



## 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, 7 April 2020

#### **Prisons**

The feeling of anxiety is perceived everywhere and unverified information on the number of people tested positive has interested many establishments. Clearly enough, these bits of information do not help in calming prisoners, staff as well as their family members. Our suggestion is to take exclusively account of reliable official data.

Every evening, the National Guarantor receives from the Prison Department (DAP) data on the number of prisoners tested positive — if they have been isolated in prison wards or brought to hospital, on the number of symptomatic cases (not confirmed positive and yet held in isolation), and on the number of the asymptomatic cases also kept in preventive isolation, often following a reception screening. Information on their placement in which section of the prison is also shared. This possibility of continuous monitoring on the epidemic evolution and management allows the early detection of where there might be a greater risk of escalating epidemic.

Currently (yesterday evening's data), the overall figure focuses primarily on four prison institutions, which have a total of 25 cases tested positive out of 37 nationwide. The remaining 12 cases have a dot distribution along the territory, with a density of one or two cases at most.

For its part, the Prison Department publishes its data almost once a week. In yesterday's communication, it reported about the 37 prisoners tested positive and the much higher number of staff tested positive — 163 people, including 158 prison officers.

The National Guarantor has upheld the penitentiary Administration in implementing measures aiming at offering greater protection to staff, both in providing an adequate supply of Personal Protection Equipment, and in setting up operational procedures to reduce the risk of contagion, as well as in terms of training and support schemes.

With regard to the effectiveness of the measures adopted to reduce prison population density, 1,361 prisoners were released from custody and assigned to home detention (data refer to measures granted from 18 March, following last provisions envisaged in article 123 of the Decree-Law No.18/2020, and in former Law No.199/2010); yesterday, 405 leaves were granted to prisoners on semi-liberty. These data show the intense work of some Supervisory Courts, in collaboration with prisons, and account for 4,000 releases reported by the Prison Department yesterday. Today the number of people held in custody is of 56,238: a meaningful number that — if compared with the prison current capacity of 9,000 less — urges the Authorities concerned for more strategic action plans.

To give a practical explanation on how to carry out more incisive interventions, it is sufficient to mention that almost 8,000 prisoners are sentenced to less than one year or have part of a sentence left of less than twelve months; around 3,500 inmates are serving a sentence of between one year and 18 months.

Even limiting the possibility of having granted home detention to the recipients indicated in the Decree-Law — which is certainly not such a high number of cases — it is imperative to get rid as much as possible of those obstacles that do not facilitate granting home detention to a larger portion of prison population.

Obviously, this matter urges commitment from the public and the capacity to provide accommodations for those who do not have one. In this regard, the National Guarantor welcomes the 5,000,000-Euro funding by the Cassa delle Ammende [the prisoners' fine fund] for interventions in support of prisoners from fragile social contexts so to encourage their reintegration into society.

With a communication to the Chief General Prosecutor at the Supreme Court Giovanni Salvi, the National Guarantor expressed its appreciation for the letter recently sent to the Chief Prosecutors at the Courts of Appeal on the role of prosecutors in reducing prison overcrowding in the context of Covid-19 emergency. It is a document rich in food for thought and wide-ranging interpretative parameters referable to all measures provided by law, as written in the letter's opening lines: «The coronavirus emergency constitutes an evaluative element in the application of all legislative provisions in force and represents a necessary interpretative requirement».

In general, what appears particularly interesting are the real data that the Chief General Prosecutor is considering in order to offer useful tools to guide the Chief Prosecutors' activity in the application of pre-trial detention measures, in the enforcement of prison sentences and in prison management.

The repertoire of extraordinary circumstances in need to be considered by any jurisdiction include: the "actual and current epidemic risk", the "restrictions to movements envisaged by the emergency measures", the "health reasons", the need "to lessen pressure on prison population density", the "needs" and "rules of social distancing", the "needs to prevent the risk of contagion of incarcerated people".

In the Chief General Prosecutor's words, it should be particularly emphasized not only the reference to the required interventions in this emergency phase, but also the possibility of opening somehow a debate on criminal execution itself and on the use of deprivation of liberty both during inquiries and sentencing. These are key topics and we should all be aware of the need to address them positively and with good intentions in the next future.

### **Immigration Removal Centres (CPRs)**

From the beginning of the health crisis, the National Guarantor urged the Authorities concerned to consider the conditions of foreign nationals who are subjected to an expulsion order and are held in immigration detention Centres without any possibility of being repatriated within the expiring date of their pre-removal period established by law. The application or continuity of any detention measure is indeed lacking its necessary pre-condition for sufficient legal basis, i.e. their feasible return, the only reason for a detention order to be issued. For this reason, a hypothesis of "illegal detention" may arise, pursuant to the so-called Return Directive 2008/115/EC.

However, from the information collected by the National Guarantor, the guidelines followed by the Justices of the Peace and the Courts differ a lot. In fact, the exceptional situation — and the impact on global mobility that resulted in the border closure and in significant reductions of international flight connections — is assessed differently when judicial reviews of detention measures are to be proceeded, which, nonetheless, continue to be ordered by the Public security authority.

The emergency context is duly taken into account by some Justices of the Peace (for example those of Rome and some in Melfi, Basilicata region) who in recent weeks have not validated the detention measures submitted to their examination. Others, however, continue issuing detention orders or extending their validity, as in the case of a Justice of the Peace who last week prolonged for further 10 days the immigration detention of a Moroccan citizen, who was detained in the Centre for 170 days (it

was the last extended period the Justice could have ordered according to the Italian law). Still, the Justice of the Peace should have known that, since March 10, Morocco had closed its borders to Italy.

With reference to asylum seekers, who are detained in the CPRs, different — sometimes opposite — decisions have been reported. The specialised sections of the Courts of Rome and Trieste have pronounced against some validation orders while taking into consideration several elements. First of all, the logical functional relationship between the detention order and the prompt examination of the application for international protection, due to the lockdown of Courts' hearings (provision of 10 March 2020). Secondly, the inadequacy of the immigration centres to ensure compliance with the measures envisaged to guarantee the health of detained people. Finally, the prospect for their repatriation. Three elements that, each on their own and above all combined, make it very difficult to understand how in this context a detention order can be extended when it is justified and functional only if linked to a return order. However, in another case, the specialised section of the Court of Cagliari has established that there are still the conditions for detaining asylum seekers, despite the suspension of court meetings for validating all international protection application.

The system is not new to asymmetries of this type, especially in the context of immigration detention, but at this historic moment, its evolution and the importance of risk factors are now urging Authorities to work with one voice.

Finally, the National Guarantor hopes that the guidelines given by the Chief General Prosecutor of the Supreme Court will result in prompt and wide-open answers, which effectively makes the State's exercise of legislative jurisdiction capable of contributing to the common objective of protecting public health. The key of all actions must be the ability to give effect to that principle of *extrema ratio* of deprivation of liberty, otherwise consigned to a reassuring etiquette in conference meetings.

It should be noted, however, that the number of migrants in the CPRs is slightly decreasing. Today, in the 9 CPRs there are 307 people, including 19 women. However, this downward is mirroring the lack of uniformity in detention orders, whether in terms of their validation or extension: in fact, the CPR in Rome is rapidly decreasing its numbers, while others undergo only small variations.

Nevertheless, there is still a significant presence of foreign nationals in the *hotspots*. 184 people are housed in three Sicilian structures — Lampedusa, with 34 people who approached its coasts yesterday, Pozzallo, with 93 people being transferred to other centres, and Messina with 57 people to be relocated to other States, according to agreements established before the emergency.

### **The international networking**

The overall imprisonment rate – the number of inmates per 100,000 inhabitants- remained stable in Europe from 2018 to 2019, according to the [Council of Europe Annual Penal Statistics for 2019](#) (SPACE I), published today. It is useful to remind that Space statistics examine the data trends observed and do not depict the precise situation at the time of their publication.

On 31 January 2019, there were 1,540,484 inmates in the 50 prison administrations (out of 52) of the Council of Europe member states for which these data are available, which means that the overall imprisonment rate, an indicator mainly determined by the length of prison sentences, was 106 inmates per 100,000 inhabitants. In the 45 prison administrations that provided data for both 2018 and 2019 the global incarceration remained stable, with a very slight increase from 104 to 104.5 inmates per 100,000 inhabitants. The proportion of inmates not serving a final sentence also remained stable (22%). <https://www.coe.int/it/web/portal/-/new-survey-europe-s-rate-of-imprisonment-remained-stable-in-2019>

## **Residences for people with disabilities or the elderly**

The team of the National Institute of Health that is conducting the research-action on nursing homes (RSAs) has communicated that today that 577 RSAs have answered the research questionnaire. This week's data are under process. We are now matching the National Guarantor's database on RSAs and the National Health Institute's. The check will be carried out in collaboration with the partners of the Protocol on disability.

In the forthcoming days, the National Guarantor will visit two RSAs, in compliance with its mandate under OPCAT.