



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



## National Preventive Mechanism under the OPCAT

19<sup>th</sup> March 2020

### **The Decree-Law and prisons**

Today, the number of prisoners has dropped down to 59,419, a sign of the commitment that many Supervisory Courts are going to make in order to put in place some measures provided for in the Penitentiary Law as quickly as possible.

The National Guarantor hopes that the enforcement of what established in the Decree-Law No. 18 of 17 March 2020 will be increasingly oriented to as many prisoners as possible, also considering the actual twofold necessity: a) to give immediate responses to the risk that the epidemic inside prisons will find such densely packed conditions that its control may become difficult; b) to reshape the prison environment so to make it coherent in terms of numbers and principles to the constitutional provisions and to the following normative frameworks.

Many comments were made on the recent Decree-Law and almost all have underlined its limits. The National Guarantor believes that, without prejudice to this critical evaluation, the signs of openness that the Decree represents are to be considered. At the same time, additional normative tools should be contextually prepared to intervene on a prison population which, even if limited only to convicts, has 22,744 people serving a sentence — or a residual sentence — of less than or equal to three years, as of today (of which, inter alia, 9,561 have a prison sentence not exceeding three years).

A comment on the current situation in prison, bearing the signature of Mauro Palma, and one on the Decree-Law, by Fabio Gianfilippi, are published today on [www.giustiziansieme.it](http://www.giustiziansieme.it).

Still attention is paid to the reports received by the National Guarantor on facts occurred in the days following the riots in prisons, in particular regarding Opera, Modena and Rieti prisons (the National Guarantor will conduct a visit to Rieti prison tomorrow).

Following the Minister of Justice's order, the Department of Prison Administration has reported to the National Guarantor on the prisoners tested positive, which were already told by the press yesterday. The good news relevant to one prisoner tested negative and the absence of new cases allow maintaining control over the situation.

About the case of a prisoner in pre-trial detention being sent to Voghera hospital and the following troubles manifested inside the prison, the National Guarantor received information that the whole prison ward where the sick person was detained has been quarantined and facemasks have been administered to prison population. The National Guarantor will carefully follow its developments.

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

The National Guarantor appreciated the project of the Campania Region to equip residential social and health care facilities with equipment that allows guests to make video calls with their family members. In fact, on March 18, the Region issued the *Operational recommendations for the management and containment for COVID-19* in residential structures. These recommendations are addressed to all health care or technical managers and to the socio-health and social structure managers. They are all invited to implement the prevention practices provided for by national and regional regulations, with particular regard to the guidelines of 16 March of the Istituto superiore di sanità (Higher Institute of Health).

The text consider the elderly and disabled people as particularly vulnerable to the virus infection — being a part of the population that is already at risk of contracting diseases. They live in a community context and for this reason are exposed to a greater risk of contracting COVID-19.

Residential care homes (so called Residenze sanitarie assistenziali - RSA) raise particular alarm. The Unione europea delle cooperative - UECOOP (European Union of Cooperatives) highlights that, in Italy, there are currently over 300 thousand elderly people hosted in the approximately 7,000 dedicated structures: one third are located in Lombardy, Veneto and Emilia-Romagna, which was referred as the "red area" of COVID-19. In these days, news of infections in nursing homes are multiplying and the number of victims among the elderly is increasing. Just to mention some significant data: 44 deaths were recorded in the nursing home in Mombretto di Mediglia (Milan), equal to one third of the guests; 40 sick guests out of 150 were registered in the nursing home "Fondazione Cecilia Caccia" in Gandino (Bergamo), all considered suspected cases; in the nursing home in Perledo (Lecco) there was an outbreak with 32 patients and staff tested positive, and in Quinzano (Brescia), there were 18 deaths among its elderly guests. Many have expressed their concerns, first of all the UECOOP which is reporting difficulties in receiving facemasks and protective medical gears for staff working in these structures. In this context, it left disappointed the request of the Agenzia di tutela della salute - ATS (Agency for Welfare) in Lombardy not to occupy with the waiting lists the places that become available in the RSAs, in order to place people tested positive who were early released to recover places in hospitals for the admission of new patients. Although the access procedure in the RSAs would be carried out by separating those new arrivals from elderly guests, it is believed that this further complication, if implemented, will bring an additional element of concern for guests and relatives, in addition to the enormous difficulties for staff.

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

Similarly, for the CPRs, the development and the range of the crisis call for an immediate change of pace and the adoption of far-sighted choices, even if brand-new but fully legitimate and necessary, which focus on the protection of the health of detained people and workforce.

There shall be a deep awareness that in this moment in which we are all obliged to restrictions and to an unprecedented sense of the collective, the responsibilities of the concerned Authorities towards those placed under their custody become huge and very delicate. Considering the current extreme interdependence of behaviours, the implications of their choices concern the health of all and affect, as for days we are told and unfortunately also represented by the media, the responsiveness of the public health system. Today more than ever, it must be recalled the principle that a measure, even if legally disposed, when enforced can lead to issues related to article 3 of the European Convention on Human Rights, which establishes the right of each individual not to be submitted to a violation of their physical and mental integrity, due to inhuman and degrading treatment. Moreover, the European Court for Human Rights, in one of its judgments v. Italy, recalled that this article cannot be violated only by active behavior, but also by "inaction or lack of diligence by public authorities".

That said, it should be remembered the paramount importance of the right to health and the absolute respect for human dignity against other necessities of a criminal or administrative nature. In fact, the freedom of the state to subject illegally staying migrants to the coercive measure of administrative detention is facing an insurmountable boundary in the full respect of the fundamental rights of foreign nationals. A reflection can be useful: administrative detention is substantially different from criminal detention. While the latter constitutes a deferrable obligation only under certain legally foreseen requirements, the administrative detention shall follow the criterion of the absolute respect for the dignity of the migrant: so this is prevalent and determines the failure of the requirements of detention.