frontex by the Regulation, thus conferring outside the Agency itself the tasks of observation, monitoring and reporting on repatriation operations and receipt of complaints. For instance, identifying the European Union Agency for Fundamental Rights (FRA) as a monitoring body of the operations coordinated and organised by Frontex, without introducing mechanisms of automaticity that risk making the monitoring a routine and therefore ineffective.

▲ POSITIVE FACTORS

69. Targeted training

The Police personnel engaged in escort services during forced returns should receive a specific training aimed at providing officers with the theoretical and practical skills required to perform such a delicate mandate. The Central Directorate for Immigration and Border Police of the Department of Public Security organises a *Training course for the State Police personnel to be addressed to the escort services for returnees* lasting two weeks, at the *Institute for Inspectors* in Nettuno. The course is now at its twelfth edition (November 2016). As this area is subject to constant updates, both regulatory and operating, refresher training sessions are also planned. So far, eight editions have been

held. It is possible to gain access to the course after an interview/exam and a test to verify the level of English language.

From the National Guarantor point of view, the organisational arrangements of the course, its structuring and intensity and the variability of the training modules, reflect the complexity and responsibility of the role designed to the State Police in order to carry out services for the escort of foreign nationals subjects to a forced return decision. Indeed, as repeatedly mentioned, these are procedures that, due to their coercive force, the arrangements of security checks, the possibility of force or means of restraint being used during the operations, may lead to violations of fundamental rights and injuries to the physical safety or dignity of those suffering them. For this reason, a specific training constitutes the essential instrument to prevent any situations or conducts of officers that could potentially prejudice the rights of the people involved. In specific terms, the course is structured in such a way as to approach the broad issue of the disciplines and practices for carrying out a forced return: the analysis of expulsion orders or decisions on removal from Italy and their execution; the difference between forced return and voluntary repatriation; the organisation of the services of repatriation and international escort; the different types and modalities of repatriation by commercial, chartered or joint flights; the analysis of the repatriation phases; the communication techniques in managing escorting; the protection of fundamental rights during the forced return operations and the Frontex code of conduct; the European policies on repatriation; the assistance in Italian international flights during repatriation operations.

Alongside the theoretical lessons, daily practical training activities are proposed, as well as operating techniques and self-defence activities aimed at a correct use of force when it is necessary and at using means of restraint such as the Velcro fasteners. The trainees shall daily attend an intensive English course with the purpose of improving their previously proven basic knowledge of the language. Before the written, oral and practical final exam, the trainees simulate a live international escort service within certain areas made available at the Fiumicino airport, including training spaces on dismantled aircrafts (*mock-ups*).

Invited by the Central Directorate for Immigration of State Police, the National Guarantor participated as observer in the last edition of the course with two of its officials. The observers had the chance to take part in all of the activities provided for by the theoretical/practical training. Furthermore, the National Guarantor Board Chair and one Member have been invited to deliver a lesson on the protection of fundamental rights during return operations, respectively at the XII and VIII refresher courses. The Department for Public Security opening to “external

The National Guarantor Board Chair and one Member have been invited to deliver a lesson on the protection of fundamental rights during return operations, respectively at the XII and VIII refresher courses. The Department for Public Security opening to “external observers” – the Guarantor has already sent a communication reporting its own observations on the course - constitutes an important step in the building of a national monitoring system in view of a control on procedures that, although independent, is still aimed at affecting, preventively and cooperatively, the practices used with the purpose of increasing the protection of fundamental rights of the people involved.

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70. Notification of the procedures to the Guarantor

Since 2 May 2016, the National Guarantor daily receives “telegrams” of the forced return operations occurring in the nearest future from the Central Direction for Immigration and Border Police of the Department of Public Security. These return operations are co-ordinated by the same Direction.

Since 2 May 2016, the National Guarantor daily receives “telegrams” of the forced return operations occurring in the nearest future from the Central Direction for Immigration and Border Police of the Department of Public Security. These return operations are co-ordinated by the same Direction. Communications are sent with the purpose of enabling the Guarantor to perform its mandate as a National Authority for forced return monitoring. This automatic notification allows the Guarantor to choose, in complete independence, the repatriation operations to monitor. The

information transferred through telegrams includes all the data relating to the name and nationality of the returnees, the type of expulsion order, his or her allocation facility, whether a CIE or a prison, the information on the escort service, the air carrier routes, the times of departure and return. All this information allows the Guarantor to choose whether to carry out its monitoring of one single phase or of the overall operation.

However, it should be clarified that “telegrams” received by the Guarantor do not cover all the measures and the subsequent repatriation operations conducted in Italy. The communications are only related to those operations that, depending on the returnee’s dangerousness, require an escort service, namely a compulsory escort that continues beyond the Italian border and follows on its way to the destination country, therefore to the returnee’s handover to the authorities of his or her country.

These are operations concerning the so-called “DEPA”, the internationally recognised acronym meaning *departure accompanied*, which differ from DEPU, *departure unaccompanied*, referring to all those foreigners irregularly present in the national territory, who have been the subjects of a removal decision and for whom an international escort is not required. Instead, they are accompanied to the country border to be then left alone on the air carrier returning to their country. These operations are reported, for statistical purposes, by the Police headquarters to the Central Directorate for Immigration only after they have been performed and, until now, the National Guarantor has not operated such type of monitoring, as it is not envisaged by Directive 115/2008. However, it is evident that these are operations foresee a form of coercion, a compulsory escort to the border by police being performed. A reflection within the National Guarantor is going on relevant to the launch of a monitoring system based on sample checks also on this type of operations, through direct contacts with the prosecuting police headquarters or agreements with the Department of Public Security of the Ministry of Interior.

71. Dialogue between the Guarantor and the Schengen Commission

During 2016, Italy was subject to an evaluation on the implementation of the Schengen *acquis* pursuant to the Council Regulation 1053/2013. The evaluation, as is known, should guarantee that Member States apply the Schengen rules effectively in accordance with fundamental principles and norms. The evaluations may cover all areas of the Schengen *acquis* (such as controls at external borders, visa policy, police cooperation) and they consist of questionnaires and of on-site visits (which shall be preceded by a questionnaire).

Presentations may be included by the evaluated Member State on the area covered by the evaluation. The team responsible for on-site visits shall consist of experts designated by Member States and of European Commission representatives. The team, at the end of each visit, shall draft recommendations for remedial action aimed at addressing possible identified deficiencies and give an indication of the priorities for implementing them. The evaluated Member State shall provide the Commission and the Council with an *Action plan* to remedy any deficiencies identified in the evaluation report.

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With regard to the on-site visit in Italy in March 2016, the measures carried out in the area of repatriations were also included among the elements to be evaluated, with reference, among others, to the implementation of an effective forced return monitoring system as provided by Directive 115/2008. The National Guarantor, a few days from its establishment, attended a hearing that took place on 15 March 2016 at the Central Direction for Immigration of State Police faced with the Schengen team, with the purpose of outlining which activities were to be put in place to ensure, at national level, an effective forced return monitoring system. Following the hearing, during 2016 and this first few months of 2017, the team was constantly informed on the progress made by the National Guarantor to implement the national monitoring system. Reports were forwarded to the competent Central Direction for Immigration that sent them to the Schengen Commission for the completion of the evaluation on Italy. Shortly, the communication on the final report is expected. It may be followed by the request for a further plan, although the results achieved this year suggest a positive outcome.

Such constructive dialogue with the Ministry of Interior on this and other matters is conducted in a perspective of inter-institutional collaboration, in full respect of roles as well as the National Guarantor autonomy and independency. Main aspects tackled have been the monitoring visits of administrative detention facilities for migrants and monitoring of the removal procedures for those subjects to an return order. Therefore, solid foundations have been laid for overcoming critical issues connected to the compliance with the Schengen *acquis* by Italy and regarding the absence of an effective forced return monitoring system.

▼ WEAKNESSES

72. Removal decision short-notice

According to the report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and according to the monitoring experience of the National Guarantor, on the 17 December 2015 joint flight coordinated by Frontex for the repatriation of a number of Nigerian nationals, detained in some Italian CIEs, it is widespread practice to give notice of the removal decision on the day of departure. This practice risks to violate the principle of *non-refoulement* as it does not offer guarantees with respect to the possibility of a timely action by legal advisers, and to timely update the personal files of those subjects to the procedure. Therefore, the European Committee recommended the Italian authorities to give a prior notice to the people concerned and their legal representatives, as well as to make provision for a *last call procedure* that could allow verifications of the legal position of irregular foreign nationals throughout the whole operation. In this way, any possible decision to interrupt the procedure, turned up after the departure, may be effectively applied.

According to CPT, and if needed by amending the regulation, some forms of guarantee shall be introduced to stop the repatriation procedure when a request for the suspension of the expulsion order is pending or the time limits for proposing it have not yet expired. In addition to affect the rights of defence and having disposal of effective means of complaint, the ways of communicating the start of the procedure just before the departure is detrimental in terms of the detainee's human dignity, as this may trigger violent reactions, which may give rise to the use of force or of means of restraint. Finally, it should be noted that the lack of a previous notice may particularly involve serious violations of fundamental rights in the case of postponement of removal set out in the *hotspots*.

The concurrent information of the removal decision and of the return, indeed, does prejudice the possibility to appeal, before the measure becomes effective. It is also necessary that the estimated increase of the postponements of removal shall be counterbalanced with effective guarantees in terms of fundamental rights in such a fragile measure, due to its lack of judicial control.

The concurrent information of the removal decision and of the return, indeed, does prejudice the possibility to appeal, before the measure becomes effective. If it is considered that the new Frontex Regulation provides for the Agency to give priority – in choosing the operations to be financed - to return operations and those conducted from *hotspots* areas (Article 28(9) of EU Regulation 2016/1624 of 14 September 2014), it is also necessary that the estimated increase of the postponements of removal shall be counterbalanced with effective guarantees in terms of fundamental rights in such a fragile measure, due to its lack of judicial control.

73. Rules intersection

The legal framework regulating the forced return operations is an articulated system of both national and supranational sources of law, which, in the practical application, do not find a complete harmonisation. Such difficult convergence is due to: a) the plurality of sources governing the matter; b) the multiplicity of places and jurisdictions involved in the various phases of the operation; c) the variety of operational practices followed by different countries. A particularly critical issue, in terms of intersection of the different standards, concerns the joint chartered return flights conducted by Frontex, involving a number of Member States in the forced removal of third-country nationals who have been expelled from their countries.

The complex legal framework regulating the various aspects of the operation consists, in the first instance, of national legislations adopted in accordance with the Return Directive by the different Member States participating in the operation, which determine both the legal position of the foreign nationals to be repatriated and the regime concerning the relevant removal procedures.

Various types of European sources are also implemented by specific provisions on the cooperation between the Member States and the organisation of joint return operations; particularly, the Council Decision 2004/573/EC of 29 April 2004 and EU Regulation 2016/1624 of 14 September 2016, the so-called “Frontex Regulation”. Still at European level, the guidelines developed by Frontex should also be mentioned: the *Code of Conduct for Joint Return Operations* (7 October 2013) and the *Guide for Joint Return Operations by Air coordinated by Frontex* (12 May 2016).

Lastly, in order to gain an objective reconstruction of the framework of the sector, reference should be made to the international instruments in force and, in particular, to the international *Convention on Offences and Certain Other Acts Committed on Board Aircraft* signed in Tokyo on 14 September 1963, according to which the pilot is the only responsible for the safety on the aircraft as well as for possible coercive measures to be taken against passengers.

The difficulties that such legal framework entails are demonstrated by the question concerning the use of coercive measures. As established in the Council Decision 2004/573/EC of 29 April 2004, before every operation, an approved list of the means of restraint is established. The escorts of the various countries taking part in the return operation, therefore, share a common prohibition of the use of certain coercive instruments, although there is no prior agreement between themselves regarding the timing and modalities of application of the authorised measures which, in fact, are left to the discretion of the escort chiefs of the various national delegations. In practice, the prerogative of the pilot –under the above-mentioned Convention of Tokyo- is attributed to the escort chiefs which, on board, maintain the command of their own devices with not uniform operating procedures. It may then happen that the escort of a certain country decides to use Velcro fasteners to tie the hands of the returnees it is responsible for while the escort just beyond does not. It appears evident that such situation may be source of tensions and misunderstanding, besides having discriminatory and detrimental effects on human dignity for those who are subjects to a more safety-oriented treatment without apparent reason.

As regards to the necessary harmonisation of the legal framework, the recent Frontex Regulation poses a further challenge. Article 30, indeed, provides for the constitution of a pool of escorts made up of police officers from all Member State, which the European Agency shall make available upon request to participating countries “to escort returnees on their behalf and to take part in return operations and interventions”.

Therefore, in the new European scenario, there may be a return operation organised by a Member State that, in order to deport third-country nationals from its territory, do not deploy – or not exclusively- its own staff. It rather may rely on an escort composed of police forces from other countries, which, moreover by expressive provision of the Regulation, are subjects to the disciplinary measures of their respective Member States.

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74. What is not notified

Except for chartered return flights, that are directly organised by the Central Direction for Immigration and Border Police, the repatriations on commercial flights or any other commercial carrier by sea or land, are implemented with different operating procedures established by the Police Headquarters responsible for the expulsion, depending on the risks associated with the operation. The risk assessment, based on the social dangerousness of the subject being repatriated, may determine the need to escort the person involved to the country of origin (DEPA) or just to the boarding on the aircraft chosen for the return (DEPU). In this last case, there is no deployment of international escort since the police officers limit themselves to escort the foreign subject to the Italian airport/port/station of departure.

The Central Direction for Immigration and Border Police may only take action to authorise the deployment of international escort in cases where the Police Headquarter requests it. Of such cases, as already mentioned, the National Guarantor is also notified so to give the opportunity to take part and monitor the operation.

In those cases where, on the contrary, there is no need for international escort, the aforesaid Direction is informed of the repatriation only *ex post* for statistical purposes, and has not thereby the opportunity to give reasonable notice to the guarantee institution. The National Guarantor is thus precluded from monitoring the expulsions conducted with an escort to the border by police forces without the deployment of international escort. These coercive measures lack of the required guarantees and protection of fundamental rights, while constituting a breach of the personal liberty. For a better understanding of the phenomenon, it has to be considered that more than half of the 5,817 forced returns conducted in 2016, 2,918 have been carried out with the procedure of escort to the border

without the deployment of international escort. Similarly, year 2015 shows that, on a total of 5,505 forced returns, in 48% of cases the escort limited itself to ensure the boarding of the subject on the selected carrier without accompanying returnees to the country of destination.

The involvement of all local bodies is necessary in order to ensure, in compliance with the prerogatives of the monitoring body, a systematic prior notice of all return operations autonomously conducted and organised by the Police Headquarters.

75. Considerations on staff training

The coercive nature of forced return operations and the justification for extremely resorting to the use of force on subjects who are not responsible under criminal law, impose on the State authorities a number of obligations in guaranteeing that restrictions on freedom, although they are allowed, are carried out in full respect for fundamental human rights. Concerning the guarantee instruments to be adopted, the training of escorts plays a central role as they are entrusted with the task of safeguarding both the dignity and physical integrity of returnees in return operations.

The need for a specific training of staff is therefore unanimously shared at national, European and international level. Particularly, explicit provisions in this regard are contained in the Annex to the Council Decision 2004/573/EC of 29 April 2004, in the Frontex *Code of conduct*, in the *Guidelines on Forced Return* adopted by the Committee of Ministers of the Council of Europe on 4 May 2005 and, lastly, in the provisions by the Central Direction for Immigration and Border Police that organises the repatriation services.

In 2016, as already mentioned, the National Guarantor participated as an observer, with some members of its staff, in a training course for escort personnel thus having the opportunity of acquiring elements of analysis and evaluation of the methodologies with which such professionalism is thought and developed.

In principle, the training appears adequate in terms of detail and multidisciplinary of the subjects covered, although some critical issues have emerged concerning the higher prevalence of the aspects relating to security matters compared to those relating to the protection of fundamental rights. This implies a strong emphasis on a training based on the use of force and coercive means, without an appropriate development, except for a generic reference to them, of the notions of necessity, reasonableness and proportionality that should always accompany the use of force. Building competence for an attentive assessment of the possible risks appears essential for the exercise of coercive power not to be systematic and precautionary, but rather residual and tailored to the specific circumstances.

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The focus on the operations of boarding and flight, with no consideration of the previous phases carried out in the detention centre, is a further critical aspect as the moment when the detainee is informed about the removal decision is not taken into account and therefore not prepared. This is a very delicate moment due to tensions that may arise and it is essential for establishing, as far as possible, a relationship of trust and cooperation with the subject being repatriated. The part concerning the acquisition of techniques for adopting a psychological approach that may ease contacts and prevent violent behaviours and reactions giving rise to the use of force, is also neglected. Lastly, the training on security checks for transmitting operating practices, which do not respect human dignity is also regarded as critical.

The National Guarantor has already shared its considerations with the repatriation service of the Central Direction for Immigration and Border Police, hoping that the critical aspects detected may be overcome when planning any future training initiatives.



Security and Freedom

Facilities where people are held under preventive detention orders or arrest also fall into the National Guarantor's field of intervention – when it is monitoring and inspecting Police Forces' activity. The work started will be expanded and developed during the National Guarantor's mandate, by adding to the State Police and the "Carabinieri" corps the other Armed Forces, which may detain a person also for short periods, such as the "Guardia di Finanza" (tax and border police) and the local police forces.

In the pages that follow, together with the description of the actual situation, the observed positive aspects and issues are also highlighted.

■ An overview on the current police custody

76. The fundamental rights and the deprivation of liberty

In executing a preventive detention order, it is mandatory for the Criminal Police to hand out a written note listing the basic rights people arrested or stopped are entitled to (the so-called "Letter of Rights"), in compliance to article 386 of the Italian Code of Criminal Procedure.

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custody record. If this procedure is not followed, the National Guarantor notes that the police officer does not undergo any disciplinary sanction. However, this should not exclude the officer's obligation to observe rules and procedures.

The suspect or arrested person must be promptly informed about his/her right to:

- a) appoint a lawyer he/she knows or, if provided by law, a duty lawyer;
- b) know about the offence the police think he/she has committed and why he/she has been arrested and is being detained;
- c) get an interpreter and translations of certain documents to help him/her;
- d) remain silent;
- e) see records and documents about why he/she has been arrested and is being detained
- f) contact his/her embassy or consulate for assistance and contact his/her own family;
- g) have the right of access to urgent medical assistance;
- h) have his/her arrest or detention confirmed by the judicial authority in charge of the case within 96 hours;
- i) appear at court to be heard and be allowed to challenge the lawfulness of the arrest by appealing to the Court of Cassation.

With regard to the right to contact the consulate or embassy, it should be remembered that if the detained or arrested person does clearly declare his will not to receive assistance from his/her consulate or embassy, in accordance to article 2 of legislative decree 286 issued on 5 July 1998 (Consolidated Immigration Act), his/her request shall be fulfilled. Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings established minimum standards for persons being deprived of their liberty, and in particular reiterated that they should be made aware - formally - not only of the rights of the defence, but also of some fundamental rights, such as the right to medical assistance and the right to the person's integrity.

It is also to be remember that, in our legislation, the right of the person accused of a crime to be promptly informed confidentially of the nature and reasons for the charges that are brought is provided in our Constitutional Charter (Article 111(1 and 3)).

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In compliance with article 4 of Directive 2012/13/EU, and the new provision in article 293 of the Code of Criminal Procedure, the obligation for the Criminal Police, even when in execution of a Court order, to give the suspect or arrested person a copy of the "Letter of Rights" has been introduced and envisaged in the internal procedural code. In a nutshell, despite the code is simply establishing to give a copy of the letter to the suspect or arrested person, a formal document being accepted by the concerned person is preferred, even though the obligation is envisaged only in case of orders setting up measures different from preventive custody.

Since long ago, the Council of Europe had provided its essential list of rights of arrested or detained persons, which must be guaranteed from the very first time the deprivation of liberty has been enforced. Their function is explicitly focused on the prevention of possible critical situations and ill-treatments. Firstly, persons taken into police custody should be expressly informed without delay of all their rights. Any possibilities offered to the authorities to delay the exercise of one or other of the latter rights, in order to protect the interests of justice should be clearly defined and their application strictly limited in time. The rights are then formulated as follows: “the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities)”.

Access to legal advice should include the right to contact and to be visited by one’s own lawyer which consultations shall be confidential. As regards the medical examination should be conducted out of the hearing, and preferably out of the sight, of police officers. Furthermore, results from each examination as well as all relevant statements made by the detainee and the doctor's conclusions should be formally recorded by the doctor and made available to the detainee and his/her lawyer.

Then, there are some rights that, despite not having a source of law, were already included in the “Letter of Rights” issued by the Ministry of Interior in 2005 and adopted since 2007 by all law enforcement agencies, upon detailed indications from the European Committee for the Prevention of Torture. They are:

- The right to personal care and hygiene;
- The right to have separated custody rooms for people of opposite sex;
- The right to obtain a receipt for the personal belongings retained before entering the detention room and returned at the moment of release;
- The right to be held in a clean custody room provided with appropriate bedding and pillows;
- The right to receive meals when he/she remains more than six hours in a detention room and in hours usually devoted to meals;
- The right for women to be kept in premises separated from men’s and if with children, to keep them with her if they are under three years of age.

Positive Aspects

77. A supportive cooperation

When on 17 February 2012 Law 9 entered into force, amendments regarding the bringing to court of the arrested person for his/her first hearing. The legislator has set out that in some cases the arrested person could be brought to “*appropriate structures (detention security cells) by the Criminal Police Officers who have carried out the arrest.*” Therefore, the ratio in the provision has set out the use of these security cells for arrested people waiting for their questioning.

The National Guarantor, in the course of its monitoring activities of detention security cells, has established a successful supportive cooperation with the Head of the Public Security Department and the Head of the Operations of the General Command of the “Carabinieri” corps. They have always - quickly and cooperatively - responded to any request made concerning having data about detention security cells in some regions targeted by the National Guarantor monitoring activities. The same spirit of cooperation had the National Guarantor delegations during their monitoring visits to places of deprivation of personal liberty under the management of the above mentioned law enforcement agencies. Not only the supportive cooperation consisted in having free and complete access to

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premises, as established by law, but also in having fast access to all documentation relevant to the execution of restrictive measures, as required by the National Guarantor by virtue of its function as National Preventive Mechanism.

In 2017, the National Guarantor is firmly convinced that it will be possible to receive the same supportive collaboration with the “Guardia di Finanza” (tax and border police), while extending its monitoring to the local

premises used by other law enforcement agencies, too.

Moreover, considering the fact that the local police officers may exercise their role as criminal police officers and, sometimes, they can act as a public order police force, the National Guarantor will pay visit to the local detention cells managed by the local police, in order to verify the adequacy of the structures as well as its personnel training in matters of deprivation of liberty.

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The National Guarantor cannot remain silent when considering that the national police and the “Carabinieri” corps, despite the severe staff shortages they are suffering, they are able to cope with additional tasks imposed by law – as the above mentioned Law 9 of 2012, concerning the monitoring of detainees in their detention cells. However, in times of “spending review” and even more restrictions, a good use of resources should inevitably be sustained by a more integrated security system: a system that requires a higher involvement of the different acting police forces. The common effort, directed to ensure the security, must be the effort of all parties involved. With workloads being distributed exclusively to the national police or to the “Carabinieri” corps, the common effort so much shouted becomes even less achievable: even the local police may well integrate, with adequate training courses, the other police forces.

78. The recording of incidents and information

We deem it necessary to spend some words on the recording of incidents occurring during the permanence of detainees in the security cells. During its monitoring visits, the National Guarantor has reckoned the use of dedicated record books for reporting all activities ensured to subjects detained in security cells.

These record books are to be considered as tools for transparency and legality in all activities the police forces have implemented and are addressed to detainees. They are used to record all behaviours adopted by police forces during the arrest or the stopping activity and all incidents, which might have occasionally occurred. In fact, the concept of transparency is not only to safeguard the subjects deprived of their liberty; it is more – and perhaps especially – adopted to protect police officers who are on place during the detention time and play a delicate role, mainly in the aftermath of an arrest which might be causing particular tensions.

About how to keep these record books updated, the National Guarantor has reported that in some cases information were not duly and completely recorded. In fact, some information useful to consider the above mentioned records as correctly filling in the form were not given in writing by police staff, thus potentially casting shadows on staff trustfulness in safeguarding those rights granted to detainees and/or the lack of useful information on behaviours adopted by detained persons during their stay in the security cells. For example, the National Guarantor is deeming indispensable to:

- Take note of possible transfers of the detainee for questioning, and record departure and arrival times;
- Record every movement from the security cell, especially if it does not have an en-suite bathroom, thus proving the staff's prompt response to calls from detainees;
- Record all circumstances relevant to meal distribution;
- Take note of any voluntary refusal of nourishment;
- Prove any therapeutic assistance and drug administration;
- To record all actions undertaken relevant the right to defense (meetings and calls with lawyers).

All information reported in such records will be useful to prove not only the respect of all caring activities to be carried out by police forces towards the detained person, but also of the safeguarding of fundamental rights acknowledged by the “Letter of Rights”.

79. The National Guarantor lecturing police trainees

In this regard, through the training of the national police future managers and of other police forces, the National Guarantor is willing to strengthen the inter-institutional cooperation so to prevent any situation and practice potentially harming the safeguard of fundamental rights, nevertheless respecting roles and independence from both sides.

On 17 November 2016, the Chairman of the National Guarantor for the rights of persons detained or deprived of liberty, lectured the national police new managers on “The National Guarantor institution and its tasks”. The course took place at the High School for Police, by the University of Security in Rome. The About 50 future national Police managers had attended. This was the initial step of the institutional dialogue that the Guarantor started with the different police forces. Furthermore, the institutional dialogue focused on the delicate training field. This initiative, being complementary to similar interventions held at the Institute of national Police for inspectors in Nettuno in

the same month, on the protection of rights in the forced return operations, is significant in building up a national security system oriented to the protection of rights and guarantees.

In this regard, through the training of the national police future managers and of other police forces, the National Guarantor is willing to strengthen the inter-institutional cooperation so to prevent any situation and practice potentially harming the safeguard of fundamental rights, nevertheless respecting roles and independence from both sides.

The exchange of information, the implementation of joint training activities, the opening to experts and participants in professional training activities, the planning of scheduled meetings, the drafting of some documents, *Guidelines*, on standards applicable in the safeguard of rights of persons deprived of liberty and the use of tools of constraint, applied in medium-long term, can help in building up a systemic awareness to the person’s rights and guarantees.

WEAKNESSES

80. The lack of an overall circular information on the National Guarantor

During the visits to some police forces local premises, despite the utmost cordiality and availability shown by all police officers, the National Guarantor delegations had frequently to introduce the independent mechanism to police officers.

The National Guarantor urges the law enforcement agencies to issue a circular letter to all regional offices, in order to present powers and tasks, as well as the composition of the National Guarantor for

the rights of persons detained or deprived of liberty, as already done by the Department of Penitentiary Administration and the Department for Juvenile and Community Justice.

81. Security cells and “revolving doors”

The main feature of a security cell is its structural appropriateness to accommodate a detained person, even for a short time, in terms of living space, state of maintenance, access to fresh air and natural light, availability of health care services and an alarm system that enables detainees to contact the staff immediately: briefly, all those elements that international legislation has indicated as necessary to accommodate a person deprived of liberty in conditions of respect for his/her dignity, security and safety against self-harm risks.

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However, some local premises visited by the National Guarantor have sometimes disclosed considerable issues. Though not too far from national and international standards, they showed tight spaces and dark and inhospitable rooms, structurally unsuitable to house detained or arrested people, even for a short time.

This problem involves all Police Forces and this is the reason why prosecutors often order to accompany the person to the prison institution. The actual situation determines, in fact, a higher use of imprisonment, even for very short detentions, in view of the first hearing, and a backlash on prison institutions in terms of the so-called “revolving doors”, the national legislation wanted to challenge, on prison staff and on prison overcrowding. This *modus operandi* becomes a burden for prison police officers and for their work schedule in establishments, linked to the new arrival’s registration and search, his/her allocation in a suitable cell where to be detained up until brought to court for questioning. In many cases, the court decides to release the detained person or to enforce a less punitive measure.

Therefore, the number of security cells available to the law enforcement authorities, is unlikely to be sufficient for more than twenty thousand arrested persons, who are then the main protagonists of the so-called “revolving doors” phenomenon. So, the National Guarantor believes that it is necessary to find a fair and equitable solution, in order to implement a system which is admitting to prison only those who have been judged by a Court and sentenced to custody.

Indeed, together with considering the negative effect of revolving doors on the penitentiary system, we must also take into account the harsh consequences and impact of imprisonment on an individual. Though embraceable, the objective of reducing numbers in prison population cannot be pursued, by a simply shifting functions from one Administration to another. This would result in worsening the conditions of detainees and determine unavoidable negative consequences on security.

If the purpose is to avoid short or very short stays of people in prison, for general reasons of criminal policy, then it seems more appropriate for the legislator to exercise its functions from the rule of law

standpoint and to propose a re-modulation of mandatory arrests, having regard to the level of dangerousness of the arrested person.

82. Efficacy of the legal assistance

The real exercise of the right of defense and therefore, first of all, the availability of legal advice, is largely based on the timeliness and completeness of the information given by the criminal police to the arrested or detained person.

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As stated above, the obligation to inform is envisaged in details in our code of criminal procedure (article 386 c.c.p.). In everyday's practice, however, what has been provided in the article is suffering, above all, of the critical aspects coming from the alien origin of most people concerned, which requires further fulfillment beyond the formal delivery of the "Letter of Rights", even if translated into the native language, as it has been usually found.

Such critical aspect particularly affects the understanding of the allegations made and the access to fundamental defense rights, such as the access to free legal aid and the right to interact immediately with a lawyer of their choice. In general, then, the effectiveness of legal aid at the critical moment of an arrest or a detention is affected by two weaknesses: one critical point refers to an organizational aspect, the other on a legislative one.

The first concerns the tight deadlines from the time of arrest, with the subsequent fulfillment of all procedures, and the appearance of the person arrested in court. Between the two, the intervention of the lawyer, which time is likely to be compressed in terms inadequate for a full-fledged defensive activity, in case the contact with the detainee is not possible in due effective time.

The second is supplemented by the provision in article 104(3) c.c.p., which provides the right of the judge, at the request of the public prosecutor, to delay the exercise of the right to confer with the lawyer. The provision, that appears to be based on a questionable prejudice to the exercise of the right of defense, can take all the time spent under an arrest order in a security cell, since the limit given is said not to exceed, therefore, could be equal to five days.

It should be noted that the bill, which has such a challenging title *Changes to the Criminal Code and to the Code of Criminal Procedure for the strengthening of defensive warrants and the reasonable duration of processes and to the prison Act for the real rehabilitation aspect of punishment*, is currently debated in Parliament. It has within the reform proposal drafted by the ministerial Committee, chaired by counselor Giovanni Canzio. It envisages a limit to the provision in its application to organized crime and to terrorism. It is not in full compliance with the exercise of the right of defense by persons arrested or in detention, but it is a first appreciable step in this direction.

83. Presence of law enforcement officers during medical visits

During the year, the National Guarantor received a number of reports about medical visits of people deprived of personal liberty, carried out in the presence of police officers. The issue, moreover, is also related to some prison complaints towards prison police officers. This is in contrast to what is foreseen by international standards accepted by all States, as well as by the case-law of the European Court of Human Rights.

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Long ago, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had made recommendations to Italy on how to conduct medical examinations that do not undermine the confidentiality in the relationship between the general practitioner and his/her patient, even in situations of deprivation of liberty. To this end, it was reiterated that all medical examinations should be conducted out of the hearing and - unless the security reasons request otherwise in a given case - out of the sight of police staff.

Certainly, general practitioners may request the presence of police staff, but such a request must be of exceptional character and duly justified in writing, since it might be waiving the exercise of a fundamental right of the person, albeit deprived of liberty.

Health care services for people deprived of their liberty are, in fact, a matter of direct relevance to the mandate of the CPT, also because health care can potentially play an important role in combating possible ill-treatment of a person in police custody. In this regard, the CPT draws attention to the importance attached to the general principle - already recognized in most of the countries visited by the Committee - that people temporarily deprived of their liberty are entitled to the same level of medical care as people living in the community. In view of the European Committee's monitoring, this provision includes the possibility for the detainee, albeit temporarily, to be call for a physician of his /her choice.



Health and Freedom

The deprivation of liberty in healthcare and “social and health care” settings will be fully developed by the National Guarantor in 2017. Here below, the guidelines already established and the first steps towards an efficient monitoring activity on health care conditions and facilities.

PENDING ISSUES

84. The involuntary medical treatment

The involuntary medical treatment (hereinafter referred to as TSO, being the correspondent Italian acronym for *Trattamento Sanitario Obbligatorio*) refers to a psychiatric treatment undertaken without the consent of whoever is treated. This treatment is required when a person presents psychic or behavioural alterations – to the extent that a therapeutic assistance is urged - and refuses medical treatment.

The involuntary medical treatment (hereinafter referred to as TSO, being the correspondent Italian acronym for *Trattamento Sanitario Obbligatorio*) refers to a psychiatric treatment undertaken without the consent of whoever is treated. Such a treatment is required when a person presents psychic or behavioural alterations – to the extent that a therapeutic assistance is urged - and refuses medical treatment. It can be started by a doctor's proposal, not necessarily a psychiatrist, and it shall be validated by a second doctor on duty at the Department of Mental Health. The ruling is made by the mayor of the city where the patient is situated. The mayor is obliged to send the order to the tutelary judge - who is the authority competent to

decide the patient's hospitalisation or his/her release - within 48 hours, and to support the order with additional medical certification.

The hospitalisation is by the psychiatric units of the Services for psychiatric diagnosis and treatment (SPDC) or in different units but in any case in a general hospital or accredited structure. The duration of the hospitalisation is of 7 days, which may be renewed on the proposal of the head of unit, validated once again by the mayor and the court judge. The TSOs are ruled by Law 833 of 23 December 1978

(articles 33, 34 and 35). In the same year, in May, the law 180 of 13 May 1978, the so called “Basaglia”, abolished in Italy mental health hospitals. On December the aforementioned law 833 established the National Health Service. Despite these two laws, in this complex framework it was difficult to understand the roles and tasks of the different actors. In July 2001, the Ministry of Interior issued a circular (circular 3/2001 of 20 July 2001) on “Involuntary medical treatment for persons with mental illness. The local police competencies”.

One of the critical issues about the analysis of the TSO functioning is the impossibility of having clear statistical data: numbers are difficult to find and the few available are about dismissals and not having single cases analysis; those data do not allow to have a solid background on which to apply specific studies to create or reinforce pre-and post-care avenues. The problem of non-transparency of data makes TSO difficult to be monitored.

For the National Guarantor, it is of absolute importance to solve this issue as soon as possible so to be able to monitor the protection and respect for the patient’s dignity and prevent situations where the physical and mental integrity of a person may be at risk.

85. First steps of the National Guarantor in this field

The debate about facilities for housing people suffering from mental disorders and the type of treatment to deliver is rooted deep in the past. Already, during the French Revolution, when it was frequent to discuss about human rights and dignity – many questions were raised on the most valid treatment to address people with mental disorders, who – up to that time - were destined to detention in a mental hospital. It is a slow process at its first stages, which is making its way through constant legislative changes, being the outcome of comparisons between the current society and the progress in medical sciences.

To impact on the introduction of relevant changes, but also on questions regarding the need of confinement or else or people with mental disorders, the type of treatment to be delivered and, in particular, the legality of their involuntary treatment, an important role was played by the confirmation of personal liberty as an intrinsic value to be included into the *Declaration of the Rights of Man and of the Citizen* (26 August 1789) which sets out: “No man should be accused, arrested, or held in confinement, except in cases determined by the law [...] The law ought to impose no other penalties but such as are absolutely and evidently necessary; and no one ought to be punished, but in virtue of a law promulgated before the offence, and legally applied.” So, there are different considerations about a patient suffering from mental diseases: some feel him/her as a person in a degraded condition and not to be respected as a human being, others feel s/he needs protection and specific assistance.

A debate that went through the whole XIX century and most of the XX, with strong positivist influences and a continuous interconnection between the medical and the custodial approaches. A debate that alternates stern affirmations about each individual’s liberty to persistent tendencies to sentence, isolate and ignore those who embody a concern, a dark side, a fear for the community, which the society itself does not want to look and considers his/her as a potential aggressor to a given normality.

In Italy, after the “Basaglia” law, the debate on mental disease, on facilities for housing people suffering from mental disorders and on coercive treatments has turned into the acknowledgment of the rights of the sick person and into the increase in measures that could foster a relationship, albeit supervised, with the daily world beyond grids and bars. Today, in time of less harsh debates than those in the wake of the law, and of a positive, though hard, outcome of the past cultural and operational approaches, the right to his/her own body and personal liberty, to self-determination and to treatments that are not, even implicitly, against his/her personal dignity are universally recognized. Great consideration is given to the recognition of the dimension of the human existence of a person with mental distress and to the importance of this aspect in each pathway to inclusion in the social community: from target of therapies, to patient to be accompanied, through therapeutic and existential approaches, in recreating his/her possible equilibrium. Nevertheless, daily news frequently tell us that the political commitment on mental health of some parties, professional associations or others front liners are not sufficient to avoid that a disease, a mental distress, a drug/alcohol addiction, or simply a form of mental illness in the elderly are faced as a security problem. Hence, custodial measures and tools are used on the person, and against the social commitment to take charge of the person’s care and of his/her discomfort. In this context, the need for a monitoring, for a third eye that may help in facing critical events and steadily keeps the person’s care at the core of all difficulty is of utmost importance.

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About the deprivation of liberty in health care setting, in line with the international organisations and with its institutional mission, the National Guarantor is paying attention not only to places where the individual is subject to a real deprivation of liberty, though for short periods, but also to the *residential care homes*, which are housing and accommodating people who have voluntarily chosen to be daily cared and assisted by a public or private structure and whose voluntary aspect has faded away, for a number of incidental reasons, to the extent that it can be considered as a deprivation of liberty. All this has a specific ethical importance for two reasons: first, because, in general, people housed in

Following its mandate given by the legislative provision – that is to monitor the real enjoyment of rights by people housed in a facility, although initially voluntary, lately could be experienced as involuntary – the National Guarantor has open a dialogue with some institutional interlocutors. The goal is to debate in panels the implementation of social and health care policies based on a common prevention strategy on abuses and violations of fundamental rights and on the realisation of a local network that could spot all residential care homes, so to strengthen and disseminate best practices.

residential care homes are highly vulnerable (elderly or people with disabilities), and at high risk to be subject to an inappropriate use of coercive practices or to staff carelessness; second, because it is relevant to the State protection of the rights of these people. Available studies and research activities on topics linked to the deprivation of liberty in health care setting, even if of relevance, are partial and represent an uneven slice of life limited to local or regional contexts. They are some works from Associations or private Research Institutes, which have carried out *ad hoc* surveys. They are too much specific and cannot give a cross section of the whole Italian framework. Following its mandate given by the legislative provision – that is to monitor the real enjoyment of rights by people housed in a facility, although initially voluntary,

lately could be experienced as involuntary – the National Guarantor has open a dialogue with some institutional interlocutors. The goal is to debate in panels the implementation of social and health care policies based on a common prevention strategy on abuses and violations of fundamental rights and on the realisation of a local network that could spot all residential care homes, so to strengthen and disseminate best practices. There are different partners with which memoranda of understanding can be signed, scientific surveys may be started, joint training courses may be envisaged for professionals in the health and social care service. With some of them, a dialogue has already been established, like the one triggered with the Ministry of health and with the National Institute for Health, Migration and Poverty. Within year 2017, it is foreseen the setting up of new co-operations with the Higher institute for health, the National association of doctors and dentists, the Province doctors association, the National council of social workers, the regional Councils, the Regions and the Health care local services.

86. Standards for involuntary medical treatments

The standards for monitoring involuntary medical treatments are taken from the *Convention on the Rights of Persons with Disabilities* (UN -CRPD) of 3 May 2008.

The Convention recognises the right of persons with disabilities (of any form) to a societal position on an equal footing with every other individual and restates their being considered as subjects with rights and not as objects in need of assistance attention. The Convention radically modifies the standards for granting rights to persons with disabilities: on them, should not weight the burden for their social reinsertion; on the contrary, the responsibility for an equal treatment and for the protection of the persons' rights is now on society and on "States Parties, which are called to accommodate their specific needs" (European Union Agency for Fundamental Rights FRA, *The right to political participation of persons with mental health problems and persons with intellectual disabilities*, 2013).

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The criteria for the treatment of mental disease and care of suffering persons, it does not matter one's own civil or juridical position, have been established by the General Assembly of the United Nations (*Principles for the protection of persons with mental illness and the improvement of mental health care*, Resolution 46/119 of 17 December 1991). These *Principles* establish that every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect his/her physical safety, especially when using physical restraints. The treatment and care of every patient shall be based on an individually prescribed plan, which is reviewed regularly by qualified professional staff.

Notwithstanding its feasibility, any form of restraint is extremely limited and submitted to certified procedures on the care of mental illness. Of particular importance in the *Principles* are the communication to the patient about his/her proposed plan of treatment and while it is ensured the patient's information on procedures and criteria adopted.

Among all safeguards granted by this approach, based on "the patient's involvement" in his/her therapeutic treatment, there is the possibility for the patient to be supported by a counsel who may

back him/her in checking and getting to know undergoing procedures.

At European level, Rec 2004(10) of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder provides that involuntary treatment is necessary when the person's conditions represent a significant risk of serious harm to his/her health or to other persons and when the placement includes a therapeutic purpose. The involuntary treatment should

- address specific clinical signs and symptoms,
- be proportioned to the person's state of health,
- form part of a written treatment plan,
- be constantly reviewed, and last the shortest period of time possible. Decision makers should act in accordance with procedures provided by law. Special attention should be paid to procedures for taking decisions on involuntary treatment.

In the Italian context, of particular relevance in this field is the 2013 document on health in prisons, approved by the National Bioethics Committee (Health care "within the walls", Presidency of the Council of Ministers, National Bioethics Committee, 27 September 2013). Treatment, as the document states, should be established through individual projects, make use of technical and scientific skills even outside the Institutions, and provide for specific arrangements for social reintegration. The definition of standards for involuntary psychiatric treatment shall cover the whole area on the treatment of mental disorder including the field in which facilities are called to work. A programmatic hypothesis that the National Guarantor is willing to take responsibility, in the overall context of the other guide lining instruments at European and global level abovementioned, like the monitoring and control that has just started.

87. Starting to monitor residential care homes, restrictive of liberty

The monitoring has been carried out in residencies, often for the elderly, where people, once entered voluntarily - or with the help of his/her family and other supporting people, may find themselves without said points of reference, and the opportunity to express their will, because of some different conditions. In fact, they can find themselves to live in daily deprivation of personal liberty, even if "incompetent". These are decisions taken to protect those people, to take responsibility on them, and yet depriving them of the possibility of freely decide to eventually leave the facility where they are placed. The control over these situations is part of the overall control on the protection of the rights of people who, for different reasons, are in fact deprived of the autonomous decision about their freedom of movement.

Moreover, the current social context is somehow characterized by the crunch on the network of support for the elderly and it is, thus, demanding for more a different solidarity from the past that was answering with a support within the family context.

Moreover, the current social context is somehow characterized by the crunch on the network of support for the elderly and it is, thus, demanding for much a different cohesion from the

past that was given answers by offering support within the family context. This question is directed more and more to the residential care homes: these are facilities that take daily care of the elderly who often become involuntarily hosts because unable to live alone or because local resources are unable to offer an appropriate care at their residences. Residential care homes should support aging with dignity and provide high-quality social and health care services in order to foster older adult's independence and autonomy and provide support to their self-initiative.

The National Guarantor, on the basis of principles stemming from international conventional sources, such as the *European Court of Human Rights* (ECHR) and others, within the UN, such as the *International Covenant on Economic, Social and Cultural Rights* (General Assembly of the United Nations, 16 December 1966, in force since 3 January 1976) and the *International Covenant on Civil and Political rights* (same adoption date, in force since 23 March 1976), is focusing on residential care homes for the elderly to monitor and ensure the protection of fundamental rights that, in addition to those 'basic' ones - which are subject to control and safeguard in all facilities depriving persons of their liberty - also include, for these specific structures, the maintenance of the older adults' autonomy, the information about all medical treatment received, the possibility of having their own financial resources proportionate to their individual needs.

The monitoring activity during a visit shall look at the facility management, the legal status of people there placed, the documentation on abuses or ill-treatments carried out both by guests and by staff, the guests' living conditions (housing, food, personal hygiene and care), their treatment and care (including activities, rehabilitation programmes and access to outdoor yards, contact with the outside world), the human resources and the care of people accommodated, the possible use of restraint tools. In short, the National Guarantor's monitoring can encompass three main areas to be observed during its visits: a) the monitor on the facility; b) the monitor on the organizational prospect; c) the monitor on treatment programmes, medical and social assistance.

For the first area, the focus is on:

- a) the structural aspects (in the strict sense surface, cubic capacity, overcrowding);
- b) the functional aspects related to the adequacy of the institution (environmental position, access to external services);
- c) the accessibility aspects related to the structure (architectural barriers, safety requirements, and open spaces).

For the second area, monitoring is about the following aspects:

- a) the management of human resources and the indoor management of guests (number and qualification of health and social care workers, time for health and care granted to each guest, protection of the guests' rights to information and self-determination);
- b) adequacy of the institution, with respect to personnel (training courses, goal-oriented activities; *turnover* rates); respect due to guests (organisation and possible customization of catering, management in small groups, visiting hours for family members, access to religious services, possibility to leave the facility at will; flexibility in time reserved for rest).

For the third area, the focus is on:

- a) the treatment and health care organizational aspects (medical induction so to access and fill in an integrated medical and nursing personal file);
- b) the patients' holistic periodic reviews (medical consultations, nutrition, rehabilitation and body care);
- c) medical care and nursing assistance (implementation of an emergency and/or daily service);
- d) the implementation of protocols on the prevention of incidents, on the use of physical restraints (adoption of written rules and monitoring tools, use of physical restraint tools, least time for physical restraint), in view of reducing and overcoming the resort to these methods.

88. Disability and international legislative framework

The term disability summarizes a great number of physical and mental limitations: a person's disability can be caused by injuries (temporary or permanent), physical illness or insanity. People with disabilities are often subject to exclusion and discrimination caused by unequal access to educational, cultural, job placement, treatment and service opportunities. Sometimes they are subject to real forms of segregation and isolation for the failure to recognize the equal importance of their needs and, consequently, of their rights. Historically, the critical issues related to disability have been treated in terms of rehabilitation and provision of welfare services. Finally, today, as a result of cultural and regulatory developments, equal opportunities are recognized, at least formally, in the exercise of political, civil, economic, social and cultural rights of people with disabilities and on an equal footing with any other individual.

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An important paradigm - that has changed the international landscape - is represented by the *International Convention on the Rights of Persons with Disabilities*, adopted by the United Nations on 13 December 2006 and signed by 146 States Parties. The *Convention* has provided a new international legal and cultural standard, without introducing new categories of rights for people with disabilities, yet through their redefinition in the fundamental rights framework (see UN Enable (www.un.org/esa/socdev/enable/disovlf.htm)). Without prejudice to the role of the national legislative production on disability, some international documents constitute a lever of change for the improvement of said standards, which are binding for the countries that agree on them (more details at the website address previously indicated).

Among those binding documents, there are some international and regional conventions that address very targeted groups of people with disabilities (such as minors, elderly, immigrants): for example, the *Convention on the Rights of the Child* (United Nations General Assembly, 20 November 1989, Article 23) and the *European Social Charter* (Council of Europe, 3 May 1996, Article 15).

Finally, among other not binding international documents, declarations, resolutions and rules - but still useful for the development of national policies on disability and particularly relevant for their implementation (all adopted by the UN General Assembly) - there are the *Declaration on the Rights of Mentally Retarded Persons* (20 December 1971), the *Declaration on the Rights*

of Disabled Persons (9 December 1975) and the *Standards Rules on the Equalization of Opportunities for Persons with Disabilities* (20 December 1993).



An evolving institution

The National Guarantor's first year of activity has certainly been very demanding: some organizational issues, aimed at laying the cornerstones for the new Institution (draft of the Self-Regulatory and Ethical Codes, staff recruitment and training, setting up its new premises, contacts and collaborations with different institutions, etc.); others more proactive, designed to carry out its mandate as a supervisory and monitoring body. A commitment brought forward with dedication and competence by all staff components.

In the forthcoming months, the National Guarantor will be continuing its activities carried out so far, while achieving its monitoring and prevention objectives, and strengthening institutional collaborations. Moreover, it will also be employed in the development of new sectors, just started in 2016, like health care.

At the very end of the report, the National Guarantor is putting forward some guidelines to the development and planning of its activities, as well as some suggestions on pivot topics to be brought to the attention of law makers.

The National Guarantor: Planning, Development and Proposals

A pluridisciplinary approach

Before dealing with the National Guarantor's planning phase, it is necessary to say some words on the human resources of the institution.

During 2016, the National Guarantor's mission has broadened and covered different fields (the deprivation of liberty in criminal law, security, migration, health care and forced returns).

During 2016, the National Guarantor's mission has broadened and covered different fields (the deprivation of liberty in criminal law, security, migration, health care and forced returns). Its multifaceted context requires a likely wide and varied field of action. Therefore, the National Guarantor would call for a legislative provision, which can

guarantee its fully-operational activity, having more human resources assigned, belonging to different administrations, and also the adoption of a legislative frame that could ensure efficiency and independence in the exercise of its mission.

Sanctions and freedom

Some issues in the deprivation of liberty in the criminal area have been at the core of the proactive project actions of the National Guarantor, and considered to be as much consistent as possible to what have been elaborated as best practice in the enforcement of sentences by the National Assembly on the execution of sentences ("Estates-General"):

- **Reopen the debate on - and going beyond - security measures.** Security measures are a real *vulnus* in case-law, for their focus on the offender. If, on the one hand, Law 8 of 31 May 2014 has established new rules for security measures in terms of its time span and has redefined the parameters for reviewing the 'social dangerousness' element, on the other their feasibility in the system may not allow consistency with provisions adopted by an unchanged penal code.
- **Predict the suspension or postponement of a criminal sentence for mental infirmity, as it happened with physical infirmity.** People suffering from mental disorders, envisaged in article 148 of the Criminal Code, if diagnosed during the inmate's serving time, are subject to a different treatment, compared to those suffering of a 'serious physical infirmity' - when the sentence may be postponed or suspended (articles 147 of the Criminal Code, and 684 of the Code of Criminal Procedure) or the inmate can serve it in home detention - envisaged in article 47-ter of the Prison Act. The National Guarantor, in line with the final proposals from panel 10 at the National Assembly on the execution of sentences ("Estates-General"), believes that this inequality in treatment and the consequent current situation - which does not provide any form of suspension of the sentence and specific rehabilitation treatment addressed to psychic illness - must be overcome. Therefore, it proposes to fully revise what has been established in Article 148 of the Penal Code, inserting mental illness within the provisions of section 147 of the Penal Code.
- **Make the prison regime referred to in Article 41bis of the Prison Act, in all prison institutions where it is implemented, fully in line with the Constitutional Court's ruling** through a revision, which could limit its effectiveness to its unique preventive features, while giving a chance to reduce the numbers in prison population restricted under this regime. In this perspective, the Guarantor shares and endorses the considerations and proposals made by panel 2 at the National Assembly on the execution of sentences ("Estates-General"), section 5.1, and urges for further reform interventions
- **Abolish the so-called "restricted areas"** or rather those separate units subject to the 41bis prison

regime, reserved to the criminal organization bosses, where a harsher regime is applied, if compared to what is established in the Prison Act. They are units been monitored and judged by the CPT (CPT / Inf Report (2006) 16, §84). It is a very critical issue, which the Guarantor is willing to challenge, in an active debate with all political authorities, so to overcome it, for its being considered as a special prison regime within an already targeted regime. Moreover, it exposes Italy to possible infringement procedures conducted by the international monitoring bodies.

- **Urgently readjust “prison pays”.** For a long period, over 20 years, prison pays were the same. Notwithstanding what was established by law, this systematic postponement of decision on raising inmates’ wages puzzled a lot over the years. A situation that is causing damages to detained persons who work while serving their time. The creation of their contributory pension fund, despite their long working life, is at risk for they may be not able to sum up part of their wage in a fund, which will help in gaining access to their social insurance. This issue can be no longer postponed, especially in consideration of the publication of a set of rules tackling the topic and the availability of funds to fill the gap. This, of course, should not compromise the desirable reform on prison pay prospects in terms of pay rise and job positions.
- **Rethink the Cassa Ammende¹’s role, management and functions** by restoring its original and exclusive funding objectives in support of programmes for the resettlement of prisoners, and by giving much visibility to its independence character. Even if the current use of its financial resources is directed to solving some critical material conditions in prison institutions, it is actually considered as a provisional solution, which, if continued, may cause some problems from different standpoints.
- **Make the Public Administration services available to prisoners.** Too often, prison institutions are places, which people access as regular and leave as irregular, without personal identification papers, tax codes, and residence permits. Some shared solutions are to be found, together with the establishment of standard mechanisms and protocols with local bodies to remedy this paradox.
- **Extend the challenges offered by ICTs.** The current prison service seems to be focused on a structural 'mistrust' towards advanced technologies (e.g. even regulations on inmates’ calls to cell phones are more restrictive than those to landline phones). In the prison’s administrative management, its monitoring on the inmates requests, in the inmate’s educational and professional pathways for the acquisition of spending skills in the community and, in particular, in his/her communication with the outside world and loved ones (video calls), technologies are an essential element to be boosted and not cut-back.
- **Switch from mere building vision into architecture.** The architectural aspect of prison facilities requires a revision in line with recommendations from the National Assembly on the execution of sentences (“Estates-General”): spaces must be planned and organized in order to foster a

¹ The *Cassa delle Ammende* is a body within the Italian Penitentiary Administration, which is funding a) projects targeting inmates and aiming at their reinsertion, their assistance and support to their families; b) and projects for the amelioration of prison facilities to enhance detention conditions. Its financial resources come, among all, from prison manufactured items, fines paid by the inmates, fines due to rejected appeals to the Court of Cassation, fines for having received a rejection to his/her request for a review on conviction and other fines linked to the inmate’s sentencing (N.d.T.).

detention model focused on all prisoners taking full responsibility of their active role, and on a dynamic system of knowledge and management of security. The Guarantor sees the need for a strong commitment from the Penitentiary Administration so to define or reconsider existing new buildings or renovation projects, and to foresee, for instance, what was proposed concerning future spaces for family visits.

Migration and freedom

The National Guarantor will continue its control on national detention centres for migrants and ensure the protection of the detainees' rights also in the local facilities, which are about to be open.

In 2017, the National Guarantor will carry out the project "Creating a monitoring system about forced returns" funded by the Asylum, Migration and Integration Fund (AMIF) 2014/2020. In addition to this monitoring activity, the National Guarantor will continue its control on national detention centres for migrants by ensuring the protection the detainees' rights also in the local facilities, which are about to be open. Here below, the National Guarantor's proposals to this subject:

- **Introduce complaints mechanisms available to migrants.** The recent judgment (15 December 2016) *Khlaifia and others v. Italy* of the Grand Chamber of the European Court of Human Rights noted that Italy did not provide the applicants with a remedy whereby they could lodge a complaint on their detention conditions.

The Court found a violation of Article 13 of the European Convention on Human Rights (ECHR) taken together with Article 3, by believing that, regardless of the lack of substantial violation of Article 3 in the fact, the seriousness and grounds of the applicants' complaints, would have required an evaluation mechanism. Therefore, time is right to open a reflection on the need to provide access to a remedy procedure for migrants, making it possible to lodge complaints before an independent authority, on ill treatments and inhuman and degrading conditions.

- **Strengthen the guarantees in the agreements with third countries.** Forced returns are permitted only with those countries with which Italy has established re-admission agreements, negotiations both at national and at European levels. However, such agreements may reduce guarantees, in order to accelerate the negotiation process and achieve speedier agreements in terms of diplomatic relations. Therefore, it is essential to strengthen the protection of rights, highlighting, even by referring to the guaranteeing institutions' advice, such as the National Guarantor, any risky factors with respect to possible violations, which can arise from the modalities and conditions of removals.
- Forced returns are permitted only with those countries with which Italy has established re-admission agreements, negotiations both at national and at European levels.
- **Strengthen the decision-making independence of the National Guarantor in the relationship with Frontex (European Union Agency).** The new Frontex Regulation opens some issues that require greater definition and clarity. First, it should be well defined the relationship between the independent national monitoring bodies (for Italy, the National Guarantor) which, at the same time, shall monitor the Frontex pool. Such an activity is raising some doubts on the neutrality of

the role played by the monitor. The second aspect concerns the number of flights to be monitored: at the moment, it is all flights should be monitored. The consequent impact on the availability of human resources makes it feasible only in theory. Finally, the mechanism for complaining about a violation of rights during a forced return operation provided by Frontex (Article 72) should be reconsidered, because it is internal to the Agency itself, and therefore with few guarantees of independence.

- **Build up an international network of NPMs (National Preventive Mechanism).** Among the weaknesses raised by the forced-return monitoring, is the handover of third-country nationals to the Authorities of the country of origin, which often takes place on board the aircraft. For the National Guarantor, the operations of handover should take place in offices on the spot, in the international zone, so to allow monitors to get information also from local authorities on the destinations of returnees. Pending such decision, the National Guarantor has committed itself in implementing an international network of guaranteeing institutions, and transferring this task to the local NPM, a sort of baton-passing step between the two institutions. In this perspective, the National Guarantor is about to start a cooperation activity with the Council of Europe's Directorate General Human Rights and Rule of Law, that could deal with these aspects, in particular for Tunisia, Morocco, Nigeria and Albania.

Security and freedom

The visits to the security cells of the different law enforcement authorities have been launched by the National Guarantor in the first year of activity, and the greatest weakness found was in its limited number. Alongside, it came to light the need for a more widespread information on rights to be ensured to persons deprived of their liberties and for a more transparent capacity to examine serious events. For this, it is useful to set up some programme points:

- **Make identifiable all the institutional actors who manage the deprivation of liberty.** Article 45 of the European Code of Police Ethics literally states: "Police personnel shall, during intervention, normally be in a position to give evidence of their police status and professional identity. The Police personnel must be able to demonstrate its degree and its professional identity". The ratio of this provision is certainly to be found in the need of guaranteeing that all actors involved can be identified, as part of the promotion of democracy and human rights. More power also means more responsibility in the interest of the credibility of the same law enforcement authorities, who may otherwise be responsible for the action of a few.
- **Ensure the absolute independence of the police corps that investigates on cases of mistreatment.** The National Guarantor has observed that sometimes the questioning of people involved in an incident and who belong to a police corps are conducted by subjects belonging to the same police corps. This prevision undermines the perception of independence and impartiality of the investigation, and opens to possible insinuations about the real willingness to investigate.
- **Fully implement the international standards related to the deprivation of liberties.** Each country is responsible for its prisoners also through its police officers who, having to tackle

situations of vulnerability and people there involved, shall monitor that fundamental rights are respected. These principles must be more and more widespread through the definition of *Guidelines*, in the wake of those of the CPT and those of the European Code of Police Ethics, and through uniformed training plans for all law enforcement authorities.

Freedom and Health

The National Guarantor is willing to implement visits to health care facilities during the current year 2017.

As pointed out earlier, the National Guarantor has started a reflection on this aspect of its overall mission: its plans for the new year are to start with its first visits to health care facilities. For this reason, the National Guarantor points out the following needs:

- **Notify the Involuntary Medical Treatments (TSO) to the National Guarantor.** As it is known, the personal situation determined by the TSO is characterized by the restriction *de facto* of the personal liberty, decided by a public authority provision and, therefore it legitimately lies in the National Guarantor's area of competence. In order to start monitoring actions on the factors integrating these treatments, from the legal requirements on which they are based to the conditions of the structures in which they are executed, the Guarantor wishes, in the context of cooperative relations between public institutions, to have formally notified each order relevant to the decision to apply all TSOs.
- **Start a reflection on physical restraint in psychiatry.** It is an issue long ago posed to the attention of HR monitoring mechanisms. This granted, the National Guarantor believes that it can never be the outcome of a shortage in human resources, nor can it even be entrusted exclusively to a remote surveillance through video cameras, or be replaced by intrusive forms of chemical restraint. Moreover, where it is practiced it should always take place in a medical environment, under the control of the health care staff, and should last as short period as possible.



The network of Guarantors



Regioni con Garanti regionali

1. Campania
2. Emilia-Romagna
3. Friuli Venezia-Giulia
4. Latium
5. Lombardy
6. Marche
7. Piedmont
8. Apulia
9. Sicily
10. Tuscany
11. Umbria
12. Valle d'Aosta
13. Veneto



Regioni con legge regionale ma senza Garante

1. Abruzzo
2. Molise
3. Sardinia



Regioni senza legge istitutiva del Garante regionale

1. Basilicata
2. Calabria
3. Liguria
4. Trentino Alto-Adige





Activities of the regional Guarantors



Campania

Adriana Tocco

National activities

- ✓ Member of panel #6 – “Family ties and the territorial jurisdiction principle” of the National Assembly on the execution of sentences (“Estates-General”). Visit to the Spanish penitentiary institutions planned by the Justice Secretary.
- ✓ Representative of the national project on employment in prison.
- ✓ Speaker at:
 - “Meaning and future of punishment”, National conference of the Supervisory Judicial Authority, Messina;
 - Closing event of the onclusive initiative of “Estates-General”, independently organised by inmates detained in Milano Opera prison institution;
 - Conference on *Detention conditions 250 years after Cesare Beccaria*, Florence.
- ✓ Participation in the technical panel, held at the Ministry of Justice, on the structural weaknesses of Santa Maria Capua Vetere prison institution.

Regional activities

Organisation of conferences and seminars:

- 26 February 2016 “Igino Cappelli’s latest news: from *Avanzi della giustizia* to the “Estates-General”;
- 12 December 2016 *The juvenile universe: new criminality, counter strategies, rehabilitation opportunities*

Speaker in many conferences organised by: voluntary associations (in particular the *Comunità di Sant’Egidio* and the *National Youth Forum*), associations of doctors, chaplaincy on a variety of topics from *pain*

management in prison (Pozzuoli) to *diabetes*, and *health care* in general (Poggioreale, Napoli), from refurbishment of prison facilities (Napoli), to the Torreggiani judgment and its consequences and many other penitentiary initiatives. Meetings with some enterprises and the *Unione degli industriali* on a national project to enhance employment in prison institutions and meetings with the regional representatives involved.

Equipment supply after requests by prison institutions

Computer equipment to Pozzuoli P.I.; books for children to Benevento, Napoli-Poggioreale, Pozzuoli, Santa Maria Capua Vetere, Napoli-Secondigliano prison institutions; equipment for the children's play centre to Benevento Institute; raw materials for the realisation of handmade products to prison institutions with women’s wings.

Rehabilitation activities

IV exhibition on theatre in prison, San Ferdinando theatre, Naples;
Market of the products from prisons, Galleria Umberto I, Naples;
San Carlo Youth Chorus tour (continuation) in the prison institutions of the region;
New opening of three legal advice, linguistic and cultural mediation help desks in Santa Maria Capua Vetere, Napoli-Poggioreale and Napoli-Secondigliano prison institutions;
Legality and Punishment day.
Four team tournament (students and inmates) organized in the prison institutions in Naples;
A new inmate chorus has been started in the Napoli-Poggioreale prison institution;

Creative sewing classes in Salerno and Benevento prison institutions;
Workshop in collaboration with the Department of Architecture of the *Federico II* University, to work at projects of refurbishment and restyling of some prison institutions. The working groups consisted of detainees and students.

Services and assistance

Interviews with single detainees (about 1000) and with groups of detainees, who were complaining on general issues.

Administrative and legal advice for acknowledgement of parentage, mandates and general legal acts (free-of-charge assistance by a notary).

Administrative support for the inmates' pension arrangements at the Italian National Institute of Social Insurance (INPS).

Negotiations with the Chief Medical Officer at the Cardarelli Hospital in Naples, about interventions in emergency.

Interpretation and translation services for prisoners.

Relationships with Consulates and Embassies for issues related to detained foreigners personal data.

Enforcement of a Memorandum of Understanding between the University "Federico II" and the Penitentiary Administration for the creation of a university campus near Napoli-Poggioreale prison institution.

Assisting inmates in lodging complaints to the Prosecutor Office in Naples.

Agreement with the City of Naples for recycling advertisement banners and social services programmes.

Inspections in most crowded prison institutions in the region.

Weaknesses: shortage of health care services, noncompliance with the territorial jurisdiction principle, difficult relationships with the Supervisory Judicial Authority, tuck shop food costs, unemployment.

<http://www.consiglio.regione.campania.it/garan-tedetenuti>



Appointed with regional law 13/2011. In the last year of activity, the Guarantor Desi Bruno has continued to carry out the supervisory and monitoring activities in detention facilities, according to the definition referred to in paragraph 2 of Article 4 of the *Optional Protocol to the Convention against Torture (OPCAT)*, ratified by Law 195, issued on 18 December 2002. These on-the-spot activities refer to, among others, not just prison institutions, including the YOIs, the first line reception centres, and the youth rehabilitation centres, but also the two Residence for the Execution of Security Measures (REMS) and a penal labour colony in Castelfranco Emilia. The former two Identification and Expulsion Centres have been recently closed.

The office reiterated, at regional and national level, the need that the figure of the Guarantor be a competent and autonomous person, and that the combination between different figures of Guarantors (for minors and for civil defence) is damaging to the specificity of the role. Therefore, it has been expressed the hope for an intervention of the National Guarantor, in order to start a reflection on the sufficiency of the existing legislation, which comes from sources of different level, and that the coordination although provided by the National Guarantor and the regional ones (but also local ones) is structured into a rational way, by recognizing that the guaranteeing authorities at a regional level, anyway expression of autonomy, are in all respects considered as part of the National Prevention Mechanism (NPM).

Among the places where a particular attention has been paid, is remembered the workhouse - without work - of Castelfranco Emilia, where are still present prisoners to whom has been applied the security measure for the one who is considered imputable. It is a structure with important labour and educational potentialities, for

years in the absolute abandon, despite the charges from the Guarantor's office, of local public administrators as well as the soliciting of the Legislative Assembly. The latter during the mandate, visited the workplace and shared worries and interest to its passing, which was already object of a legislative proposal in Parliament that from the far VIII Legislature, approved the project "abrogation of norms of the first book of the Criminal Code on the allocation of assignment to an agricultural colony or a workhouse".

Another 'place' to which has been dedicated particularly attention, also demanded by many detainees, was the Institute of Parma, with particular reference to the high-security circuits, to the living conditions of the sick detainees, and to the problematic presence of a diagnostic and therapeutic Centre (now known SAI), insufficient, as well as the building of a pavilion to extend the jail.

The health issue and those issues related to the living conditions of detainees have been the subject of numerous interventions, all punctually reported in the office's reports, which can be consulted on the link below <http://www.assemblea.emr.it/garanti/i-garanti/detenuti/il-garante/relazioni-annuali>.

The office has carried out activities within the field of the table 11 – "Security Measures" of States General of the criminal prosecution. Moreover, the office also participated and supported the second edition of the course in jail "Rights Duties Solidarity. Conversation between Constitutions and Cultures". It was born as an idea of Brother Ignazio De Francesco, islamist and volunteer at the Volunteers Association in prison (AvoC), realized in collaboration with the provincial centre for metropolitan and adult education, pointed towards the Arabic detainees of Islamic religion, registered to school schedules in the prison of "Dozza of Bologna". The first edition, as 2014-2015, had important acknowledgments.

It has been produced a logbook's publication "Rights Duties Solidarity. An experience of conversation between the Constitutions and Cultures at the "Dozza of Bologna's prison", experience also adapted

into the documentary film 'Dustur' directed by Marco Santarelli.

The contacts with the counters and points of listening were stable, and they were managed by voluntary associations of the criminal area and local authorities, a useful network of relationship for monitoring the checks and the subsequent initiatives of the Guarantor. In this regard, particular relevance had the activity of the legal help desk and the extrajudicial consultancy for minors or young adult of foreign citizenship, and resident in the structures of the Centre of Juvenile and Criminal Justice, result of a two-year Memorandum of Understanding between the Guarantor and the Centre of Juvenile and Criminal Justice. During the 2016, it started a season on norms, circulars and procedures, which can be defined both 'formative' and 'informative', by accepting the need for knowledge, also specific and practical, expressed by volunteering, which since decades constitutes an important resource of a proper formation of its members, and which has been formally recognized by the Operating Protocol, signed by the Directory Access Protocol (DAP) and by the National Conference of volunteering and Justice.

Two are the actions organized, supported and currently being implemented by the office:

- *the legal status of the foreigner detained*: four meetings about the norms for the application of the protective measure, on the execution of the custodial sentence, and the stay on Italian territory.

- *the rights and dignity in the execution of the sentence*: training courses born as an idea of the regional Conference of the justice volunteering, and realized in the territories through a plenary meeting with the participation of the President of the Conference of the justice volunteering and a plenary session with the participation of volunteers and operators of the Penitentiary Administration.

The *mission*, equally important and binding in comparison to the previous two, is to promote each useful initiative, in order to ensure the respect for the dignity of the persons deprived of their personal liberty and the exercise of their rights: in

particular, the activities addressed to detainees for correct information on the protection and access to rights, opportunities in the field of work, the right to health and the access to the alternative measures to detention. The tools are brochures, information notes, publications, also translated in the most widespread languages in jail, distributed, with the collaboration of the Penitentiary Administration, among the detained population.

In 2016, it was printed the re-edition updated and translated in five languages of *Prison and Surroundings - handbook of the relevant legislation*, compendium of norms, rules and dispositions of penitentiary life. In collaboration with the Foundation for Victims of Crimes, was created and organized the conference “victims and offenders: a possible meeting?” in criminal matters.

The activity of relationship and collaboration continued with the Universities, in particular with the departments of Legal Science of Bologna and Ferrara, but not only; with different high schools and with the training bodies for the diffusion and the knowledge of issues related to prison and human rights. In 2016, were three the lessons held by the Guarantor in seminars or training period for students, specialized operators or professionals admitted to the Orders; 11 were the active participations of the Guarantor in seminars and conferences.

Throughout the mandate, the media information has been considered fundamental, in order to give voice to who does not have voice, and for bringing the attention, objectively, the public opinion on the living conditions of the detainees. The news, communications, especially in occasion of the visits of the Office in the Institutes, the newsletter and the site are considered informative and educational tools, which are essential both for the Office and readers, especially the ones specialized. Completed the first five year mandate of the Guarantor Desi Bruno, on 12 December, the Legislative Assembly of the Emilia-Romagna region, elected as Guarantor of persons deprived of their personal liberty,

Marcello Marighelli, who was already Guarantor of persons deprived of their liberties of the municipality of Ferrara.

Among the first actions started, there is the mapping situation of external criminal prosecution with particular reference to the free volunteer work of public utility.

<http://www.assemblea.emr.it/garanti/i-garanti/detenuti>



Friuli
Venezia-Giulia

Giuseppe Roveredo
(Year 2015)

The regional Guarantor of the rights of person of Friuli Venezia Giulia was established in 2014 with an appropriate law, which specifies the competences and the functions, Regional Law 16 May 2014, n. 9.

The regional Council of Friuli Venezia Giulia has elected the Guarantor for persons deprived of their personal liberty during the session of the Regional Council on June 26, 2014 and its role began to elapse from 11 September 2014.

Below there is a summary of the activities carried out from the Guarantor of the deprived persons of their personal liberty during the year 2015.

The five Institutes of the Region are: Gorizia, Pordenone, Tolmezzo, Trieste and Udine.

The interviews with detainees were overall, 271, and they were distributed as follows:

- Gorizia, 12
- Pordenone, 7
- Tolmezzo, 96
- Trieste, 132
- Udine, 24

The meetings with the directors of Institute and officials of the pedagogical legal area were overall 25, distributed as follows:

- Gorizia, 2
- Pordenone, 3
- Tolmezzo, 9
- Trieste, 6
- Udine, 5

Moreover, were held 5 meetings with the supervising judges (Trieste and Udine). The Guarantor produced 14 reports addressed to them.

Some meetings were held with the family members of the detainees (22) and with people who are victims of crime (4). In addition, the Guarantor organized three meetings with the regional Superintendent

of the penitentiary Administration, and with some local members of the Parliament.

A particular attention has been paid to the secondary schools, in order to raise awareness about themes of rights, their protection, and the deprivation of the personal liberty: 18 meetings in 11 Institutes.

<http://www.consiglio.regione.fvg.it/cms/pagine/garante-diritti-persona/>

The system of the Latium's region, is a complicated deprivation system, which is constituted by structures, which depend on the Ministry of Justice (14 Penitentiary Institutions, an Initial Reception Centre, and a Criminal Institute for Minors in Rome), structures which depend on the Ministry of the Interior, and its geographic locations (prisons of commissariats and barracks and the Centre For identification and Expulsion of Rome), health facilities of the Region, such as psychiatric services for diagnosis and treatment, in which compulsory medical treatments are performed, and the five residences for security measures. To these places should be added the public facilities for hosting or recovering people who are waiting to be recognised, of international protection, in other words in external criminal prosecution, which should be "monitored", or still elderly with incapability, which appeared after the recovery in long-term care facilities.

The Regional Law 6 October 2003, n. 31, founding of the Guarantor of the persons detained under restrictive measures of their personal liberty, recognizes the competence on the subjects present in the Youth Detention Centres, as well as in the Initial Reception Centres, in the Temporary Aid Centres for foreigners, and in the health facilities because they are subject to the compulsory medical treatment (Article 1, 2).

After a year of holiday of the office, on June, 15 2016, the regional Council of Latium elected as regional Guarantor, Stefano Anastasia, and his assistants Sandro Campagnoni and Mauro Lombardo. The elected Guarantor has taken up his duties, on July 13, 2016.

Since that date, the Guarantor's commitment had as main objective the knowledge of the territorial reality and institutional and local referents, the reactivation of projects and activities previously limited pending his appointment, the organization of the monitoring activities

of the condition of the detained population both through some visits in jail and with on-site activity.

A fundamental part of the commitment was the collection of data and the resulting definition of the medium and long-term objectives. In particular:

- the Guarantor visited all the Penitentiary Institutions of the Region, the Youth Detention Centre, and the Centre For identification and Expulsion. At the moment, the visits to Residences for the security measures are currently under development;

- as a results of the visits, it has been reactivated the monitoring of the conditions of detention of the deprived persons, which is directly carried out in the Penitentiary Institutions through the colleagues of the Guarantor, made with weekly or biweekly frequency, aimed at identifying and solving the weaknesses through direct conversations with detainees and with the penitentiary and sanitary staff who is present in the Institutes;

- to cope with the raising of the average age and of the level of education of the guests through a specific determination of the Department for the education of the Latium region, the Guarantor promoted the activation of a high school classroom in the Youth detention centre in Rome, during the school year 2017-2018;

- On 28 October was signed the Memorandum of Understanding with the University of Roma Tre and the regional administrative body of prison administration, aimed at supporting the detainees enrolled at the University. It is under development an agreement with "Laziodisu", a regional authority for the right to education, to cover the enrolment fees, and the supply of teaching material to the underprivileged school students;

- In close proximity to the Christmas holidays, with the goal to encourage the family relationship of the detainees, were financed, through a public announcement, ten projects for the realization of cultural and recreational activities

in the Identification and Expulsion Centre, in the Youth detention centre, in the house arrest and in the prison of Civitavecchia and in the Rome's penitentiary institutions for women in Rebibbia, New Complex and House of imprisonment;

- after the visit of the CIE (Immigration Detention Centre) and the institutional meetings with the vice prefect Roberto Leone, head of the CIE and of the prefecture of Rome, with Dr. Fabrizio Mancini, director of the Immigration Office of the Rome Police Headquarters, are in the process of defining the presence mode, a confidential intervention and assistance reserved for foreigners detained in prison or at CIE.

With a note to all the AUSL (Local health centre) in whose territory of expertise, there are penitentiary institutes, was requested the reactivation of Joined Technical Tables, finalised to a close examination and the solution of health issues which are present in the penitentiary institutes. Starting from February, some operational meetings are in progress.

With some stresses by the Guarantor, within the field of organization of the POR-FSE (Regional Operational Program co-financed by the European Social Funds), is being currently developed a final design proposal, finalised to the vocational training, apprenticeship and work orientation in the penitentiary institutions of the Region.

<http://www.garantedetenutilazio.it>



Lombardy
Donato Giordano

In Lombardy, according to the regional law n. 18 of 6 December 2010, the Regional Defender also carries out the Guarantor functions of the detainees, and takes action against the Administration and the Authorities that are part of the regional system, in order to ensure to persons submitted to some restrictive measures of their personal freedom will be provided some performances applicable to the health protection, to the improvement of the quality life, to the vocational and educational training, and each other performance finalised to the recovery, the social integration, the entry to the world of work, the maintenance of family relationships and with the outside community.

In accordance with the collaboration and inter-institutionalized principle, the Guarantor also addresses himself to the prison administration.

With regard to this aspect, it is important the occurred subscription, on 4 March 2016, of the Memorandum of Understanding among the regional authority of the prison administration and the Offices of the Guarantors of persons deprived of their liberties of the regional Lombard territory. With the abovementioned Protocol, the Provveditorato Office, the Regional office of the Guarantor and the Guarantors nominated by the local authorities, have pledged to a reciprocal inter-institutionalized collaboration, finalized to the protection of detainees' rights, to the improvement of quality life standards within the institutes, to the respect for the legality, in line with the main principles of the penitentiary system, the new addresses of the Minister with regard to the modes of execution of sentence and the ultimate goal of social reintegration of the restricted subjects, which was constitutionally sanctioned. The agreement shall be valid for a three-year

period, and from the date of signature, it is tacitly renewed and it may eventually be integrated and updated.

In particular, the Memorandum of Understanding consists of a joint part aimed to discipline in a uniform manner on the regional territory, the access to the institutes, how to conduct visits and conversations with the detainees, the intervention modes towards different levels of prison administration, how to collaborate even on the initiative of the same Bureau of the penitentiary institutions, the possibilities of joint actions with the prison administration and the discipline of relations with the Prosecution Offices (U.D.E.P.E.), so that all the institutional subjects involved, can find in the agreement specific shared reference criteria.

Type of application received

The largest number of applications received to the Guarantor's Office during the year 2016, concerned the relationships with the operators,

since they are institutionally competent bodies for the scope of report. This category of requests for action gathers together mainly warnings, which require dialogues with the prison administration concerning, for example transfer requests already presented or requests for clarifications to the Directions of individual Institutes on specific grievances, which are inherent to the treatment course still realized or to particular detention conditions.

The theme of the need for the protection of the family ties and affective relationships also emerged in many instances both through the request to the Guarantor to intervene with the Administration prison in support of requests for approach to the place of residence of their relatives either by requesting clarifications about how to conduct meetings with relatives or the enjoyment of permits needed.

Another area where the reports were particularly significant, both in terms of number and in terms of content, is what concerns the health care assistance for the detainees.

Turning specifically to the matter of operations on the subject of the right to health, which mainly falls under the

competences of the Lombardy Region, is specifically provided both by the abovementioned Memorandum of Understanding, and by the Deliberation Of the Regional Council (DGR No. X / 4716) released on January 13, 2016 that every news and request of the Guarantor of such aspects shall be

submitted to the Territorial and Pharmaceutical Service (ASST) competent for the Institute and for knowledge to the Provveditorato and to the Lombardy Region, Welfare Department, U.O. Programming Territorial Network Structure and Care of the mentally ill in Prisons, as well as the Penitentiary Directorate interested.

The same resolution has updated the regional network of the health penitentiary services according to the provisions of the United Nations Convention signed on January 22, 2015 by categorising the structures according to the degree of complexity of the health care assistance provided.

Therefore, there are different penitentiary institutions that have only one primary health service, and that hosts detainees in good and general health conditions.

In addition, there are structures that instead offer a multi professional medical service, and with the presence of the personnel 24 hours a day, and that guarantees even the distribution of some specific benefits. There are also institutes that have inside them a specialized healthcare department for the treatment of specific pathological conditions or for the delivery of special rehabilitation treatments, and finally, there are structures that have specific departments dedicated and specialized for intensive assistance (S.A.I) addressed to detainees not self-sufficient or with chronic incurable disease in an ordinary penitentiary institute.

The penitentiary health network also has a "Department of Protected Medicine" at the ASST (Territorial Healthcare Company) "Santi Paolo e Carlo", destined to the scheduled hospitalization of the detainees in the Penitentiary Institutions of the Region and in stay equipped facilities for detainees at some hospital structures of the territory.

With the DGR (Resolution of the Regional Council) mentioned, it was also confirmed the subsistence of the UOSP (Penitentiary Health Operational Entity) as a reference

regional structure and operational interface for the realization and monitoring of interventions in the penitentiary field with coordination functions, planning and implementation of intervention programs, verification of the results of the activities realized and strengthening of the specific welfare services for detainees.

The grievances arrived at the Guarantor concerned the dissatisfaction of the applicants for the contents or the timing of the health care assistance received, or the inadequacy of treatments with respect to particular and serious medical disorders.

The Guarantor, without having any technical skills in the medical field within its own office, has taken advantage of the fruitful collaboration with the Penitentiary Health Operational Entity (UOSP) and the competent Health Authority for the Institute, in order to give a feedback to the received warnings, and identify possible solutions to the critical issues, which have been found.

The instances with particular regard to the vocational training and the job re-employment, seem to be less numerous than those related to the right to health and the protection of relationships with family members, but equally significant as a request for implementation of effective clinical pathways.

In the field of vocational training, the interventions of the Guarantor were intended to provide to the applicants information about the approved operators and about the services offered on the regional territory, in order to promote the enjoyment of adequate training opportunities also from people who have a criminal background. There have been also required information and clarifications when occurred some bureaucratic impasse that could threaten the running of the expected courses.

During the visit to the Youth Detention Centre “Beccaria” which took place in November, the Guarantor, after hearing that the vocational training courses destined to the guests were in danger of being suspended waiting for the publication of the list of projects concerning the activities in question, has been activated at the competent regional department, in order to find out the timing for defining the

procedure, and has obtained specific assurances about the regular continuation of training courses within the Institute.

Finally, with regard to the job re-employment, as a result of specific applicant’s warnings, were required some clarifications for the Regional Council inherent to individual social inclusion projects activated on the territories (work experience grants, internships) to improve the access to the labour market of persons eligible for alternative measures.

It is also considered useful to refer to some of these matters object of discussion of this Office, that during the year have gained national relevance or general interest.

a) Issues of national relevance or general interest

The Municipal Property Tax (IMU)

Some deprived persons have reported the receipt of some alerts sent by local authorities for the payment of IMU tax, inherent to the real estate property of the local authorities, and at which they resided before the detention.

Following the transfer of the residence of the detained at the Penitentiary Institution, the housing has been considered by the municipality as a previous residence, like a “second” house” with the resulting application of the proper Municipal Tax.

In this respect, in the reported cases, the Guarantor considered appropriate to contact the taxing bodies by observing that, although under the regulation in force, the facilitations for the main house are normally recognized on the living unit under the condition that the taxpayer has his/her residence in it, and that habitually reside in the same house. In the case of deprived persons, the residence is normatively established in a coercive manner at the penitentiary institution as a result of the resulting obligations, which derive from the criminal execution, nor can the detainee evidently boast about their own overnight accommodation is the property of any right in rem.

The Office also noticed that the act provides the faculty for municipalities to consider as main house, also the real estate owned by property or usufruct as long as not occupied

by old or disabled people, who obtain residency in Healthcare Institutes as a result of permanent shelter.

In these cases, the Guarantor has hoped that the local authority, through an extensive interpretation of the provisions in force, could apply also to the real estate unit, owned by the detainee the same tax treatment provided for the main home, by believing that the detention status could lead to a similar exemption from that foreseen for elderly and disabled, who permanently reside in healthcare facilities, as in both cases the subjects are 'forced' to stay, though different reasons, in housing units to which they do not boast any kind of possession.

However, except in a single case, where the specific conditions and the occurred assignment of the real estate unit to the former spouse has allowed the municipality, by taking into account specific regulatory provisions, to be able to recognize the exemption from the IMU tax for the real estate unit used as a main house by family unit - in the remaining cases the local authorities opposed the Guarantor's request the enunciation of the principle, confirmed by the law, according to which the facilities on tax matters cannot simply an analogic or extensive interpretation, hence make people to understand hypotheses not explicitly provided by the legislator.

Therefore, the question may find an appropriate solution by means of a legislative amendment, in other words expressed, clear and explicit interpretative provisions.

Authorisation for the achievement of the driving license following a revocation

The reports received by the Guarantor concern the interpretation and application of the Article 120 of the Highway Code, with regard to moral requirements, in particular, for what concerns the achievement of the authorisation, of competence of the Prefecture, following the occurred revocation of the driving license title, arranged for the obedience to protective and prevention measures, and the sentence for the crimes of the same Article.

The need for deepening and identifying possible resolving paths emerged from the weaknesses reported to the Office by the same interested parties.

The theme has been subject of meetings with multiple institutional representatives, especially with the prefect of Milan, with the President of the Milan Court of Appeal, with delegated magistrates and some spokespersons of the Motor Vehicle Authority of Milan.

The interpretation that has been currently granted by the Prefecture of Milan, though not uniform to that of other prefectures of the regional territory, requires, in fact, for verification of possession some moral requirements, only having obtained the rehabilitation in the technical sense ex Article 178 of the Penal Code.

Below are the reasoning given by the Guarantor during the meetings and the notes sent to the Prefecture, in order to arrive to the amendment of the orientation, which has been granted up to this moment.

The norm literally provides the expression "rehabilitation measures" which does not make explicitly reference to the rehabilitation institute provided by the Penal Code.

In this regard, the Office has noticed that the use by the legislator of the following expression (rehabilitation measures), seems to be inclined to a choice, which should not limit the reference to the exclusive institute of rehabilitation ex Article 178 of the Penal Code, for which it would be more appropriate, for a necessity of clarity, to turn to the singular term (criminal rehabilitation by recalling the Article).

The abovementioned restrictive interpretation, also determines the paradoxical consequence that the entities, who receive some revocation measures of the driving license title, as referred in the paragraph 1 of Article 120, they cannot achieve another driving license, even in the case of the next absolution and/or the already disposed revocation of the prevention measure for a terminated danger from the judicial authority.

The arranged revocation of preventive and security measures, by believing the evaluation of terminated social danger by the judicial authority, it could indeed be considered as a rehabilitation measure. In addition, the Guarantor also referred to arguments of jurisprudence, in order to ward off the automatic denial of the release of authorization for some specific cases, by hoping the recourse to specific merit assessments and the exercise of administrative discretion by the prefecture.

In particular, some specific evaluations should be reserved also to the addressees of granting alternative measures, by considering the difficulties they might encounter in doing the proper socio-occupational reintegration path, in the absence of the possibility to have the driving license, which is considered often indispensable for the access to employment opportunities.

To the present day the question was submitted by the Prefect of Milan to the competent Directorate of the Ministry of Interior, in order to express an opinion about the question itself and to allow uniformity of treatment on national territory and to contain possible controversies.

Proposal for uniform system on regional territory for carrying out medical psychological assessment for the renewal of the driving license in prison

During the Guarantor's visits to the Lombard prisons, there have been some critical issues reported for the medical examinations to verify the subsistence of the psychophysical requirements for driving, which are necessary for the renewal of the driving license of persons deprived by both the Directorates and by the operators, and by the same detainees.

Frequently the difficulties encountered concern the need for the monocratic physician, that is the local medical commission required for the so-called "special licenses" (if interested please go to the Penitentiary Institutions). The translation of the deprived persons at the health services, in addition to the risks and to the organizational complexity, it would

involve an increase of costs and commitment of the penitentiary police to be dedicated. According to reports, in some cases, in order to obtain the fact that the visits can be carried out within the Institutes, it was necessary by the Directorates of the Penitentiary Institutions to solicit several times the competent health companies and with rather long response times.

In several cases, the Guarantor intervened to stress, by taking into account that the lack of renewal of the driving license for more than three years, involves the necessity for the person concerned to resort to the "inspection", with the consequent unimportant expense of economically viable resources.

The Office turned to the competent Welfare Department, to the U.O. Programming Territorial Network Structure Psychiatric Assistance and the Health Care Penitentiary Unit of the Regional Council, by proposing the consideration of subscription of an operative ad hoc measure/memorandum, to be transmitted to the accountable offices of the A.S.S.T (territorial healthcare company) and A.T.S. (healthcare company), which establishes with a certain periodicity the entrance to the Penitentiary Institutes responsible for the compliance in question, in order to rationalize and to make clear and homogeneous ways of carrying out the medical examinations on the Regional territory, by ensuring uniformity of treatment in the Lombardy Penitentiary Institutions.

The Office is waiting for a response from the competent Directorate concerned.

<http://www.difensoreregionale.lombardia.it/garante-dei-detenuiti/>



The activity envisaged by the Guarantor of the rights of the Marche region, with reference to the persons who are subject to restrictive measures of personal freedom, has developed on several levels.

First, it was implemented a constant monitoring of the detention's conditions in prisons and REMS in the territory, as well as the adequacy of the structures (Ancona-Barcaglione House, Ancona-Barcaglione House, Pesaro's House of Constanta -Villa Fastiggi, Fossombrone Detention House, Ascoli Piceno-Marino del Tronto House, Fermo Detention House, Camerino's Home House, REMS of Montegrimano Terme).

This was done by visiting the places every month, checking the conditions and talking directly with the various operators involved, as well as with some detainees. Contacts with the institute's directions, the prison police commanders, healthcare managers and others have been constant, also to monitor the situation following the severe seismic events that hit our region and which led to the closure Of the Camerino Institute.

The Guarantor personally participated in various initiatives, sometimes patronizing them, promoted by institutional and associative subjects, both in penitentiary facilities and in other contexts (for example poetry competitions, charitable initiatives, events sponsored by the National Guard as "a kick to the bars").

This was accompanied by a campaign of awareness and involvement of the Regional Council: at the beginning of 2016, visits and meetings were held in all the Marche's Institutes, with the participation of numerous Regional Councilors. At the end of the meeting, the Legislative Assembly of the Marche has approved two motions on this matter. Another significant activity was the one related to the direct relationship with the population. About 600 were the meetings,

during the year, with the restricted people who had asked for contact with the office. Formal and non-formal interventions have been made in a number of areas (from the penitentiary administration to the competent social services, from the penitentiary health to the world of volunteering)

In particular among the events promoted by the Guarantor's Office, can be reported:

- 1 April the public presentation in Ancona and Pesaro of the book "Abolishing the prison" with Stefano Anastasia and Valentina Calderone
- On 28 and 29 May 2016 in Ancona a convention, with the Union of Criminal Chambers of the Marche, on the reform of the penitentiary law, entitled "Crimes and Penalties".

Specific projects were also implemented in the penitentiary institutions, in the field of treatment, with the aim of encouraging relationships between prison and exterior:

- "A New Page" - Approach to reading and meeting with writers
- "Newspaper in jail" - support for the newspapers produced in the Institutes
- "Art Project" - paintings in the Ancona-Barcaglione Prison House.

We want to highlight two great projects that see an important commitment from the Regional Guarantee Office, alongside other institutions, projects whose elaboration was started during the year:

- the project "implementing the activity of the information desk of the University Polo at the Fossombrone Prison" - the project "implementation of the professional training pole at the Ancona-Barcaglione prison house.

2016 ended with the public presentation on December 16, at the headquarters of the regional council of the "Annual Report on the Situation of Penitentiary Institutions and REMS", which has been widely disseminated on regional radio and television broadcasters (in particular two long Raitre services) and on local newspapers.

<http://www.ombudsman.marche.it/index.php?ida=0>



In Piedmont it was discussed the need and the opportunity to create the Guarantor of people subjected to restrictive measures of liberty since 2003, when the Latium region adopted the first constitutional law and began to get wide and to join the idea of a Third figure of control in addition to the Prison Administration and the Surveillance Magistrate.

A broad and diverse movement of opinion has been activated in Piedmont with the involvement of associations, departments, universities and representative bodies of the sub alpine lawyer. In June 2004, the city of Turin approved the Municipal Assembly's deliberation, while a bill, Although signed by almost all of the group leaders, filed in the regional council in February 2005 will see the transformation into regional law only on 2 December 2009, also following a lively mobilization of public opinion. For the first implementation of the rules contained in Regional Law 28/2009, however, we have to wait until April 16, 2014, when the plenary assembly of the regional council chooses, among the various candidates and according to the procedures of the public appointments, the first regional guarantor of "detainees".

Of 12 May 2014 is the presidential decree of appointment. The designation comes only after a new and wide mobilization of personalities and subjects of the private social, political, justice and university world, creating a significant attention and expectation about the role of the guarantor, also following the convictions of the European Court Human Rights Sulejmanovic (2009) and Torregians (2013).

The same penitentiary community in Piedmont becomes the protagonist of the campaign for the institution of the figure, meanwhile appointed in various regions: in September 2012, five detainees restricted into the high security section of the Circondary Home of Asti - the prison that became the December 2004 stage Of serious

violence that became public in 2011-activating a lawsuit against the President of the Region and the Regional Council for the non-implementation of its law.

The activity carried out in these three years since the establishment has seen the activation of the Office by the construction of networks of relations and operations which has, among other things, led to the establishment and appointment of City Guarantors of private persons Of personal liberty in all 12 cities in the Piedmont Prison (Alba, Alessandria, Asti, Biella, Cuneo, Fossano, Ivrea, Novara, Saluzzo, Turin, Verbania, Vercelli). For more than a year, the Regional Coordination of Guarantors is active, which meets monthly with the Regional Guarantee Office. All Piedmontese Guarantors also participate actively in national coordination of regional and territorial guarantors, which in Turin on 29 January 2016 approved a renewed regulation.

The effort to respond to the expectations and requests of the prison community also following the insertion into the penitentiary law of the ex art 35 ter plea, saw at the same time the need to open and follow dossiers related to broader jurisdiction provided for in the law Setting up with people subjected to restrictive measures of freedom.

The historic presence of a Center for Identification and Exhumation in Turin (formerly CPT-temporary centers of temporary residence) and the difficult path of overcoming the psychiatric hospitals of the judiciary, which also registered the distrust and commissariat of the Piedmont Region by the Government for the delay in taking over the Piedmont's internees and the failure to locate REMS, provisional and definitive, have been the areas of action of a role that is being defined in a close and daily relationship, In the key of autonomy and independence, with local and regional authorities in the first place and with peripheral joints of the Ministry of Justice, Home Affairs and Health.

<http://www.cr.piemonte.it/web/assemblea/organizationali/garante-dei-detenuti>



The Office of the Guarantor for the Rights of Persons Deprived of their Liberties of the Apulia Region has been set up in July 2012, in conjunction with the designation of the current Guarantor. To the current date (end of February 2017) is being finalised the designation procedure of the Guarantor for the next five years.

As concerns the state of the art, in Apulia the situation of intolerable overcrowding which, at the end of 2012, was valued, on average, in the order of over 180%, marked a strong countertrend, which seems now to be stabilised. There are some consistent and common problems of implementation of the so-called “dynamic vigilance”. Thanks to the collaboration with volunteer operators and with volunteer associations - with some of them have been stipulated conventions, adopted in order to determine - the Office has now definitively draw up

a system of increasing the recruitment of useful information for the target. It is also important to note that volunteers who cooperate with the Guarantor - as ‘correspondents’ from the six provinces - have faced a ‘training path’, so they provide an homogenous service in the offer and in the listening technique, even in the autonomy and in the specificity of the skills and of the training paths.

Of course, in all eleven penitentiary institutes, the Guarantor carries out his listening activity at first hand on request of the interested parties or of a request expressed in different ways. The take of responsibility is also determined by the warning of other territorial and regional guarantors who talk about issues concerning detainee’s free resident in other regions and at present who are in Apulia. In addition, the reference target can call by telephone some specific users during pre-established days and times.

Currently, the functional load is overall constituted by over four hundred cases, with a still steady growth trend. The cases are considered archived only in case of release,

transfer outside the region of the person in question or for obvious lack of competence of the Office. Particular care is given to the continuity of the help report, both in transfer case within the regional territory and outside the regional territory; in the latter case, thanks to the existing network between regional and territorial guarantors. The process of granted aid, relates to two dimensions, which are complementary to each other: the collective and the individual one.

As for the collective dimension, it was possible to create assembly meetings (in Foggia, Bari, Altamura, Brindisi, Lecce and Taranto) during which general instances which concerned the main critical aspects have been reported, some of them were of a more structural nature (lack of work, the partial perception of healthcare services, the partial offer of school education) and others weaknesses were related to (inadequate mattresses, sheets and blankets, insufficient water supply, lack of fruition of spaces for social life). Many times, these collective comparisons were born on occasion of events originated for other reasons during which, there are always moments of dialogue with groups of detainees who always in a conscious and civil manner address issues of collective interest. Other times, the Office has received real petitions, signed by large groups of detainees, followed by assembly moments. Concerning the individual size, both the intense and epistolary activity and voice demands during the meetings, continue to return the centrality of two issues on all: health and affectivity. It remains feeble the expectation of paid job opportunities (another issue is that of work of general public interest provided for free and in a voluntary way which also has always intercepted availability of all detainees interviewed in this regard).

Regarding the guarantee of the right to health, this Office, in collaboration with the management of the Correctional facility of Bari (location of the one regional Therapeutic Diagnostic Center), on the instruction of the President of the Apulia region, has

followed up a reconnaissance study of the state of implementation of the regional Prison Health, by giving an answer in a publication of the 2014. This work stresses

the need to give rise to a stabilization of the staff involved, the increase of primary care - but with a special focus to the psychiatric and psychological ones - and that specialist in all institutes and a continuous update of the available diagnostic instrumentation.

It should be noted that situations of mental illness increase and that the Penitentiary Administration, in Apulia, has provided an organization to cope with this kind of problem. For example, a psychiatric department has been set up in the Correctional Facility of Lecce. Apulia, along with other regions, has initially marked the step in the predisposition of REMS as a solution to the problem, but already in the course of 2015, with the opening of REMS (Residence for the Execution of Health Security Measures) of Spinazzola (at the hospital headquarters) began to welcome the first eighteen prisoners. With the subsequent activation (which came in 2016) of the Carovigno location, is expected an overall availability of 62 seats. Another issue is the load which begins to deal with REMS, as part of protective custody. It is clear that the judge of cognition, morally altered by the eviction of the Hospitals for the Criminally Insane (OPG) now eliminated, he believes that it is possible to turn to

the precautionary placement, waiting for the judgment, at the REMS which, instead, have been

created to cope with a take of responsibility of a medium-long term, just for their therapeutic vocation of mental distress. On one hand, it will be necessary to act on the legislative level, by reforming, in the points related to the issue, the same Act 81/2014, on the other hand to prepare a medical infrastructure dedicated to the so-called CRAP (Mental Health Rehabilitation Community), able to accommodate also cases, which involve this issue.

The Apulia Region (Territorial Assistance, Psychiatry and pathological dependencies) is already ready to deal with this kind of situations by concrete actions. Both REMS in Apulia are considered temporary structural solutions. However, in the case of Carovigno, that temporariness is for tabulas, in the case of Spinazzola, this temporary dimension was the subject of oral evaluations.

The Guarantor's Office contributes to the promotion of any financially supported initiative from various regional, national and European contexts such as:

European Regional Development Fund, Regional Operational Programmes and National Operational Plans (respectively ERDF, ROP, NOP) for the promotion of civil and social rights of weak people, as well as it offers its own support - both in partnership terms and in sponsorship terms - to initiatives of particular significance, which can provide reliable interlocutors of a certain public credibility. Of particular relevance is the work inclusion experience, named "Aid Atelier Project" ongoing at the Lucera Prison, which involves three detainees and four entrusted to the Criminal Prosecution Office of Foggia, which are regularly recruited. The project has started an inclusion process through the restoration and renovation of prosthetic aids. Feasibility studies and experimentation on the field are proving that the inclusion of work through restoration and renovation of prosthetic aids is possible and guarantees to Public Health a cost saving purchase of 70%. At the moment are under development some growths concerning the Local Health Authority (LHA) in Bari, Barletta-Andria-Trani and Lecce.

It remains an indispensable goal of involvement of local businesses that, in the form of financial support or technical sponsor may, must and sometimes want (in the sense that they propose themselves independently) to testify their own civil and social commitment, giving life to the most different initiatives for the benefit of the population in prison. In the circumstances in which has been identified the opportunity to compete for financing, at national or European level, of training/integration projects of detainees, research and research-action, they have been identified partners able to achieve the goals pursued with successful results too.

Finally, of particular importance, are the results obtained, over the last year, for the institution of the figures of the territorial Guarantors in Taranto and in Trani. In both cases, a council resolution is adopted a procedure inspired to the guidelines indicated, by the National Guarantor, for the organization of the regional guarantors.



The Sicilian regional Guarantor was appointed in May 2016 after a *vacatio* period that lasted about three years.

The problems encountered in the Penitentiary Institutions mainly concern shortages of staff, especially with regard to educators and cultural mediators. Among the detainees, the major reports highlight the need of approach for family reasons and health issues.

The Guarantor also contacted the UEPE (Local offices for External Criminal Execution) in view of a collaboration with training and cultural initiatives.

Certain conventions have been signed with some institutional decision-makers such as the University of Palermo and the Conservatory of Music “Vincenzo Bellini” in Palermo, in order to promote training and musical academic activities.

In addition, the Guarantor has promoted a national conference at the Institute Pagliarelli about the “Meaning of the punishment and fundamental rights of detainees” and a musical concert always at the Institute Pagliarelli with the participation of professors and students of the Conservatory “Vincenzo Bellini”.

He provided the purchase of clothes destined to the detained people.

http://pti.regione.sicilia.it/portal/page/portal/PIR_PORTALE/PIR_LaStrutturaRegionale/PIR_PresidenzadellaRegione/PIR_UffGarantedetenuti



The detainees in Tuscany passed from 3260 on December 31, 2015 (of which 117 and 1511 foreigners) to 3276 on 31 December 2016 (including 115 women and 1567 foreigners). In 2016 some changes occurred in the Tuscan penitentiary's geography: the Empoli female prison was closed with the aim of transforming it, after the necessary structural interventions, into a second REMS for Tuscany, the IPM of Florence continues to be closed without timely re-opening, the Porto Azzurro prison has finally had a stable director who has given a boost to the treatment activities. In the next days will close the OPG of Montelupo Fiorentino (FI), carrying all 16 penitentiary facilities in Tuscany. Many knots remain unsettled from the structural point of view: in San Gimignano the water that arriving in prison is polluted, Pisa has been restored the female jail by creating exposed bathrooms, the kitchen of Livorno's high security department, large and well equipped, it has never been opened because it is not possible to certify it for irregularities in the construction of columns.

The Guarantor Franco Corleone has continued to respond to the demands of detainees and demands of visit prisons. Requests come to the great majority by letter from the Tuscan's prisons. There are also others coming from outside the region, and by other means (telephone, e-mail) from prison's relatives and other guarantors. Support in transfer requests is one of the most frequently asked questions. Even physical and mental health problems not adequately treated in jail are often reported.

Problems in administering the penitentiary's execution, such as going to leave, in an alternative way, as well as being able to maintain contact with minor children, are other recurring issues.

The Guarantor has paid great attention to the process of overcoming the Psychiatric

Hospitals (OPG), the opening of REMS and the issues generated accordingly. The placement and treatment of detainees classified as 148 c.p. (Mental illness occurred to the convicted) in penitentiary psychiatric units and their implementation, according to sanitary standards, committed the Guarantor in the dialogues with the penitentiary administration and with the Tuscany region. The same prediction of these sections is questionable for the regulatory means used (State-Regions agreements instead of law) as well as for the idea of keeping in prison people with mental problems rather than addressing them to external community paths. On this the guarantor is committed to obtains legislative changes. The other issue emerged is that of the provisional measures (Article 206 cp.) Applied in greater numbers after the entry into force of Law 81/2014, and of the security measures pending execution, a category partially superimposed on the previous one.

The issue of prisoner's health continued to be monitored and analyzed: from drug addiction management to recognition of specific custodial care problems, such as dental and prosthetic care, as well as the new organization of prisons organized by the Region. The Guarantor related to the Prison Administration in order to bring to his attention the problems of the Tuscan prisons.

From this process was born the "Pact for Reform", a protocol of commitments and intentions, signed between the guarantor and the administrator Giuseppe Martone, and shared by the City Guarantors. Some of the commitments concern the structural part of the Institutes, with restructuring that in 2017 will have to be completed: works for the reopening of the prison in Arezzo, restructuring two sections in Livorno and reopening the female jail, always in Livorno works to ensure the opening of the high security kitchen, in Pisa the decision on the use of the G1 manufacture and the restoration of the baths in the female section, work for the reopening of Pistoia's jail, interventions at the institute of Solliciano starting from the second kitchen for men, work at the institute "M.Gozzini" to turn it into a female institution,

construction of the theater at the Volterra's institute and adaptation of the infirmary in Lucca.

Some choices should be made immediately, such as providing hot water and showers in the cells, initiating experimentation for the activation of common places where to eat lunch, locating libraries where libraries can be used as a reading and study site and not as a deposit of books, arranging the design of places of affection ,etc.

In 2016, the Guarantor continued to engage in the promotion of the knowledge of detainees's rights, and in the dialogue with the workers, organizing conferences and seminars. In particular, the presentation of a research by the Institute of the Innocents on the theme, the conference "Guarantees for the protection of children and adolescent children of prisoners who visit the prisons" (19 May); The seminar "penitentiary geography, the Tuscany case" (12 October) and the convention "the state of the prison after the general conditions" (October 13).

<http://www.consiglio.regione.toscana.it/oi/default?idc=42>

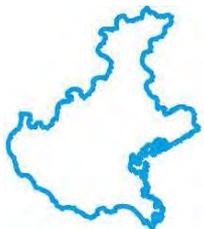


With deliberation No. 74 of the Legislative Assembly, on April 15, 2016 Stefano Anastasia was nominated Guarantor of the persons subjected to restrictive measures of the freedom of the Umbria Region, pursuant to Regional Law 18 October 2006, No.13. Following the formal acceptance of the post, on June 13, 2016, Stefano Anastasia assumed office, vacant since October 2015.

As from the assumption of the charge, the Guarantor has visited pursuant to art 67 o.p. The four penitentiary institutions in the region (Perugia, Terni, Orvieto and Spoleto) and has held talks with detained applicants pursuant to art. 18 c.p

Then the guarantor participated in the working tables for the definition of the Operational Protocols on Mental Health, Addictions and Infectious Diseases required by the Resolution of the Regional Council No.137 of 15 February 2016 concerning the transposition of the "Guidelines on the subject On ways of providing health care in adult penitentiary institutions, "approved at a unified conference on January 22, 2015. Therefore the guarantor participated in the first meeting to define the computerized medical record to be experienced in the Umbrian penitentiary institutes.

<http://www.regione.umbria.it/sociale/garante-dei-detenuti>



VENETO

Mirella Gallinaro

Activities

- Belluno, go to the neighbouring house (02.22.2016); Dissemination Seminar on "States General of Criminal Procedure "(05.12.2016);
- Padova meeting with director and educators Of the Coronary House (10.08.2016); talks With detainees (21.07.2016); Visit to the Institute a Attenuated housing (ICAT, 21.07.2016);
- Rovigo seminar on "General States Of Criminal Execution "at the House Coronary (4.11.2016); Inspecting the Institute (10.18.2016); The inauguration of the Institute (02.29.2016);
- Treviso, interviews with detainees in the Coronary House Every first Wednesday of the month; meeting With the deputy mayor (06.07.2016);
- Venice, visit to the Coronary House (01.13.2016); Dissemination Seminar on "States General of Criminal Prosecution "(24.08.2016);
- Verona, a seminar on "General States Of Criminal Execution "at the House Coronary (21.09.2016); Meeting on REMS of Nogara (03.03.2016).

Messages from detained prisoners: no. 44 of which 15 are in the process of being investigated.

Conferences

- Venice, 08.03.2016 Women's party at the Female Jury of the Giudecca;
- Padua, 18.03.2016 "The penalty in the net: towards a community justice? Testing for adults ";
- Vicenza, 31.03.2016 "Prevention of suicide in jail. The experience of Veneto ";
- Vicenza, 18-19.04.2016 "General Execution States Criminal - Presentation of documents conclusive ";
- Padova, 21.04.2016 "Health care in prison: the availability of care";
- Florence, 19.05.2016: Presentation Seminar of a research on "The Warranties

- of Protection of children and adolescent children of Detainees visiting the prisons";
- Padua, 24.09.2016 Seminar of study "Ten years of mediation. State of the art, experiences and prospects ";
- Florence, 13.10.2016 "The state of the jail afterwards The General States ";
- Belluno, October 22, 2016 "The city and people recruited. Reality and participation";
- Rome, 24.11.2016 Seminar on "The judgment Muršič 'of the Grand Chambre of the Court EDU ".

Tables on sanitary health

(11.01.2016), (03.03.2016), (12.05.2016), (16.11.2016).

National Coordination

(29.01.2016), (14.03.2016), (31.05.2016), (22.09.2016), (24.11.2016).

Regional Coordination

(26.02.2016), (18.04.2016 (25.05.2016), (19.07.2016), (23.11.2016).

Meetings Required by the Office

- 20.01.2016 with the Head of UEPE in Venice;
- 27.01.2016 with the director of the USSM in Venice of the Juvenile Justice Center for Veneto, Friuli Venezia-Giulia and Trentino Alto Adige;
- 06.04.2016 with the Association "Nessuno Tocchi Caino";
- 28.04.2016 with the administrator of the Administration Penitentiary for the Triveneto;
- 11.05.2016 with the Director of the Service Center For volunteering in Venice;
- 28.07.2016 with the head of hospital unit for mental health and penitentiary health of the Veneto Region.



The Guarantors' distribution map

Abruzzo

1. Regional Guarantor to be appointed
2. City Guarantor Pescara
3. City Guarantor Sulmona

Calabria

4. Metropolitan area Guarantor Reggio Calabria

Campania

5. Regional Guarantor
6. Provincial Guarantor Avellino

Emilia-Romagna

7. Regional Guarantor
8. Provincial Guarantor Ferrara
9. City Guarantor Bologna
10. City Guarantor Ferrara
11. City Guarantor Parma
12. City Guarantor Piacenza
13. City Guarantor Rimini

Friuli Venezia-Giulia

14. Regional Guarantor
15. Provincial Guarantor Gorizia
16. City Guarantor Trieste
17. City Guarantor Udine

Latium

18. Regional Guarantor
19. City Guarantor Roma to be appointed

Lombardy

20. Regional Guarantor
21. Provincial Guarantor Lodi
22. Provincial Guarantor Milan
23. Provincial Guarantor Monza Brianza
24. City Guarantor Bergamo to be appointed
25. City Guarantor Brescia
26. City Guarantor Busto
27. City Guarantor Lecco
28. City Guarantor Milan
29. City Guarantor Sondrio

Marche

30. Regional Guarantor

Molise

31. Regional Guarantor to be appointed

Piedmont

32. Regional Guarantor
33. City Guarantor Alba
34. City Guarantor Alessandria
35. City Guarantor Asti
36. City Guarantor Biella
37. City Guarantor Cuneo
38. City Guarantor Fossano CN
39. City Guarantor Ivrea
40. City Guarantor Saluzzo
41. City Guarantor Torino
42. City Guarantor Vercelli
43. City Guarantor Vercelli

Apulia

44. Regional Guarantor to be appointed
45. City Guarantor San Severo FG
46. City Guarantor Taranto
47. City Guarantor Trani

Sardinia

48. Regional Guarantor to be appointed
49. City Guarantor Nuoro
50. City Guarantor Oristano
51. City Guarantor Sassari
52. City Guarantor Pausania to be appointed

Sicily

53. Regional Guarantor
54. Provincial Guarantor Trapani
55. Provincial Guarantor Enna to be appointed

Tuscany

56. Regional Guarantor
57. Provincial Guarantor Massa Carrara
58. City Guarantor Florence
59. City Guarantor Livorno
60. City Guarantor Lucca
61. City Guarantor Pisa

62. City Guarantor Pistoia
63. City Guarantor Porto Azzurro
64. City Guarantor Prato
65. City Guarantor San Gimignano

Trentino Alto-Adige

66. City Guarantor Bolzano to be appointed

Umbria

67. Regional Guarantor

Valle D'Aosta

68. Regional Guarantor

Veneto

69. Regional Guarantor
70. Provincial Guarantor Padua
71. City Guarantor Belluno
72. City Guarantor Rovigo
73. City Guarantor Venice
74. City Guarantor Verona
75. City Guarantor Vicenza





Set of rules concerning the National Guarantor

Sources

Supranational framework

National Institutions for the Promotion and Protection of Human Rights (United Nations General Assembly, resolution 48/134 of 20, December 1993)

European Directive 115/2008/EC

Laying down common rules and procedures in the Member States relating to the return of third-country nationals whose stay is unlawful.

Art 8, paragraph 6

Removal

1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.

[...]

6. Member States shall provide for an effective forced-return monitoring system.

Letter 5007-2 / A2014-001564 / IX, December 9, 2014, Home Office

Bureau of Legislative Affairs and Parliamentary Relations addressed to:

- Presidency of the Council of Ministers, Department for European Policies;
- Presidency of the Council of Ministers, Department of Legal Affairs and legislation;
- Ministry of Justice - Legislative Office.

SUBJECT: Infringement Procedure 2014/2235 (Former EU Pilot Case 6534/14 / Home) incorrect transposition of Directive 2008/11/EC on Common rules and procedures applicable in the Member States for repatriation of third-country nationals whose stay is irregular and alleged violation of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers in the Member States.

Comments

The National Human Rights Advisory Committee is to be established with a threefold function of advice, supervision and proposal on HR legislation.

The aims are thus clarified: "effective policy on deportation and repatriation based on common standards for people to be repatriated in compliance with human rights and in full respect of their fundamental rights and dignity"

Establishment of an independent monitoring system for forced returns (entrusted to the National Guarantor)

With this letter, the infringement procedure already started and the default notice from the European Commission, the National Guarantor is designated as the monitoring body for forced returns ex art 8(6) of Directive 2008/115/EC (see above).

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (United Nations General Assembly, Resolution 57/199 of 9 January 2003)

[...]

Article 4.

1. *Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.*

2. *For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.*

[...]

National Preventive Mechanisms

Article 17.

Each State Party maintains, constitutes or creates, at most within one year from the entry into force of this Protocol or from its ratification or accession, one or more independent national prevention mechanisms of domestic torture. They can be qualified as national mechanisms for the purposes of this Protocol, also bodies set up at the local level, provided that they meet the requirements set out in this Protocol.

Article 18

1. *The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.*

2. *The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.*

3. *The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.*

4. *When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.*

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) *To regularly examine the treatment of the persons deprived*

The OPCAT, which came into force in June 2006, has created a 'double pillar' for the prevention of torture: the United Nations Subcommittee on Prevention of Torture (SPT) and at national level the so called National Preventive Mechanisms (NPMs) that each state has to establish in the form of dedicated independent bodies. Italy has ratified the OPCAT in 2012 and has indicated the National Guarantor as its NPM.

Both the Subcommittee and the National Mechanisms have the task of conducting regular visits to places of deprivation of liberty and of drafting reports and recommendations to improve the protection of people's rights and to prevent any form of ill-treatment or disrespectful conditions of people's dignity. They shall also stand advices on existing laws, on issues at stake at parliamentary level, and shall propose amendments or possible reforms.

of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

Art. 35, Law 26 July 1975, no. 354 et seq. modif.
The detainees and internees may make oral or written requests or complaints, even in closed envelopes:

1. *To the prison governor, to the Regional Penitentiary Administration, to the Head of the Department of the Penitentiary Administration and the Minister of Justice;*
2. *To the judicial and health authorities visiting the prison institute;*
3. *To the National Guarantor and the regional or local guarantors for the rights of prisoners;*
4. *To the President of the regional council;*
5. *To the Supervisory Judge;*
6. *To the Head of the State.*

Art. 7, Decree Law 23 December 2013 n. 146 (converted into law 21.02.2014 n.10):

1. *It is established, at the Ministry of Justice, the National Guarantor for the Rights of People Detained or Deprived of Liberty, hereinafter referred to as "National Guarantor";*
2. *The National Guarantor shall be composed of a Board, composed of the Chairman and two Board Members, who remain in office for five years, not renewable. They are chosen among people, not employees of public administrations, who assure independence and competence in the disciplines related to the protection of human rights, and are appointed, after resolution of the Council of Ministers, with Decree of the President of the Republic, after hearing the relevant parliament committee;*
3. *The members of the National Guarantor cannot cover institutional functions, even elective, or assignments in political parties. They are immediately replaced in case of resignation, death, incompatibility occurred, physical or psychological impediment, serious violation of inherent duties at the office, or in case of a criminal conviction for an intentional criminal offense. They do not have the right to 'bonuses or remuneration for the activity' provided, without prejudice to the right to reimbursement of costs.*
4. *Under the National Guarantor, which uses facilities and resources made available by the Minister of Justice, an office is established, which is composed of staff of the same Ministry, chosen according to the knowledge acquired in the areas of competence of the Guarantor. The structure and the composition of the office are determined by further decision by the Minister of Justice, to be adopted within three months from the date of entry into force of the present decree.*
5. *The National Guarantor, in addition to promoting and encouraging collaboration with territorial guarantors, or with other institutional bodies anyway named, who have competence on the same subjects:*
 - a) *Monitors the prisoners', internee's and remand prisoners' custody or people under other forms of deprivation of liberty, so that it is enforced in compliance with the rules and principles established by the Constitutional Charter, by international*

The Decree Law no. 146 (converted into law on February 21, 2014 No. 10) introduced the so called "Judicial remedy" with Article 35 of Law 354/1975. It also strengthened the first level of protection, the non-judicial right, which consists of the right to complaint: prisoners can send oral or written complaints, to Authorities, both internal and external to the Penitentiary Administration. Therefore, the function that the Guarantor is called to perform is that of reinforcing the judicial protection of the Supervisory Judge with an extra-judicial action conducted after its own initiative or the individual's requests.

It is established the National Guarantor of the Rights of People Detained or Deprived of liberty, a key element in the enhancement of supervisory and monitoring of the deprivation of liberty.

In the course of the 15th legislature, the institution of such a guaranteeing body was foreseen by a consolidated text approved by the Houses of Parliament on 4 April 2007. This measure was intended to establish it under the "Commission for the Promotion and Protection of Human Rights". However, its procedure at the Senate did not start because of the early ending of the legislative session., which in a way aborted the bill itself. On several occasions, non-governmental organizations had urged the introduction of this institution.

The guaranteeing institution has the task of supervising, visiting, consulting documentation, having confidential interviews with people deprived of liberty, in order to strengthen the protection of their rights and to provide overall guidance for the proper functioning of the institutions. It also has the task of coordinating the local guarantors.

- conventions on human rights ratified by Italy, by state laws and regulations;*
- b) Carries out unannounced visits to prisons, forensic hospitals and healthcare facilities accommodating people under security measures, therapeutic and reception communities or in any case public and private facilities where people are sentenced to alternative measures or to house arrest, the YOIs and the reception communities for minors subject to decisions by the judiciary authority, as well as, announced and unrestricted visits, not hindering any ongoing investigation, to law enforcement holding cells, and to any room used or otherwise functional to the detention requirements;*
 - c) Examines, even with the consent of the person concerned, the documentation in the file of a person detained or deprived of liberty and in any case all documents related to the conditions of detention or deprivation of freedom;*
 - d) Requires the responsible administrations of the structures indicated in letter b) the necessary information and documents; in case the administration does not provide a reply within thirty days, informs the competent Supervisory Judge and may require the release of an exhibition order. It verifies the compliance of the obligations related to the rights provided for in articles 20,21,22 and 23 of the Regulation referred to in the Decree of the President of the Republic n. 394 of 31 August 1999 and subsequent amendments, at the Centers for Identification and Expulsion provided for in Article 14 of the Consolidated Legislative Decree n. 286 of 25 July 1998 and subsequent modifications, by accessing without any restriction in any premise;*
 - e) Elaborates specific recommendations to the administrations concerned, if an action is violating the established set of rules and verifies the legitimacy of claims and complaints pursuant to Article 35 of the Penitentiary Act, Law n.354 of 26 July 1975. The Administration concerned, in case of refusal, shall notify its dismissal within thirty days;*
 - f) Annually reports on the activity to the Presidents of the Senate of the Republic and the Chamber of Deputies, as well as to the Minister of Interior and the Minister of Justice.*

Law 9 November 2012 n. 195 on the Optional Protocol ratification to the Convention against Torture and Other Cruel Penalties or Treaties, Inhuman or degrading (OPCAT)

The ratification makes operational all obligations arising from the Protocol. In particular article 3 states that "Each State Party shall establish, appoint and maintain at national level one or more bodies with powers of attorney for the prevention of torture and other cruel, inhuman or degrading treatment or punishment".

Note Verbale 1105, 25 April 2014 - Permanent Mission of Italy to the International Organizations in Geneva

[...] the new Guarantor for the rights of persons detained or deprived of liberty, established by law n. 10/21 February 2014, will coordinate the network of local Guarantors, formed by institutions already in place or to be set up at the regional Authorities, while the National Guarantor will submit recommendations to the central Government. The whole system will constitute the National Preventive Mechanism pursuant to the Optional Protocol of CAT [...]

Diplomatic communication through which the Permanent Mission of Italy to the International Organization of Geneva informs on the appointment of the new Guarantor for the rights of people detained or deprived of liberty as the coordinator of the network of local guarantors and the Italian NPM.

Ministry of Justice decree 11 March 2015 n. 36 Regulation on the structure and composition of the Guarantor [...]

Given Law 195 of 9 November 2012 on the "Ratification and Enforcement of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on 18 December 2002", and in particular Articles 17 et seq of the Protocol; [...]

In its preface, the decree refers to the OPCAT ratification and defines the structure and composition of the National Guarantor's Office, in the frame of the obligations and powers given by the Protocol itself to the National Preventive Mechanism.

Art. 2 The Guarantor

- 1) *The Guarantor in the respect of the competences in article 7 of the decree law 146/2013*
 - a) *determines the addresses and general criteria to which the Office's activities are reported and defines the objectives to be achieved, verifying its implementation;*
 - b) *adopts the self-regulatory code of the Office's activities the discipline of the operation, the guiding principles of its conduct, its components the Office and all those who, in any way, collaborate with the Guarantor, in accordance with the principles set out in Part IV, Articles 17 to 23, of the UN Protocol;*
 - c) *draws up the annual report on the activities to be carried out by the Presidents the Senate of the Republic and the Chamber of Deputies, the Minister of the Interior and to the Minister of Justice referred to in Article 7 (5) (g), of the decree-law. The report also contains an illustration of the objectives and the analysis of the results achieved and is published on the Ministry's website of justice.*

Art. 3 Head Office and Instrumental Goods

- 1) *The National Guarantor is sited in Rome at the Ministry of Justice available premises.*
- 2) *The Ministry assigns the Office the furniture and equipment, ITC included, and a website, which are necessary for its activities. It also guarantees their maintenance. By using its facilities and equipment, the Ministry of Justice provides the organisational and logistics support to the National Guarantor during the implementation of its nationwide activities, without using*

any additional funds from public finances.

Art. 4 Composition of the Office

- 1) *Twenty-five staff members are assigned to the Office from the Ministry of Justice, and allocated in accordance to the staff distribution scheme established by the National Guarantor in agreement with the Ministry of Justice, after having enquired the trade unions;*
- 2) *The National Guarantor looks after the management and evaluation of the staff members assigned to the Office. The staff members are at the sole dependence of the National Guarantor and cannot be employed in other tasks without considering the National Guarantor's agreement.*

The National Guarantor establishes the Office organisational chart and is responsible for its staff selection and for the functions given to its recruited staff.

Art. 5 Office organization and layout

- 1) *The Office organisation is based on the principles of transparency, efficacy and efficiency of the administrative action, as well as on the staff employment flexibility in operational activities;*
- 2) *The Guarantor, acting by his own discretion, shall determine the arrangements for the organization and internal organization of the Office, respecting the principles contained in the legislative decree.*

Law n.208 of 28 December 2015 (Provisions on the annual and multi-year public budget, 2016 Italian Financial Act) by article 1(317)(b), on the functioning of the National Guarantor has granted, starting from 2016, the grand total of 200,000 Euro (together with all wages paid to staff from each public administration they belong to). This amount includes reimbursements for the National Guarantor's Board.

Art. 6 Reimbursement of expenses

- 1) *The National Guarantor shall be reimbursed of the expenses incurred in the performance of its tasks conferred by article 7 of the decree-law, taking from the ordinary budget of the Ministry of Justice dedicated to the reimbursement of expenses during national missions;*
- 2) *The present decree, bearing the seal of the State, shall be inserted in the Official Journal Collection of the Italian Republic and shall take effect from the day following its publication. It is an obligation to observe it and to make it observed.*



Self-regulatory Code of the National Guarantor for the rights of persons detained or deprived of liberty

Consultant: prof. Alessandro Monti

Resolution dated 31 may 2016. Updated version (as per resolution of 6 December 2017)

Article 1

Definitions

1. Hereinafter in the text:
 - a) “Guarantor” refers to the collegial body of the National Guarantor (hereinafter NG), established according to article 7 of the Law Decree 14, of 23 December 2013, converted, with amendments, from Law 10, of 21 February 2014, and composed of the President and two Members;
 - b) “Office” refers to the Office of the NG;
 - c) “Staff member” refers to people forming the Office of the NG;
 - d) “UN Protocol” refers to the United Nations *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted in New York on 18 December 2002, and ratified by Law 195, of 9 November 2012;
 - e) “Constitutive Law” refers to article 7 of the Law Decree 14, of 23 December 2013, converted, with amendments, from Law 10, of 21 February 2014;
 - f) “Regulations” refer to the *Set of regulations on the composition and organisation of the Office of the National Guarantor for the Rights of Persons Detained or Deprived of Liberty*, adopted by Decree 36 of the Ministry of Justice, of 11 March 2015;
 - g) “Directive 2008/115/CE” refers to the Directive of the European Parliament and of the Council of 16 December 2008, n.115, *on common standards and procedures in Member States for returning illegally staying third-country nationals*;
 - h) “FRONTEX” refers to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Warsaw);
 - i) “FRA” refers to the European Union Agency for Fundamental Rights (Vienna);
 - j) “ECHR” is the *European Convention for the Protection of Human Rights and Fundamental Freedoms* adopted by the Council of Europe and signed in Rome on 4 November 1950;
 - k) “Subcommittee on Prevention, in art. 2 of the UN Protocol” refers to the *Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* established – in compliance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) adopted in New York adopted in New York on 18 December 2002, and ratified by Law 195, of 9 November 2012 - within the “Committee against Torture” established by art. 17 of the UN Convention of 10 December 1984;
 - l) “CIE” is the Centre for the Identification and Expulsion of irregular migrants;
 - m) “Code” refers to the current *Self-regulatory Code*;
 - n) “Ethic Code” is the Ethic Code of the NG.

Article 2

Operational aspects of the NG

1. The NG, a collegial body formed by the Chairman and two members, in compliance with the competences attributed by the constitutive law and its regulations, and in conformity to the principles in part IV, articles 17-23 of the UN Protocol:
 - a) Determines the guidelines and general criteria to which the Office activity shall comply and defines the objectives to be achieved, which outcomes are periodically assessed;
 - b) Adopts the Self-regulatory Code of the Office activities, which disciplines its operational aspects, gives the guiding principles of its direction, of its members and of all individuals who, for whatever reason, collaborate with the NG;
 - c) Regularly examines the conditions of the persons deprived of their liberties, who are restricted in the places, also temporary, described in art. 4 of the UN Protocol; has private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the NG believes may supply relevant information;
 - d) Actively tries to improve the treatment and conditions of the persons deprived of their liberties and prevents tortures and other inhuman or degrading punishments through the proposal, when necessary, of the empowerment of measures of protection - which are defined in reciprocal collaboration and exchange of information with the Subcommittee in article 2 of the UN Protocol - and of the national instruments of protection adopted by other countries which have ratified the UN Protocol;
 - e) Drafts the *Annual Report* on the implemented activities, which contains the description of the objectives and the analysis of its results. The report is transmitted to the President of the Republic, also by virtue his role as President of the Higher Council of Courts, to the President of the Constitutional Court, to the President of the Senate of the Republic, to the President of the Chamber of Deputies, to the President of the Cabinet of Ministers, to the Minister of Defence, to the Minister of Justice and to the Minister of Health. The Report is published on the Ministry of Justice and the NG's websites.

Article 3

Tasks of the NG

1. The NG carries out his mandate aiming at the protection of the rights of those deprived of their liberties or in prison without any conditions. It avails itself of some facilities and resources from the Ministry of Justice, and other public bodies, from the European Commission and from other international agencies, which are in lines with the goals of its constitutive law and the UN Protocol.
2. In full independence and without any condition, the NG:
 - a. Promotes and fosters collaborations with the local ombudsmen and with other local appointed public entities, which have the same competences as the NG. The local ombudsmen can be invited to collaborate with the steering committee for the activities of the local ombudsmen, where established;
 - b. Monitors the legality of the enforcement of sentences on inmates, interneers, persons held in pre-trial detention or under other orders privative of their personal liberty, and its compliance with the legislation and principles set in the Constitutional Charter and in the international conventions on the promotion and protection of the rights and dignity of persons, ratified by the Italian current laws and regulations;

- c. Visits, on a regular basis and with no need of permissions: prison establishments; facilities for the treatment and custody of prisoners with mental illness and other places, also temporary, employed for housing persons under detention orders for security reasons; rehabilitation and host communities; public or private houses accommodating persons under probation orders or house arrest; detention centres for juveniles and host communities for minors under judicial orders.
- d. Visits, on a regular basis and with no need of permissions: police forces detention cells, where admission to any place used for restrictive and security purposes shall take place without restriction;
- e. Has access, after obtaining permission (also verbal) from the applying person, to all documents in the personal file of the inmate or of the person deprived of his/her liberty, and of all documents relevant to the detention or deprivation of personal liberty conditions;
- f. Requests all information and documents necessary for carrying out its tasks to the administrative entities responsible for facilities falling under letters c) and d). In case the administration responsible is not replying within thirty days, as per visits to places falling under letter c), the NG will inform the judicial authority in charge and ask for an order to have the requested documentation; as per visits falling under letter d), the NG will also inform all authorities in charge and ask for their intervention so to have the requested documents supplied;
- g. Expresses justified remarks and specific recommendations to the addressed administrations when it verifies that provisions established in the Prison Act are not respected, and the rights of persons deprived of their liberties and the relevant obligations in charge of the responsible administration are violated. Or rather, it verifies the plausibility of requests and complaints forwarded in accordance with art. 35 of Law 354, of 25 July 1975, *Provisions on the prison act and the enforcement of measures depriving or limiting liberties*. In case of denial, the administration shall communicate its justified disagreement within thirty days. The deadline expired, all remarks, recommendations and replies from the addressed administration, if any received, are published on the NG's website without indicating the name of the persons involved, and when necessary, they are sent to the *Subcommittee on Prevention*, established in art.2 of the UN Protocol;
- h. Verifies the fulfilment of obligations relevant to articles 20, 21, 22 and 23 of the *Regulations on the enforcement of the Consolidated Act of Provisions concerning immigration and the condition of third country nationals*, in accordance to article 1, paragraph 6 of the legislative decree 286, of 25 July 1998, approved with Decree of the President of the Republic 394 of 31 August 1999, and following amendments and integrations, by visiting, without any preventive communication and restrictions, the CIEs, and similar facilities where identification photos or other forms of registration of third-country people, whose permanence or admission to the national territory is irregular, are undertaken;
- i. Verifies, in addition, the respect of the obligations concerning the protection of fundamental rights and dignity of the individual, by visiting, without any preventive communication and restrictions, any site, aircrafts and other modes of transport included, where persons deprived of their liberties are placed after the enforcement of a judicial or administrative order;
- j. Monitors the modalities enacted in the enforcement of forced returns and removals by air or ship of third-country nationals as described in Directive 2008/115/CE, article 8, paragraph 6, and according to relevant procedures provided by FRONTEX and FRA. Where violations of rights and concerning unfulfilled obligations in charge of the

responsible administrations are verified, it expresses remarks and recommendations so to improve the treatment and conditions of the involved persons and to prevent tortures and other inhuman or degrading punishments and treatments, through the proposal, when necessary, of the empowerment or the amendment of the current measures of protection. The addressed administration communicates its own observations with thirty days. This term expired, all remarks, recommendations and observations from the administration, if any received, are published on the NG's website, and when necessary, they are sent to the concerning departments of the *Subcommittee on Prevention*, established in art. 2 of the UN Protocol, of FRONTEX and of FRA.

3. If during a visit the situation considered is deemed to breach article 3 of the ECHR ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment), the NG informs in due time the authority in charge so to stop the occurring violation with no further delay, and at the same time gives communication to the judicial authority and to the relevant Minister for the appropriate interventions.

Article 4

Guiding principles

1. The NG, the Office, the staff members and all individuals who, for whatever reason, collaborate with the NG in institutional activities shall follow these guiding principles:
 - a. Fully independent behaviours respectful of the principles in the UN Protocol, in particular article 18, and provisions in the ethic code;
 - b. Protection of confidential information collected by the NG. In particular no personal data can be published without the agreement of the interested person;
 - c. Secrecy concerning preliminary investigations, information and documentations acknowledged during the institutional visits and the carrying out of the other NG tasks;
 - d. Secrecy concerning the outcomes of the visits relevant to article 3 of the Code, and up until they are published on the NG's website;
 - e. Duty to suddenly communicate the notifications of charges to persons deprived of their liberties or in prison, which it comes across while carrying out its institutional tasks, to the judicial authority in charge.
2. The NG strives to avoid that an authority or a civilian can order, apply, allow or tolerate a sanction against a person or an organisation for having given the NG any true or false information. The NG will strive so that this person or the organisation does not undergo any kind of prejudice.

Article 5

The Chairman

1. The Chairman represents the NG in any public occasions. He makes proposals to the NG, in team meetings, concerning the approval of the guidelines and general principles to which the Office activities shall comply, and defines the results to be achieved and their relevant priorities;
2. The Chairman calls for the NG meeting, also following the request of one member, which shall take place periodically, in the way at least once in a month, to decide on the institutional activity to be planned; he drafts the agenda to be sent to the NG members two days before the meeting at the latest, the report from the precedent meeting included. Decisions are taken with the approval of the Chairman and of at least one member. Modalities for the execution of the team meetings are decided from time to time;

3. With his own decision and the interested person's agreement, the Chairman can assign to the members of the NG individual operational and representative tasks to be carried out directly or with the help of the Office staff members. The relevant outcomes are reported to the President, assessed in team meetings and recalled in the Annual report on the activity of the NG, in accordance with art. 2 of the Code;
4. When necessary, the President can take on some urgent decisions, which are communicated in due time to the members for the team validation;
5. The Chairman drafts the ethic code adopted by the NG;
6. The Chairman can appoint study commissions and call for unpaid consultants with high expertise and professionalism to carry out his institutional tasks. Consultants are unpaid and are appointed after the Chairman's decision;
7. The Chairman authorises the implementation of the Office staff members' missions, with no costs, the costs for missions, for the purchase of assets and for service supplies according to what is established in article 9 of the Code;
8. The Chairman determines modalities, time and number of the Office staff members during the NG visits and in other institutional tasks, and yet the monitoring activities under letter j) of article 3 of the Code;
9. In case of prolonged or temporary absence, the Chairman can delegate his tasks to the NG members, also separately;
10. The Chairman appoints the person Responsible for Preventing Corruption and Promoting Transparency. Said person will be chosen among the Organisational Units of the Guarantor's Office.

Article 6

Office premises and assets

1. The NG is sited in Rome at the Ministry of Justice available premises, in via San Francesco di Sales, 34 - 00165;
2. The Ministry assigns the Office the furniture and equipments, ITC included, and a website, which are necessary for its activities. It also guarantees their maintenance. By using its facilities and equipments, the Ministry of Justice provides the organisational and logistics support to the NG during the implementation of its activities on the whole national territory.

Article 7

Staff member composition and management

1. Twenty-five staff members are assigned to the Office from the Ministry of Justice, and allocated in accordance to the staff distribution scheme established by the NG in agreement with the Ministry of Justice, after having enquired the trade unions;
2. When needed, the NG can apply for further staff members after having signed agreements with other public administrations involved in the fulfilment of its tasks as per article 3 of the Code;
3. Staff members to be assigned are selected by the NG who assesses their expertise and acquired positive experiences in the NG's field of intervention.
4. The NG looks after the management and evaluation of the staff members assigned to the Office. The staff members are at the sole dependence of the NG and cannot be employed in other tasks without considering the NG's agreement.

Article 8

Office organisation and lay-out

1. The Office organisation is based on the principles of transparency, efficacy and efficiency of the administrative action, as well as on the staff employment flexibility in operational activities;
2.
 - a. The Office is composed of the following units, in relation to the preliminary investigation necessities required in the implementation of the Guarantor's functions and tasks. It is open to modifications and adaptations according to the operational experiences:

Unit 1. General affairs: secretariat, correspondence registration and file assignment to the units. Filing. Timetable of expiration dates relevant to reports and feedbacks. Management of staff. Logistics. Accountancy: staff missions and check on heading 1753 *National Guarantor for the rights of persons deprived of their liberties or in prison* of the Ministry of Justice budget.

Unit 2. Information systems: information functions concerning data collection and organization from different Administrations. Data analysis and periodical or scheduled itemized reports. Computerized management of internal data flows and relevant storage. Website.

Unit 3. Deprivation of liberty in the criminal justice system: monitoring adults and juveniles custodial facilities and structures for the implementation of community orders. Security measures (in particular Residences for the enforcement of security measures). Relationships with the concerned prison/probation services. Access to documentation, requests of documents, contacts with the probation justice.

Unit 4. Deprivation of liberty by law enforcement officials: monitoring police forces premises. Relationships with the concerned bodies. Access to documentation, requests of documents.

Unit 5. Deprivation of liberty and migrants: monitoring facilities for the deprivation of liberties to migrants (Reception and repatriation Centres, Hotspots, Centres for unaccompanied children, Centres for asylum seekers). Monitoring forced returns. Co-ordination of supplementary units concerning the possible management of the Asylum, Migration and Integration Fund (AMIF).

Unit 6. National and international relations, field studies: relations with the local Guarantors, with the concerned International Organisations and other bodies working within the system of protection of persons deprived of their liberty. Body of rules update and ongoing legislative processes (National and European). Providing support to the Board in researches and field studies. Interpreting service.

Unit 7. Deprivation of liberty and health protection: Monitoring and visits conducted to people under *Involuntary Medical Treatment* out of the penal environment. Monitoring and visits conducted to Residences for disabled or elders undergoing a factual deprivation of liberty. Security measures (in particular Residences for the Enforcement of Security Measures). Relationships with relevant Administrations. Document examination and request.

b. Under the Board's direct supervision is the *Board Support Organisational Unit*, which has been established to carry out the following tasks: management of the Board's agendas. Organising the Board meeting minutes and resolutions. Public relations. Establishing the examination procedure on complaints ex Article 35 of the Penitentiary Act and administration of documents relevant to the deliberative Commission. Invitations to conventions, conferences and other public participations. Final co-ordination for the delivery of the annual Report.

c. The analysis of nursing homes for disabled people, vulnerable people and, in general, for people in hospital with legal capacity deprivation or with lessened legal capacity, and the analysis of compulsory treatments is temporarily carried out by the Board.

d. Units under paragraph a. are managed by an official who is in charge of directing all activities, and is implementing the Board's given directives.

3. Through team decisions, and after receiving approval from addressed staff, also considering its staff scheme, the Guarantor assigns the available staff to the organisational units and defines tasks and competences. If in need, it appoints one or more than one co-ordinator.
4. Modalities, time and number of the Office staff members during visits and monitoring activities are established with proper provisions by the Chairman;
5. Among the professionals responsible for the Organisational Units, the Chairman appoints the person Responsible for Preventing Corruption and Promoting Transparency and prepares a Three-yearly Plan for the Prevention of Corruption following the strategic objectives outlined by the Guarantor in the field of the prevention of corruption, and promotion of integrity and transparency. The Guarantor's board adopts the Three-yearly Plan for the Prevention of Corruption and provides for further fulfilments foreseen in Law n. 190/2012 provisions, after amendments in the Presidential Decree 97/2016 and in the resolutions of the Counter Corruption National Authority, thus including those relevant to training and refreshing activities addressed to working staff – and by paying particular attention to those who work in environments where there is a high risk of corruption.

Article 9

Financial, administrative and cost-related financial resources

1. The budgetary resources deemed necessary for the enforcement of the institutional tasks of the NG are administered following the criteria for a reasonable use of financial resources and overall transparency. Within the extent of such resources, the Chairman, with proper provisions, states and authorizes the costs for missions, purchase of assets and service supply;
2. The budgetary resources are assigned to the NG by the national budget act funds and go into a dedicated budget item, which is used in complete autonomy and independence by the Guarantor. The cash management is carried out by staff from the Ministry of Justice, who undertake accounting operations following the NG's directives;
3. The audit on the administrative and accounting consistency of all expenditures incurred by the NG is implemented by the Ministry of Economy and Finances, which is the public administration in charge of the legitimacy control activity of the public spending;
4. A budget summary relevant to the costs executed during the current solar year, ascribed to the budget item in paragraph 2 of this article, will be reported in a specific part of the *Annual Report*, to be presented to the Parliament.

Rome, 31 May 2016

Mauro Palma, Chairman - National Guarantor
Daniela De Robert, Board Member - National Guarantor
Emilia Rossi, Board Member - National Guarantor



Map of the visits

PIEDMONT

- 6** IDENTIFICATION & EXPULSION CENTRE, TURIN
CUNEO P.I.
VERBANIA P.I.
"LORUSSO E CUTUGNO" (TURIN) P.I.
IVREA P.I.
SECURITY CELLS POLICE STATION "SAN PAOLO", TURIN

- 8** **LIGURIA**
"CAMP ROJA" RECEPTION CAMP, VENTIMIGLIA
GENUA-MARASSI P.I.
GENUA-PONTEDECIMO P.I.
SAN REMO NC P.I.
"MADDALENA" CARABINIERI STATION, GENUA
SECURITY CELLS "FORTE SAN GIULIANO"
CARABINIERI PROVINCIAL STATION, GENUA
SECURITY CELLS POLICE STATION, VENTIMIGLIA
SECURITY CELLS, GENUA TRIBUNAL

- 1** **TUSCANY**
AREZZO P.I.

LAZIO

- 10** PROTECTED ACCOMMODATION FACILITY FOR IMPRISONED MOTHERS "LEDA COLOMBINI", ROME
PALIANO (FROSINONE) P.I.
"MAMMAGIALLA" (VITERBO) P.I. x 2
CIVITAVECCHIA P.I.
LATINA P.I.
"SORELLA LUNA" THERAPEUTIC COMMUNITY, SANTA MARIA DI GALERIA (ROME)
WAITING ROOMS, TRANSIT ZONE, ROME FIUMICINO AIRPORT
"RAFFAELE CINOTTI" (ROME-REBIBBIA) P.I.
"REGINA COELI" (ROME) P.I.

- 1** **SARDINIA**
ORISTANO-MASSAMA P.I.



RETURN FLIGHTS

-  RETURN ON CHARTERED FLIGHT TO TUNISIA, x 2
-  RETURN ON COMMERCIAL FLIGHT FIUMICINO-LIMA
-  FRONTEX RETURN FLIGHT TO NIGERIA, x 4

14 SICILY

- HOTSPOT, TRAPANI x 2 I&E CENTRE, CALTANISSETTA
HOTSPOT, LAMPEDUSA (AGRIGENTO) x 2
HOTSPOT, POZZALLO (RAGUSA)
HUB VILLA SIKANIA, SICULIANA (AGRIGENTO)
LANDING, LAMPEDUSA (AGRIGENTO)
SECURITY CELLS POLICE HEADQUARTERS, TRAPANI
SECURITY CELLS POLICE HEADQUARTERS, RAGUSA
SECURITY CELLS CARABINIERI STATION, POZZALLO (RAGUSA)
SECURITY CELLS CARABINIERI PROVINCE STATION, TRAPANI
CALTANISSETTA P.I.
RAGUSA P.I.



3 TRENTINO – ALTO ADIGE

SPINI DI GARDOLO* (TRENTO P.I., x 2
BOLZANO P.I.

1 FRIULI

TOLMEZZO P.I.
GORIZIA P.I., x 2

EMILIA-ROMAGNA

2 YOI, BOLOGNA
FIRST LINE RECEPTION CENTRE, BOLOGNA
DISABLED HOUSING UNIT, PARMA P.I.

VENETO

13 "DUE PALAZZI" (PADUA) P.I.
BELLUNO P.I.
VICENZA P.I.
"SANTA MARIA MAYRE", (VENETIA) P.I., x 2
YOI TREVISO
FIRST LINE RECEPTION CENTRE, TREVISO
"GIUSEPPE OLIVOTTI" YORC, RIESE PIO X (TREVISO)
SECURITY CELLS POLICE HEADQUARTERS, VICENZA
SECURITY CELLS CARABINIERI PROVINCIAL STATION, VICENZA
SECURITY CELLS CARABINIERI STATION, DUEVILLE (VICENZA)

APULIA

3 I&E CENTRE, BRINDISI
HOTSPOT, TARANTO
LECCE P.I.

8 CAMPANIA

BELLIZZI IRPINO (AVELLINO) P.I.
BENEVENTO P.I.
S.TA M. CAPUA VETERE (CASERTA) P.I.
MILITARY PRISON, S.TA M. CAPUA VETERE (CASERTA)
SALERNO P.I.
SECURITY CELLS POLICE HEADQUARTERS, AVELLINO
SECURITY CELLS CARABINIERI PROVINCIAL STATION, AVELLINO
HOUSING CENTRE FOR IMPRISONED MOTHERS, AVELLINO

CALABRIA

7 LANDING, REGGIO CALABRIA
"UGO CARIDDI", SIANO (CATANZARO) P.I.
"GIUSEPPE PANZERA" (REGGIO CALABRIA) P.I.
ARGHILLÀ (REGGIO CALABRIA) P.I.
YOI CATANZARO
POLICE HEADQUARTERS REGGIO CALABRIA
SECURITY CELLS POLICE STATION, CATANZARO LIDO



Summary on visits

(March 2016 – February 2017)

Structures for the deprivation of liberty in penal and security areas

Oristano-Massama P.I.

2 April 2016

Background

The visit has been planned after a received report on some critical aspects. The delegation has focused its attention on high security units.

Strengths

- A relatively new structure with equipment properly functioning;
- Recreational activities and projects (mosaics, archeology) started in prison, which it is possible to boost and develop.

Weaknesses

- Overcrowding, though not of much concern, which is increased by continuous arrivals and long sentences;
- The facility design does not allow an enforcement of sentences in line with the principles endorsed by the National Assembly on the execution of sentences (“Estates-General”);
- Gym court not used - since the prison’s opening, even if fully equipped;
- Prison regime performed too closed;

- Lack of well-framed relationships with the local bodies/community and with the voluntary sector;
- Individual sentence plans, started at the former prison institution, interrupted;
- Visit: for its booking, the prison management is not considering relatives travelling from distant regions;
- Prison governor: often absent, because employed in other services (prison governor of two institutions and deputy Director-General at the regional prison service). Hence, some issues in getting in contact with him.

14 recommendations have been proposed.

The report on the visit is published on the National Guarantor’s website with the reply from the Prison Administration.

“Santa Maria Maggiore” P.I. (Venetia)

5 April 2016

Background

The visit was carried out after some concerns emerged in the relationships with the local bodies/community, which have been since well-established.

Weaknesses

- Weakened relationships between the prison institution direction and the territory, the third sector, the local bodies, and the education centres;
- Jalousie windows that reduce fresh air and natural light. This

critical aspect has been many times reported;

- Shortage of space for community activities: common rooms are not equipped, the sporting activities are lacking.

6 recommendations have been proposed.

The report on the visit is published on the National Guarantor’s website with the reply from the Prison Administration.

Regional visit in Calabria

10 – 15 April 2016

Background

For the first regional visit, we have decided to step forth one of the region where there is not a regional Guarantor. Moreover, in Calabria, at the time of the visit, there was just a city Guarantor, the one in Reggio Calabria (lately appointed metropolitan area Guarantor) The visit dealt with some prison institutions, for adults and youth offenders, some law enforcement holding cells.

“Ugo Cariddi” P.I. Siano (Catanzaro)

11 April 2016

Strengths

- Prison activities are started in all units, though housing prisoners differently classified. This gives indications on the prison Direction’s and the staff’s commitment, despite space shortage, in planning an

enforcement of sentences oriented to our constitutional principles;

- the creation of work places for high security inmates, which are linked with external enterprises.

Weaknesses

- There is one unequipped cell for solitary confinement – a cell with a bed secured to the floor, with a dirty mattress, with no electric light and in bad hygienic conditions;
- due to the lack of agreements with the local health service, the multi-professional integrated Intensive Care Service (SAI) was not activated. This situation is conditioning the service to delays and inconveniences in the assistance of patients and a risk of deteriorated instruments;
- plans for an exercise yard limited to patients from the Intensive Care Service on the roof of the building and completely surrounded by grids.

17 recommendations have been proposed.

“Giuseppe Panzera” P.I. (Reggio Calabria)
13 April 2016

Strengths

The unit for women has been recently renovated.

Weaknesses

- Lack of common rooms in the women’s high security;
- Limited use of diagnostic instruments, though available, due to a lack of co-ordination.

16 recommendations have been proposed.

Arghillà P.I. (Reggio Calabria)

14 April 2016

Strengths

- electrical hot plates for heating food have been installed;
- during the visit, prison staff has been particularly involved in evaluating, together with the National Guarantor the overall weaknesses of the prison institution.

Weaknesses

- lack of common spaces to be used for large-scale events;
- presence of architectural barriers even if the prison institution has been recently built;
- lack of social reinsertion activities: the quality of life in detention, despite prison staff commitment, seems to be far from the implementation of a responsibility model which may guarantee a gradual positive back in track;
- lack of outside spaces which may be equipped for prison staff’s activities, and for rehabilitation;
- overall unfitness of prison staff accommodation premises, which are located in an unused detention building and having the same features of detention cells (CCTV in corridors included)

18 recommendations have been proposed.

YOI in Catanzaro

12 April 2016

Strengths

- After its recent renovation, its conditions are good; a theatre has been open;
- Staff participation in discussions on detention modules projects, based on minor’s age, to be implemented

Weaknesses

- Overnight cells remain closed after daily social and

recreational activities, without giving any attention to the guests features and their age, and to the need to enhance as much as possible any form of communication and responsibility.

- The football pitch is not used, after a critical event had occurred.

2 recommendations have been proposed.

Holding cells at Police stations, Reggio Calabria and Catanzaro Lido

12 April 2016

Strengths

In Catanzaro Lido police station, standards provided for holding cells have been respected.

Weaknesses

Lack of functioning holding cells in the whole province of Reggio Calabria. The risk is the “revolving doors” phenomenon in prison, with the arrival of offenders and their one-night permanence in the cells.

2 recommendations have been proposed.

The report on the regional visit in Calabria is published on the National Guarantor’s website with the reply from the Administration.

Protected Accommodation Facility for Imprisoned Mothers “Leda Colombini”, Rome

2 May 2016

Background

The visit was planned to assess the state of play of the refurbishment in view of the structure’s opening: it is the first Protected Accommodation Facility for Imprisoned Mothers in Rome, opened in collaboration with the Rome municipality and the prison administration.

Strengths

- The facility is suitable for housing six mothers and their children; there is plenty of common space and a wide garden;
- It has been considered as an important step beyond in the protection of children and motherhood.

Weaknesses

Delays in the structure's planned opening.

About the report on the visit, a written request has been submitted to the Department of Penitentiary Administration. It has been published on the National Guarantor's website.

Spini di Gardolo P.I. (Trento)

6 May 2016

A short visit to assess some reports arrived to the National Guarantor, in the occasion of the National Guarantor's hearing at the First Commission of the Council of Trento Province. The National Guarantor has sent the information received to the Public Prosecution Office. It has qualified the National Guarantor as the aggrieved party in the lawsuit.

Gorizia P.I.

7 May 2016

Background

The visit has started from pieces of information given by media on a gay housing unit for homosexuals coming from the prison institutions in the region.

Weaknesses

- A gay housing unit in the Triveneto region is

contrasting the idea of a sentence term that may offer different possibilities to different individuals, that is not against the principle of equality which characterises the deprivation of liberty in detention;

- Deteriorated conditions of the structure, with an overall sense of obsolescence and scarce hygiene;
- Inadequate conditions for impaired detainees;
- Sporadic activities are implemented in the prison institution due to the unsuitability of spaces.

9 recommendations have been proposed.

The report on the visit is published on the National Guarantor's website with the reply from the Prison Administration.

Lecce P.I.

17 May 2016

Background

The visit was to check into the adequacy of the new mental health and patient safety unit in the prison institution, before its opening. The unit has been organised with the city health service in Lecce and at the time of the visit was not operational yet.

Strengths:

- Structural and environmental conditions of the prison institution and of the quality of detention life;
- Local community being involved in life in prison.

Weaknesses

Lack of a MoU between the prison Administration and the health care service so to appoint an adequate number

of specialised staff units and to precisely identify the operational procedures relevant to the co-ordination of all interventions in health care and security.

8 recommendations have been proposed.

The report on the visit is published on the National Guarantor's website with the reply from the Prison Administration.

Bollate P.I. (Milan)

23 May 2016

Background

The goal of the visit was an interview with a targeted inmate and the analysis of medical documentation relevant to a complaint on mistreatments lodged by an MP and relevant to the detention of said inmate in another prison. The results of the visit have been requested in the form of report by the Public Prosecution Office.

Paliano P.I. (Frosinone)

26 May 2016

Background

The visit has been made to the whole prison institution, in particular to the variety of working, cultural, recreational and sporting activities implemented in this prison. .

Strengths

A very fruitful relationship with the local bodies, which helps in building up many working and rehabilitation activities.

Weaknesses

- Difficulties in accessing work for inmates under a protection programme

because of their classification as cooperating witnesses;

- More clarity in roles of different institutional professionals who work at the decisions on the cooperating witnesses' release license or alternative sanctions.

The report on the visit is published on the National Guarantor's website with the reply from the Prison Administration.

“Mammaglia” P.I. (Viterbo)

9-10 June 2016

Background

The 41bis maximum security detention unit has been visited.

The visits to the 41bis maximum security units will be reported in a specific survey, which will be edited and submitted to the prison Administration once the visits to all prison institutions – where there are such units – are completed.

Regional Visit in Triveneto

28 June - 5 July 2016

Background

The visit to the three regions in Triveneto has interested several facilities and different Administrations. For the first time, the National Guarantor has visited the “Carabinieri” holding cells and a community housing minors in preventative detention. This visit has also started the quick assessment system on the measures adopted after the

recommendations proposed in the past by the National Guarantor on a given prison institution, with a planned follow-up visit to the Gorizia P.I..

Strengths

- Setting up a preliminary meeting, with the prison Director-General of the Triveneto region, with all prison governors and chief prison police officers from the local prison institutions;
- Particular attention was paid to prison work by the regional prison Directorate-General;
- Meeting with the local associations after the first half of the visit;
- Skype calls have been experimented in some prison institutions to boost family contacts.

Weaknesses

- Some internees are present in these regions' prison institutions, who are under a detention security measure to be enforced by a penal labour colony;
- The internal regulation is lacking in all prison institutions in the three regions. It has been substituted by a bulk of rulings, orders, subjective responding behaviours from prison governors, which are not consistent with the nationwide definition of what is life in detention, shared by in all prisons;
- Some issues are surfacing relevant to the inmates' transfers, especially in cases where the central administration is involved: too much time to reply to requests; passive transfers more frequent that is a transfer which is passively accepted by the inmate with a certain risk to interrupt rehabilitation pathways already in place;
- overlap of more than one order for the same inmate, which may sum up and

create some unbearable situations.

Belluno P.I.

28 - 29 June 2016

Strengths

Positive relationships with the local bodies, in particular for creating new jobs in the prison institution.

Weaknesses

- Transgender inmates are sealed off from the rest of the prison, and the risk is to transform the unit in a sort of “ghetto”;
- Lack of therapeutic tailored programmes for inmates housed in the mental health and patient safety unit;
- Environmental unsuitability of the mental health and patient safety unit;
- Inadequacy of the exercise yard in the new arrivals' unit

10 recommendations have been proposed.

Vicenza P.I.

30 June 2016

Strengths

Family days have been arranged to foster ties between parents in prison and children.

Weaknesses:

- The delegation has come across a solitary confinement cell, which was well below any acceptable operational standard: it was not indicated by the prison warden;
- Architectural unfitness of the new cell block, which was ready to be open at the time of the visit, compared to the common space pattern outlined by the National Assembly on the execution of

sentences (“Estates-General”).

15 recommendations have been proposed.

Spini di Gardolo P.I. (Trento)

1 - 2 July 2016

Strengths

- A positive example of prison architecture for its large size and how spaces for inmates and staff are arranged;
- Efficient integration of the right to health care in prison, positively framed in the general service addressed to the community.

Weaknesses

- The overall management of the enforcement of criminal sentences is shaped on a idea of total institution, with fixed rules and routine rehabilitation plans;
- Limited contacts with the local bodies, very rich in experiences;
- A special cell has been visited, which use was not very clear;
- Very poor general conditions of the prison staff accommodation block.

6 recommendations have been proposed.

Tolmezzo P.I.

4 - 5 July 2016

Strengths

- Implementation of a variety of rehabilitation and social reinsertion pathways in different prison regimes;
- Many internal and external spaces have been dedicated to common uses;
- Activity planning and spaces rearrangement are in progress;
- Introduction of some forms of open prison regimes

addressing high security inmates (AS3), with a residual prison sentence of less than one year, so to foster the inmate’s reintegration programme.

Weaknesses

- Disciplinary sanctions at too short distance, which translate into a risk of prolonged solitary confinement periods;
- Overlap of orders of different nature³ (special surveillance, daily isolation and so on), which may seriously interfere with the inmate’s daily life in prison.

4 recommendations have been proposed.

The visits to the 41bis maximum security units will be reported in a specific survey, which will be edited and submitted to the prison Administration once the visits to all prison institutions – where there are such units – are completed.

Bolzano P.I.

5 July 2016

Strengths

Prison staff greatly committed both in offering treatment to inmates, in maintaining an open regime and in levelling out detention life to human rights standards, despite the severely deteriorated condition of the whole structure.

Weaknesses

- Deteriorated conditions of the prison institution, which is since necessitating refurbishment;

- Shortage in cultural mediators, despite the great numbers of foreign nationals in this structure.

2 recommendations have been proposed.

Gorizia P.I. (follow-up visit)

5 July 2016

Strengths

- Overall amelioration of prison environment with refurbished and cleaned common spaces;
- Contacts between the prisoners and the prison service have been re-established (with a new warden appointed);
- New relationships with the local bodies have been established.

Weaknesses

The gay housing unit has remained permanent and still unaccepted by the National Guarantor. It is still featured with segregation and total lack of rehabilitation programmes.

1 recommendation has been proposed.

YOI and First Line Reception Centre, Treviso

30 June 2016

Strengths

Variety of rehabilitation programmes in the prison institution, and large cooperation with the local community and bodies.

Weaknesses

- General unfitness of the structure (from multiple detention cells to showers just above the squat cloakrooms);
- Too much proximity between the adult prison institution and the YOI: though contacts are

- avoided, the main prison entrance and the football pitch are in common;
- Difficulties in implementing separated activities for minors and adults, for shortage of spaces;
 - Substantial structural community between the YOI and the First Line Reception Centre.

1 recommendation has been proposed.

Youth Rehabilitation Centre “Giuseppe Olivotti”, Riese Pio X (Treviso)

30 June 2016

Strengths

- Well established relationships with the local bodies;
- Clarity in defining and sharing rules with minors there housed.

Weaknesses

Difficulties in furthering *diversion* programmes addressing juveniles.

Holding cells at the police headquarters in Vicenza

3 July 2016

Strengths

Holding cells following set standards and in good hygienic conditions.

Weaknesses

Insufficient information on rights delivered to arrested (letter of rights).

4 recommendations have been proposed.

Holding Cells at the Carabinieri Province Station in Vicenza

3 July 2016

Strengths

- Accuracy and completeness of records and documentation;
- Information on rights delivered to the arrested or stopped subjects,

Weaknesses

The holding cell alarm system is inaccessible to detainees in case of any emergency.

3 recommendations have been proposed.

The report on the Triveneto regional visit is published on the National Guarantor's website with the reply from the Prison Administration.

“Mammagialla” P.I., Viterbo

7 July 2016

Background

The Prefect of Viterbo, Ms Rita Piermatti, is accompanied for a visit to the local prison institution.

‘Regina Coeli’ P.I. (Rome)

28 July 2016

Background

The visit has focused on the material conditions of the VIII section, a three-storey cellblock. This section is so called *protected*.

Weaknesses

- The situation is of a deteriorated environment with broken windows, peeled walls, crumbling cloakrooms (also used as kitchens) and lack of the heating system in the whole section;
- Overcrowding in detention cells;
- Metallic slabs and thick nets at the windows of some cells on the highest floors, with reduced air and light.

A letter has been sent to the local, regional and central prison administrations where the prison institution's emergency situation was described and immediate interventions urged.

Civitavecchia P.I.

1 August 2016

Background

The National Guarantor, together with the Director-General of the local health service, has visited the mental health and patient safety unit at the Civitavecchia prison institution. They have discussed the MoU, which has been approved and was the starting point for the opening of the unit.

Arezzo P.I.

11 August 2016

Background

The visit has been conducted with the town Prefect Alessandra Guidi. During the visit, the reasons for the persistent unavailability of part of the prison institution – due to refurbishment interventions not yet finished – have been clarified.

Weaknesses

- Unbearable undetermined situation, which is since persistent;

- Permanent “waiting attitude” adopted;
- Unused structures and materials that risk deterioration.

Cuneo P.I.

13 September 2016

Background

The visit to the Cuneo P.I. has been conducted after some reports arrived to the National Guarantor. A protest which involved the whole prison population has aroused to express the inmates’ uneasiness in this prison.

Strengths

Some outdated rules have been repealed, though very recently. They were not in line with the standard to be applied to the execution of sentences stated by the National Assembly on the execution of sentences (“Estates-General”).

Weaknesses

- Re-use of a unit, which was previously for the 41bis prisoners and closed for inadequacy of the structure: at the moment of the visit, the high security inmates were detained in this unit;
- The unit is still inadequate to host inmates, if not for temporary and short detention periods.

The highlighted weaknesses have been included in a written note addressed to the Prison Administration. It has been uploaded on the National Guarantor’s website.

Verbania P.I.

20 September 2016

Background

During the training event addressed to the National Guarantor’s staff in Verbania, a delegation from the National Guarantor has visited the local prison institution. The visit has focused on the “protected” gay-housing unit.

Strengths

Prison staff knew about the National Guarantor.

Weaknesses

The prison environment shows as too much restricted, not only in its spaces. It sometimes depicts some claustrophilic elements in its detention enforcement.

Voghera P.I.

16 October 2016

Background

The visit was conducted to assess the detention and health care conditions of an inmate who is detained in uninterrupted solitary confinement since a long time.

When arrived at the P.I., the said prisoner was not there anymore, because he was transferred to Turin P.I. the day before. During the visit, the National Guarantor’s delegation knew from the prison doctor that any digital track relevant to the inmate’s medical file was deleted the day before, in the afternoon.

Weaknesses

- Lack of information on the National Guarantor from prison staff on duty at the Voghera prison institution;

- Scarce co-operation between prison police officers and medical staff;
- Defensive attitude of the prison’s management when discussing with the National Guarantor on the evident critical event occurred;
- Not easy access to information during the visit.

3 recommendations have been proposed.

The report on the visit is published on the National Guarantor’s website with the reply from the Prison Administration.

“Lorusso-Cutugno” P.I., Torino

26 October 2016

Background

The visit came soon after the visit to Voghera P.I., to meet the inmate who was there transferred.

Strengths

- Full awareness of the National Guarantor’s tasks and openness to discussion of the prison’s issues;
- Availability of the prison’s management to promptly give the information requested.

Weaknesses

Poor hygiene conditions of the “Psychiatric Observation Unit” and shortage of the inmate’s personal kit, due to the implementation of the so-called “removal” practice, that is to deprive the inmates of all tools that can be used for self-harming.

4 recommendations have been proposed.

The report on the visit is published on the National

[Guarantor's website with the reply from the Prison Administration.](#)

Regional Visit in Liguria

16 - 21 October 2016

Background

The visit to this region has been conducted because it lacks the institutional regional representative of the guarantor for the protection of the rights of persons deprived of their liberty. The prison population, on a criminal and administrative level, feels the effect of the prison institution's closeness to the border: it has a high rate of foreign nationals.

Strengths

- Sensitive, open and co-operative attitude of met institutions;
- Presence of the external community in prison, which is characterised with high professionalism and co-operation;
- The third sector is present in prisons and is networking;
- Since 2013, the region Liguria has implemented subsidiary agreements with the third sector, aiming at its enhancement and at a co-ordinated action, based on a shared evaluation of real needs and the use of resources.

Weaknesses

- Regional Guarantor to the appointed and legitimated;
- President of the regional Supervisory Judicial Authority;
- At the time of the visit, the Residence for the execution of Security Measures;
- Shortage in linguistic and cultural mediators in the region's prisons.

18 recommendations have been proposed.

Marassi P.I., Genua

17 - 18 October 2016

Strengths

- Unit for the protection of health;
- A structured relationship with the local bodies, both relevant to job placement and cultural activities;
- The *Arca Theatre*, launched in May 2016 inside the prison institution and open to the community.

Weaknesses

- Inadequacy of material conditions of some structures in the P.I.;
- Deteriorated conditions of the old prison police barracks, still in use;
- Lack of cultural mediators, notwithstanding the high rate of foreign nationals.

12 recommendations have been proposed.

Pontedecimo P.I., Genua

18 - 19 October 2016

Strengths

Added value given to the wide green open area, which is surrounding the prison institution.

Weaknesses

- A closed setting, not much used to contacts with the outside world;
- Discriminating attitude towards female inmates, expressed in less space given to the women's unit, fewer equipment and activities addressed to them, if compared to the ones targeting male inmates,

- Very few rehabilitation activities;
- Difficulties in reaching the P.I. by public transport;
- Unsufficient use of the prison's green open areas.

22 recommendations have been proposed.

San Remo N.C. P.I.

20 October 2016

Weaknesses

- With rare exceptions, scant material conditions in the prison units;
- Lack in rehabilitation activities -maybe due to its former use as prison for people convicted to short sentences – manifested in its closed detention regime;
- Difficulties in relationships between the prison management and the medical staff, and volunteers;
- The P.I. is located far from the city centre, and not easy to be reached by public transport: the visible outcomes in the low number of family visits;
- Difficulties in societal integration reported by prison police officers (mainly with southern origins) due to the decontextualised location of the prison institution.

11 recommendations have been proposed.

Carabinieri Station "Maddalena", Genua

18 October 2016

Strengths

Knowledge about the National Guarantor's institution and complete co-operation.

Weaknesses

- Lack of suitable holding cells (113 holding cells were usable, out of 140);
- A *waiting room* where people stopped can be checked and also accommodated and restrained for not so short a period, sometimes.

Carabinieri Province Station “Forte San Giuliano”, Genua

19 October 2016

Strengths

- Knowledge about the National Guarantor’s institution and complete co-operation.

Weaknesses

Lack of air and natural light through the grid above the holding cell entry door.

1 recommendation has been proposed.

Holding Cells at the Police Station in Ventimiglia

20 October 2016

Strengths

Knowledge about the National Guarantor’s institution and complete co-operation.

Weaknesses

Possible use of the unsuitable holding cells, even if for short periods.

2 recommendations have been proposed.

Holding Cells at the Genua Tribunal

19 October 2016

Weaknesses

- Inadequacy of holding cells, which are located at LG floor,

without natural light and windows;

- Reported by police officers, there is a risk that people asked for questioning can be held in the Tribunal holding cells for many hours, without any beverages or foods being given to them.

2 recommendations have been proposed.

The report on the Liguria regional visit is published on the National Guarantor’s website with the reply from the Administration.

Parma P.I.

29 October 2016

A delegation from the National Guarantor has visited the unit for disabled at the Parma P.I.: the occasion was given by a theatre event organised by the prison institution to which the National Guarantor was invited.

Strengths

More open detention conditions have been implemented in a P.I. which fame was of closed regime.

Weaknesses

- Unavailability of an equipped area with a pool, to be used for physical recovery of disabled inmates. From staff, the delegation knew that it has never been opened since its realisation;
- A closed regime in the visited unit, though used for disabled inmates;
- Architectural barriers present in the P.I. which do not allow the full use of all prison premises by the disabled inmates;
- Deteriorated and poky conditions in the inner yard.

Latina P.I.

9 November 2016

Background

A delegation from the National Guarantor has visited the women’s high security unit.

On the issues highlighted during the visit, the National Guarantor has started a debate with the prison Administration, the Supervisory Judicial Authority and the associations volunteering in prison.

YOI and First Line Reception Centre “Pratello”, Bologna

22 November 2016

Background

The visit was directly assessing the overcrowding conditions in the structures, after the many complaints arrived at the National Guarantor’s secretariat.

Strengths

Many different rehabilitation activities are implemented in the YOI, supported by a full cooperation with the local bodies, the private sector and the associations.

Weaknesses

- Inadequate and few spaces available, though necessary for the implementation of treatment programmes;
- Impossible to split in different detention units the young adults and the juveniles: they both share detention cells and common spaces;
- The first line reception centre and the Yoi for detained male juveniles are in the same building;
- Lack of cooperation with the local administrative bodies to guarantee the renewal of the residence permit for young

foreign nationals, with the risk that juveniles arrive at the YOI as legal residents and leave the structure as illegal.

5 recommendations have been proposed.

The report on the visit is published on the National Guarantor's website.

Ivrea P.I.

22 November 2016

Background

The visit was conducted to verify the reliability of the reported information on some repressive behaviours leading to an improper use of force. The delegation could read documents on the events occurred, talk to staff and inmates, visit and evaluate the material conditions of the prison.

Weaknesses:

- An isolation cell which contains no furnishing and no services (so called "cella liscia") has been located with hygienic and structural conditions at very low standards of acceptability. Differently from what was reported, it has been used for restraining inmates some very short time before the National Guarantor's visit to the prison;
- A second cell, with the same characteristics and purposes has been located in the prison;
- There were no registers available in the prison where to report critical events and disciplinary sanctions. They have been substituted by a file on daily events in a single database

5 recommendations have been proposed.

A communication has been sent to the Public Prosecution Office.

The report on the visit is published on the National Guarantor's website with the reply from the Prison Administration.

"Santa Maria Maggiore" P.I. (Venetia)

28 November 2016

Background

Follow up visit after the report and recommendations proposed. The aim has been to verify the communication process with the inmate's family concerning transfers to hospitals for admission or other critical events occurred to the person detained.

Weaknesses

- Jalousie grates in cells, which hinder the passage of natural light and air;
- Issues detected relevant to the prevention of suicide;
- The manager of the health care service knew little on the National Guarantor.

4 recommendations have been proposed.

The report is published on the National Guarantor's website.

Regional Visit in Campania

29 November- 6 December 2016

Background

Given the complex detention conditions, the visit was conducted in some prisons in the region. A second regional visit will be dealing with the remaining facilities.

Three big establishments have been visited (Bellizzi Irpino, Benevento, Santa Maria Capua

Vetere), the military prison of Santa Maria Capua Vetere and the Caritas family-centered group home for detained mothers in Avellino. Moreover, the delegation has carried out an *ad hoc* visit to the Fuorni (Salerno) prison institution.

Strengths

- Staff knew about the National Guarantor and its activities and tasks;
- Standards applied in the penal execution in the military prison.

Weaknesses

- Difficulties in reaching some prison institutions by public transports and their overall isolation;
- Since long time, Santa Maria Capua Vetere prison is not connected to the water supply network;
- Difficulties in relationships between the prison institutions and the local health care services;
- Difficulties in managing different prison regimes and relevant categories inside the same prison.

The overall evaluation of the detected conditions will be included in a report on the region, once the second part of the visit is completed.

"Raffaele Cinotti" P.I. (Rome Rebibbia)

22 December 2016

Background

This prison institution has been the object of a visit by the National Guarantor's delegation due to the many reports arrived on critical conditions of the G9 unit.

Strengths

Availability of the acting warden to solve the P.I.'s problems.

Weaknesses

- Critical structural and hygienic situation in the G9 unit, so severe that it was asked its shutdown: the whole unit is in bad conditions, with mouldy walls outside and inside the cells and the heating not working;
- Some point at issue expressed by the prison police officers relevant to environmental and working conditions.

6 recommendations have been proposed.

The report on the visit is published on the National Guarantor's website.

Therapeutic Community "Sorella Luna", Santa Maria di Galeria, Rome

9 February 2017

Background

The National Guarantor has conducted a visit to the community, hosting persons deprived of their liberty for being sanctioned to an alternative measure to imprisonment. The structure is also housing minors under *diversion* programmes.

Strengths

Adequateness of the location, which is neat and welcoming.

Weaknesses

- Minors under *diversion* programmes are deprived of their liberty;
- Unclear skills and tasks of professionals working at rehabilitation therapies, sometimes not even having the adequate education;
- Activities in the community are performed within a strong religious framework, which is

determining the minors' experience of their daily life in the community in positive terms;

- Lack in the transparency of the rehabilitation programmes, which are communicated to detainees orally without appropriate written agreements.

About the visit, some documentation has been produced to start a relationship with the structure's responsible and with the Supervisory Judicial Authority, which is in charge of controlling activities.

2. Structures depriving or restricting liberties and forced returns

Hotspot, Trapani - Milo

7 March 2016

Background

The visit has trailed a first contact with the institutions operating in the migration sector. It has been conducted with the help and support of the State Police and the Department for civil liberties and immigration of the Home Office. On the day of the visit, no migrants were present in the facility.

Strengths

Refurbishing was in progress to ameliorate the facility.

Weaknesses

- Unavailability of a record book for "critical events", which are reported to the local Police station the day after they have occurred;

- A very closed structure, due to the fact that it was previously used as Immigration and Expulsion Centre, therefore a facility for detention.

Landing Operations and Pre-identification Procedures in Harbour, Reggio Calabria

14 April 2016

Background

During the regional visit to Calabria, the National Guarantor has followed the landing operations of some migrants arrived at the Reggio Calabria harbour, after the intervention of the Coast Guard at sea. At the harbour, 570 migrants arrived from Eritrea, Somalia, Sudan and Morocco, 85 were unaccompanied minors.

Strengths

- Tensile structures were elevated at the harbour;
- Cultural mediators were present at the harbour to inform on access to international protection.

Weaknesses

- Violation of privacy of people suffering from scabies, who were plainly identified by the name of the infection written on a piece of paper then pinned on the shirt;
- Lack of organisation during the pre-identification procedures operated at the harbour, long in duration and causing distress in people arriving after a difficult crossing.

The report on the regional visit in Calabria is published on the National Guarantor's website with the reply from the Administration.

Forced Return Flight, Rome – Lampedusa – Palermo – Hammamet

19 May 2016

Background

Having been appointed as independent forced-return Monitoring Authority, the National Guarantor has monitored the return operations of 29 Tunisians from the hotspot in Lampedusa. The chartered flight was planned by the Central Direction for immigration and border Police at the Home Office.

Strengths

Staff operating on the flight were trained at escorting returns and were well experienced in managing the situation.

Weaknesses

- Security checks were carried out without guaranteeing the respect of privacy;
- Lack of interpreters on board: the right to understand what's going on and what is the procedure employed shall be of all individuals, notwithstanding which measure has been decided on the subject;
- The handover of the returnees to the Tunisian authorities has occurred on board;
- Restraint strings were adopted and maintained during the whole flight (Velcro straps to fasten wrists). Those devices were used in a preventive manner, and not in reaction to an eventual critical event.

6 recommendations have been proposed.

The report on the visit is published on the National Guarantor's website with the reply from the Prison Administration.

Monitoring the Pre-boarding Phase of a Forced Return on a Commercial Flight, Rome FCO Airport

26 May 2016

Background

First monitoring of a forced return on a commercial flight. The flight was to Lima with a stopover in Madrid.

Strengths

The returnee has travelled all the time with no restraint device applied.

Weaknesses

- Delay in the return decision communication to the person, who did not quite understand what he was signing and the consequences of the signature;
- Duration of the flight too long: for the returnee the length of the flight has been of almost 27 hours, being started in Brindisi at 21.30 on the 25th and ended in Lima on the 26th at 20 past midnight (18.20 local time).

6 recommendations have been proposed.

The report on the visit is published on the National Guarantor's website with the reply from the Administration.

Law Enforcement Facilities at the Rome FCO Airport

26 May 2016

Background

At the Fiumicino airport, law enforcement authorities are

employing more than 7,000 officers, divided in Border Police, investigation Police, general affairs and security Police.

In the airport, there are different rooms for the control of detained citizens (in case of persons rejected at the border for lacking requirements of admission in the country), who are waiting to be returned, and of others detained for administrative or judicial reasons.

Strengths

The presence of cultural mediators.

Weaknesses

Need of suitable equipments to allow detained or rejected people to have a rest if the departure is delayed of some days.

Identification and Expulsion Centre, Brindisi

20 June 2016

Background

This visit has been the first conducted in an administrative detention centre. On the day of the visit, there were 48 foreign nationals coming from 17 countries.

Strengths

Cooperation with the Prefect in Brindisi and State Police.

Weaknesses

- Crumbling structures, extremely closed, with metallic bed frames, even above the centre yards;
- Lack of information for people there detained: there isn't a Centre regulation and written information on the rights of detained people;
- No recreational and social activities realized, no prayer rooms, though foreseen in the

general Identification and Expulsion Centre standard regulation.

4 recommendations have been proposed.

The report on the visit is published on the National Guarantor's website.

Hotspot, Taranto

21 June 2016

Background

The *hotspot* in Taranto is operational since 17 March 2016. Since then and up to the National Guarantor's visit, there have been 22 arrivals for a total of about 4,300 persons, of which 700 were unaccompanied minors.

Strengths

- Freedom of movement of the housed migrants out of the facility after photo-signalling;
- All photo-signalled migrants were provided with a pass when leaving the facility and re-entering the *hotspot*;
- The city hall has given availability of a shuttle bus for the *hotspot* migrants to be use for their transfers to downtown and return.

Weaknesses

- Migrants were housed in tents;
- There were some unaccompanied minors housed in the hotspot, because of shortage in places in the first line reception centres;
- Iron powder falling from the near ILVA plant on the structure, with real health risks for detainees and staff working there;

- Duration of permanence in the hotspot over the established 72 hours.

3 recommendations have been proposed.

The report on the visit is published on the National Guarantor's website.

Joint Return Operation monitored by Frontex and organised by Italy, Rome – Lagos – Rome

14 July 2016

Background

First monitoring of a flight coordinated by Frontex and organised by Italy. 22 Nigerians were on board, coming from Switzerland, Belgium and Italy.

Strengths

- The National Guarantor's monitors participated as monitors in the preparatory meetings of the Border Police;
- Proportionated use of force in managing a migrant resisting removal.

Weaknesses

- Differences in operating the flight as migrants were coming from different host Member States, as foreseen in the Frontex code of conduct: this lack of homogeneity can cause tensions among migrants concerning the type of means of restraint used, if any, on some occasions;
- The handover of the migrants to the Nigerian authorities happened on board;
- Lack of interpreters and cultural mediators during the whole return operation.

A Report on the flight has been elaborated and a reserved

communication with the responsible authorities started.

Italian Forced Return Chartered flight Rome – Hammamet – Rome

21 July 2016

Background

The return operation has been carried out with a chartered flight organised by Italy, which has involved 21 Tunisians coming from the Identification and Expulsion Centres in Brindisi and Caltanissetta and the *hotspot* in Trapani.

Strengths

Experienced escort staff, specifically trained.

Weaknesses

- The handover of the migrants to the Nigerian authorities happened on board;
- Lack of interpreters and cultural mediators during the whole return operation.

4 recommendations have been proposed.

The report on the visit is published on the National Guarantor's website.

Hotspot, Lampedusa (Agrigento)

3 October 2016

Background

The National Guarantor has participated in the visit organised for a group of journalists and representatives of the National Press and the Usigrai (the journalists' trade union) Association in celebration of the 2013 shipwreck.

Strengths

- The admittance of journalists, even if with lots of restrictions,

represents a first step towards transparency and media access to *hotspots*.

Weaknesses

- Deteriorated overnight facilities and of the migrants' cloakrooms.
- Some unaccompanied girls were hosted in the *hotspot* for more than a month;
- Lack of common rooms for migrants, included a place where to have meals.

4 recommendations have been proposed.

The report on the visit is published on the National Guarantor's website.

Hub – Reception Centre for Migrants “Campo Roja”, Ventimiglia

20 October 2016

Background

The short visit to the Reception Centre for Migrants in Ventimiglia, managed by the Italian Red Cross and located at the railway yard of the national train company, was conducted during the National Guarantor's regional visit in Liguria.

Strengths

- Staff committed and dedicated to tasks undertaken in extreme conditions.

Weaknesses

- Structure working in emergency. Inadequate to its function and poor in material conditions.
- Overcrowding at 171%, with 600 migrants housed in a facility for 360;
- After periodical evacuation, migrants are transferred to a

very distant facility (usually in Apulia);

- Insufficient information and legal advice activities.

The National Guarantor's evaluations have been sent by mail to the Ministry of Interior, and published on the website.

Joint Return Operation monitored by Frontex and organised by Italy, Rome – Lagos – Rome

3 November 2016

Background

The flight to Lagos was coordinated by the European Agency Frontex and organised by Italy. Belgium and Poland also participated in the flight, for a total number of 33 Nigerian returnees.

Strengths

The National Guarantor's monitors participated as monitors in the preparatory meetings of the Border Police.

Weaknesses

- Inaccuracy in decision relevant to the so called “fit-to-travel”;
- The handover of the migrants to the Nigerian authorities happened on board;
- Lack of interpreters and cultural mediators during the whole return operation.

A Report on the flight has been elaborated and a reserved communication with the responsible authorities started.

Thematic Visit to *hotspots* and Identification and Expulsion Centre, Sicily and Piedmont

13 - 19 January 2017

Background

The visit has allowed to complete the monitoring of *hotspots* Lampedusa, Trapani and Pozzallo and to the Identification and Expulsion Centre in Caltanissetta and Turin. The delegation has also visited the hub in *Villa Sikania - Siculiana*, in the province of Agrigento.

Strengths

- Great organizational effort in the management of flows carried out by institutional and social actors, in the rescue, landing and first reception operations;
- Great responsibility in easing communication.

Weaknesses

- Inadequacy of some structures, which conditions are below standards of dignity and usability for those housed and working there
- Saturation level reached for places for unaccompanied minors, with consequent reception in *hotspots* for even long periods;
- Lack of homogeneity in procedures and intervention modalities among same structures;
- Migrants' identification needs not always in line with reception needs.

Hotspot, Lampedusa (Agrigento)

13-14 January 2017

Strengths

- Efficient system for collecting data from migrants;
- Doctors from the National Institute for Health, Migration and Poverty (NIHMP), which is carrying out the multidisciplinary procedure for

verifying the age of the child migrants.

Weaknesses

- Inadequacy of premises, with beds and bed frames in bad conditions and deteriorated;
- Lack of common spaces for migrants, who are forced to remain in open spaces in good and bad weather conditions;
- Delivery to migrants of dresses and basic necessities, only after their photo-signalling;
- Poor and too quick information is given to migrants on their right before filling out the information sheet.

Migrant's Landing, Lampedusa (Agrigento)

14 January 2017

Strengths

- Great commitment and dedication of the Coast Police in the rescue operations on the high sea;
- Positive cooperation with the local health care service and rapid distribution of landing migrants, depending on their health care needs.

Hotspot, Trapani

15 January 2017

Strengths

Staff awareness and capacity in managing the facility.

Weaknesses

- Two vulnerable migrants were present in the structure instead of being transferred in adequate sites where they could better assisted;

- Inadequate overnight rooms for migrants;
- Migrants are not free to leave the structure at will after photo-signalling.

Identification and Expulsion Centre, Caltanissetta

16 January 2017

Strengths

- Great co-operation between the local authorities and the National Guarantor;
- Professionalism in operating also supported by a strong experience;
- Legal advice to migrants.

Weaknesses

- Claustrophobic aspect of the compound area used as Identification and Expulsion Centre;
- Poor conditions of the medical centre for migrants hosted in the Identification and Expulsion;
- Deteriorated conditions of dormitories and of some cloakrooms.

Hub Villa Sikania, Siculiana (Agrigento)

16 January 2017

Strengths

A well equipped and clean canteen.

Weaknesses

- Inadequateness of dormitories with too close beds, when the site has been used as *hotspot* (to receive migrants landed at Porto Empedocle);
- Cloakrooms without hot water and doors (doors were substituted with a shower curtain);
- long-term permanence of Eritreans admitted to the

relocation scheme, and not transferred because of the failure to comply with the plan of some European States.

Hotspot, Pozzallo (Ragusa)

17 January 2017

Strengths

- Well maintained spaces with renovation still in progress;
- Laundry for the use of migrants;
- Great attention paid to migrants at arrival and before photo-signalling;
- Efficiency and professionalism of staff that manages the structure;
- Cultural mediators present on site capable to understand if there are cases of trafficking of human beings and foster dialogue with women involved.

Weaknesses

- Overnight in large common dormitories, very depersonalising.
- Minors in the facility for many days waiting for their coming of age (soon after the visit) and being transferred somewhere.

Identification and Expulsion Centre, Turin

18-19 January 2017

Strengths

Next opening of newly refurbished spaces.

Weaknesses

- Very close environment: each block is surrounded by metallic bed frames and let migrants be confined in the internal open or closed parts of the block;
- Spaces called "tiny hospitals" are used for confinement: its design is itself making those rooms unacceptable;

- Communication with staff there operating happens through a net.

4 recommendations have been proposed.

The report on the thematic visit is published on the National Guarantor's website.

Joint Return Operation monitored by Frontex and organised by Italy, Rome – Lagos – Rome

26 January 2017

Background

Third monitoring flight coordinated by Frontex and organised by Italy. On board, there were 38 Nigerians coming from Italy (36) and also from Poland (1) and Germany (1).

Strengths

- The National Guarantor's monitors participated as monitors in the preparatory meetings of the Border Police;
- A national chartered flight has been operated to allow migrants coming from the Identification and Expulsion Centre in Caltanissetta to reach the Rome FCO airport.

Weaknesses

- Gaps in medical communication among the doctor in charge at the Identification and Expulsion Centre of the host country and the one on board of the flight;
- It is clear the need that the assessment on the fit-to-travel condition of the migrant shall be evaluated by an official GP and not by simply calling for a doctor belonging to the hosting structure;

- Lack of interpreters and cultural mediators during the whole return operation;
- Some security controls were operated without the right conditions safeguarding the people's dignity;
- Inadequacy in delivering the returnees' luggages;
- The handover of the Nigerians has happened on board.

A Report on the flight has been elaborated and a reserved communication with the responsible authorities started.

Joint Return Operation monitored by Frontex and organised by Italy, Rome – Lagos – Rome

23 February 2017

Background

Fourth monitoring flight coordinated by Frontex and organised by Italy.

By the time of the present report to Parliament, the flight had not taken place.

As usual, a Report on the flight is going to be elaborated and a reserved communication with the responsible authorities started.



Recommendations

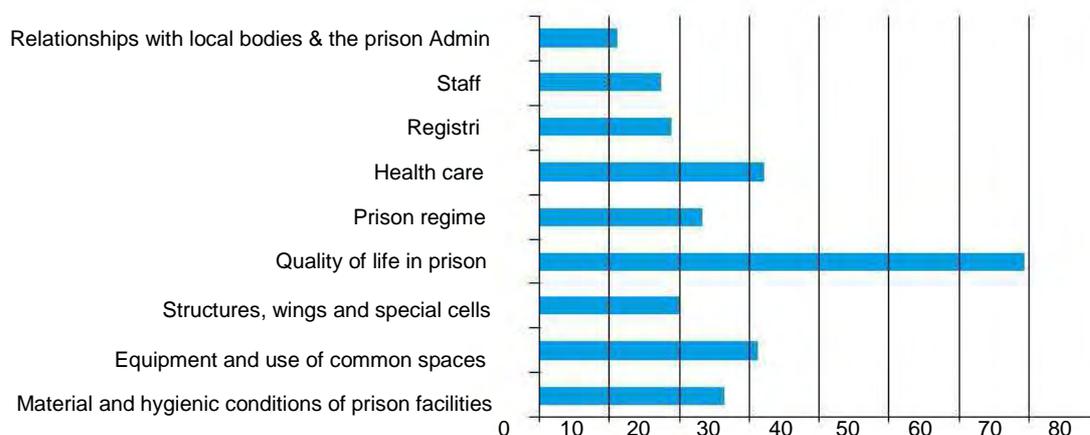
All recommendations are included in the Reports on the visits of the National Guarantor for the rights of people detained or deprived of liberty carried out until 31 December 2016. They are published, together with the replies from the Administrations, at the website address www.garantenpl.it.

Table 1 - Recommendations in the criminal detention area

Condizioni materiali e igieniche delle strutture detentive	26
Attrezzatura e utilizzo degli spazi comuni	31
Strutture, sezioni e camere particolari	20
Qualità della vita detentiva	69
Regime penitenziario	23
Tutela della salute	32
Registri	19
Personale	17
Rapporti con gli Enti locali e l'Amministrazione penitenziaria	11
Totale	216

Fonte: Garante Nazionale dei diritti delle persone detenute o private della libertà personale

Graph 1 - Recommendations in the criminal detention area



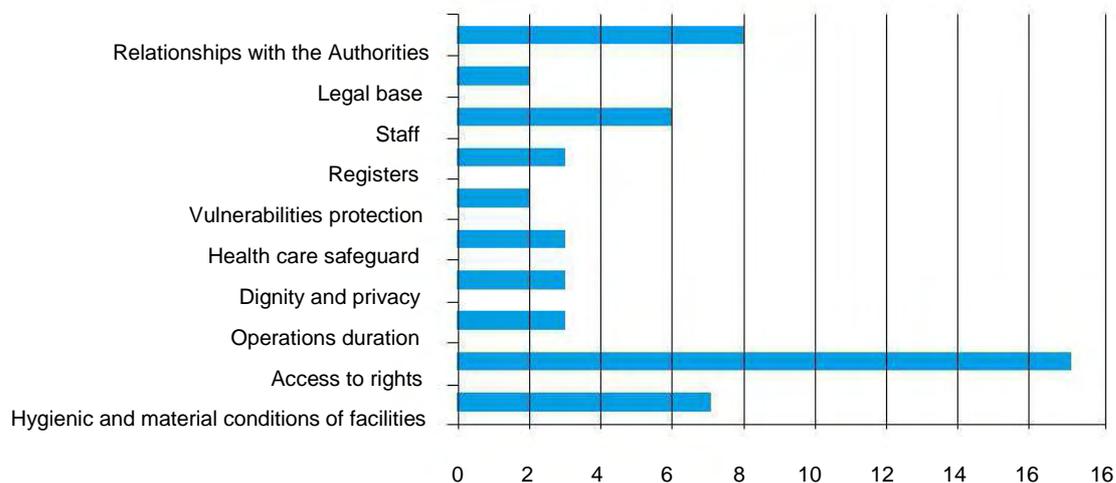
Fonte: Garante Nazionale dei diritti delle persone detenute o private della libertà personale

Table 2 - Recommendations in the administrative and security area

Material and hygienic conditions of facilities	7
Access to rights	17
Operations duration	3
Dignity and privacy	3
Health care safeguard	3
Vulnerabilities protection	2
Registers	3
Staff	6
Legal basis	2
Relationships with the Authorities	8
Total	54

Source: National Guarantor for the rights of persons detained or deprived of liberty

Graph 2 - Recommendations in the administrative and security area



APPENDIX 1

The National Guarantor activity

- Table 1 The National Guarantor activity in the migration field – Years 2016/2017
- Table 2 The National Guarantor ad hoc visits to prisons – Year 2016
- Table 3 The National Guarantor regional visits to prisons – Year 2016
- Table 4 The National Guarantor regional visits to Youth Offender Institutions (YOI) – Year 2016
- Table 5 The National Guarantor ad hoc visits to police detention cells Year 2016
- Table 6 Complaints and reports submitted to the National Guarantor – Year 2016
- Graph 1 Complaints and reports submitted to the National Guarantor – Year 2016
- Table 7 Processing of complaints and reports submitted to the National Guarantor Year 2016
- Graph 2 Processing of complaints and reports submitted to the National Guarantor Year 2016
- Table 8 Itemised complaints and reports submitted to the National Guarantor - Year 2016
- Graph 3 Itemised complaints and reports submitted to the National Guarantor - Year 2016

Table 1- The National Guarantor activity in the migration field – Years 2016/2017

Monitorings	Site	Date	# of monitored migrants
Immigration Detention Centres (CIE)			
	Caltanissetta	16/01/2016	91
	Brindisi	20/06/2016	96
	Torino	19/01/2017	48
	Roma	23/01/2017	14
Waiting room			
	Aeroporto Fiumicino	26/05/2016	0
Hotspot			
	Taranto	21/06/2016	280
	Lampedusa	03/10/2016	265
	Lampedusa	14/01/2017	269
	Trapani	15/01/2017	87
	Pozzallo	17/01/2017	19
Force returns flights			
	Rome / Tunisi	19/06/2016	29
	Rome / Tunisi	21/07/2016	21
	Rome / Tunisi	14/07/2016	15
	Rome / Tunisi	03/11/2016	36
	Rome / Tunisi	26/01/2017	38
	Rome / Tunisi	23/02/2017	38
			Total 1,346

Source: National Guarantor for the rights of persons deprived of their liberties or in prison – Unit 3, Deprivation of liberty in criminal matters

Table 2 - The National Guarantor ad hoc visits to prisons – Year 2016

Region	Prison	Prison population	Date of the visit	population survey date
Sardegna	C.R. Oristano-Massama "S. Soro"	293	02/04/2016	31/03/2016
Veneto	C.C. Padova "N.C."	208	04/04/2016	31/03/2016
Veneto	C.C. Venezia "S. Maria Maggiore "	228	05/04/2016	31/03/2016
Trentino A.A	C.C. Trento " Spini di Gradolo"	344	06/05/2016	30/04/2016
Friuli V.G.	C.C. Gorizia	41	07/05/2016	30/04/2016
Puglia	C.C. Lecce	874	17/05/2016	31/05/2016
Lombardia	C.R. Milano Bollate	1.188	23/05/2016	31/05/2016
Lazio	C.R. Paliano	73	26/05/2016	31/05/2016
Lazio	C.C. Viterbo "N.C."	520	09/06/2016	31/05/2016
Lazio	C.C. Viterbo "N.C."	520	10/06/2016	31/05/2016
Lazio	C.C. Viterbo "N.C."	525	07/07/2016	30/06/2016
Lazio	C.C. Roma "Regina Coeli"	872	28/07/2016	31/07/2016
Lazio	C.C. Civitavecchia	443	01/08/2016	31/07/2016
Toscana	C.C. Arezzo	29	11/08/2016	31/07/2016
Piemonte	C.C. Cuneo	207	13/11/2016	31/08/2016
Piemonte	C.C. Verbania	56	20/11/2016	31/07/2016
Lombardia	C.C. Voghera	373	16/10/2016	31/07/2016
Piemonte	C.C. Torino "G.Lorusso e L.Cutugno"	1.312	26/10/2016	31/10/2016
Emilia Romagna	C.R. Parma	587	29/10/2016	31/10/2016
Lazio	C.C. Latina	112	09/11/2016	31/10/2016
Piemonte	C.C. Ivrea	224	22/11/2016	30/11/2016
Veneto	C.C. Venezia "S. Maria Maggiore "	233	28/11/2016	30/11/2016
Lazio	C.C. Roma "Rebibbia N.C."	1.404	22/12/2016	31/12/2016

Source: National Guarantor for the rights of persons deprived of their liberties or in prison – Unit 3, Deprivation of liberty in criminal matters

Table 3 - The National Guarantor regional visits to prisons – Year 2016

Region	Prison	Prison population	Date of the visit	population survey date
Calabria	C.C. Catanzaro-Siano "Ugo Carridi"	568	10-15/04/2016	30/04/2016
Calabria	C.C. Reggio Calabria "Giuseppe Panzera"	185	10-15/04/2016	30/04/2016
Calabria	C.C. Reggio Calabria "Arghillà"	271	10-15/04/2016	30/04/2016
Veneto	C.C. Belluno	91	28/06 – 3/07/2016	30/06/2016
Veneto	C.C. Vicenza	213	28/06 – 3/07/2016	30/06/2016
Trentino A. A.	C.C. Trento "Spini di Gradolo"	312	28/06 – 3/07/2016	30/06/2016
Friuli Venezia Giulia	C.C. Tolmezzo	191	28/06 – 3/07/2016	30/06/2016
Trentino A. A.	C.C. Bolzano	112	28/06 – 3/07/2016	30/06/2016
Friuli Venezia Giulia	C.C. Gorizia (follow up)	35	28/06 – 3/07/2016	30/06/2016
Liguria	C.C. Genova "Marassi"	675	16 -02/10/ 2016	31/10/2016
Liguria	C.C. Genova "Pontedecimo"	125	16 -21/10/2016	31/10/2016
Liguria	C.R. Sanremo "N.C."	248	16 -21/10/2016	31/10/2016

Source: National Guarantor for the rights of persons deprived of their liberties or in prison – Unit 3, Deprivation of liberty in criminal matters

Table 4 - The National Guarantor regional visits to Youth Offender Institutions (YOI) – Year 2016

Region	Institution	Operational capacity	Institution's population	Date of the visit	population survey date
Calabria	Istituto penitenziario minorile di Catanzaro	36	17	10-15/04/2016	10-15/04/2016
Veneto	Comunità "G.Olivotti"	8	5	28/06-3/07/2016	30/06/2016
Veneto	Istituto penitenziario minorile di Treviso	12	13	28/06-03/07/2016	30/06/2016
Veneto	Centro prima accoglienza di Treviso	0	2	28/06-03/07/2016	30/06/2016
Emilia Romagna	Istituto penitenziario minorile di Bologna	22	27	22/11/2016	22/11/2016

Source: National Guarantor for the rights of persons deprived of their liberties or in prison – Unit 3, Deprivation of liberty in criminal matters

Table 5 - The National Guarantor ad hoc visits to police detention cells – Year 2016

Region	Visited structures	Date of the visit
Calabria	Commissariato Polizia di Stato Catanzaro Lido	11/04/2016
Veneto	Questura Polizia di Stato Vicenza	01/07/2016
Veneto	Comando Provinciale Carabinieri Vicenza	01/07/2016
Veneto	Tendenza Carabinieri Dueville	01/07/2016
Liguria	Stazione Carabinieri Genova Maddalena	18/10/2016
Liguria	Comando Provinciale Carabinieri Genova "Forte San Giuliano"	19/10/2016
Liguria	Commissariato Polizia di Stato Genova Ventimiglia	20/10/2016
Liguria	Camere di sicurezza Tribunale di Genova	19/10/2016
Sicilia	Comando Provinciale Carabinieri Trapani	15/01/2017
Sicilia	Questura Polizia di Stato Trapani	15/01/2017
Sicilia	Questura Polizia di Stato Caltanissetta	16/01/2017
Sicilia	Questura Polizia di Stato Ragusa	17/01/2017
Sicilia	Stazione Carabinieri Pozzallo	17/01/2017
Piemonte	Commissariato Polizia di Stato San Paolo Torino	19/01/2017

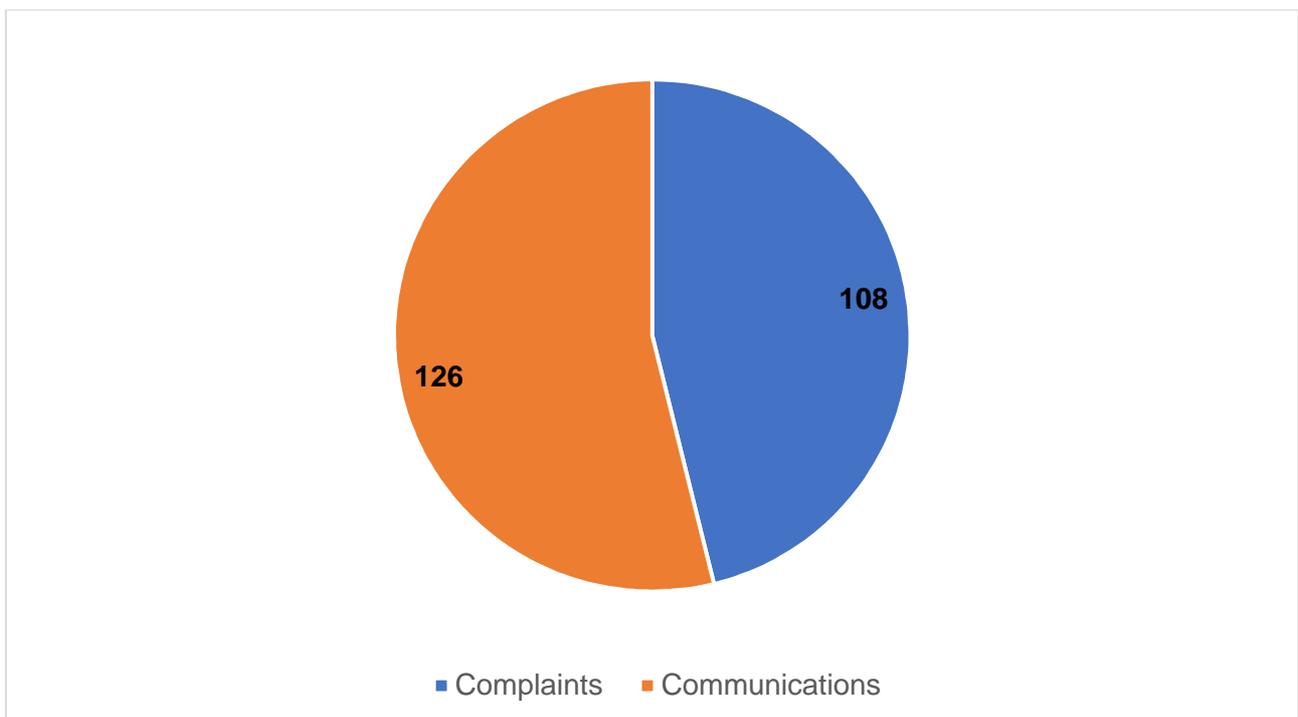
Source: National Guarantor for the rights of persons deprived of their liberties or in prison – Unit 4, Deprivation of liberty by law enforcement agencies

Table 6 - Complaints and reports submitted to the National Guarantor – Year 2016

Tipology	Number
Complaints	108
Communications	126
Total	234

Source: National Guarantor for the rights of persons deprived of their liberties or in prison – Unit 3, Deprivation of liberty in criminal matters

Graph 1 - Complaints and reports submitted to the National Guarantor – Year 2016



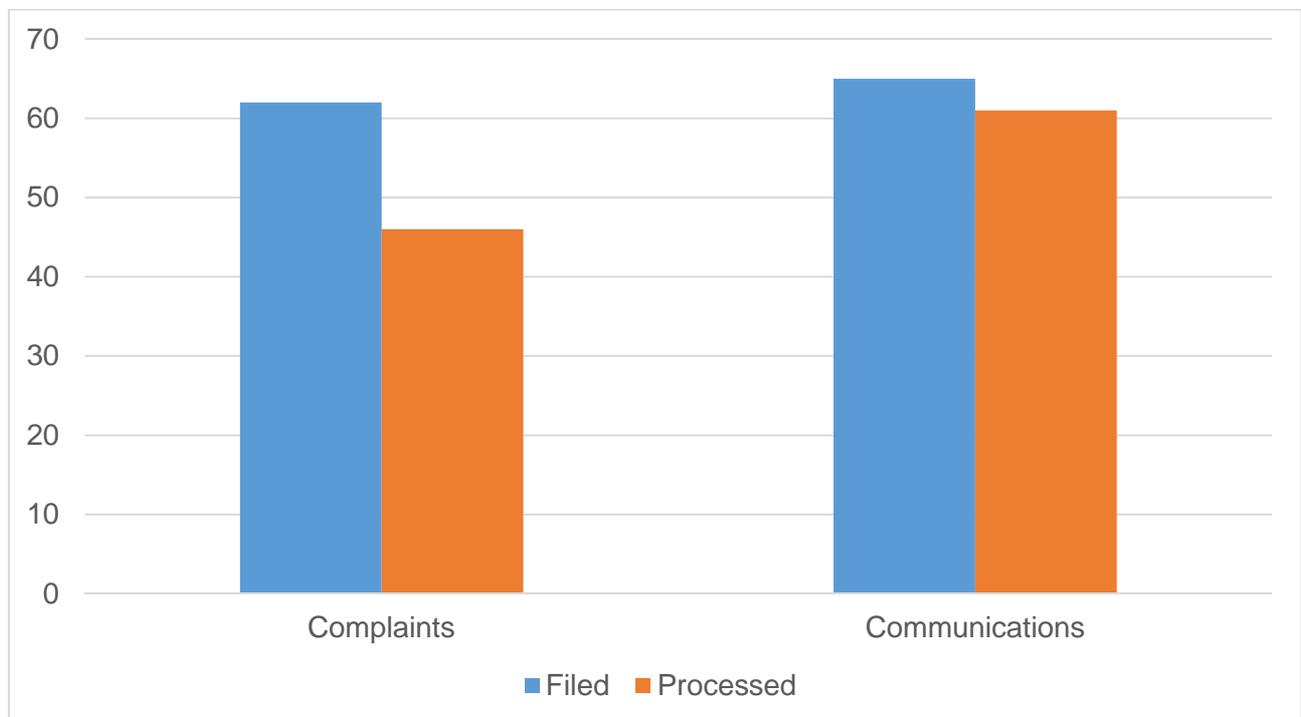
Source: National Guarantor for the rights of persons deprived of their liberties or in prison – Unit 3, Deprivation of liberty in criminal matters

Table 7 – Processing of complaints and reports submitted to the National Guarantor – Year 2016

Processing	Complaints	Communications
Filed	62	65
Processed	46	61
Total	108	126

Source: National Guarantor for the rights of persons deprived of their liberties or in prison – Unit 3, Deprivation of liberty in criminal matters

Graph 2 - Processing of complaints and reports submitted to the National Guarantor – Year 2016



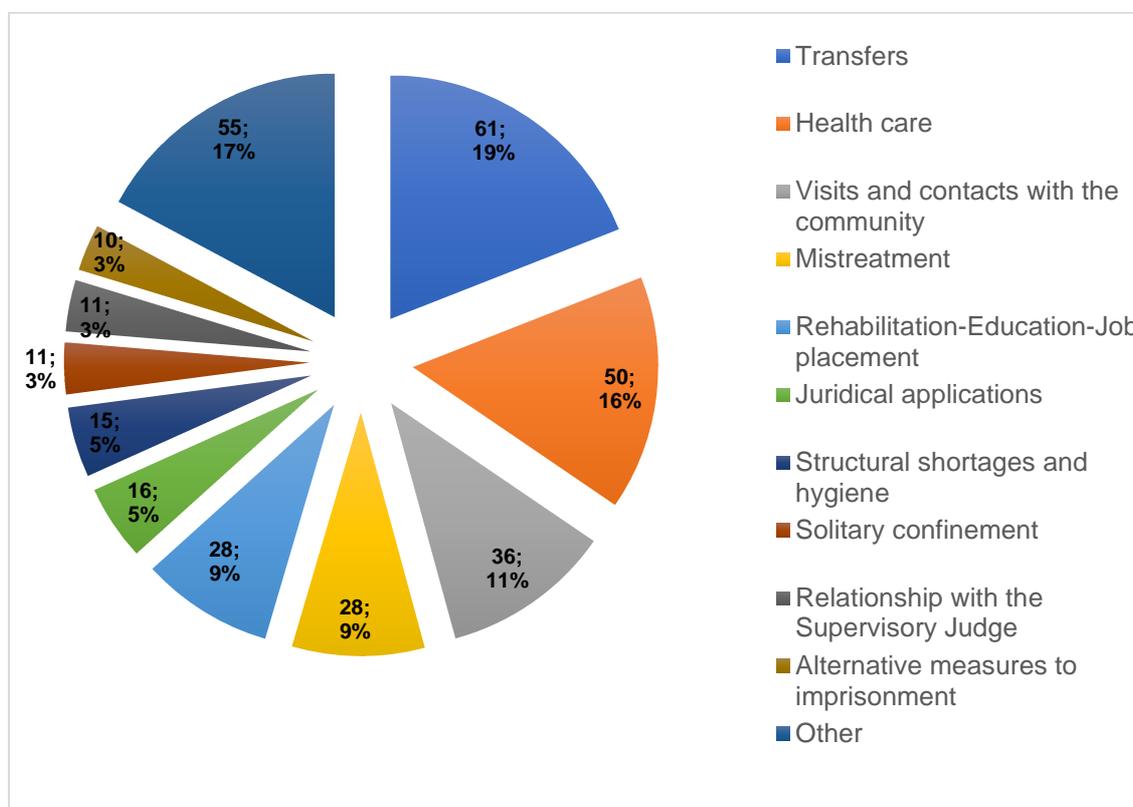
Source: National Guarantor for the rights of persons deprived of their liberties or in prison – Unit 3, Deprivation of liberty in criminal matters

Table 8 - Itemised complaints and reports submitted to the National Guarantor - Year 2016

Item	Applications	Percentage
Transfers	61	19,0%
Health care	50	15,6%
Visits and contacts with the community	36	11,2%
Mistreatment	28	8,7%
Rehabilitation-Education-Job placement	28	8,7%
Juridical applications	16	5,0%
Structural shortages and hygiene	15	4,7%
Solitary confinement	11	3,4%
Relationship with the Supervisory Judge	11	3,4%
Alternative measures to imprisonment	10	3,1%
Other	55	17,1%

Source: National Guarantor for the rights of persons deprived of their liberties or in prison – Unit 3, Deprivation of liberty in criminal matters

Graph 3 - Itemised complaints and reports submitted to the National Guarantor - Year 2016



Source: National Guarantor for the rights of persons deprived of their liberties or in prison – Unit 3, Deprivation of liberty in criminal matters

APPENDIX 2

Deprivation of liberty in the “adult” penal setting

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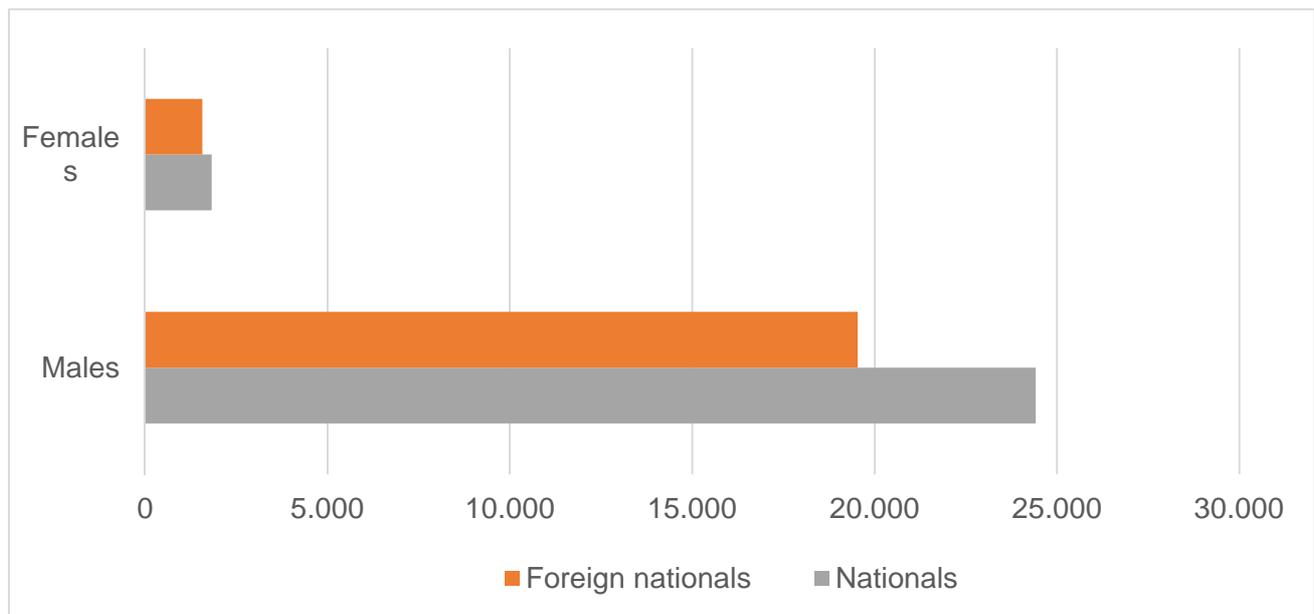
- Graph 24** Visiting children’s playroom service - Year 2016
- Table 26** Family visits in dedicated area - Year 2016
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Table 1- New arrivals - Year 2016

Prison population	Male	Female	Totals	%
Nationals	24.419	1.821	26.240	55,43
Foreign nationals	19.534	1.568	21.102	44,57
Totals	43.953	3.389	47.342	100

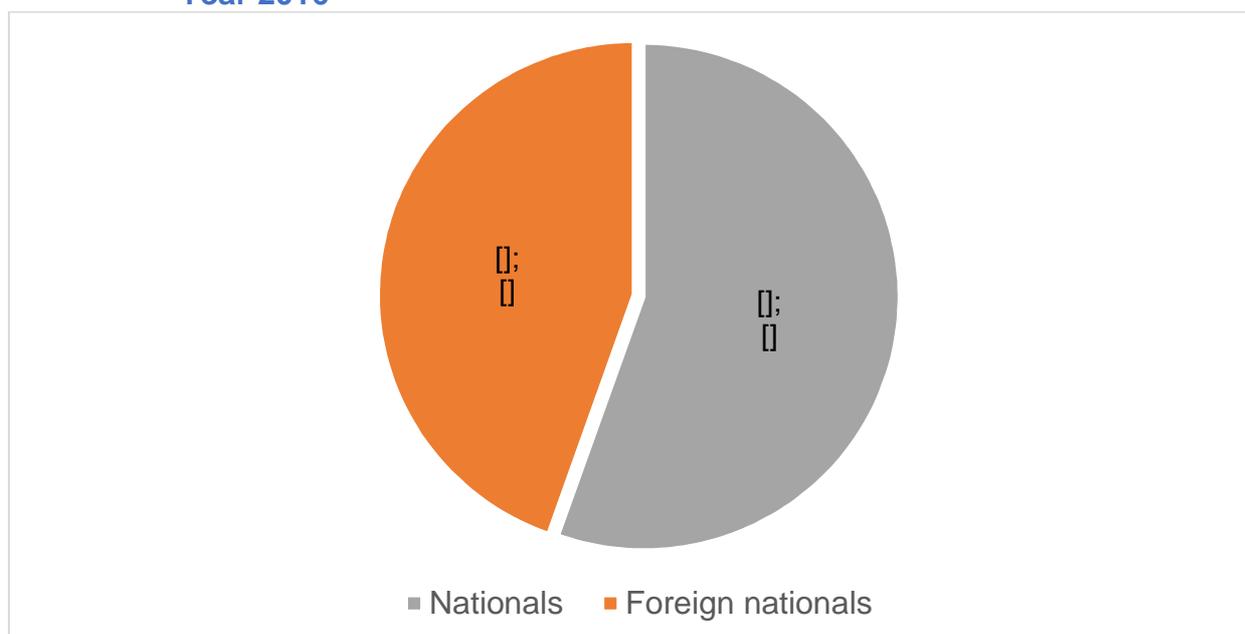
Source: Department of Penitentiary Administration – ITC development and management Office – Statistics and departmental support automation – Statistics unit.

Graph 1- New arrivals - Year 2016



Source: Department of Penitentiary Administration – ITC development and management Office – Statistics and departmental support automation – Statistics unit.

Graph 2 – New arrivals – Nationals and foreign nationals - Year 2016



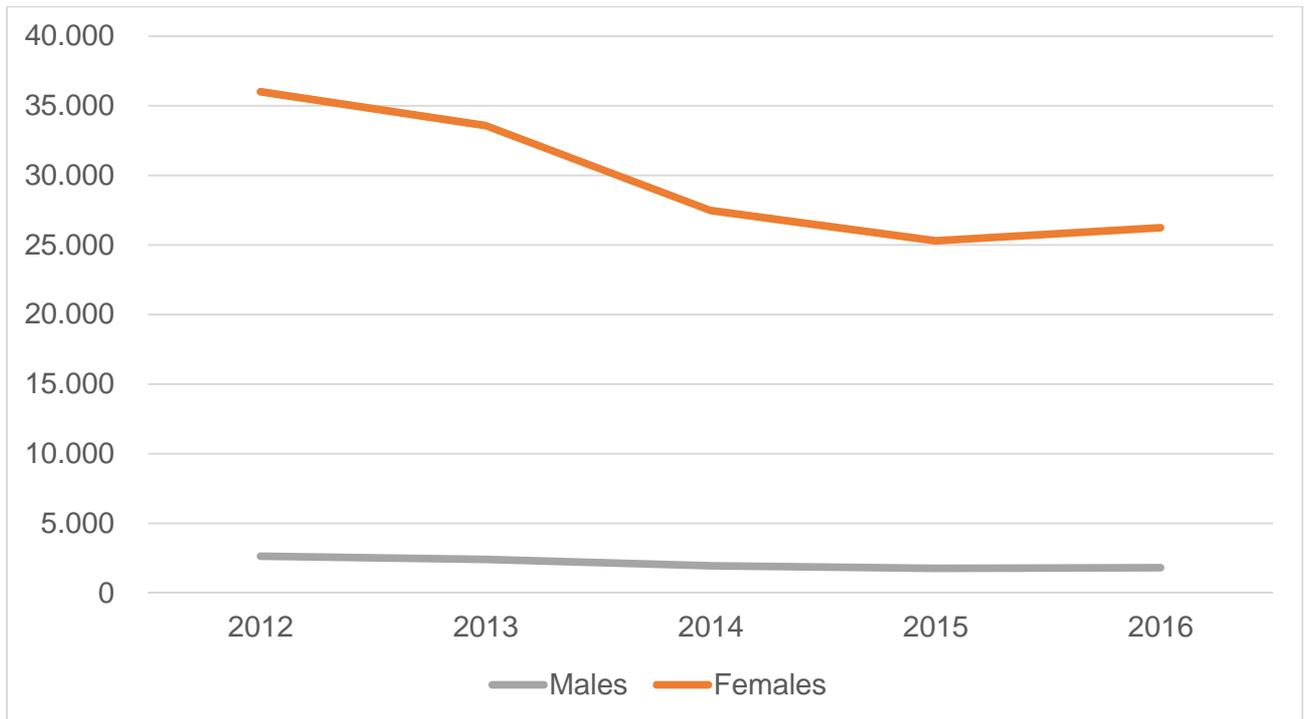
Source: Department of Penitentiary Administration – ITC development and management Office – Statistics and departmental support automation – Statistics unit.

Table 2 – New arrivals - years 2012-2016

Year	Nationals			Foreign nationals			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
2012	33.364	2.650	36.014	24.765	2.241	27.006	58.129	4.891	63.020
2013	31.150	2.422	33.572	23.705	2.113	25.818	54.855	4.535	59.390
2014	25.511	1.959	27.470	20.981	1.766	22.747	46.492	3.725	50.127
2015	23.537	1.765	25.302	18.949	1.572	20.521	42.486	3.337	45.823
2016	24.419	1.821	26.240	19.534	1.568	21.102	43.953	3.389	47.342

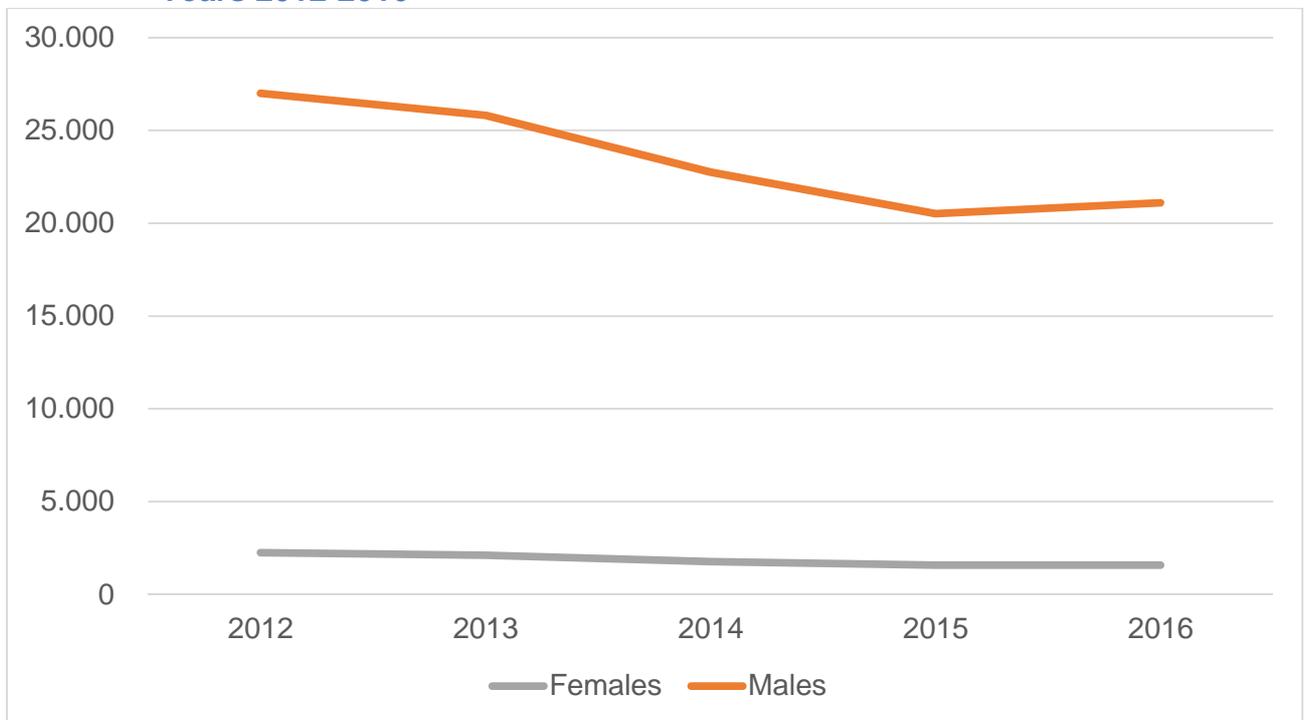
Source: Department of Penitentiary Administration – ITC development and management Office – Statistics and departmental support automation – Statistics unit.

**Graph 3 – New arrivals - Nationals
Years 2012-2016**



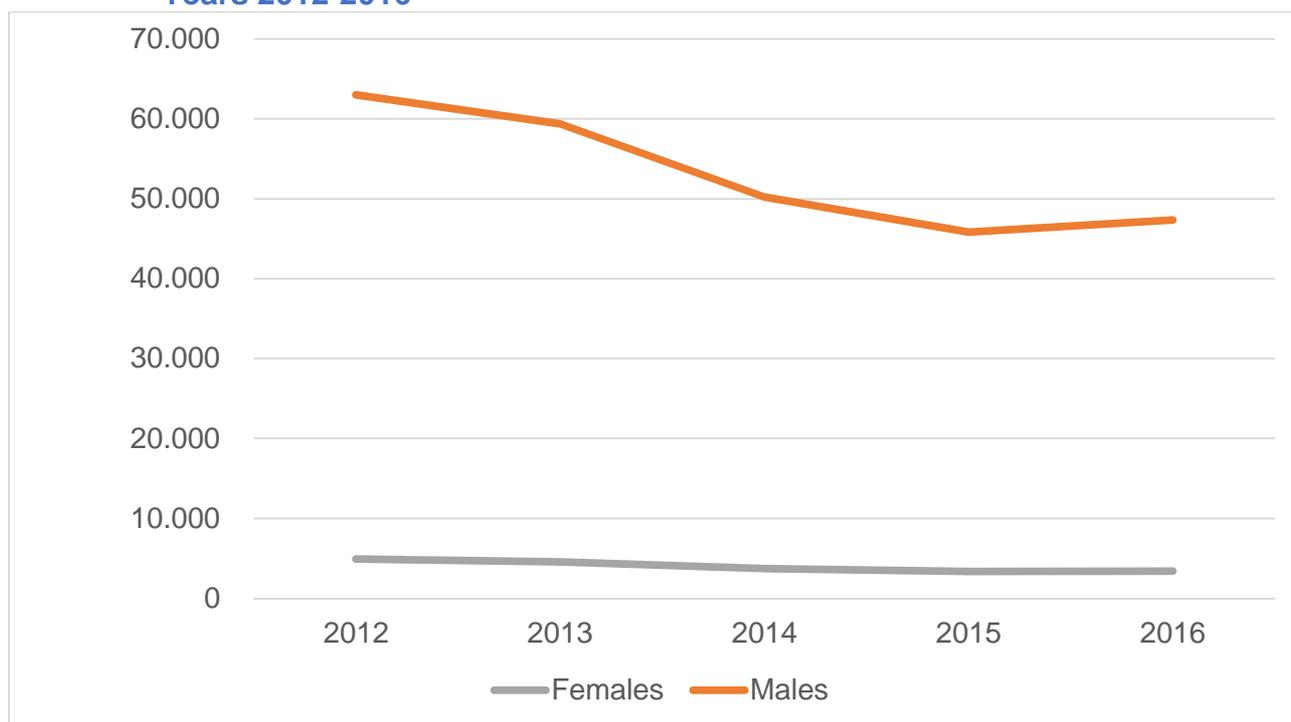
Source: Department of Penitentiary Administration – ITC development and management Office – Statistics and departmental support automation – Statistics unit.

**Graph 4 - New arrivals – Foreign nationals
Years 2012-2016**



Source: Department of Penitentiary Administration – ITC development and management Office – Statistics and departmental support automation – Statistics unit.

**Graph 5 - Totals of new arrivals – Nationals and foreign nationals
Years 2012-2016**



Source: Department of Penitentiary Administration – ITC development and management Office – Statistics and departmental support automation – Statistics unit.

Table 3 – New arrivals and incarceration rates - Years 2006-2016

Year	New prisoners	Country population*	Prisoners per 100,000 population
2006	90.714	58.064.214	156
2007	90.441	58.223.744	155
2008	92.800	58.652.875	158
2009	88.066	59.000.586	149
2010	84.641	59.190.143	143
2011	76.982	59.364.690	130
2012	63.020	59.394.207	106
2013	59.390	59.685.227	99,5
2014	50127	60.782.668	82
2015	45.823	60.795.612	75
2016	47.342	60.665.551	78

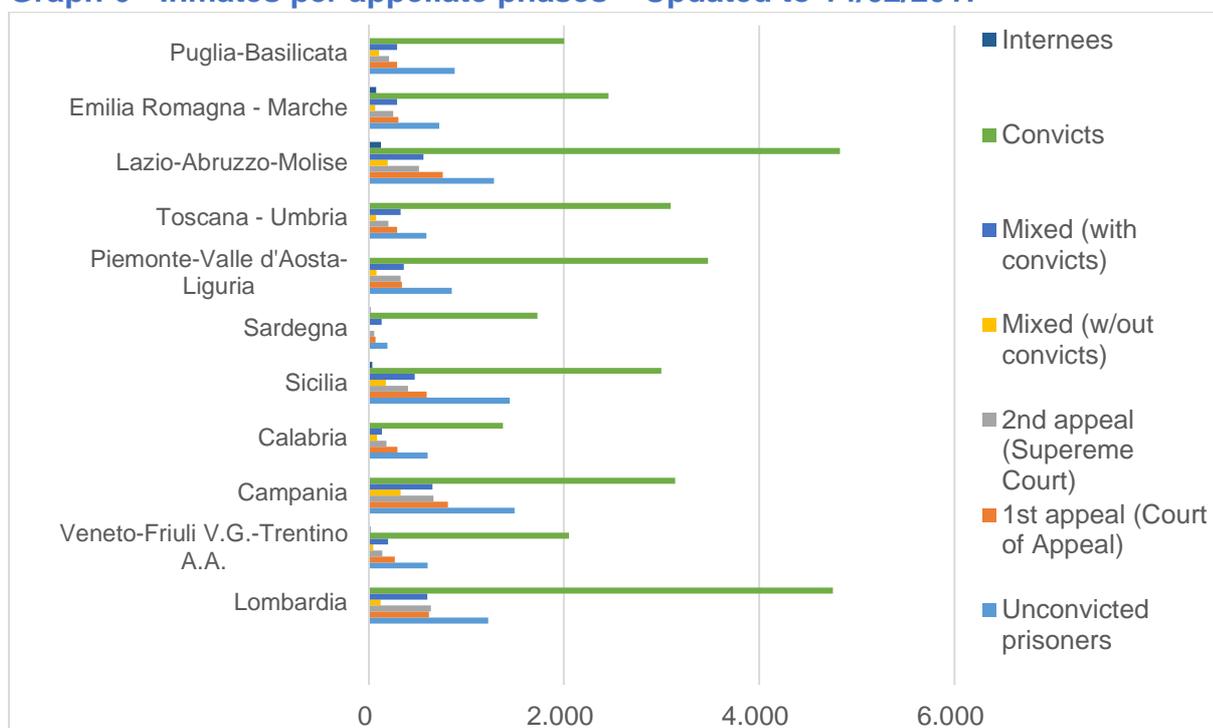
Source: Data elaboration by the National Guarantor based on the data from the Department of Penitentiary Administration -ITC development and management Office – Statistics and departmental support automation – Statistics unit.*Eurostat

Table 4 – Inmates per appellate phases – Updated to 14/02/2017

Regional Directorate	Unconvicted prisoners	1st appeal (Court of appeal)	2nd appeal (Supreme Court)	Mixed w/out convicts	Mixed with convicts	Convicts	Internees	Total
Calabria	604	297	183	89	138	1.375	-	2.686
Campania	1.495	814	666	329	655	3.139	8	7.106
Emilia Romagna - Marche	723	306	252	68	291	2.456	78	4.174
Lazio-Abruzzo-Molise	1.284	761	515	198	561	4.828	126	8.273
Lombardia	1.225	619	637	123	603	4.756	7	7.970
Piemonte - Valle d'Aosta - Liguria	853	340	328	80	362	3.477	4	5.444
Puglia-Basilicata	881	292	210	109	291	2.003	6	3.792
Sardegna	194	72	57	11	134	1.728	20	2.216
Sicilia	1.444	595	404	177	473	2.997	39	6.129
Toscana - Umbria	592	293	204	79	329	3.095	2	4.594
Veneto-Trentino A.A.- Friuli V.G.	604	269	140	48	200	2.051	17	3.329
Total	9.899	4.658	3.596	1.311	4.037	31.905	307	55.713

Source: Ministry of Justice - Department of Penitentiary Administration

Graph 6 - Inmates per appellate phases – Updated to 14/02/2017



Source: Ministry of Justice - Department of Penitentiary Administration

Table 5 – Inmates per sentencing phases, gender and nationality – Years 2006-2016

Date	Sentencing phases				Gender	Nationality
	Remand prisoners	Convicted prisoners	Internees	Total	Female	Foreign national
31/12/2006	22.145	15.468	1.392	39.005	1.670	13.152
31/12/2007	28.188	19.029	1.476	48.693	2.175	18.252
31/12/2008	29.901	26.587	1.639	58.127	2.526	21.562
31/12/2009	29.809	33.145	1.837	64.791	2.751	24.067
31/12/2010	28.782	37.432	1.747	67.961	2.930	24.954
31/12/2011	27.325	38.023	1.549	66.897	2.808	24.174
31/12/2012	25.777	38.656	1.268	65.701	2.804	23.492
31/12/2013	22.877	38.471	1.188	62.536	2.694	21.854
31/12/2014	18.518	34.033	1.072	53.623	2.304	17.462
31/12/2015	17.828	33.896	440*	52.164	2.107	17.340
31/12/2016	18.958	35.400	295*	54.653	2.285	18.621

*This figure is not considering inmates sentenced to security measures in REMS (namely structures for the custody of inmates with mental illness)

Source: Data elaboration by the National Guarantor based on the data from the Department of Penitentiary Administration -ITC development and management Office – Statistics and departmental support automation – Statistics unit.

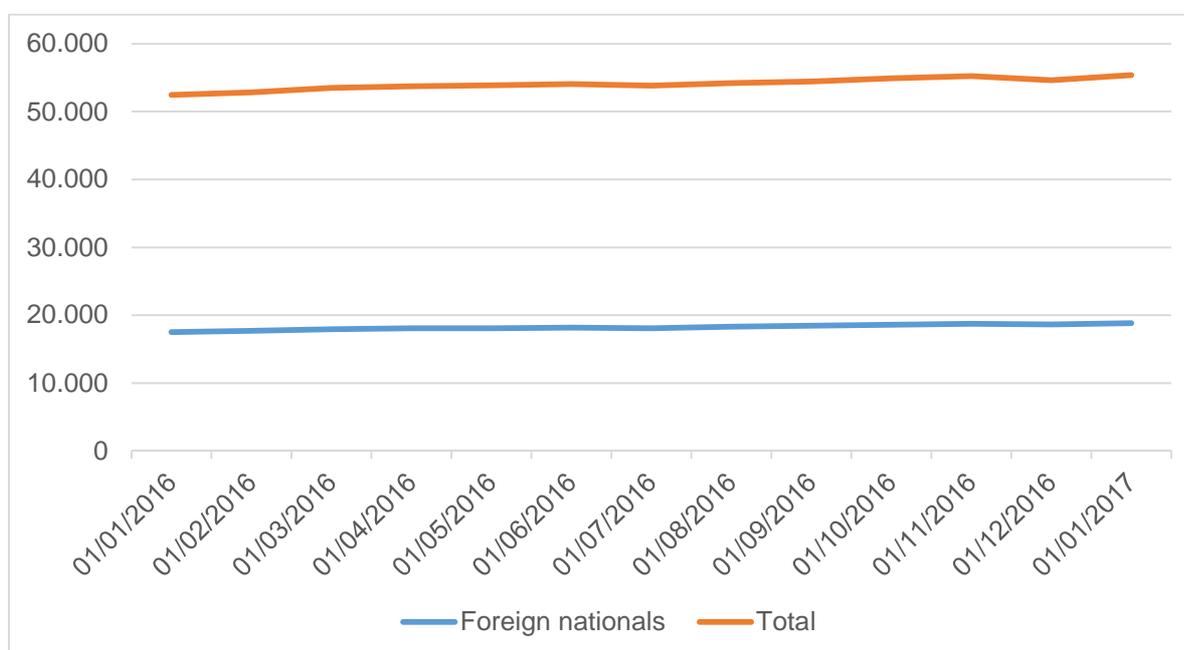
Table 6 – Number of prisons, operational capacity, number of inmates – Monthly data up to 31/01/2017

Date	# of prisons	Operational capacity*	Incarcerated inmates			Inmates under semi-liberty	
			Total	Females	Males	Total	Of which foreign nationals
31/01/2016	195	49.480	52.475	2.126	17.526	726	71
29/02/2016	195	49.504	52.846	2.148	17.679	746	77
31/03/2016	193	49.545	53.495	2.198	17.920	763	79
30/04/2016	193	49.579	53.725	2.213	18.074	763	76
31/05/2016	193	49.697	53.873	2.236	18.085	767	83
30/06/2016	193	49.701	54.072	2.264	18.166	754	78
31/07/2016	193	49.659	53.850	2.279	18.091	778	84
31/08/2016	193	49.600	54.195	2.293	18.311	767	85
30/09/2016	193	49.796	54.465	2.310	18.462	738	88
31/10/2016	192	50.062	54.912	2.300	18.578	781	97
30/11/2016	192	50.254	55.251	2.335	18.714	781	91
31/12/2016	191	50.228	54.653	2.285	18.621	787	94
31/01/2017	191	50.174	55.381	2.338	18.825	803	88

*Prison capacity is of 9 sq m for a single cell + 5 sq m for each additional host. The current situation, updated to 14.02.2017, is of 10% cells, which are unavailable.

Source: Data elaboration by the National Guarantor based on the data from the Department of Penitentiary Administration -ITC development and management Office – Statistics and departmental support automation – Statistics unit.

Graph 7 – Prison population – Per month in year 2016



Source: Data elaboration by the National Guarantor based on the data from the Department of Penitentiary Administration -ITC development and management Office – Statistics and departmental support automation – Statistics unit.

Table 7 – Prison population in Europe and incarceration rates up to 31/12/2016

Country	Prison* population	Country* population	Prisoners per 100,000 population
Russia	633.826	146.544.710	433
Lithuania	7.355	2.888.558	255
Turkey	187.609	7.8741.053	238
Bielorussia	22.526	9.498.364	237
Azerbaijan	22.526	9.705.643	232
Latvia	4.409	1.968.957	224
Moldova	7.872	3.553.056	222
Estonia	2.859	1.315.944	217
Georgia	9.765	4.490.498	217
Czech Republic	22.565	10.553.843	214
Albania	6.108	2.886.026	212
Poland	71.765	37.967.209	189
Slovakia	10.095	5.426.252	186
Hungary	18.208	9.830.485	185
Montenegro	1.131	622.218	182
Macedonia	3.427	2.071.278	165
Armenia	4.873	2.998.577	163
United Kingdom	94.247	65.382.556	144
Serbia	100.67	7.076.372	142
Romania	27.600	19.759.968	140
Ucraina	60.771	45.245.894	134
Portugal	13.775	10.341.330	133
Malta	569	434.403	131
Spain	59.839	46.438.422	127
Bulgaria	9.028	7.153.784	126
Luxembourg	705	576.249	122
France	68.514	66.661.621	103
Kosovo	1.816	1.771.604	103
Belgium	11.071	11.289.853	98
Austria	8.177	8.700.471	94
Italy	54.653	60.665.551	90
Greece	9.621	1.0783.748	89
Switzerland	6.884	8.325.194	83
Cyprus	681	848.319	80
Croatia	3.228	4.190.669	77
Germany	63.100	82.162.000	77
Ireland	3.597	4.723.605	76
Norway	3874	5213985	74
Monaco	28	38.400	73
Bosnia and Erzegovina	2.599	3.830.911	68
The Netherlands	11.603	16.979.120	68
Slovenia	1.308	2.064.188	63
Denmark	3.418	5.707.251	60
Finland	3.002	5.487.308	55
Andorra	41	76.246	54
Sweden	5.245	9.851.017	53
Iceland	124	332.529	37
Liechtenstein	10	37.622	27
San Marino	2	33.005	7
Total	1.576.714	843.245.866	187

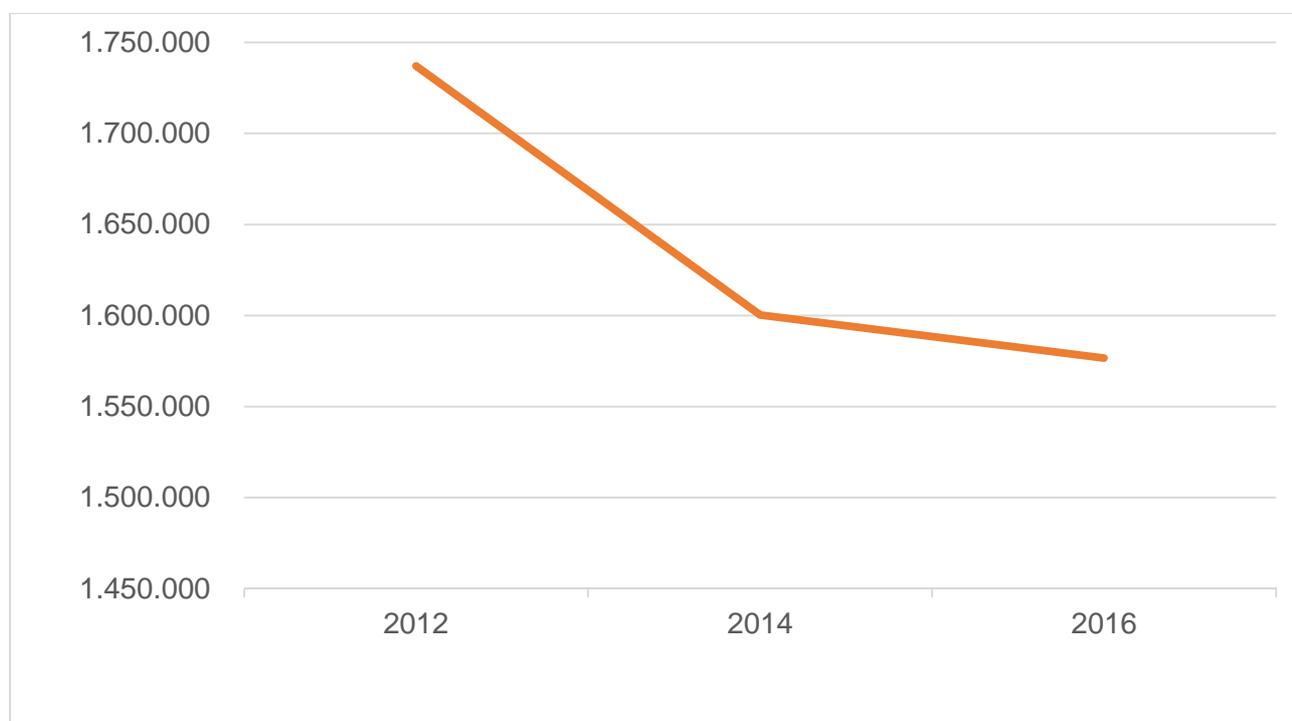
Source: *World Prison Brief*; Eurostat

***Table 8 – Prison population in Europe – Years 2012-2016**

Year	Prison population
2012	1.737.061
2014	1.600.324
2016	1.576.714

Source: *Council of Europe Annual Penal Statistics - Space I Prison Populazion, Survey* – Strasbourg, 15 December 2015, pc5cp\space\documents\pc5cp (2015) 7

Graph 8 - Prison population in Europe – Years 2012-2016



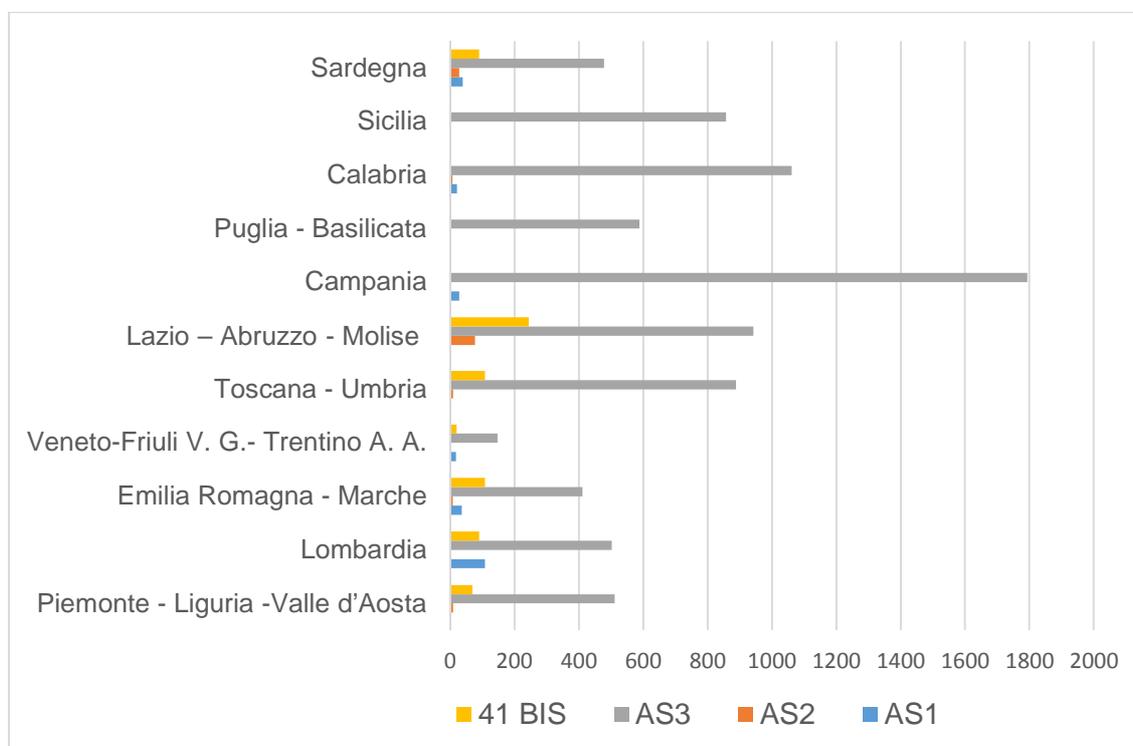
Source: *Council of Europe Annual Penal Statistics - Space I Prison Populazion, Survey* – Strasbourg, 15 December 2015, pc5cp\space\documents\pc5cp (2015) 7

Table 9 – Prison population – High security and 41bis wings – Up to 24/01/2017

Regional Directorate	AS1	AS2	AS3	41 BIS
Calabria	21	7	1.061	0
Campania	28	1	1.794	0
Emilia Romagna - Marche	36	8	411	108
Lazio – Abruzzo - Molise	3	77	942	244
Lombardia	108	0	502	90
Piemonte - Liguria -Valle d'Aosta	2	9	511	69
Puglia - Basilicata	0	1	588	0
Sardegna	39	28	478	90
Sicilia	0	2	857	0
Toscana – Umbria	0	9	888	108
Veneto-Friuli V. G.- Trentino A. A.	18	1	147	20
Total	255	143	8.179	729

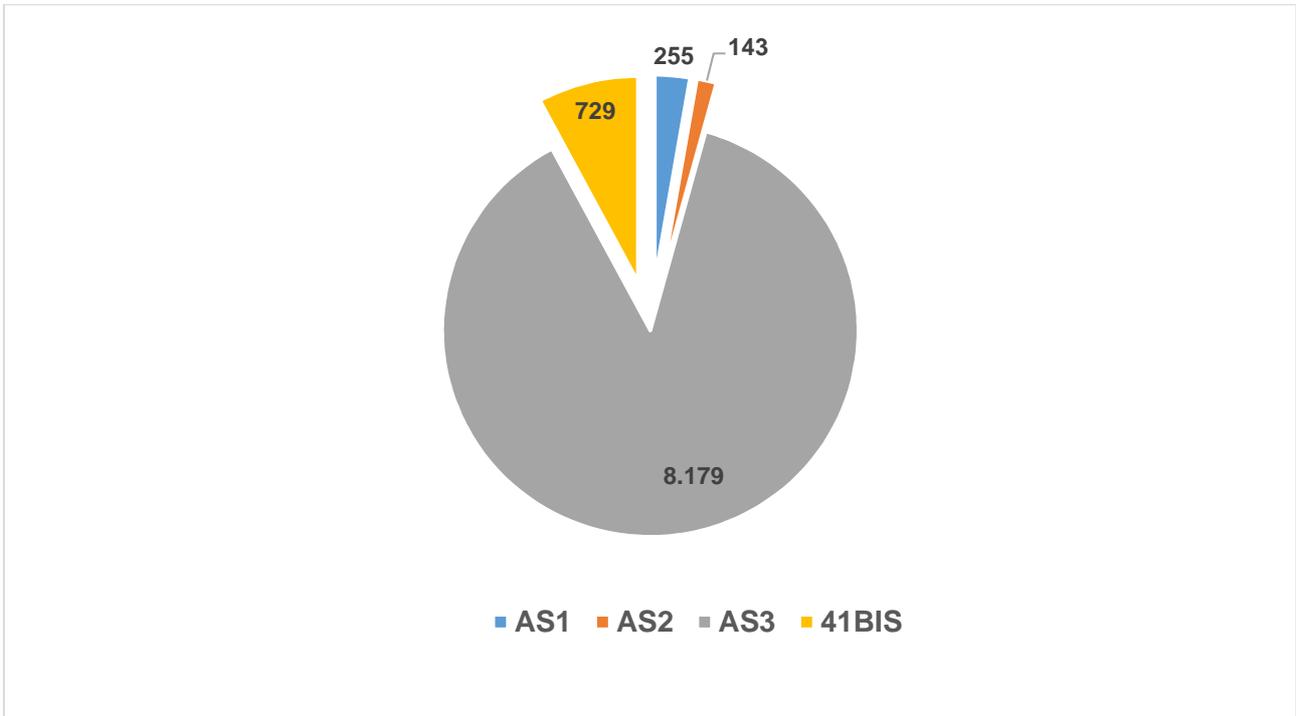
Source: Ministry of Justice - Department of Penitentiary Administration

Graph 9 - Prison population – High security and 41bis wings – Up to 24/01/2017



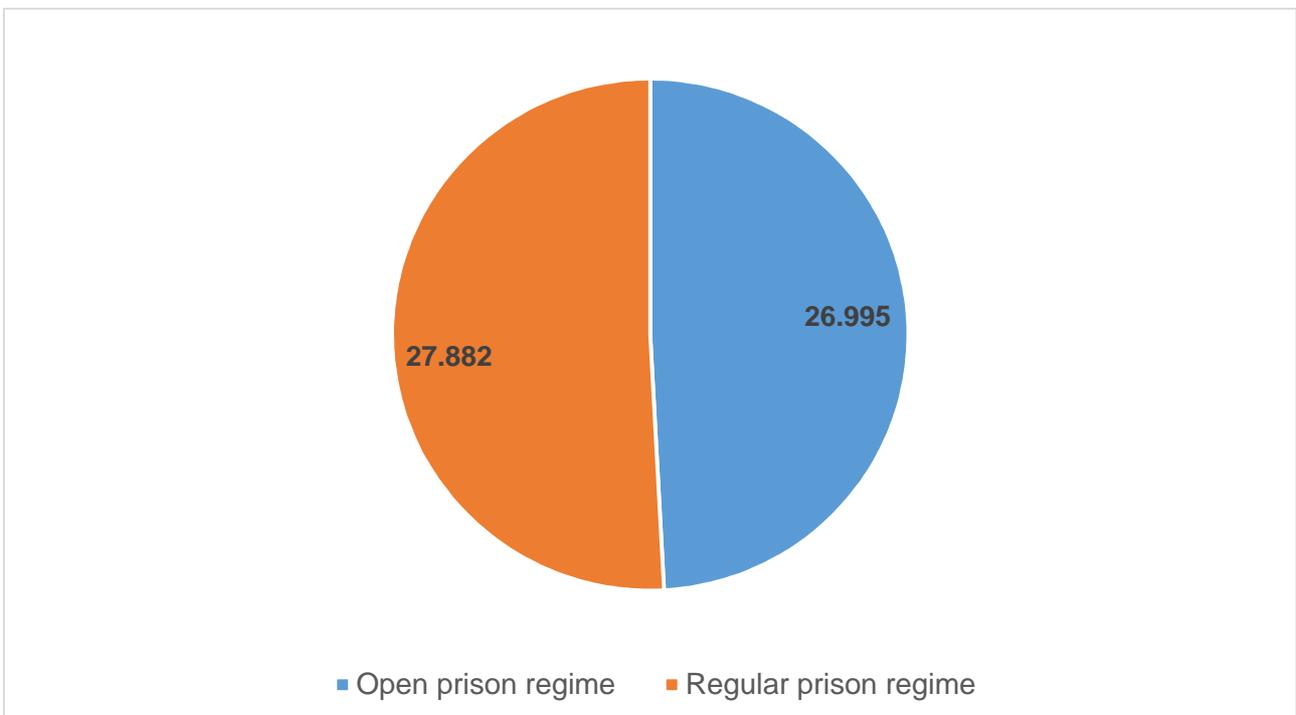
Source: Ministry of Justice - Department of Penitentiary Administration

Graph 10 - Prison population – High security and 41bis wings – Up to 24/01/2017



Source: Ministry of Justice - Department of Penitentiary Administration

Graph 11 – Inmates in open prison regime and regular prison regime – Up to 24/01/2017



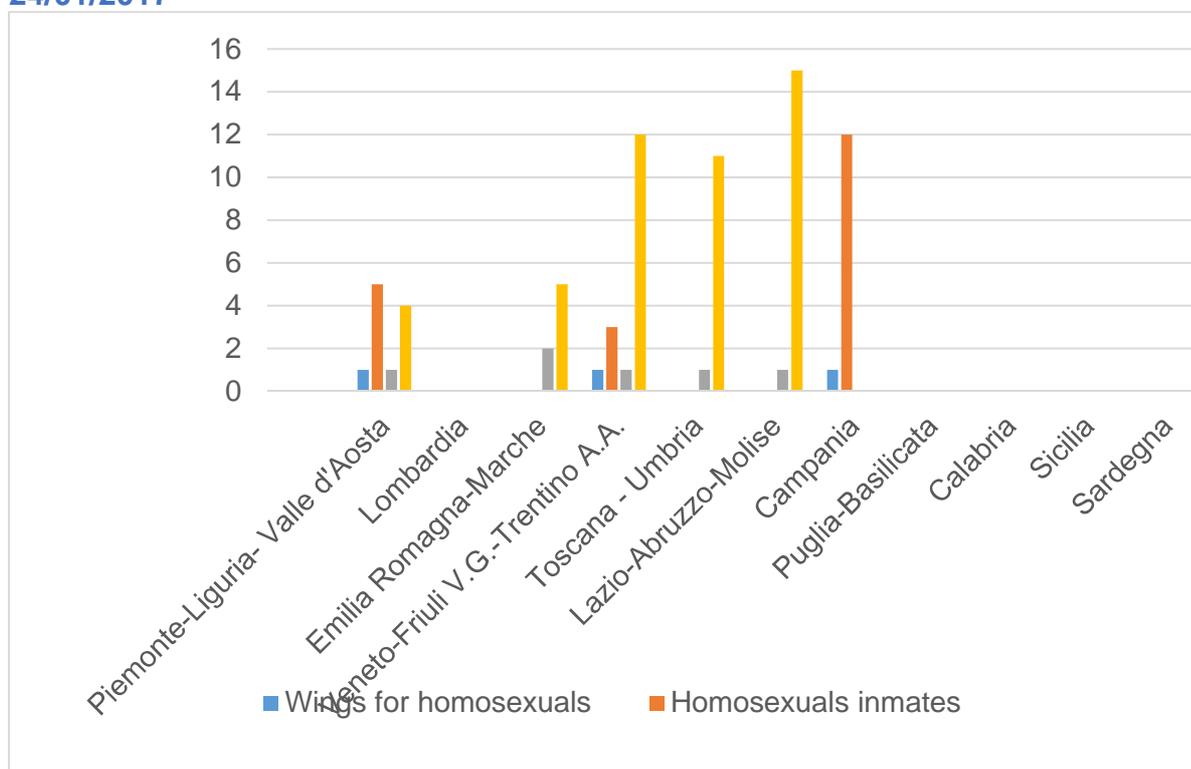
Source: Ministry of Justice - Department of Penitentiary Administration

Table 10 - Prison population - Homosexuals and Trans-genders – Up to 24/01/2017

Regional Directorate	Wings for homosexuals	Homosexual inmates	Wings for transgenders	Transgender inmates
Calabria	-	-	-	-
Campania	1	12	-	-
Emilia Romagna - Marche	-	-	2	5
Lazio-Abruzzo-Molise	-	-	1	15
Lombardia	-	-	-	-
Piemonte-Liguria-Valle d'Aosta	1	5	1	4
Puglia-Basilicata	-	-	-	-
Sardegna	-	-	-	-
Sicilia	-	-	-	-
Toscana-Umbria	-	-	1	11
Veneto-Friuli V.G.-Trentino A.A.	1	3	1	12
Total	3	20	6	47

Source: Ministry of Justice - Department of Penitentiary Administration

Graph 12 - Prison population - Homosexuals and Trans-genders – Up to 24/01/2017



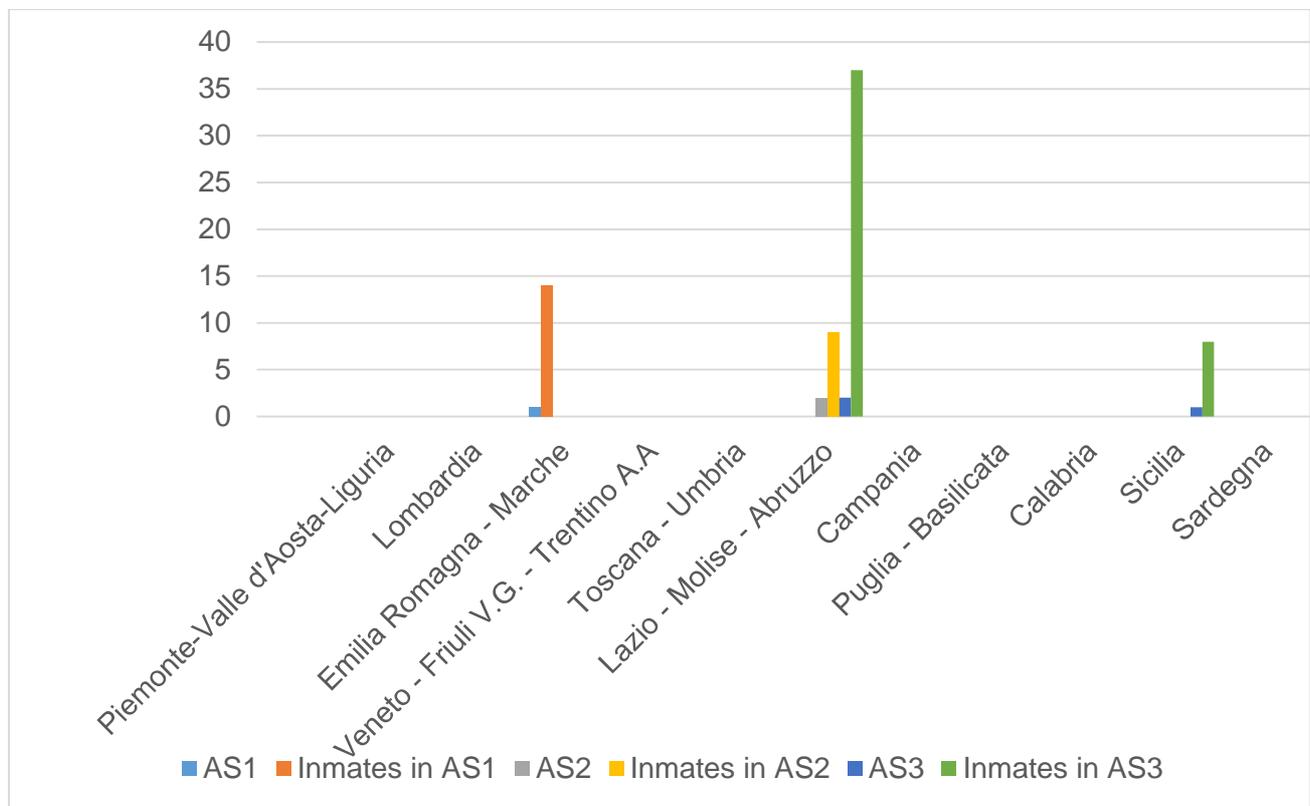
Source: Ministry of Justice - Department of Penitentiary Administration

Table 11 - Prison population – Females in high security wings – Up to 24/01/2017

Regional Directorate	AS1	Inmates in AS1	AS2	Inmates in AS2	AS3	Inmates in AS3
Calabria	-	-	-	-	-	-
Campania	-	-	-	-	-	-
Emilia Romagna-Marche	1	14	-	-	-	-
Lazio-Abruzzo-Molise	-	-	2	9	2	37
Lombardia	-	-	-	-	-	-
Piemonte- Liguria -Valle d'Aosta	-	-	-	-	-	-
Puglia-Basilicata	-	-	-	-	-	-
Sardegna	-	-	-	-	-	-
Sicilia	-	-	-	-	1	8
Toscana - Umbria	-	-	-	-	-	-
Veneto-Friuli V.G.- Trentino A.A.	-	-	-	-	-	-
Total	1	14	2	9	3	45

Source: Ministry of Justice - Department of Penitentiary Administration

Graph 13 - Prison population – Females in high security wings – Up to 24/01/2017



Source: Ministry of Justice - Department of Penitentiary Administration

Table 12 - Prison population – incarcerated parents (nationals) with children – Up to 31/01/2017

Region	Prison	Incarcerated women with children	Children
Emilia Romagna	C.C. Bologna "Rocco D'Amato"	0	0
Lazio	C.C.F. Roma Rebibbia Femminile "Germana Stefanini"	5	5
Lombardia	C.R. Milano "Bollate"	2	2
Lombardia	C.C.F. Milano - San Vittore "Francesco Di Cataldo"	1	1
Piemonte	C.C. Torino "G. Lorusso - L. Cutugno"	3	4
Sardegna	C.C. Cagliari "Ettore Scaldas"	1	1
Veneto	C.R.F Venezia "Giudecca"	1	2
Total		13	15

Source: Ministry of Justice - Department of Penitentiary Administration

Table 13 - Prison population – incarcerated parents (foreign nationals) with children Up to 31/01/2017

Region	Prison	Incarcerated women with children	Children
Emilia Romagna	C.C. Bologna "Rocco D'Amato"	1	1
Lazio	C.C.F. Roma Rebibbia Femminile "Germana Stefanini"	9	9
Lombardia	C.R. Milano "Bollate"	1	1
Lombardia	C.C.F. Milano - San Vittore "Francesco Di Cataldo".	6	7
Piemonte	C.C. Torino "G. Lorusso - L. Cutugno"	2	4
Sardegna	C.C. Cagliari "Ettore Scaldas"	0	0
Veneto	C.R.F Venezia "Giudecca"	3	3
Total		22	25

Source: Ministry of Justice - Department of Penitentiary Administration

Table 14 - Prison population – incarcerated parents (nationals and foreign nationals) with children – Up to 31/01/2017

Region	Prison	Incarcerated women with children	Children
Emilia Romagna	C.C. Bologna "Rocco D'Amato" .	1	1
Lazio	C.C.F. Roma Rebibbia Femminile "Germana Stefanini"	14	14
Lombardia	C.R. Milano "Bollate"	3	3
Lombardia	C.C.F. Milano - San Vittore "Francesco Di Cataldo".	7	8
Piemonte	C.C. Torino "G. Lorusso - L. Cutugno".	5	8
Sardegna	C.C. Cagliari "Ettore Scalas"	1	1
Veneto	C.R.F Venezia "Giudecca"	4	5
Total		35	40

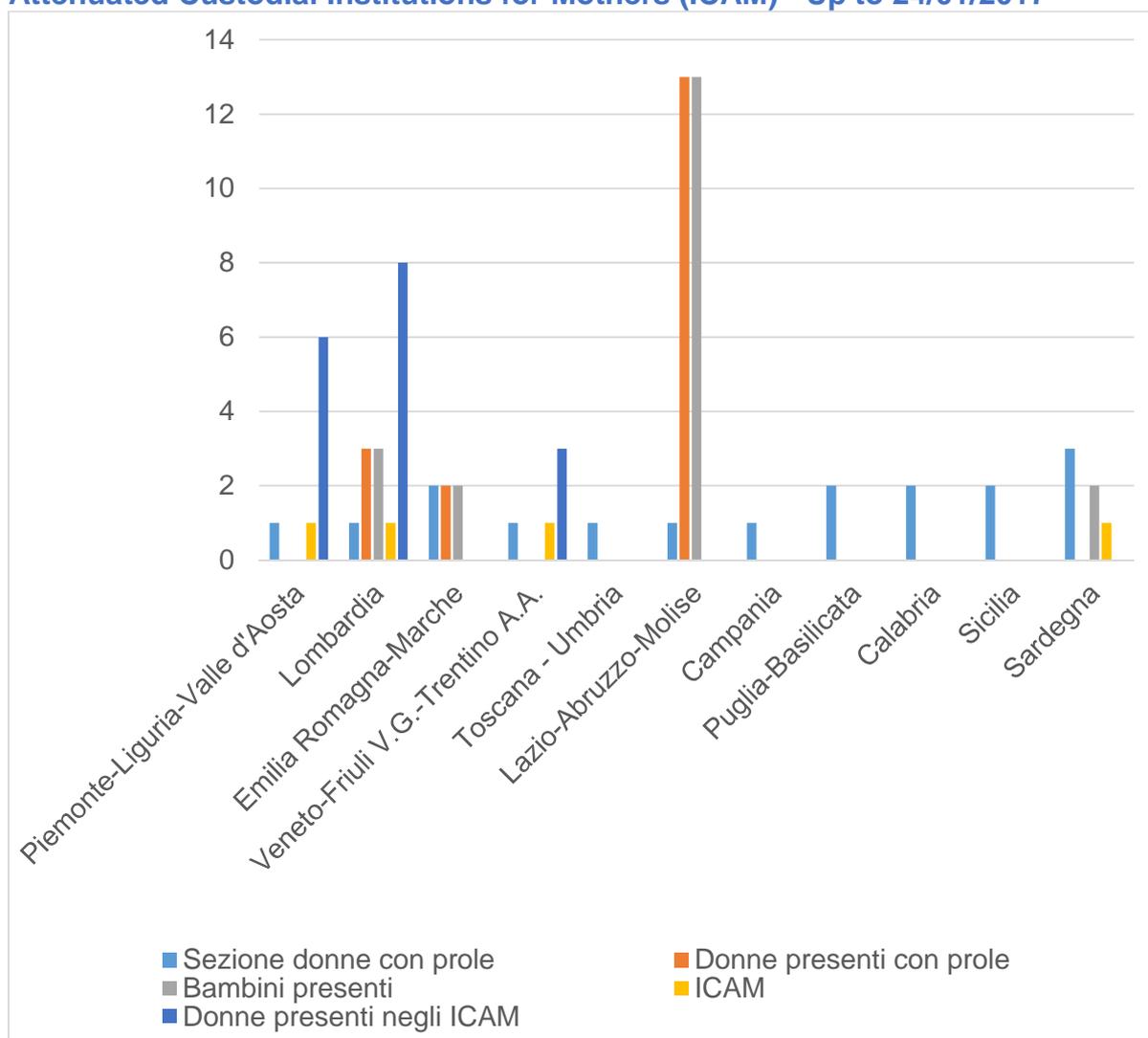
Source: Ministry of Justice - Department of Penitentiary Administration

Table 15 - Wings accommodating incarcerated parents with children – Attenuated Custodial Institutions for Mothers (ICAM) - Up to 24/01/2017

Regional Directorates	Wings for women with children	Incarcerated women with children	Children	ICAMs	Women accommodated in ICAMs
Calabria	2	-	0	-	-
Campania	1	-	0	-	-
Emilia Romagna-	2	2	2	-	-
Marche					
Lazio-Abruzzo-	1	13	13	-	-
Molise					
Lombardia	1	3	3	1	8
Piemonte-					
Liguria-Valle	1	-	0	1	6
d'Aosta					
Puglia-	2	-	0	-	-
Basilicata					
Sardegna	3	-	2	1	0
Sicilia	2	-	0	-	-
Toscana-					
Umbria	1	-	0	-	-
Veneto-Friuli					
V.G.-Trentino	1	-	0	1	3
A.A:					
Total	17	18	20	4	17

Source: Ministry of Justice - Department of Penitentiary Administration

Graph 14 - Wings accommodating incarcerated parents with children – Attenuated Custodial Institutions for Mothers (ICAM) - Up to 24/01/2017



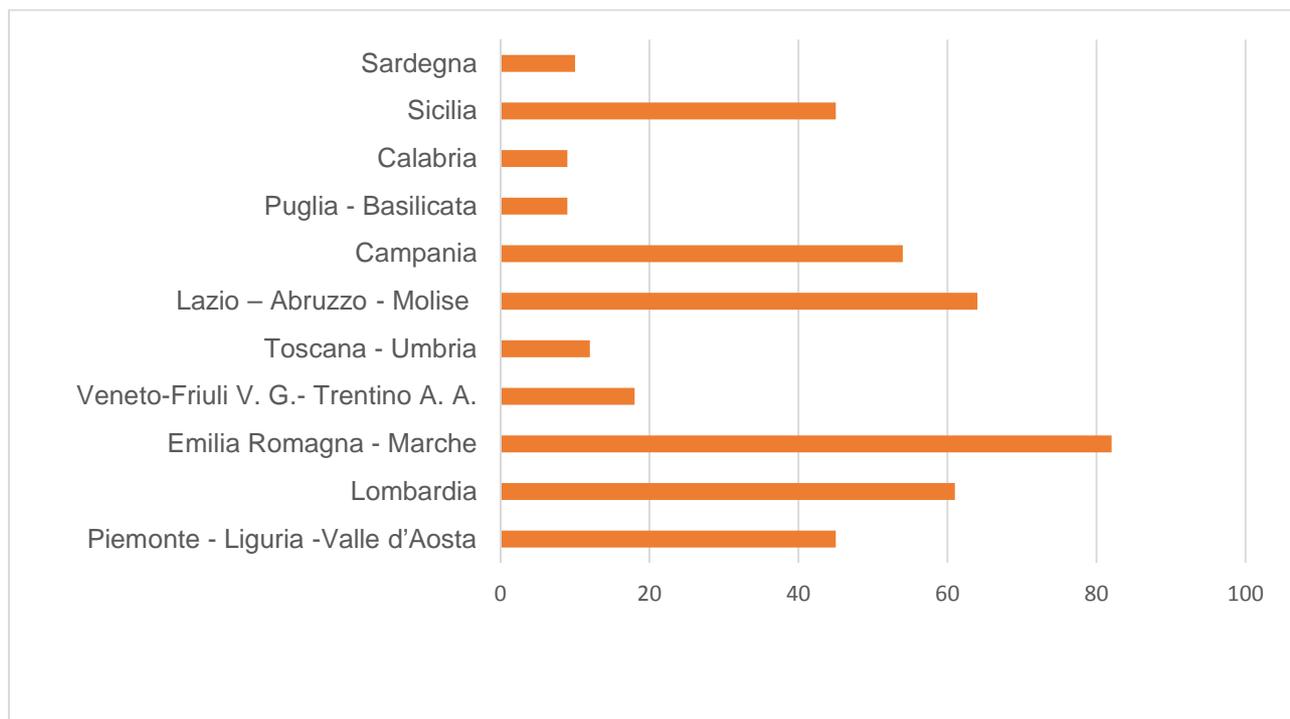
Source: Ministry of Justice - Department of Penitentiary Administration

Table 16 – Inmates held in solitary confinement – Up to 24/01/2017

Regional Directorates	Inmates
Calabria	9
Campania	54
Emilia Romagna - Marche	82
Lazio - Abruzzo - Molise	64
Lombardia	61
Piemonte - Liguria -Valle d'Aosta	45
Puglia - Basilicata	9
Sardegna	10
Sicilia	45
Toscana - Umbria	12
Veneto-Friuli V. G.- Trentino A. A.	18
Total	409

Source: Ministry of Justice - Department of Penitentiary Administration

Graph 15 - Inmates held in solitary confinement – Up to 24/01/2017



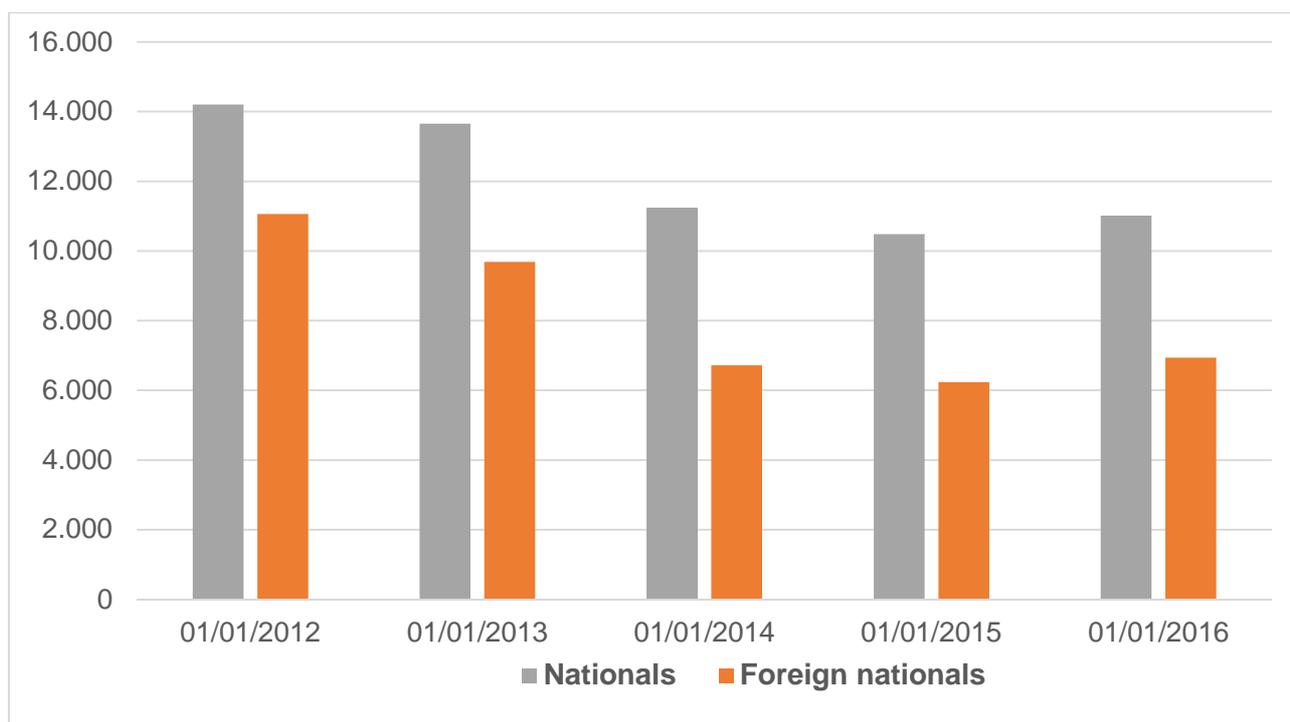
Source: Ministry of Justice - Department of Penitentiary Administration

Table 17 - Inmates sentenced for drug trafficking (art. 73 D.P.R. 309/90) – Years 2012-2016

Date	Nationals	Foreign nationals
31/12/2012	14.206	11.063
31/12/2013	13.658	9.688
31/12/2014	11.240	6.715
31/12/2015	10.482	6.230
31/12/2016	11.018	6.937

Source: Ministry of Justice - Department of Penitentiary Administration

Graph 16- Inmates sentenced for drug trafficking (art. 73 D.P.R. 309/90) – Years 2012-2016



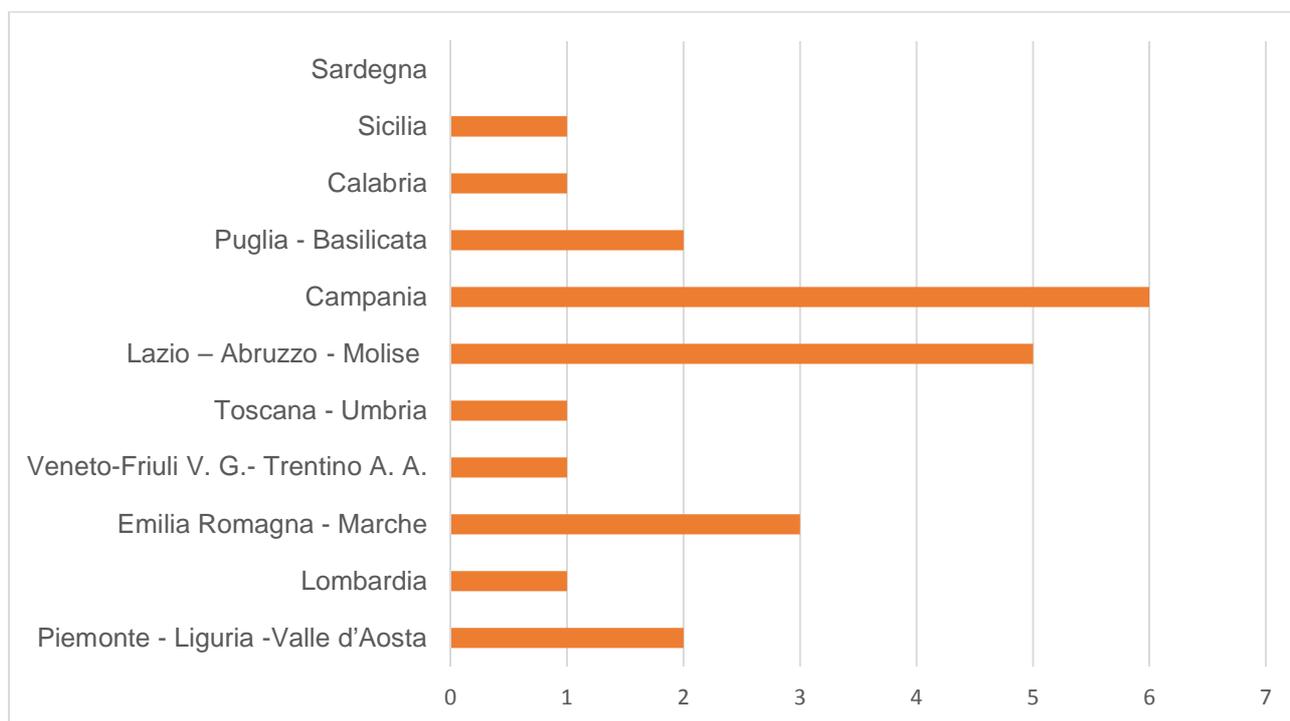
Source: Ministry of Justice - Department of Penitentiary Administration

Table 18 - Wings dedicated to mentally ill male inmates – Up to 24/01/2017

Regional Directorates	Wings for mental healthcare
Calabria	1
Campania	6
Emilia Romagna - Marche	3
Lazio - Abruzzo - Molise	5
Lombardia	1
Piemonte - Liguria -Valle d'Aosta	2
Puglia - Basilicata	2
Sardegna	0
Sicilia	1
Toscana - Umbria	1
Veneto - Friuli V.G. -Trentino A.A.	1
Total	23

Source: Ministry of Justice - Department of Penitentiary Administration

Graph 17- Wings dedicated to mentally ill male inmates – Up to 24/01/2017



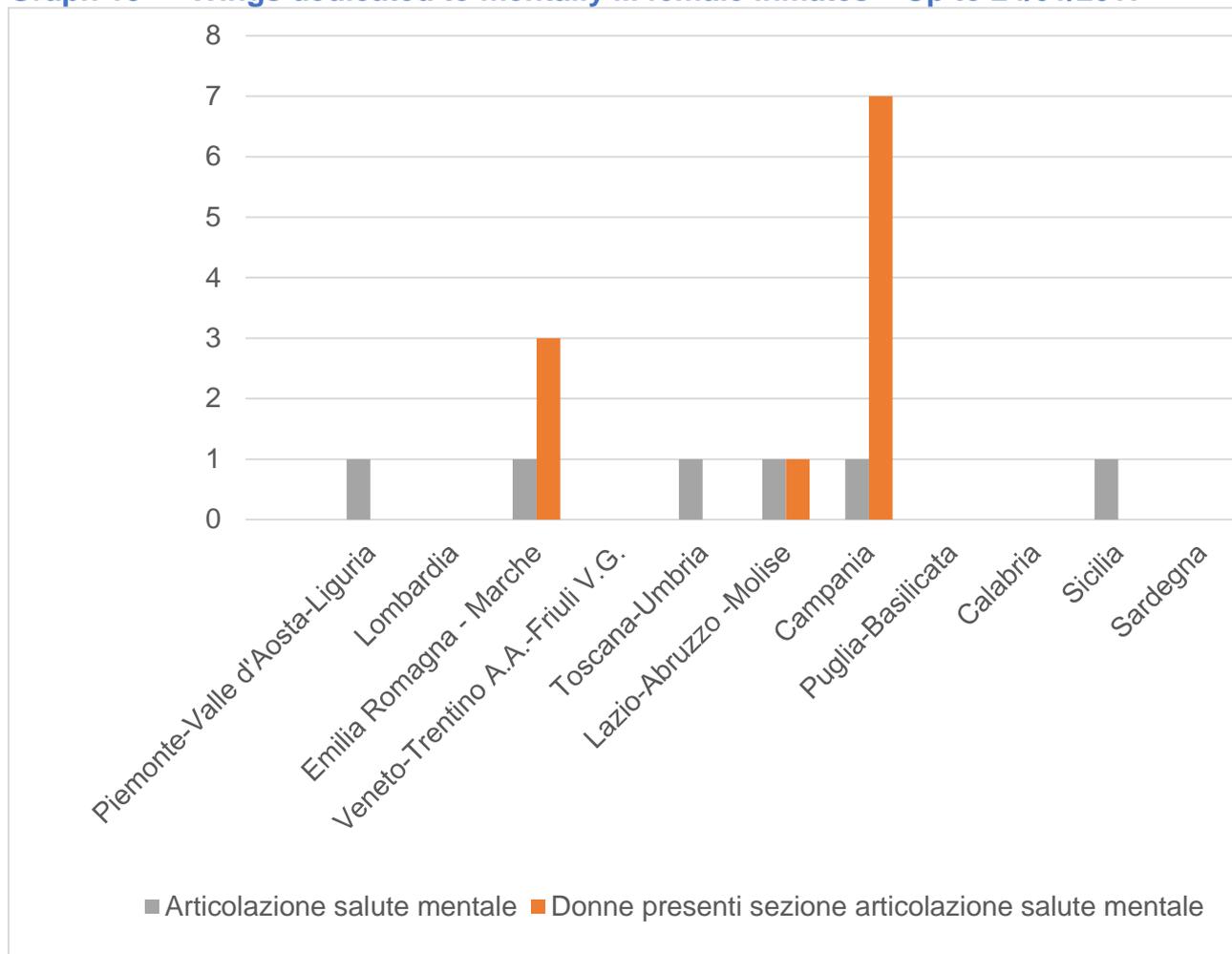
Source: Ministry of Justice - Department of Penitentiary Administration

Table 19 - Wings dedicated to mentally ill female inmates – Up to 24/01/2017

Regional Directorate	# of wings for healthcare	Mentally ill female inmates
Calabria	-	-
Campania	1	7
Emilia Romagna - Marche	1	3
Lazio-Abruzzo-Molise	1	1
Lombardia	-	-
Piemonte-Liguria-Valle d'Aosta	1	0
Puglia-Basilicata	-	-
Sardegna	-	-
Sicilia	1	0
Toscana-Umbria	1	0
Veneto-Friuli V.G.-Trentino A.A.	-	-
Total	6	11

Source: Ministry of Justice - Department of Penitentiary Administration

Graph 18 - Wings dedicated to mentally ill female inmates – Up to 24/01/2017



Source: Ministry of Justice - Department of Penitentiary Administration

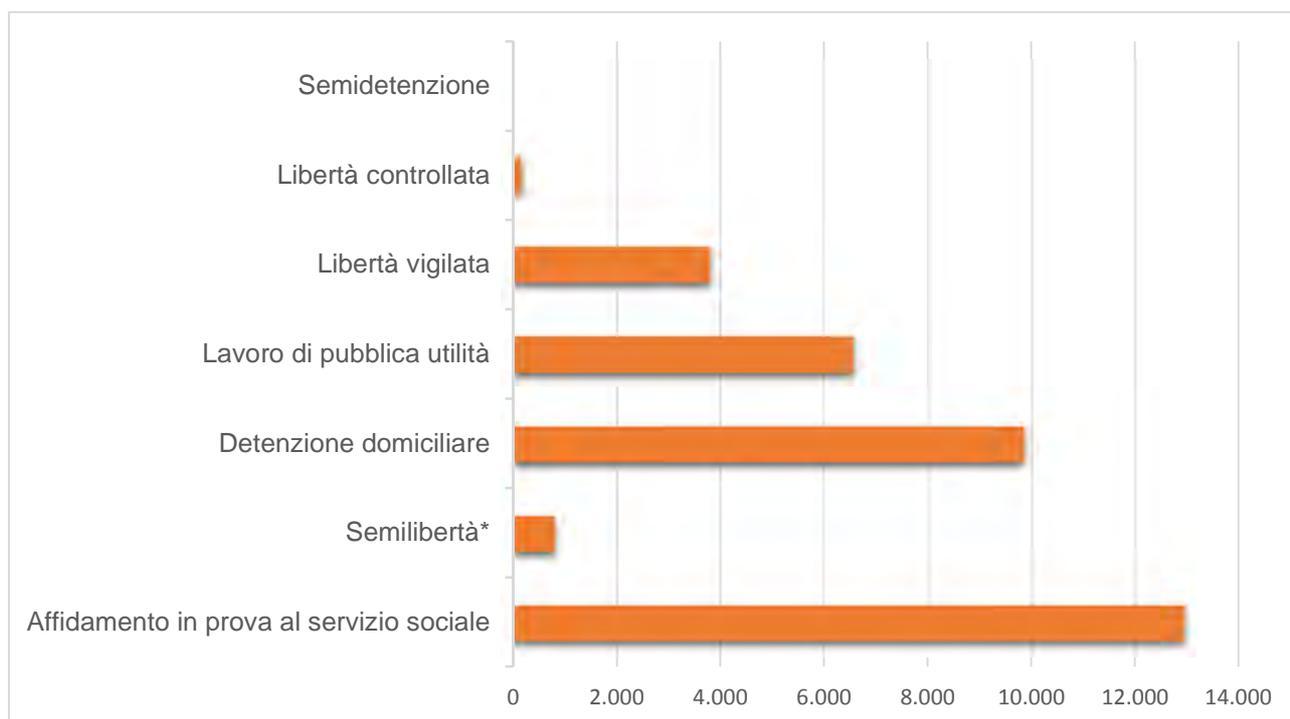
Table 20 - Non-custodial measures, community service work, security measures, substitutive sanctions – Up to 31/01/2017

Typologies	Cases
Probation order	12.941
Home detention	9.852
Community service work	6.558
Monitored liberty (substitutive sanction)	159
Community control (security sanction)	3.791
Semi-detention	6
Semi-liberty	803*
Total	34.110

* Source: Department of Penitentiary Administration – ITC development and management Office – Statistics and departmental support automation – Statistics unit.

Source: Department for juvenile justice and the community – DG for the enforcement of sentences in the community and probation

Graph 19 - Non-custodial measures, community service work, security measures, substitutive sanctions – Up to 31/01/2017



* Source: Department of Penitentiary Administration – ITC development and management Office – Statistics and departmental support automation – Statistics unit.

Source: Department for juvenile justice and the community – DG for the enforcement of sentences in the community and probation

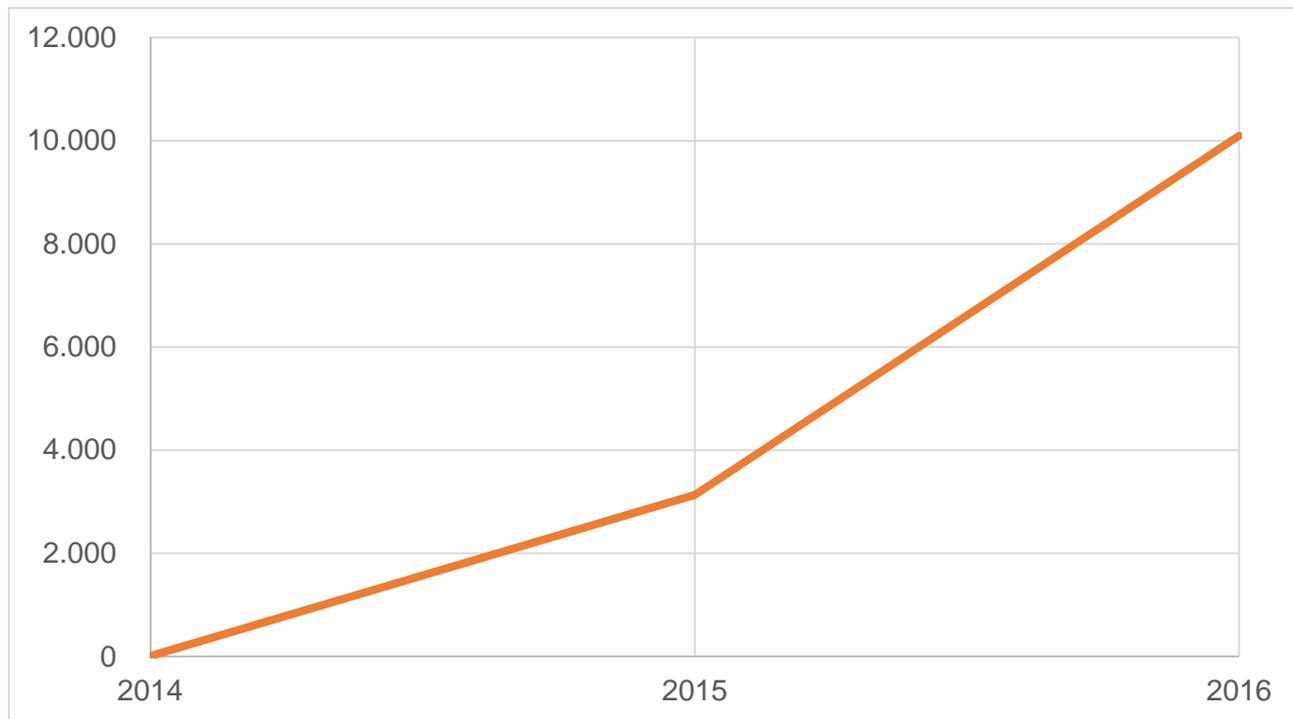
Table 21 - Suspension of judgment with *diversion* programmes for adult defendants – Results. Years 2014-2016

Years	# of cases	Charges dismissed	Fail to complete	DNF
2014	7	n.r.	n.r.	n.r.
2015	3.133	95,9	3,7	0,4
2016	10.097	96,1	3,7	0,2

Data refer to the number of suspensions executed in the year referred – elaboration dated 10 February 2017.

Source: Department for juvenile justice and the community – DG for the enforcement of sentences in the community and probation.

Graph 20 - Suspension of judgment with *diversion* programmes for adult defendants – Results. Years 2014-2016



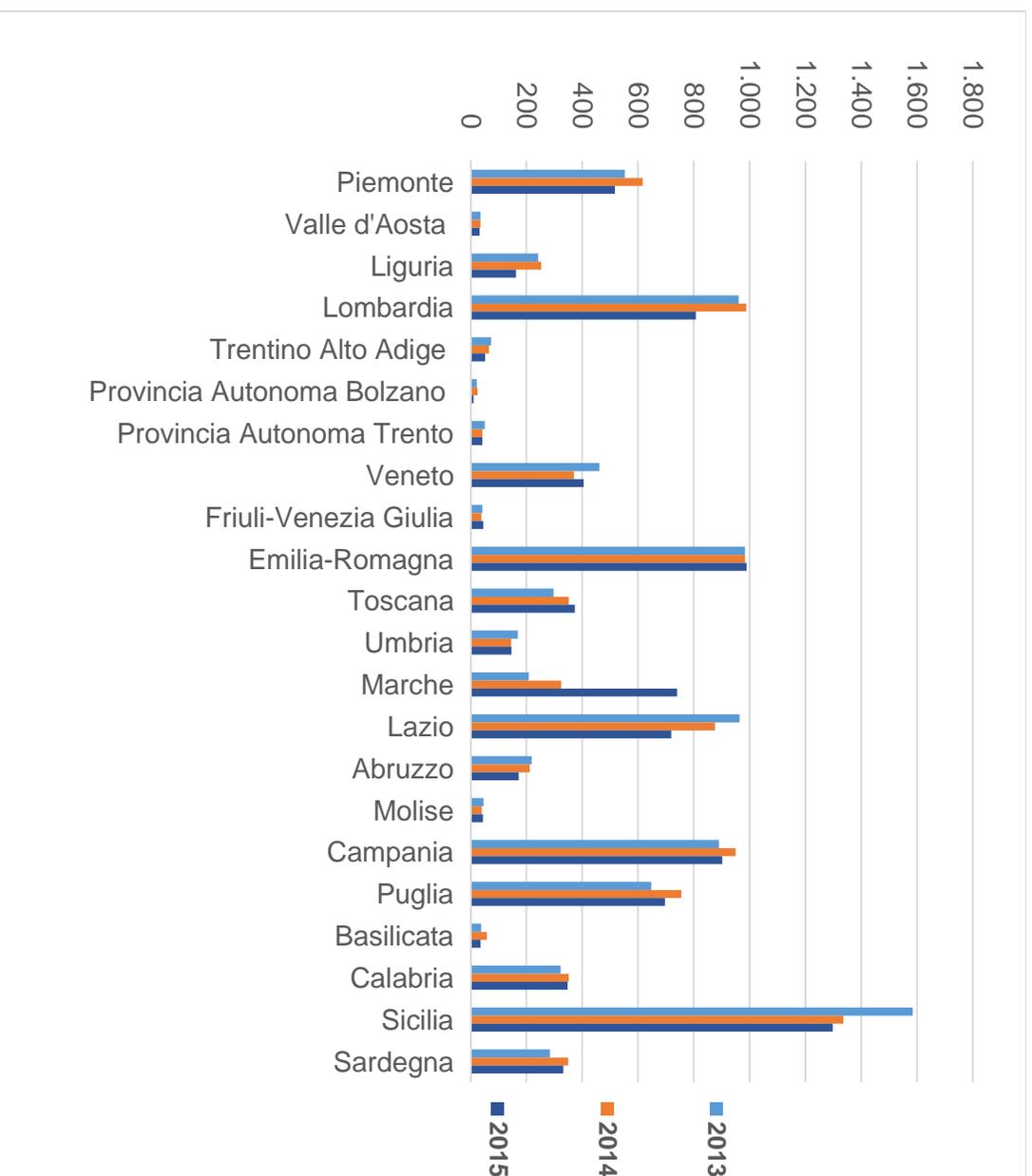
Source: Department for juvenile justice and the community – DG for the enforcement of sentences in the community and probation

Table 22 - Discharge of patients following Involuntary treatments (TSO) - Years 2013-2015

Region for hospitalisation	2013	2014	2015
Abruzzo	219	212	172
Basilicata	37	58	35
Calabria	322	352	347
Campania	890	950	902
Emilia-Romagna	984	984	989
Friuli-Venezia Giulia	42	38	45
Lazio	964	876	719
Liguria	242	253	162
Lombardia	961	988	808
Marche	208	325	740
Molise	46	40	44
Piemonte	553	617	517
Provincia Autonoma Bolzano	22	24	10
Provincia Autonoma Trento	51	42	42
Puglia	648	755	697
Sardegna	284	350	332
Sicilia	1.585	1.336	1.298
Toscana	297	352	373
Trentino A.A.	73	66	52
Umbria	169	145	146
Valle d'Aosta	35	35	32
Veneto	462	370	405
Total	11.107	11.182	10.882

Source: Istat.it

**Graph 21 - Discharge of patients following Involuntary treatments (TSO) -
Years 2013-2015**



Source: Istat.it

Table 23 – Residencies for the execution of the security measures (REMS)

REMS	Region	Opening day	Capacity	# of patients
Aurisina	Friuli Venezia Giulia	04/05/2015	2	1
Maniago	Friuli Venezia Giulia	21/05/2015	2	2
Udine	Friuli Venezia Giulia	29/02/2016	2	0
Palombara Sabina “Merope”	Lazio	18/08/2015	20	19
Palombara Sabina “Minerva”	Lazio	08/06/2016	20	20
Subiaco	Lazio	01/07/2015	20	19
Ceccano	Lazio	05/11/2015	20	17
Pontecorvo	Lazio	31/03/2015	11	9
Calvi Risorta	Campania	18/06/2015	20	19
Vairano Patenora	Campania	06/12/2015	12	12
Mondragone	Campania	30/04/2015	16	15
San Nicola Baronia	Campania	02/12/2015	20	20
Volterra	Toscana (Umbria)	01/12/2015	28	30
Barete	Abruzzo (Molise)	09/05/2016	20	13
Bra	Piemonte	22/10/2015	18	18
S. Maurizio Canavese	Piemonte	15/11/2016	20	20
Castiglione delle Stiviere	Lombardia	01/04/2015	120	121
Capoterra	Sardegna	27/07/2015	16	16
Caltagirone	Sicilia	30/04/2015	20	20
Naso	Sicilia	01/04/2105	20	20
Carovigno	Puglia	07/07/2016	18	17
Spinazzola	Puglia	01/12/2015	20	20
Pergine Valsugana	Trentino Alto Adige	01/07/2015	10	10
Parma	Emilia Romagna	27/04/2015	10	09
Bologna	Emilia Romagna	01/04/2015	14	14
Nogara	Veneto	20/01/2016	40	34
Montegrimano	Marche	25/06/2015	15	20
Pisticci	Basilicata	27/04/2015	10	09
Santa Sofia D’Epiro	Calabria	28/09/2016	20	16
Genova “Prà”	Liguria	08/02/2017	20	9
Total (30 REMS)			604	571

Source: Quarterly report by the Commissioner for the closing of forensic psychiatric hospitals – data refer to 19 February 2017

Graph 22 - Residencies for the execution of the security measures (REMS) in Italy

Grafico 22 - Mappa delle residenze per l'esecuzione delle misure di sicurezza (REMS) in Italia



Source: Quarterly report by the Commissioner for the closing of forensic psychiatric hospitals – data refer to October 2016

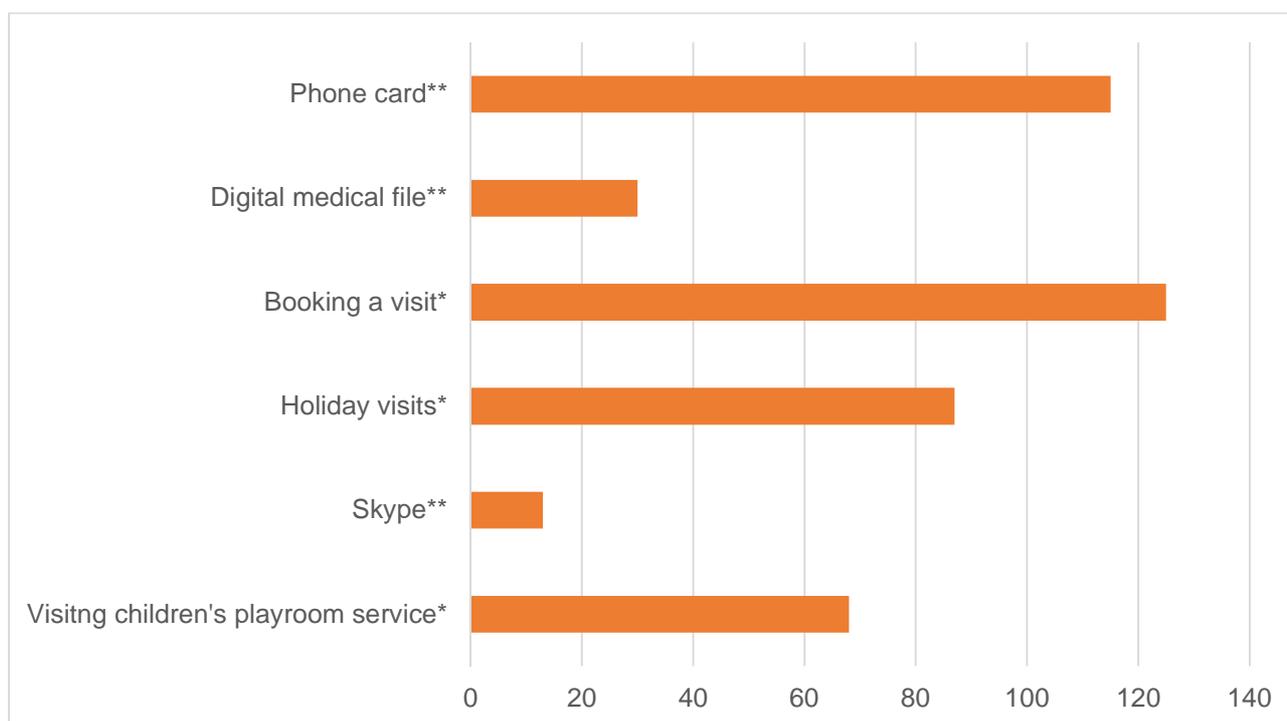
Table 24 – Activities and services implemented in prisons – Year 2016

Visiting children's playroom service	Skype	Holiday visits	Booking a visit	Digital medical file	Phone cards
68*	13**	87*	125*	30**	115**

*Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

**Source: Ministry of Justice – Press office

Graph 23 - Activities and services implemented in prisons – Year 2016



*Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

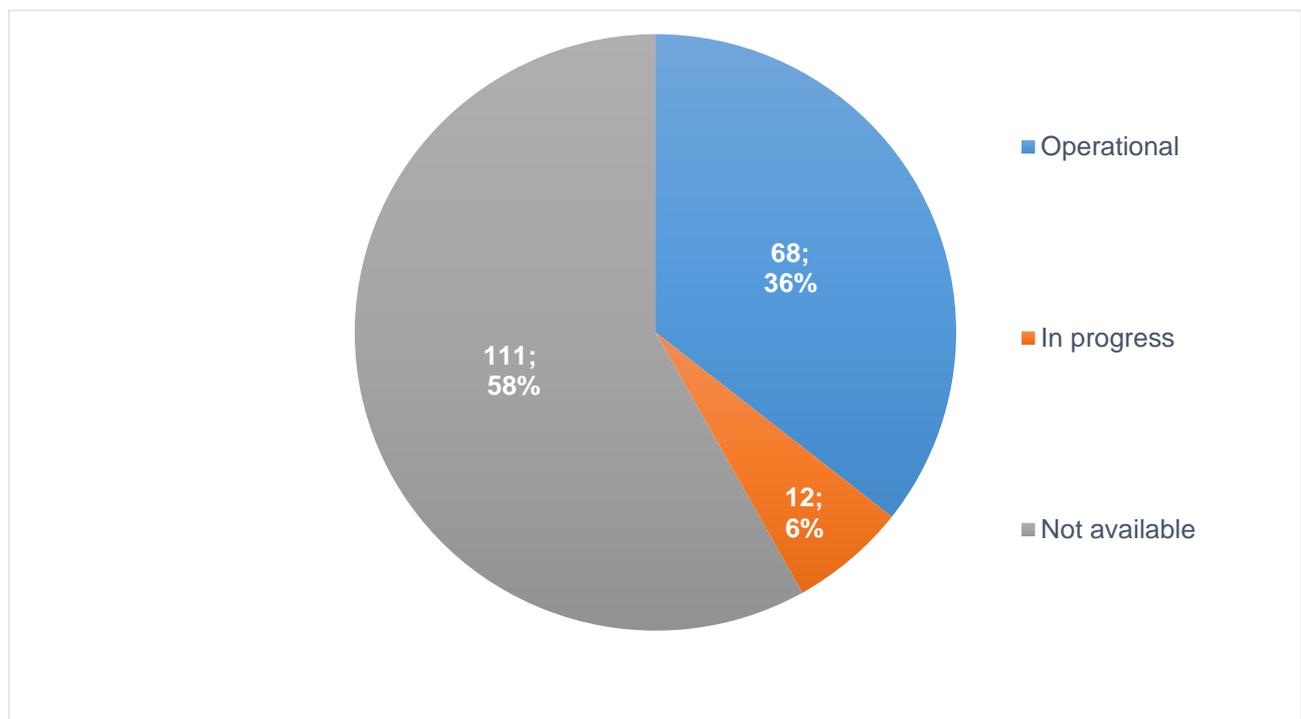
**Source: Ministry of Justice – Press office

Table 25 – Visiting children’s playroom service - Year 2016

Playroom service	Total	%
Operational	68	36
In progress	12	6
Not available	111	58
Total prisons	191	100

Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

Graph 24 - Visiting children’s playroom service - Year 2016



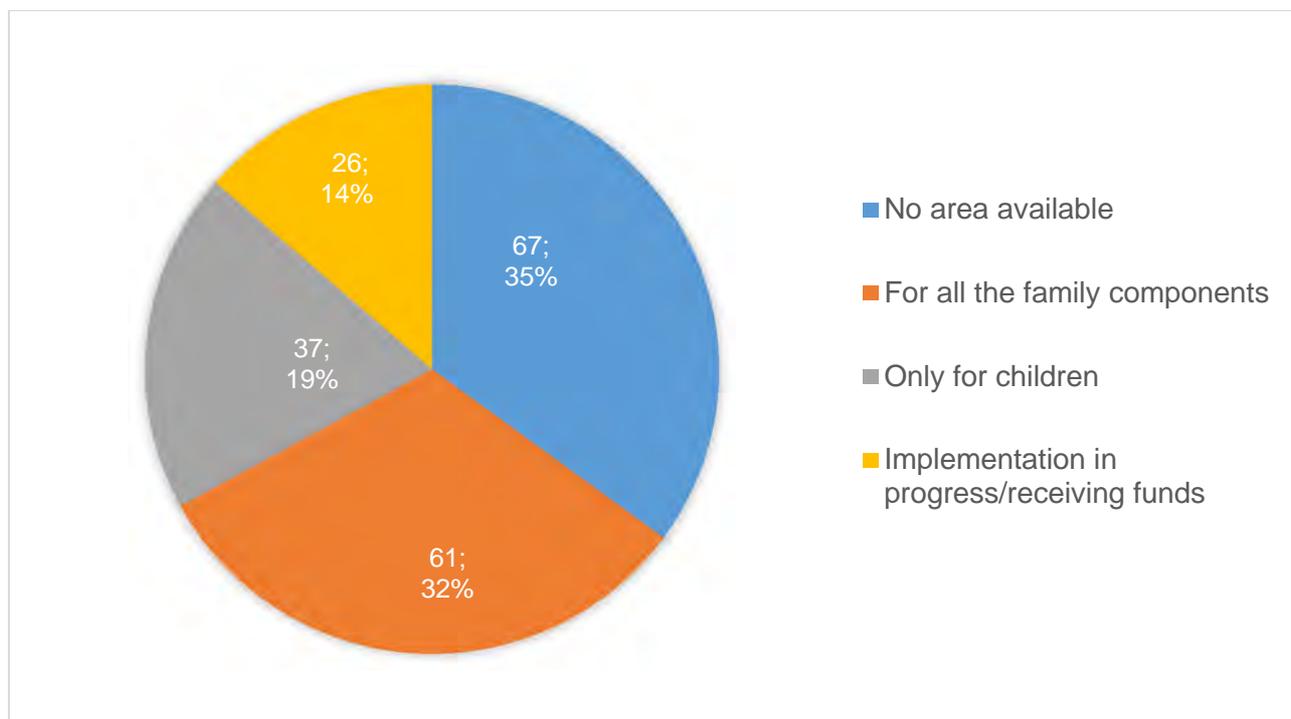
Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

Table 26 – Family visits in dedicated area - Year 2016

Visits	Total	%
No area available	67	35
For all the family components	61	32
Only for children	37	19
Implementation in progress/ receiving funds	26	14
Total prisons	191	100

Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

Graph 25 - Family visits in dedicated area - Year 2016



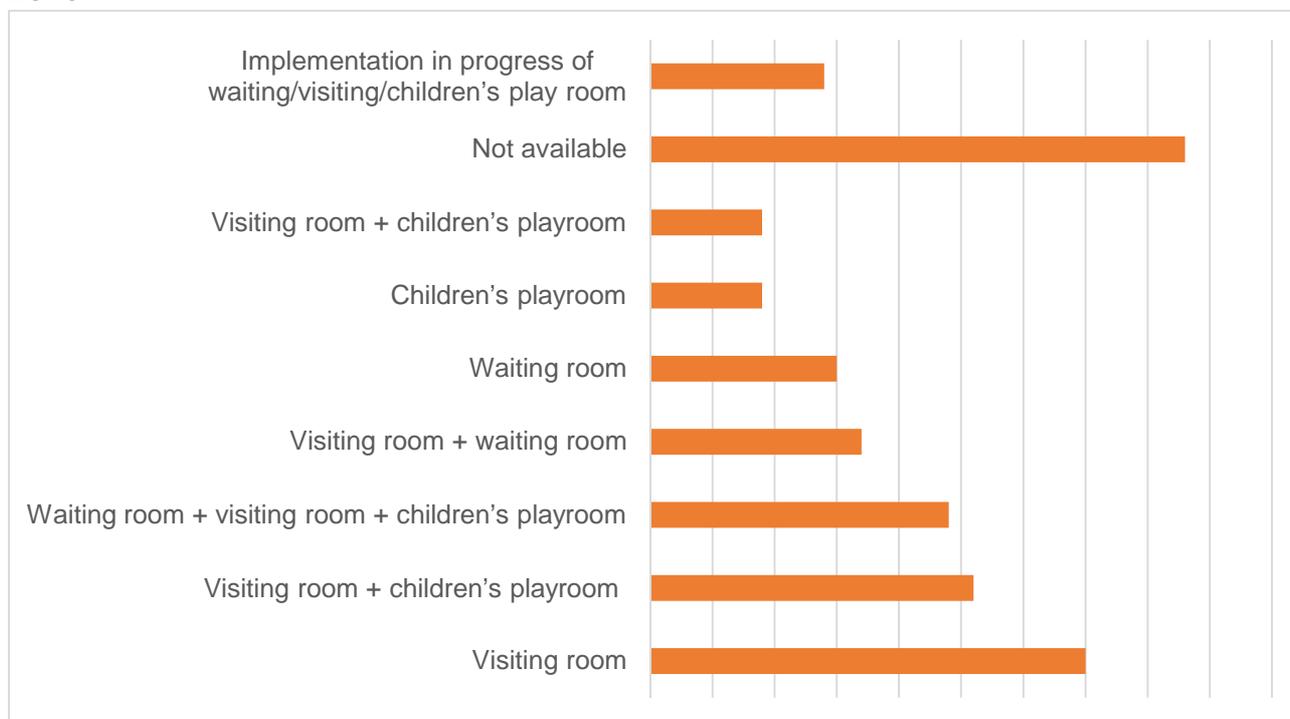
Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

Table 27 – Facilities dedicated to children visiting incarcerated parents - Year 2016

Facilities	Total
Visiting room	35
Visiting room + children’s playroom	26
Waiting room + visiting room + children’s playroom	24
Visiting room + waiting room	17
Waiting room	15
Children’s playroom	9
Visiting room + children’s playroom	9
Not available	43
Implementation in progress of waiting/visiting/children’s play room	14

Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

Graph 26 - Rooms dedicated to children visiting incarcerated parents - Year 2016



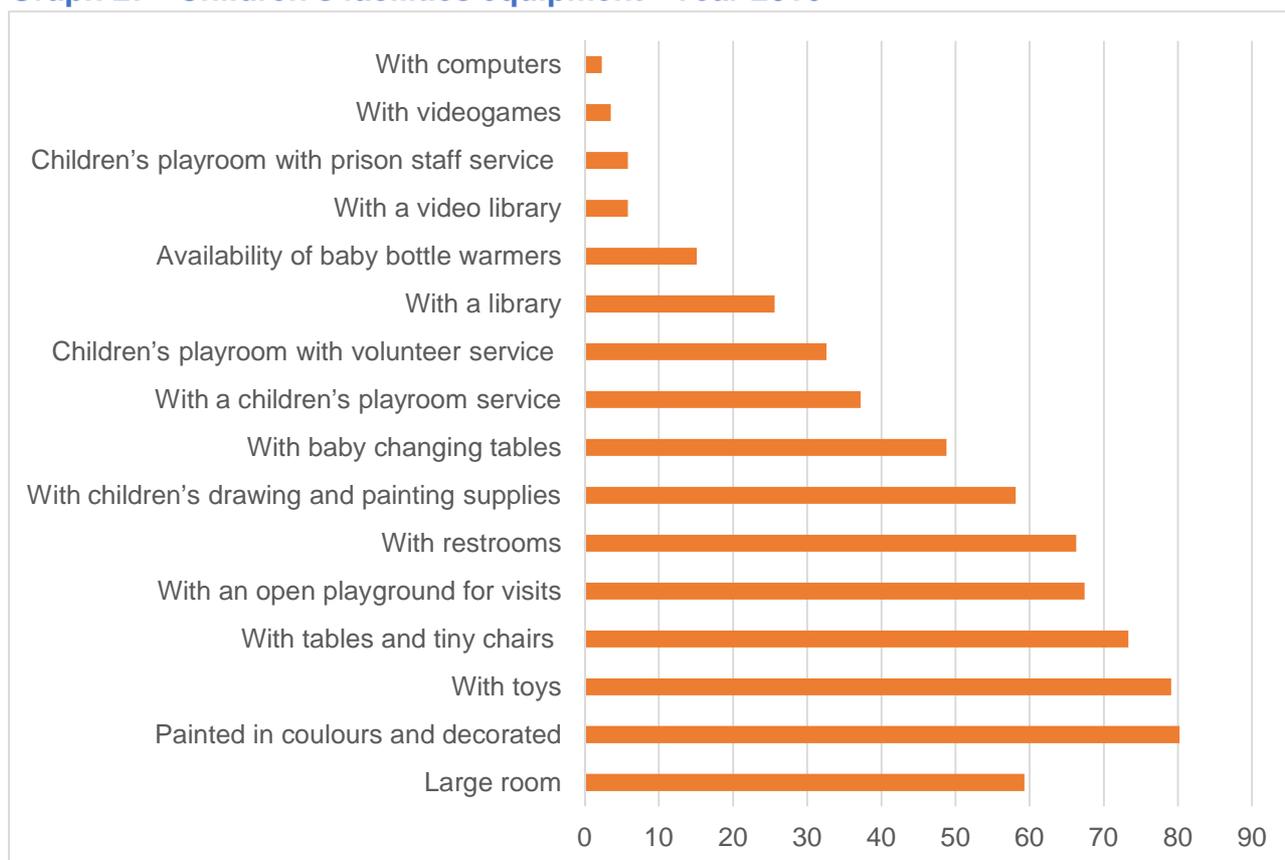
Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

Table 28 – Children’s facilities equipment - Year 2016

How facilities are equipped	%
Large room	59,3
Painted in colours and decorated	80,2
With toys	79,1
With tables and tiny chairs	73,3
With an open playground for visits	67,4
With restrooms	66,3
With children’s drawing and painting supplies	58,1
With baby changing tables	48,8
With a children’s playroom service	37,2
Children’s playroom with volunteer service	32,6
With a library	25,6
Availability of baby bottle warmers	15,1
With a video library	5,8
Children’s playroom with prison staff service	5,8
With videogames	3,5
With computers	2,3

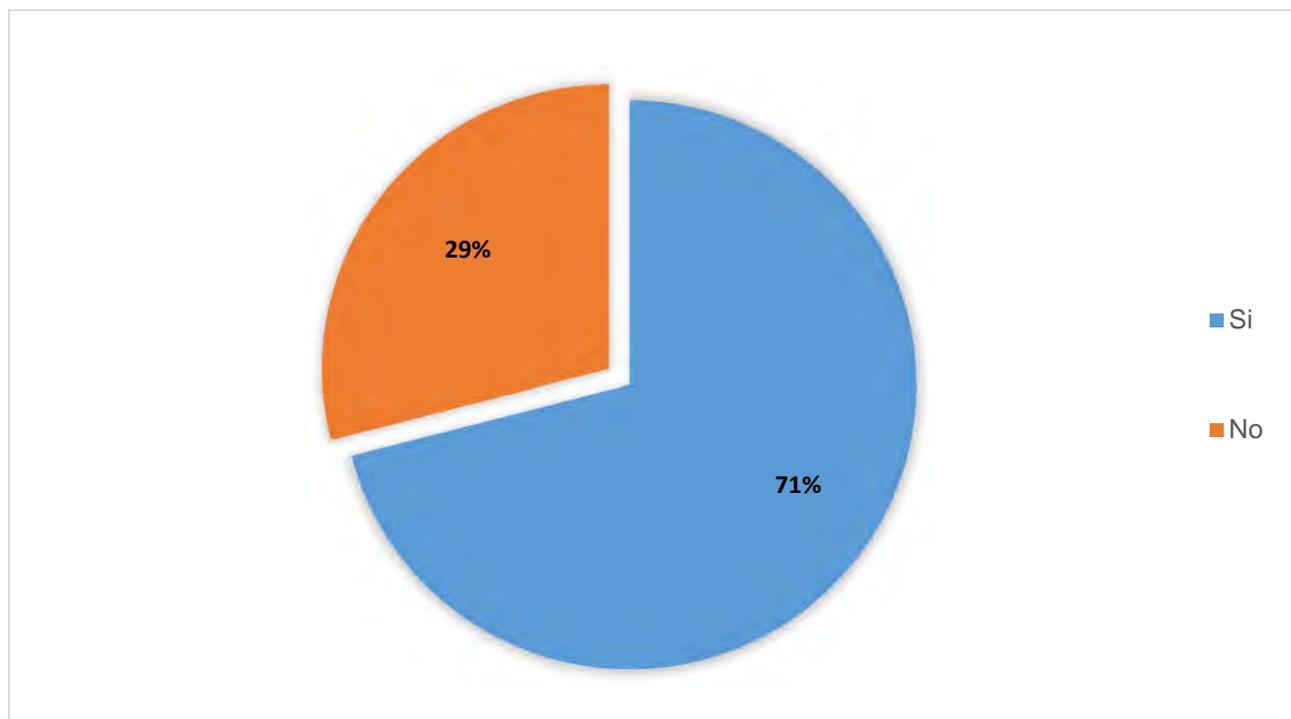
Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

Graph 27 - Children’s facilities equipment - Year 2016



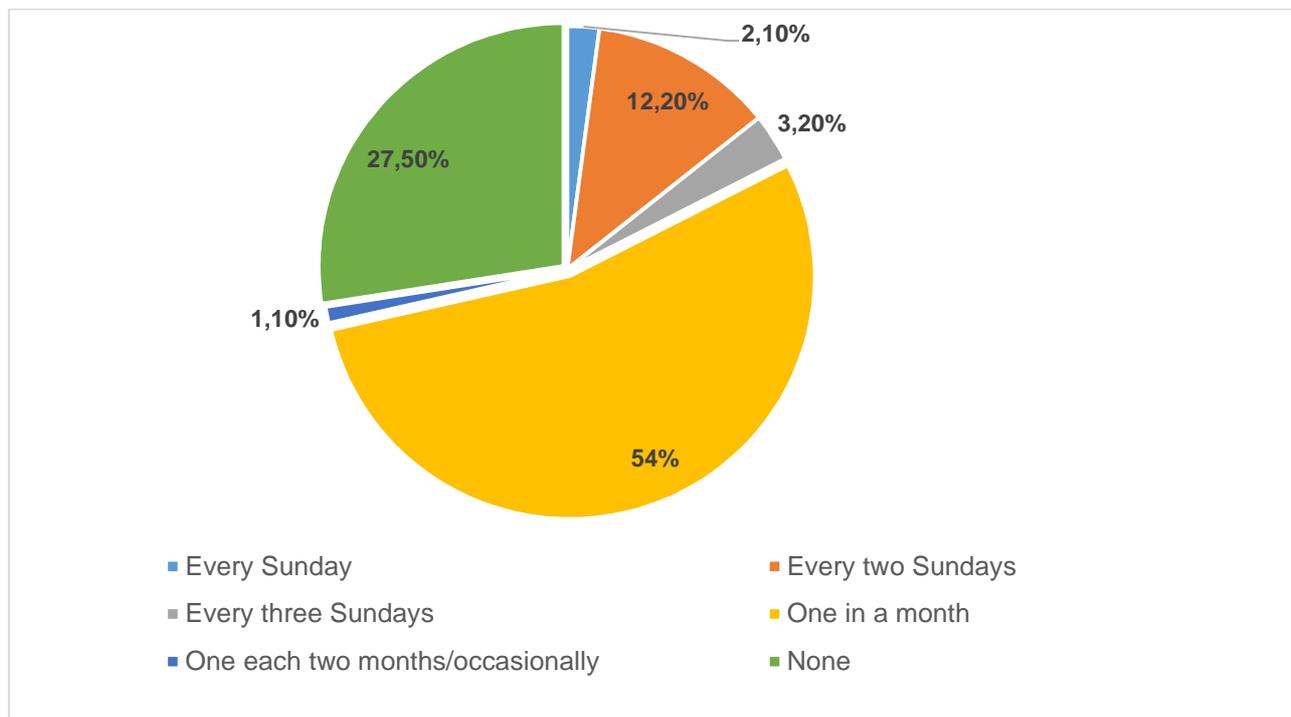
Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

Graph 28 – Booking visits - Year 2016



Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

Graph 29 – Visits on Sundays - Year 2016



Source: Bambinisenzasbarre.org – COPE (Children of Prisoners Europe) – Data refer to April 2016

APPENDIX 3

The deprivation of liberty in the “juvenile” penal field

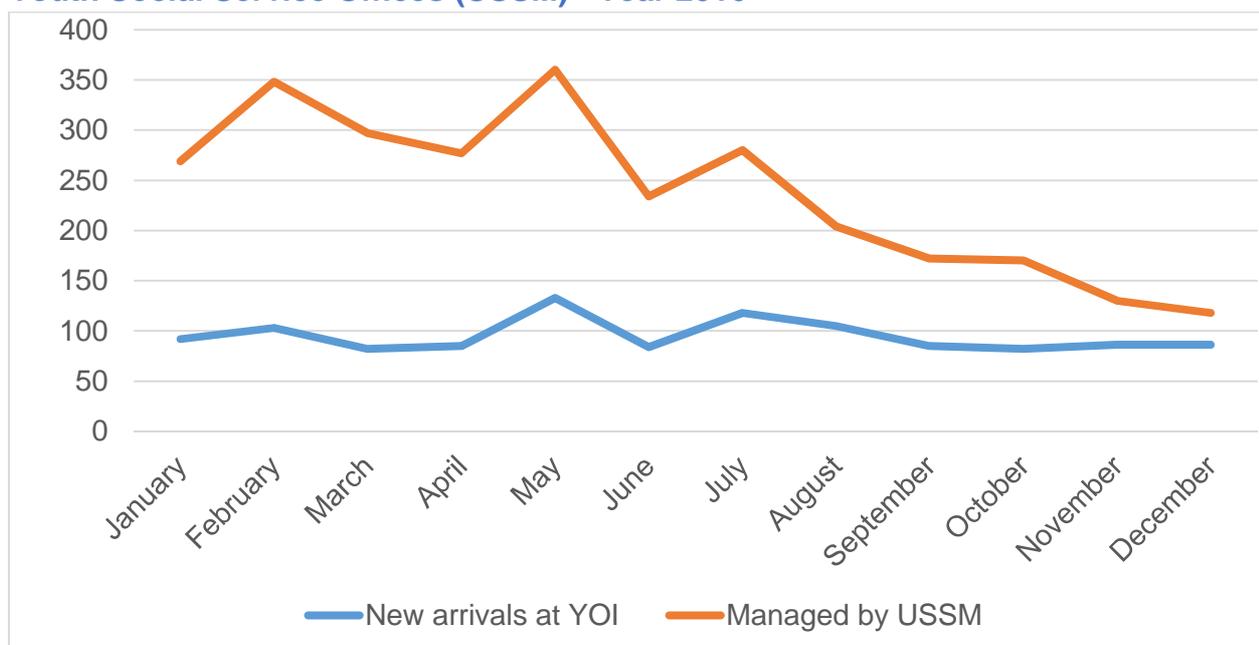
Table 1	Arrivals at the Young Offender Institution (IPM) - Managed by the Youth Social Service Offices (USSM) - Year 2016
Graph 1	Arrivals at the Young Offender Institution (IPM) - Managed by the Youth Social Service Offices (USSM) - Year 2016
Table 2	Arrivals at the First Reception Centres (CPA) – Year 2016
Table 3	Population in Young Offender Institutions for crimes envisaged in art. 73 Decree of the President of the Republic (DPR) 309/90 – Year 2016
Table 4	Arrivals of juveniles and young adults in government and private communities – Year 2016
Table 5	Disciplinary sanctions in Young offender institutions - Year 2016
Graph 2	Disciplinary sanctions in Young offender institutions - Year 2016
Table 6	Juveniles and young adults managed by the Youth Social Service Offices (USSM) - Year 2016
Table 7	Juveniles and young adults managed by the Youth Social Service Offices USSM) Community sanctions – Year 2016
Table 8	Number of sentence suspension order and parole for young offenders (in application of art. 28 D.P.R. 448/88) – Data distributed per outcome Years 2011-2016

Table 1 - Arrivals at the Young Offender Institution (IPM) - Managed by the Youth Social Service Offices (USSM) - Year 2016

Month	New arrivals IPM	New arrivals managed by USSM
January	92	177
February	103	245
March	82	215
April	85	192
May	133	227
June	84	150
July	118	162
August	105	99
September	85	87
October	82	88
November	86	44
December	86	32
Total	1.141	1.718

Source: Ministry of Justice – Department for Young offender institutions and the community – Statistical data elaboration Office

Graph 1 - Arrivals at the Young Offender Institution (IPM) - Managed by the Youth Social Service Offices (USSM) - Year 2016



Source: Ministry of Justice – Department for Young offender institutions and the community – Statistical data elaboration Office

Table 2 – Arrivals at the First Reception Centres (CPA) – Year 2016

Month	Arrivals	Dismissals
January	124	113
February	119	109
March	110	121
April	123	125
May	140	142
June	141	122
July	105	122
August	111	111
September	111	109
October	126	131
November	99	98
December	72	75
Totale	1.381	1.378

Source: Ministry of Justice – Department for Young offender institutions and the community –Young offender services IT System (SISM)

Table 3 – Population in Young Offender Institutions for crimes envisaged in art. 73 Decree of the President of the Republic (DPR) 309/90 – Year 2016

Month	Population after prison term served	Of which convicted
January	81	36
February	76	38
March	75	41
April	74	39
May	79	36
June	82	33
July	86	34
August	87	36
September	89	39
October	90	42
November	92	43
December	95	42

Source: Ministry of Justice – Department for Young offender institutions and the community –Young offender services IT System (SISM)

Table 4 – Arrivals of juveniles and young adults in government and private communities – Year 2016

Month	Arrivals	Of which	
		In application of art.22 DPR 448/88	From other preventative detention order, after conversion
January	137	9	9
February	166	92	19
March	161	95	8
April	155	99	12
May	123	71	10
June	183	95	22
July	185	93	8
August	128	88	8
September	133	76	11
October	154	94	6
November	143	61	19
December	132	64	10
Total	1.800	1.007	142

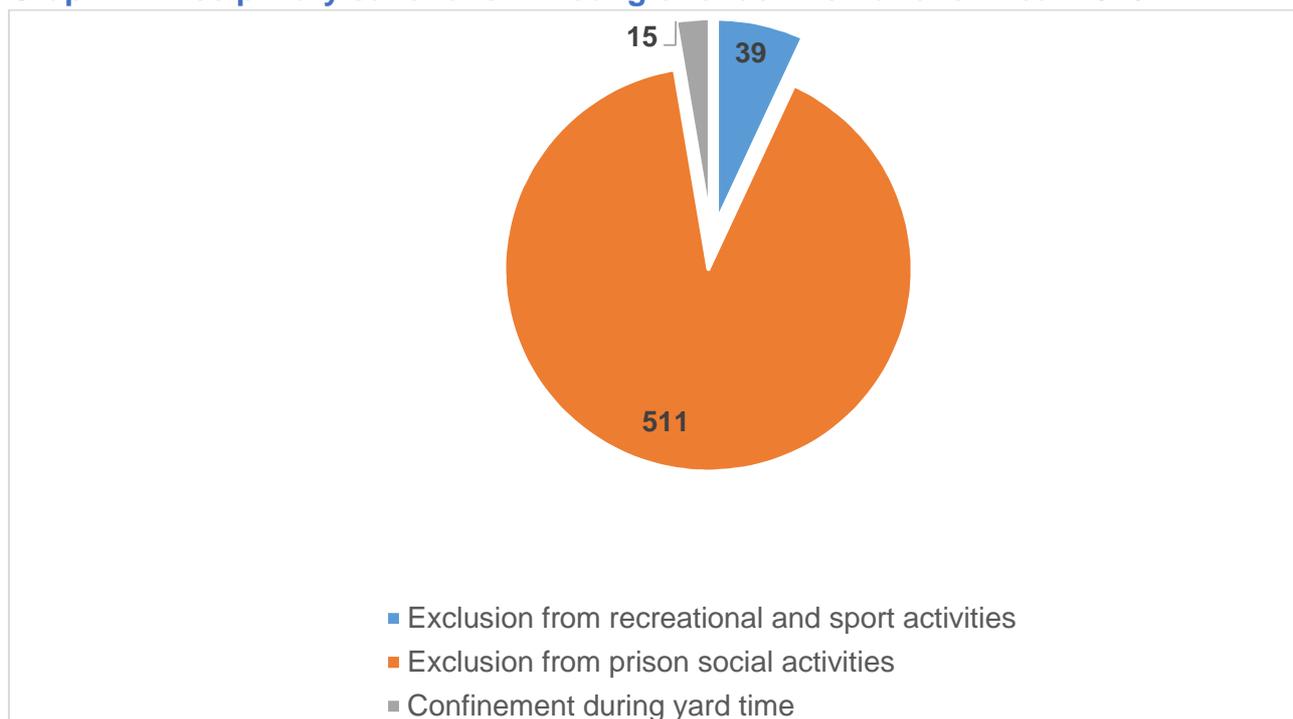
Source: Ministry of Justice – Department for Young offender institutions and the community –Young offender services IT System (SISM)

Table 5 – Disciplinary sanctions in Young offender institutions - Year 2016

Type of sanction	How many
Exclusion from recreational and sport activities	39
Exclusion from prison social activities	511
Confinement during yard time	15
Total	565

Source: Ministry of Justice – Department for Young offender institutions and the community –Young offender services IT System (SISM)

Graph 2 - Disciplinary sanctions in Young offender institutions - Year 2016



Source: Ministry of Justice – Department for Young offender institutions and the community –Young offender services IT System (SISM)

Table 6 – Juveniles and young adults managed by the Youth Social Service Offices (USSM) - Year 2016

Month	First arrival in the month	Previously managed	Total
January	794	13.402	14.196
February	818	13.694	14.512
March	678	13.838	14.516
April	669	13.860	14.529
May	714	13.875	14.589
June	554	13.795	14.349
July	546	13.550	14.096
August	471	13.608	14.079
September	612	13.932	14.544
October	771	13.802	14.573
November	654	13.837	14.491
December	504	13.708	14.212

Source: Ministry of Justice – Department for Young offender institutions and the community –Young offender services IT System (SISM)

Table 7 – Juveniles and young adults managed by the Youth Social Service Offices (USSM) – Community sanctions – Year 2016

Month	First arrival in the month*	Previously managed*	Total
January	177	3.019	3.196
February	245	2.962	3.207
March	215	3.147	3.362
April	192	3.266	3.458
May	227	3.305	3.532
June	150	3.396	3.546
July	162	3.367	3.529
August	99	3.121	3.220
September	87	3.253	3.340
October	88	3.311	3.399
November	44	3.348	3.392
December	32	3.303	3.335

Source: Ministry of Justice – Department for Young offender institutions and the community – Young offender services IT System (SISM)

*Figure included in totals table 6.

Table 8 – Number of sentence suspension order and parole for young offenders (in application of art. 28 D.P.R. 448/88) – Data distributed per outcome – Years 2011-2016

Year	Number of orders/sanctions	Outcome	
		Positive	Negative
2011	3.217	80,8%	19,2%
2012	3.368	84,6%	15,4%
2013	3.456	84,5%	15,6%
2014	3.261	82,4%	17,6%
2015	3.340	83,6%	16,4%
2016	3.581	n.r.	n.r.

Source: Ministry of Justice – Department for Young offender institutions and the community – Statistical data elaboration Office – up to February 1, 2017.

APPENDIX 4

Deprivation of liberty by Law enforcement officers

Table 1	Holding cells at Police and “Carabinieri” stations
Graph 1	Holding cells at Police and “Carabinieri” stations
Table 2	Holding cells at Police stations detailed by regions and number of persons under police custody/ arrest – year 2016
Graph 2	Holding cells at Police stations detailed by regions and number of persons under custody/ arrest – year 2016
Table 3	Holding cells at “Carabinieri” stations detailed by regions and number of persons under custody/ arrest – year 2016
Graph 3	Holding cells at “Carabinieri” stations detailed by regions and number of persons under custody/ arrest – year 2016

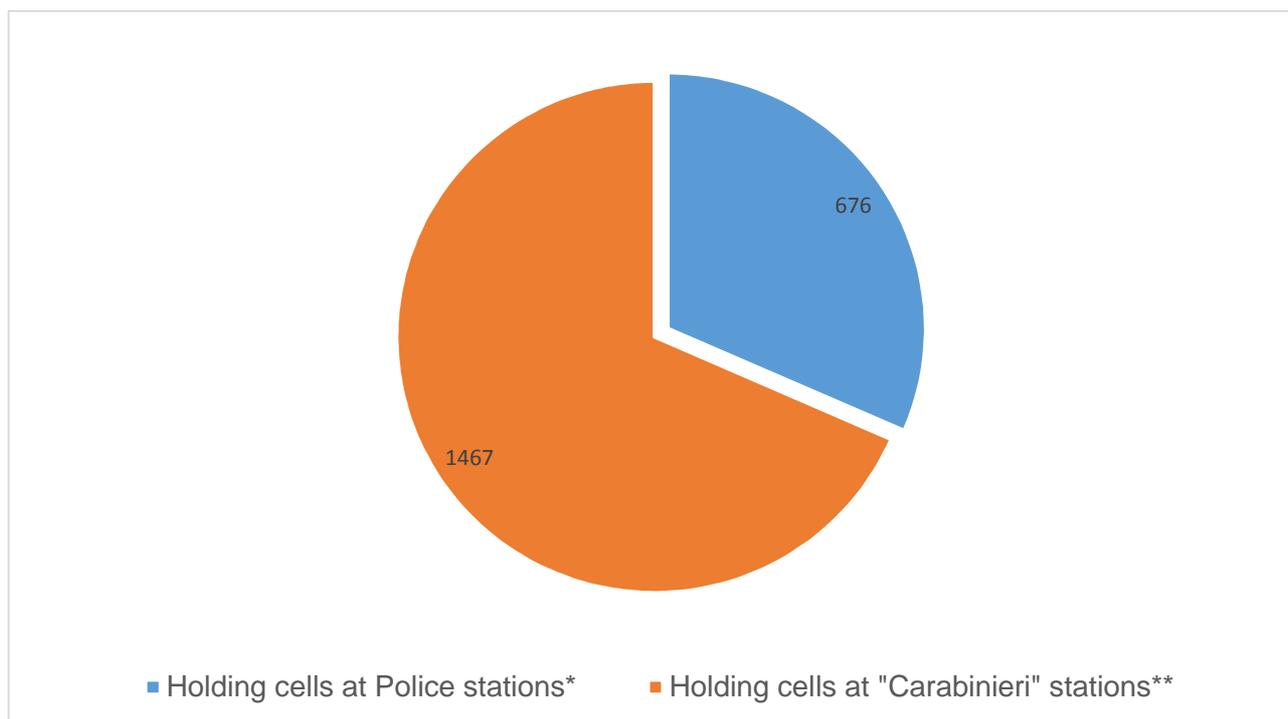
Table 1 – Holding cells at Police and “Carabinieri” stations

Detention cells	How many
Holding cells at police stations*	676
Holding cells at “Carabinieri” stations**	1467
Total	2143

*Source: Ministry of Home Affairs – Department of public security, secretariat of the Department of analysis, programmes and documentation.

**Source: Ministry of Defense – General Office of the Carabinieri II Unit – SM – Operational office

Graph 1 - Holding cells at Police and “Carabinieri” stations



*Source: Ministry of Home Affairs – Department of public security, secretariat of the Department of analysis, programmes and documentation.

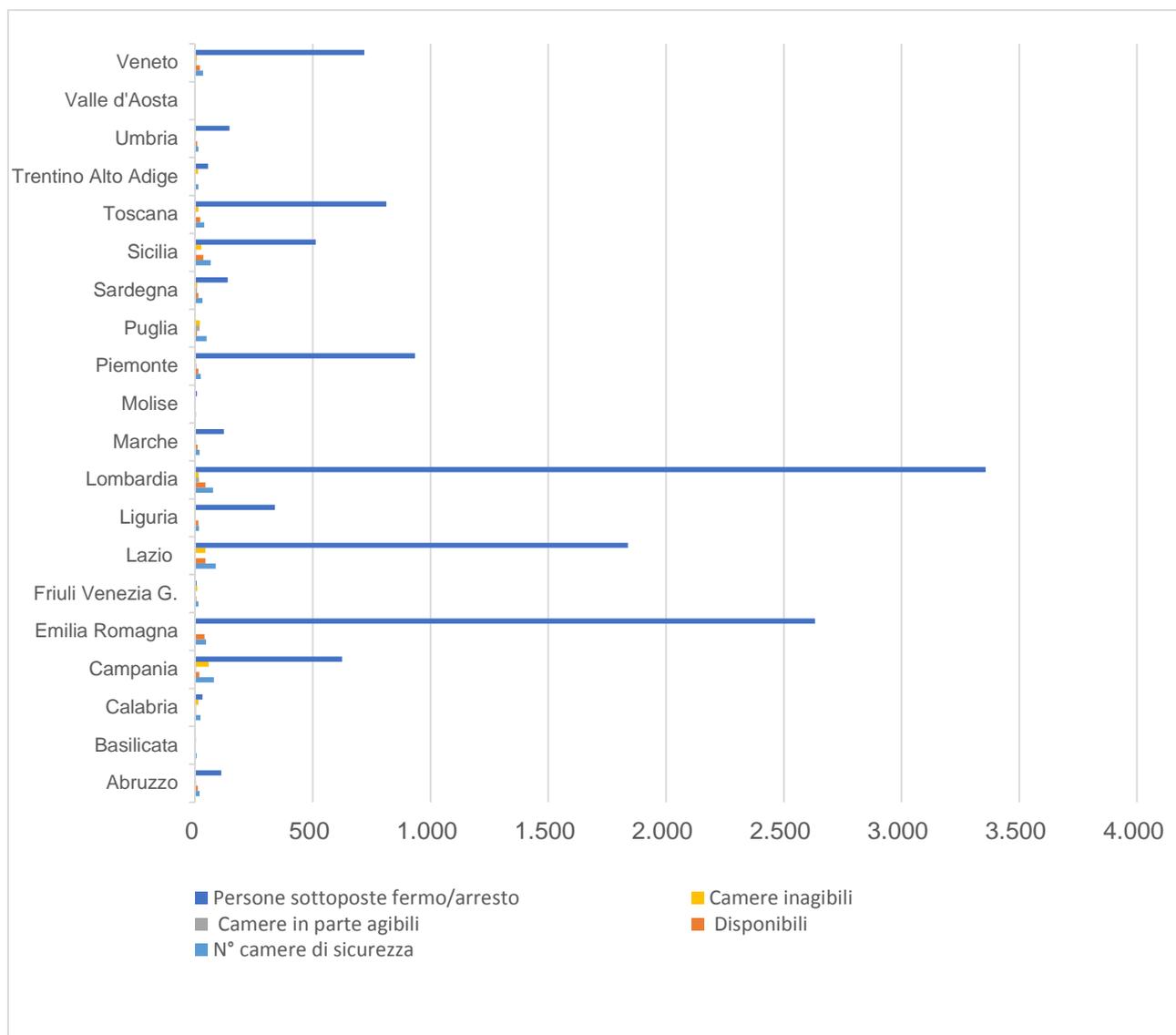
**Source: Ministry of Defense – General Office of the Carabinieri II Unit – SM – Operational office

Table 2 – Holding cells at Police stations detailed by regions and number of persons under police custody/ arrest – year 2016

Region	# of holding cells	Available	Practicable	Impracticable	# of persons under custody/arrest
Abruzzo	19	12	4	3	111
Basilicata	7	0	2	5	0
Calabria	23	5	4	14	32
Campania	80	18	4	58	625
Emilia Romagna	47	41	3	3	2.633
Friuli Venezia G.	15	6	0	9	7
Lazio	88	44	0	44	1.838
Liguria	17	15	0	2	339
Lombardia	77	44	17	16	3.357
Marche	19	11	5	3	123
Molise	5	3	2	0	8
Piemonte	25	15	6	4	935
Puglia	49	8	20	21	0
Sardegna	32	14	8	10	139
Sicilia	67	36	4	27	513
Toscana	39	22	2	15	813
Trentino A. A.	15	2	0	13	55
Umbria	14	10	0	4	146
Valle d'Aosta	3	0	3	0	2
Veneto	35	21	6	8	719
Total	676	327	90	259	12.395

Source: Ministry of Home Affairs – Department of public security, secretariat of the Department of analysis, programmes and documentation.

Graph 2 - Holding cells at Police stations detailed by regions and number of persons under custody/ arrest – year 2016



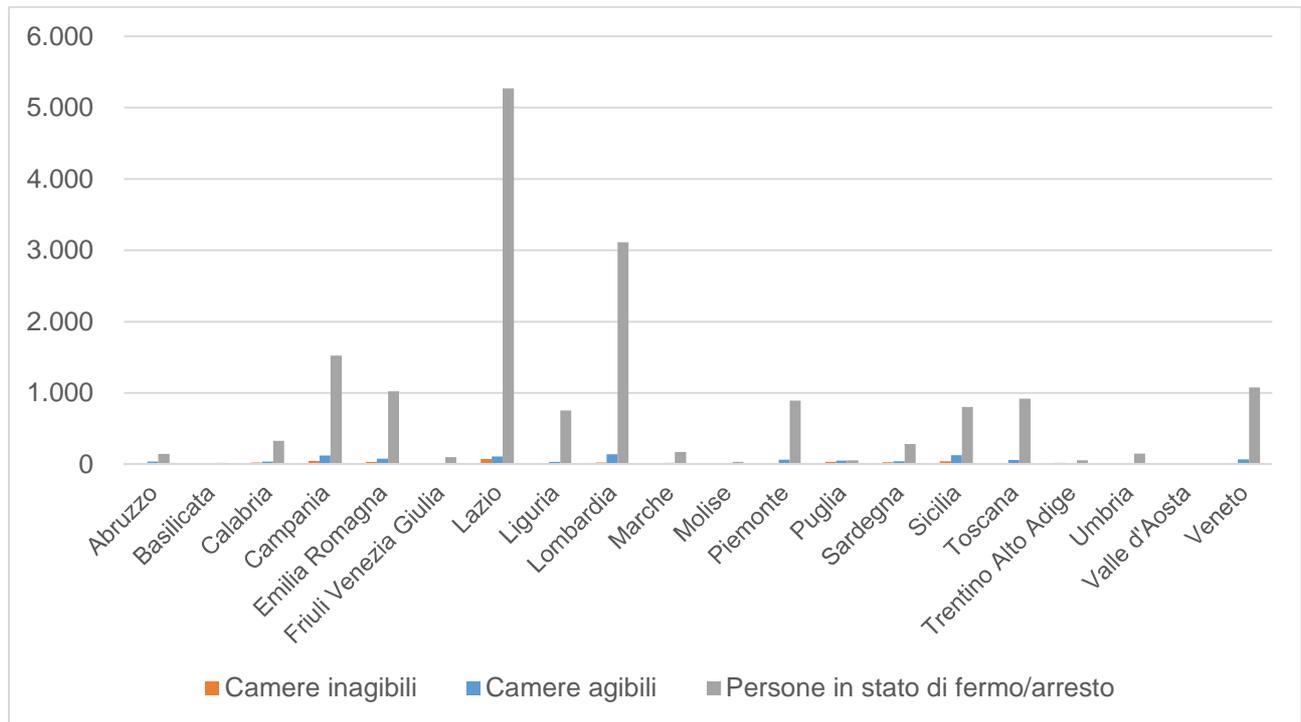
Source: Ministry of Home Affairs – Department of public security, secretariat of the Department of analysis, programmes and documentation.

Table 3 - Holding cells at “Carabinieri” stations detailed by regions and number of persons under custody/ arrest – year 2016

Region	Practicable cells	Impracticable cells	# of persons under custody/arrest
Abruzzo	38	5	145
Basilicata	10	2	22
Calabria	38	23	328
Campania	122	49	1.523
Emilia Romagna	77	33	1.025
Friuli Venezia Giulia	16	12	99
Lazio	108	72	5.270
Liguria	35	8	753
Lombardia	142	23	3.111
Marche	22	8	173
Molise	10	4	35
Piemonte	66	13	892
Puglia	50	33	55
Sardegna	41	30	283
Sicilia	129	43	804
Toscana	61	11	920
Trentino Alto Adige	16	20	57
Umbria	15	7	148
Valle d'Aosta	4	0	6
Veneto	68	3	1.077
Total	1.068	399	16.726

Source: Ministry of Defense – General Office of the Carabinieri II Unit – SM – Operational office

Graph 3 - Holding cells at “Carabinieri” stations detailed by regions and number of persons under custody/ arrest – year 2016



Source: Ministry of Defense – General Office of the Carabinieri II Unit – SM – Operational office

APPENDIX 5

Deprivation of liberty and migrants

Table 1	Migrants' new arrivals at hotspots (from their first implementation)
Graph 1	Migrants' new arrivals at hotspots (from their first implementation)
Table 2	New arrivals of unaccompanied children at hotspots (from their first implementation)
Table 3	Hotspot – average detention stay (from their first implementation)
Table 4	New arrivals at the Immigration Detention Centres (CIE) – First five Countries - Year 2016
Graph 3	New arrivals at the Immigration Detention Centres (CIE) – First five Countries - Year 2016
Table 5	Number of returnees detailed as per typology of means of transport - Year 2016
Graph 4	Number of returnees detailed as per typology of means of transport - Year 2016
Table 6	Total number of returnees detailed as per Country of return
Table 7	Return trend – First five countries - Years 2015-2016
Graph 5	Return trend – First five countries - Years 2015-2016
Table 8	Trends in new arrivals at the Immigration Detention Centres – First five countries - Years 2015-2016
Graph 6	Trends in new arrivals at the Immigration Detention Centres – First five countries - Years 2015-2016
Table 9	Children's migration flows in Italy - Year 2016
Graph 7	Children's migration flows in Italy - Year 2016
Graph 8	Children's migration flows in Italy – Countries with highest number children migrants - Year 2016

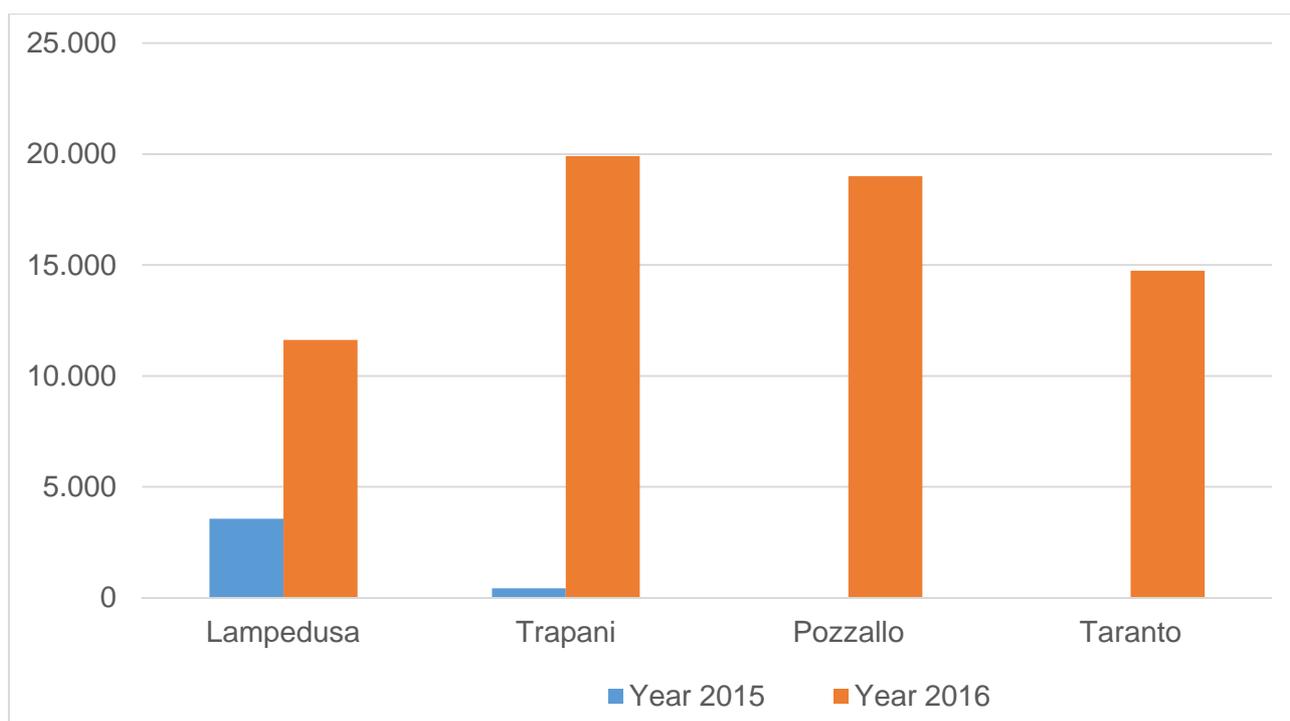
Table 1 – Migrants’ new arrivals at hotspots (from their first implementation)

Hotspot	Implemented on	Year 2015	Year 2016
Lampedusa	28/09/2015	3.569	11.632
Pozzallo	19/01/2016	*	19.000
Taranto	28/02/2016	*	14.744
Trapani	22/12/2015	427	19.919
Total		3.996	65.295

*Hotspots in Pozzallo and Taranto were not available in 2015.

Source: Ministry of Home Affairs – Department of civil liberties and of immigration

Graph 1 - Migrants’ new arrivals at hotspots (from their first implementation)



Source: Ministry of Home Affairs – Department of civil liberties and of immigration

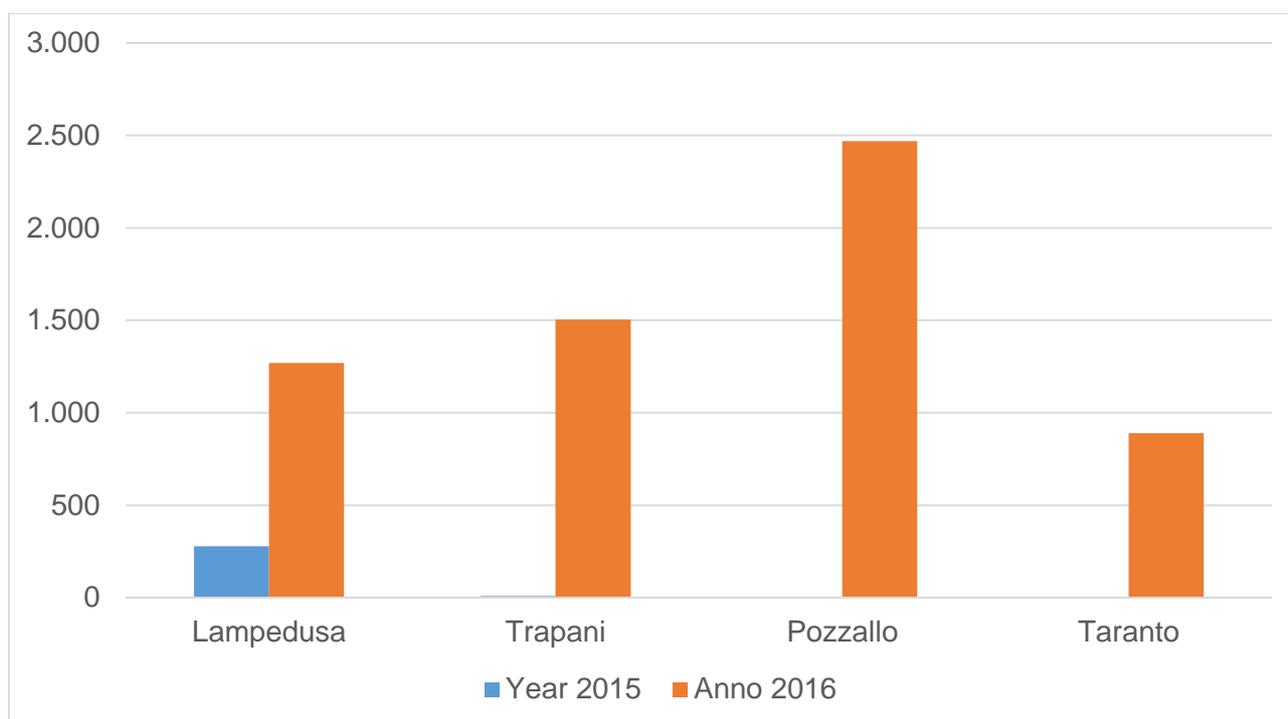
Table 2 – New arrivals of unaccompanied children at hotspots (from their first implementation)

New arrivals of unaccompanied children	Implemented on	Year 2015	Year 2016
Lampedusa	28/09/2015	279	1.269
Pozzallo	19/01/2016	*	2.470
Taranto	28/02/2016	*	890
Trapani	22/12/2015	9	1.504
Total		288	6.133

*Hotspots in Pozzallo and Taranto were not available in 2015.

Source: Ministry of Home Affairs – Department of civil liberties and of immigration

Graph 2 – New arrivals of unaccompanied children at hotspots (from their first implementation)



Source: Ministry of Home Affairs – Department of civil liberties and of immigration

Table 3 - Hotspot – average detention stay (from their first implementaion)

Hotspot	Adults	Children
Lampedusa	15	15
Trapani	5,5	5
Pozzallo	2,5	17,5
Taranto	10	13

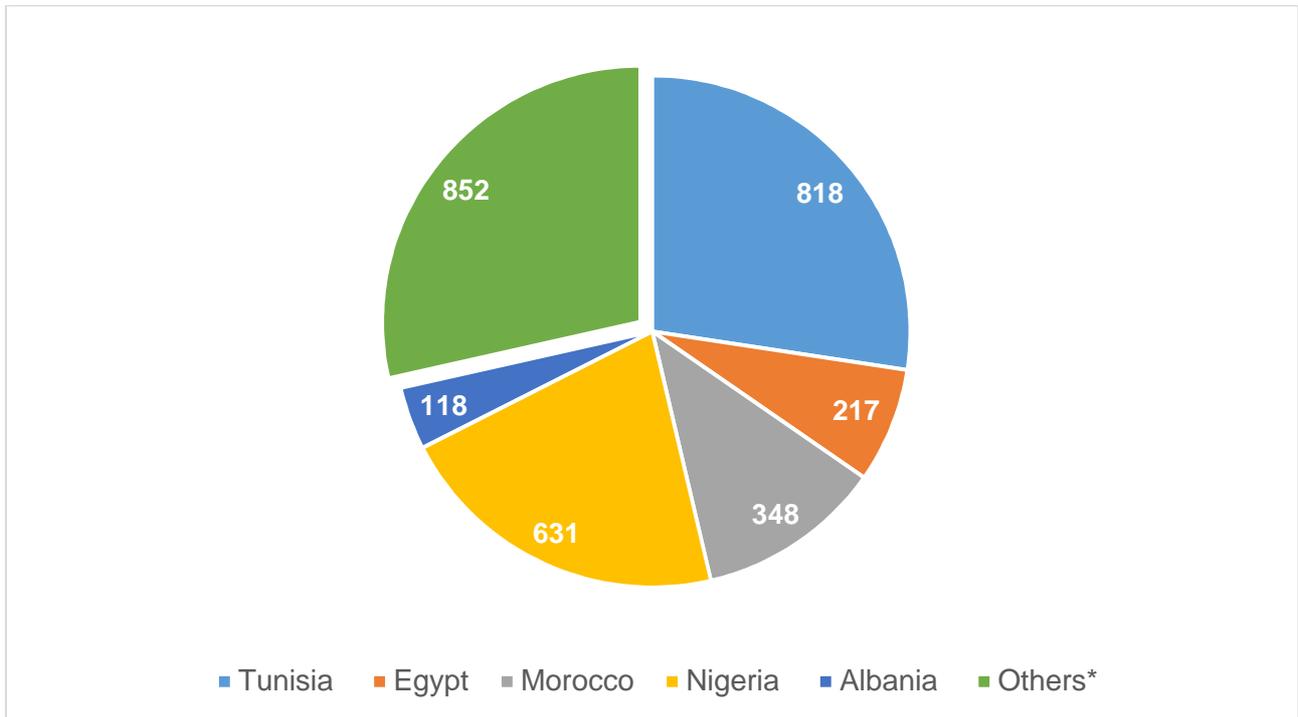
Source: Ministry of Home Affairs – Department of civil liberties and of immigration

Table 4 - New arrivals at the Immigration Detention Centres (CIE) – First five Countries - Year 2016

Declared nationality			
Tunisia	818	Messico	4
Nigeria	631	Mongolia	4
Marocco	348	Palestina	4
Egitto	217	Bulgaria	3
Albania	118	Camerun	3
Cina	78	Colombia	3
Algeria	73	Honduras	3
Romania	64	Portogallo	3
Gambia	50	Capo Verde	2
Georgia	48	Francia	2
Ucraina	48	Mauritius	2
Senegal	43	Paraguay	2
Libia	37	Serbia Montenegro	2
Costa d'Avorio	32	Uruguay	2
Moldavia	24	Venezuela	2
Perù	23	Angola	1
Ecuador	22	Azerbaijan	1
Brasile	18	Bolivia	1
Pakistan	18	Comore	1
Serbia	16	Croazia	1
Ghana	15	Grecia	1
Sudan	15	Guinea	1
Bangladesh	12	Kazakistan	1
Siria	12	Kirghizistan	1
Bosnia-Erzegovina	11	Libano	1
India	11	Liberia	1
Cile	10	Lituania	1
Cuba	10	Mauritania	1
Kosovo	10	Montenegro	1
Sri Lanka	10	Niger	1
Federazione Russa	9	Paesi Bassi	1
El Salvador	8	Polonia	1
Macedonia	8	Repubblica Ceca	1
Afghanistan	7	Ruanda	1
Iraq	7	Sao Tome e Principe	1
Etiopia	6	Slovacchia	1
Repubblica Dominicana	6	Somalia	1
Turchia	6	Spagna	1
Gabon	5	Tailandia	1
Filippine	4	Taiwan	1
Iran	4	Tanzania	1
Mali	4	Togo	1
Total 2.984			

Source: Ministry of Home Affairs – Central Bureau for immigration and border police. Immigration office – Removal unit.

Graph 3 - New arrivals at the Immigration Detention Centres (CIE) – First five Countries - Year 2016



*In "others", countries with less than 100 new arrivals at the immigration detention centres are included.

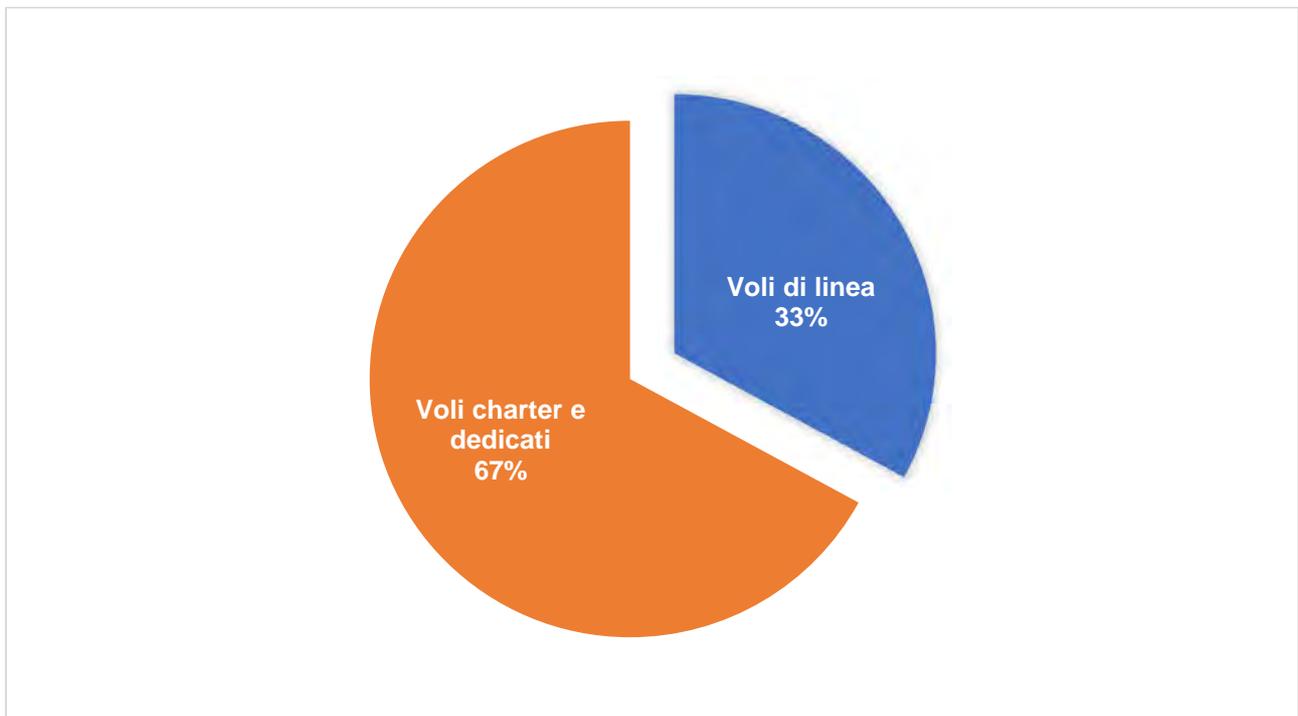
Source: Ministry of Home Affairs – Central Bureau for immigration and border police. Immigration office – Removal unit.

Table 5 - Number of returnees detailed as per typology of means of transport - Year 2016

	Commercial	Chartered	Total returnees
Returnees	955	1.944	2.899

Source: Ministry of Home Affairs – Central Bureau for immigration and border police. Immigration office – Removal unit.

Graph 4 - Number of returnees detailed as per typology of means of transport - Year 2016



Source: Ministry of Home Affairs – Central Bureau for immigration and border police. Immigration office – Removal unit.

Table 6 - Total number of returnees detailed as per Country of return

Commercial		Chartered		
Country	Returnees	Country	# of flights	Returnees
Morocco	329	Tunisia	43	1.094
Tunisia	174	Egypt	66	659
Albania	107	Nigeria	6	151
Senegal	33	Sudan	1	40
Egypt	32	Total	116	1.944
Romania	32			
Georgia	27			
Algeria	19			
Nigeria	18			
People's Republic of China	15			
Ecuador	14			
Bangladesh	11			
Bosnia Erzegovina	11			
Ghana	11			
Kosovo	11			
Macedonia	11			
Chile	10			
Gambia	10			
Moldova	9			
Peru	8			
Dominican Republic	8			
Brasil	6			
Colombia	5			
Serbia	5			
Ucraina	4			
El Salvador	3			
India	3			
Sri Lanka	3			
Cape Verde	2			
Costa Rica	2			
Dominica	2			
Philippines	2			
Mauritius	2			
Turkey	2			
Hungaria	2			
Bolivia	1			
Bulgaria	1			
Côte d'Ivoire	1			
Russian Federation	1			
France	1			
United Kingdom	1			
Pakistan	1			
Portugal	1			
Spain	1			
Tanzania	1			
Uruguay	1			
Venezuela	1			
Total	955			

Source: Ministry of Home Affairs – Central Bureau for immigration and border police. Immigration office – Removal unit.

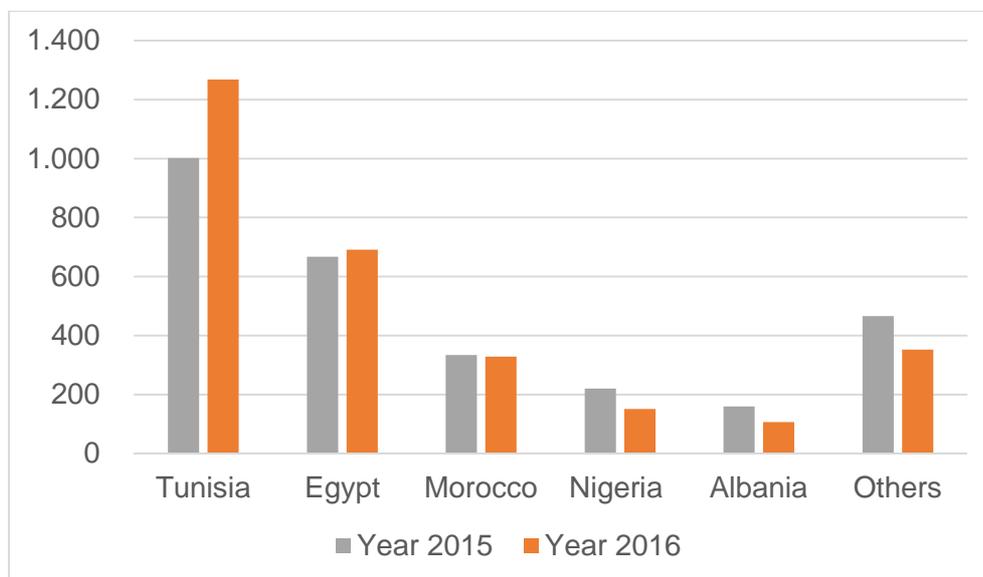
Table 7 – Return trend – First five countries - Years 2015-2016

Country	Year 2015	Year 2016
Albania	160	107
Egypt	667	691
Morocco	334	329
Nigeria	221	151
Tunisia	1002	1268
Others*	466	353
Total	2850	2899

*In "others", countries with less than 100 returnees in a year.

Source: Ministry of Home Affairs – Central Bureau for immigration and border police. Immigration office – Removal unit

Graph 5 – Return trend – First five countries - Years 2015-2016



Source: Ministry of Home Affairs – Central Bureau for immigration and border police. Immigration office – Removal unit

Table 8 – Trends in new arrivals at the Immigration Detention Centres – First five countries - Years 2015-2016

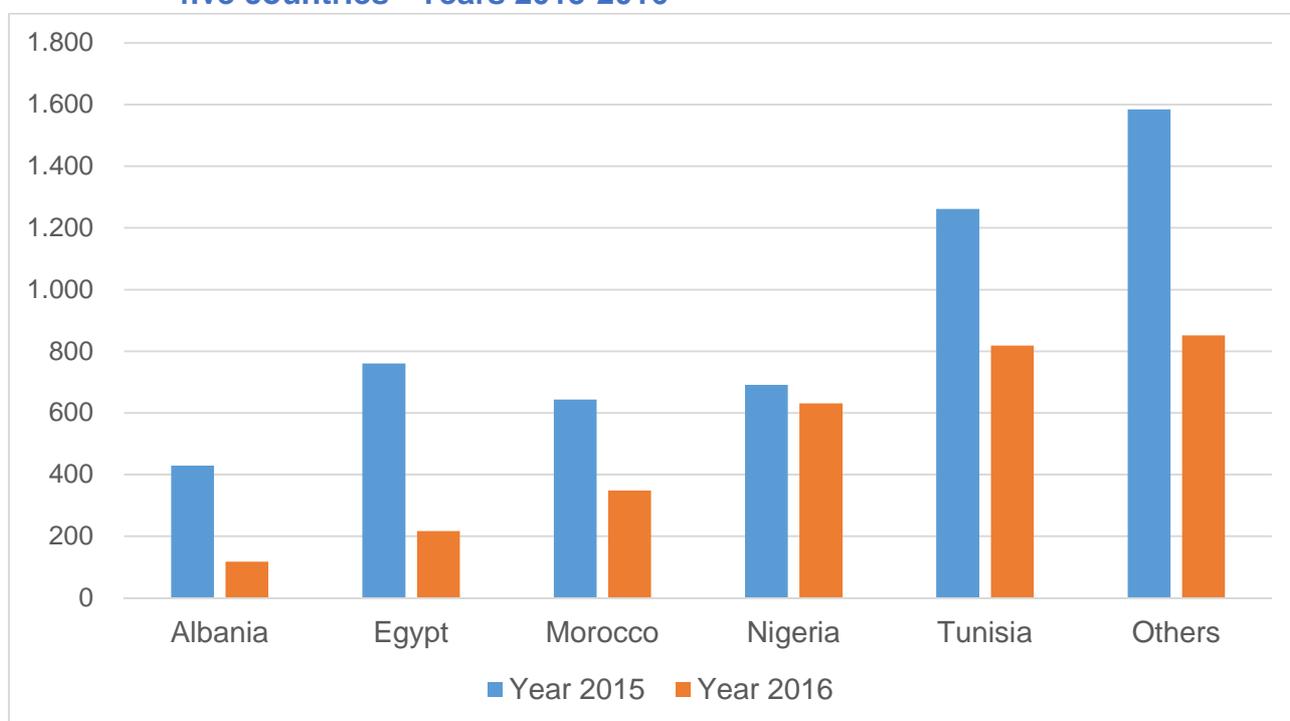
Country	Year 2015	Year 2016
Albania	429	118
Egypt	760	217
Morocco	644	348
Nigeria	691	631
Tunisia	1262	818
Others*	1.585	852
Total	5.371	2.984

*In "others", countries with less than 120 new arrivals in 2015

*In "others", countries with less than 100 new arrivals in 2016

Source: Ministry of Home Affairs – Central Bureau for immigration and border police. Immigration office – Removal unit

Graph 6 – Trends in new arrivals at the Immigration Detention Centres – First five countries - Years 2015-2016



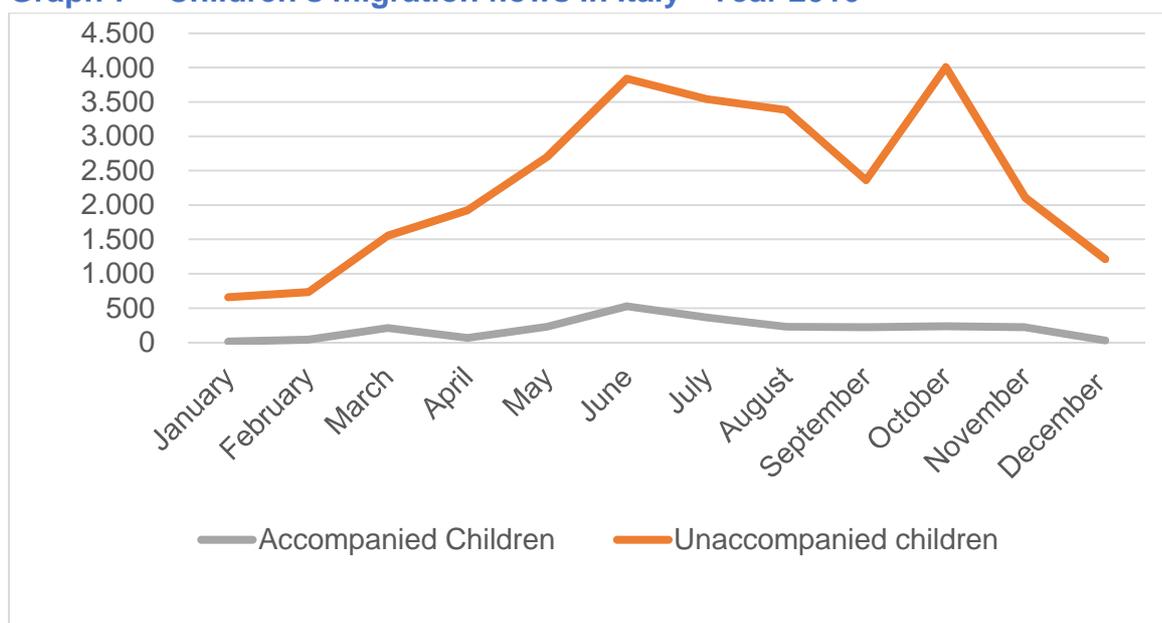
Source: Ministry of Home Affairs – Central Bureau for immigration and border police. Immigration office – Removal unit

Table 9 – Children’s migration flows in Italy - Year 2016

Country	Accompanied	Unaccompanied
Bangladesh	72	965
Côte d’Ivoire	173	1.613
Egypt	118	2.459
Eritrea	555	3.714
Gambia	62	3.119
Guinea	121	2.225
Mali	50	1.302
Nigeria	325	2.932
Senegal	18	1.072
Somalia	225	1.535
Total	1.719	20.936

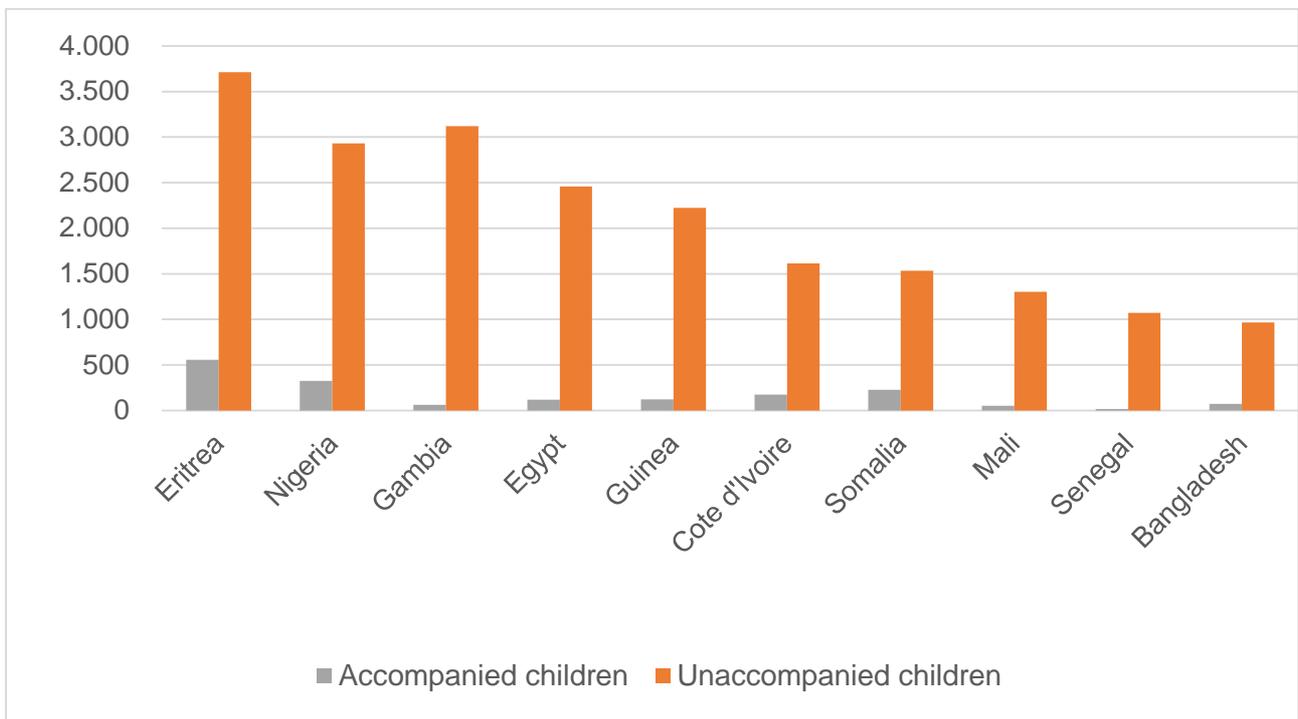
Source: United Nations High Commissioner for Refugees (UNHCR)

Graph 7 – Children’s migration flows in Italy - Year 2016



Source: United Nations High Commissioner for Refugees (UNHCR)

Graph 8 – Children’s migration flows in Italy – Countries with highest number children migrants - Year 2016



Source: United Nations High Commissioner for Refugees (UNHCR)

