



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



National Preventive Mechanism under the OPCAT

The National Guarantor in the context of Covid-19 outbreak

Rome, 30 March 2020

The words of Pope Francis at the Angelus prayer

The solutions are difficult but must be found. Policy-makers in this emergency context do not have an easy task but — while respecting uncertainties — it is necessary to find common solutions: it is the actual situation that urges us to look for them. We can no longer think as we have done so far. Today the problem is the harshness of such an essential gift that is life. This has been the Pope's message at the Angelus prayer. He stressed the severity of the epidemic in closed institutions, the risk for those who are compelled to live and work there and the potentially explosive situation in prisons. Pope Francis wanted us to remember that prisons are not a separate world, but they are part of us all and of society in all its aspects. He did so by recalling that all people have the right to safeguard their health. For this reason, the National Guarantor is inviting everyone to accept Pope Francis' admonishment and to come together to find the most appropriate tools to confront the pandemic risk in prison. In these days when the public opinion is dismayed, the Pope's figure reconnects us all to that separated human kind.

We will keep on telling that society and political forces — even if divided on the issue of criminal execution or having more severe or opener views on alternative measures — must put aside divisions. They have to focus on the safeguard of prisoners' health, as well as of those who work in prison and the population in general, also because the outbreak of the virus in prisons would obviously have consequences overall in the community.

Prisons

To date, there are 57,590 people detained in prisons, with a further drop, compared to Friday, of 354 persons. It is an important figure, though the decrease is not enough with respect to the need to find places in prisons in order to guarantee areas for people's preventive isolation and for self-isolation for any case tested positive.

More decisive measures are needed, we reiterate this once again. And, in coordination with the National Guarantor, all the local Guarantors of persons deprived of liberty designated by the Regions, the Provinces and the Municipalities are clearly urging the implementation of said measures: "We call upon the Mayors and the Governors of Regions and Provinces and the Mayors of the Metropolitan Cities so that they can let their voices be heard by the Government. We appeal to the Members of the Parliament of the Republic, so that in examining the Decree-Law containing provisions aimed at reducing overcrowding, more robust measures are adopted,

so that in a few days the trend relevant to prison population will drop below the threshold of regulatory capacity actually available".

Meanwhile, the implementing provision of the "Cura Italia" Decree has been issued, an interdepartmental measure which was signed by the Head of the Department of Prison Administration (Dap) and the Head of the Police. 5,000 electronic bracelets made available for monitoring prisoners who can serve on home detention the remainder of their sentence if exceeding six months. 920 electronic tags are already available. The provision provides for the application of maximum 300 tags per week. The system will be constantly monitored by the Department of Prison Administration. The interdepartmental decree shall be periodically updated, in relation to the possible availability of additional monitoring tags.

The prison regular capacity is of 51,416 places, but according to the statement of the Prison Department, the places actually available do not reach the figure of 48,000. Some structures are particularly crowded: for example in Apulia, Taranto prison has an overcrowding rate of 194% while Lecce prison has 182%; in Lombardy, the occupancy rate is significantly high in Monza prison (173%), as in Lazio-Abruzzo-Molise regions Campobasso prison (175%) and Latina prison (181%) are particularly overcrowded. These examples make it clear that the average rate is not very indicative and it is to be read in their specific contexts.

Currently, 740 rooms of different sizes have been reconverted and used as preventive isolation rooms: they are assembled into the 169 wards present in 120 prisons. However, we all should be careful in defining these structures as isolation wards because they do not provide single-bedded rooms and are simply separated from the other prison units.

The international networking

- On 27 March the US District Court - Eastern District of Michigan - Southern Division ordered the temporary release of a prisoner subject to preventive detention (custody).

The judge justified the need to adopt this measure - which provides for a review within four months - with the need to contain the risk of the spread of Covid-19 within the prison institutions, attributing importance to the health conditions of the person detained and the difficulties that the latter may encounter because of the limitations imposed on interviews with the lawyer and therefore on the possibility of preparing an adequate defense.

The provision is part of a broader jurisprudential context, which tends to favour the application of non-custodial measures on prisoners (not only in custody), in the name of the declared need to carry out a rapid and preventive action to reduce the risk of infection, disease and death of prisoners and prison workers.

In a different but similar context, the Government of Portugal has decided to grant the residence permit to migrants who have already applied for it. In this way, they will be able to access employment and public services, starting with health care. "People should not be deprived of the right to health and public services just because their application has not yet been processed," said Interior Ministry spokeswoman Claudia Veloso, who added "in this emergency, the rights of migrants must be guaranteed".

- The United Nations High Commissioner for Human Rights, Michelle Bachelet, has called on governments to take urgent action to protect the health and safety of people in detention and other closed facilities, as part of overall efforts to contain the COVID-19 pandemic.

"Covid-19 has begun to strike prisons, jails and immigration detention centres, as well as residential care homes and psychiatric hospitals, and risks rampaging through such institutions' extremely vulnerable populations."

For this reason, the High Commissioner urged governments and relevant authorities to work quickly to reduce the number of people in detention. Authorities should examine ways to release those particularly vulnerable to COVID-19, among them older detainees and those who are sick, as well as low-risk offenders.

- On international stances, the following links may be useful.

10-14 February 2020 - UN, SPT (Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). Advice of the Subcommittee on Prevention of Torture to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland regarding compulsory quarantine for Coronavirus, adopted at its 40th session (10 to 14 February 2020).

https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/2020.03.03-Advice_UK_NPM.pdf

23 March 2020 - UN, WHO (World Health Organization). Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance (15 March 2020)

http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1

23 March 2020 - COE, CPT (Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic (issued on 20 March 2020).

https://www.coe.int/it/web/portal/full-news/-/asset_publisher/5X8kX9ePN6CH/content/covid-19-anti-torture-committee-issues-statement-of-principles-relating-to-the-treatment-of-persons-deprived-of-their-liberty?_101_INSTANCE_5X8kX9ePN6CH_languageId=en_GB

25 March 2020 – UN, OHCHR (Office of the High Commissioner for Human Rights). Statement of the Commissioner. Urgent action needed to prevent COVID-19 “rampaging through places of detention”

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>

25 March 2020 – UN, SPT (Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25th March 2020)

<https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

26 March 2020 – COE, Commissioner for Human Rights. Statement of the Commissioner. Commissioner calls for release of immigration detainees while Covid-19 crisis continues

<https://www.coe.int/en/web/commissioner/-/commissioner-calls-for-release-of-immigration-detainees-while-covid-19-crisis-continues>

Residences for people with disabilities or the elderly

The first reports have arrived from the residential social and health care home, in particular from the nursing homes (RSAs), regarding the situation of isolation of guests and the lack of information to family members about their health conditions.

Already in recent days, the National Guarantor had expressed concern not only for the protection of the guests' health and safety in all kinds of residential structures, for the elderly and for the disabled, but also for the protection of their right to maintain family ties. For these reasons, the National Guarantor invited the Authorities concerned to foster forms of communication alternative to individual visits. For the elderly or disabled people, it is certain that family ties play an important role, also as motivational support.

Another aspect reported by the RSAs is the lack of protective individual gears for their guests and for staff working in the structures. The medical and nursing professionals are in fact frontliners who are very much exposed to the risk of contagion, but are the only ones to assist and treat the guests of these residences.

Due attention should be paid to all professionals working in said facilities so as to support them during their stressful working days and to ensure they work in safe conditions (also to protect the safety of the whole residence and community outside).

A press conference with the Higher Institute of Health is scheduled for tomorrow on the first outcomes of the joint research project, aimed at monitoring the contagion from Covid-19 within the RSAs and the critical issues that could jeopardize the enforceability of fundamental human rights.

The research-action also aims to adopt strategies to enhance programmes and the fundamental principles of prevention and control of healthcare-related infections.