



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)

Resolution dated 31 May 2016

Adoption of the Self-regulatory Code of the National Guarantor for the Rights of Persons Detained or Deprived of Liberty

The **National Guarantor** for the Rights of Persons Detained or Deprived of Liberty [hereinafter NG], having prof. Mauro Palma, as Chairman, Emilia Rossi, Lawyer – Board member, appointed with Decree of the President of the Republic of 1 February 2016, and Daniela de Robert, Board member, appointed with Decree of the President of the Republic of 3 March 2016, **met in Rome on 31 May 2016**;

Given the Law Decree 146, of 23 December 2013, n.146, converted, with amendments, from Law 10, of 21 February 2014, n.10, on: “Urgent actions for the protection of fundamental rights of prisoners and on monitored decrease in prison population”, which establishes the “National Guarantor for the Rights of Persons Detained or Deprived of Liberty”;

Given 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”, finalised with Decree 36 of the Ministry of Justice, of 11 March 2015, which, at article 2/b, provides that the NG shall adopt the “*Self-regulatory Code* of the Office activities, which disciplines its operational aspects, gives the guiding principles of its direction, of its staff members and of all individuals who, for whatever reason, collaborate with the NG, following the principles established in part IV, articles 17-23, of 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;

Given the decision of 12 May 2016 of the NG’s Chairman, by which Alessandro Monti, lawyer and former professor of *Administrative Sciences* at the Law Department of the University of Camerino, has

been appointed as non-paid legal consultant, being in charge of elaborating the *Self-regulatory Code* to be submitted as soon as possible to the examination of the NG and to its team validation;

Examined the outline of the *Self-regulatory Code*, suddenly provided by prof. Monti, and having listened to the introductory presentation of the legislative content of its 9 articles, distributed as follows: *Definitions* (art. 1), *Operational aspects* (art. 2), *Tasks* (art. 3), *Guiding principles* (art. 4), *Chairman* (art. 5), *Office premises and assets* (art. 6), *Staff member composition and management* (art. 7), *Office organisation and lay-out* (art. 8), *Financial, administrative and cost-related financial resources* (art. 9);

Observed that the *Code* explicitly affirms that the NG has freedom of action during the enforcement of his mandate, and its institutional tasks aiming at the safeguard of the rights of persons deprived of their liberties or in prison are independently carried out and with no interference (art. 3);

And that all articles of the *Code* are taking into due account the principles foreseen in the United Nations Protocol, to guarantee the respect of fundamental rights of people deprived of their liberties, in particular those identifying the guiding principles, which the , the Office and all those co-operating with him at all occurrences (art. 4) shall conform to;

Acknowledged that the *Code* text conveniently refrains the necessity of a factual commitment of the NG in guaranteeing that custody and any other form of deprivation of liberty shall be enforced in compliance with articles and principles established in the Constitutional Charter, in the international laws and conventions on the promotion and protection of the rights and dignity of individuals. It is expressly foreseen that, whenever during a visit the situation is considered infringing art. 3 of the ECHR, the NG shall promptly inform the judicial authority so to stop the infringement; it shall then immediately report to the judicial authority and the relevant Minister for further actions;

Considered that the *Code* text also disciplines the NG's obligations foreseen in Directive 2008/115/CE, relevant to the expulsion and return of third-country nationals, whose admission and residence permits on the national territory are irregular; and also the obligations established by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and by the European Union Agency for Fundamental Rights (FRA);

Considered that the Office organisation, now articulated in 7 units, based on the principles of transparency, efficacy and efficiency - of the administrative action - and of staff employment flexibility in operational activities (art. 8), responds to the functioning needs of the NG, so to correctly implement all tasks foreseen in the constitutive law and further European obligations;

Have unanimously agreed:

1. to adopt the following *Self-regulatory Code*, which is an integral part of the present decision, and is subscribed in all its pages;
2. to publish the *Self-regulatory Code* in its website;

3. to send the *Self-regulatory Code* to:

- The President of the Republic, also by virtue his role as President of the Higher Council of Courts;
- The President of the Constitutional Court;
- The President of the Senate of the Republic;
- The President of the Chamber of Deputies;
- The President of the Cabinet of Ministers;
- The Minister of Defence;
- The Minister of Justice;
- The Minister of Interior;
- The Minister of Health;
- The President of the European Commission, Brussels;
- The Subcommittee on Prevention, established in art.2 of the UN Protocol, Geneva;
- The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), Warsaw;
- The European Union Agency for Fundamental Rights (FRA), Vienna.

Rome, 31 May 2016

Mauro Palma, Chairman - National Guarantor

Daniela De Robert, Board Member - National Guarantor

Emilia Rossi, Board Member - National Guarantor

**THE SELF-REGULATORY CODE OF THE NATIONAL GUARANTOR FOR THE RIGHTS OF PERSONS
DETAINED OR DEPRIVED OF LIBERTY**

Version updated by resolution 6 December 2017

Article 1
Definitions

1. Hereinafter in the text:

- a) “Guarantor” refers to the collegial body of the 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

2. 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.
3. 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, internees, 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.
4. 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 ethical 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 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 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 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.
- 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 lessen 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 made available 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. Budget funds concerning monitoring activities relevant to Directive 2008/115/CE are transferred to a dedicated budgetary item of the Ministry of Justice and are exclusively used for the enforcement of such monitoring activities;
3. A specific log, in paper and electronic versions, is stamped by the Chairman and by the Office staff member, who is the liaison officer with the Cash Office at the Ministry of Justice. The liaison officer is in charge of editing and preserving the log. In the log, all authorisations of costs, spending commitments and relevant orders of payment and eventual markings are registered;
4. A budget summary relevant to the costs executed during the current solar year will be reported in a specific part of the Annual Report. All costs are entered in item 1753 - NG, of the Ministry of Justice budget, and in the specific item for the monitoring activities falling under paragraph 2.

Rome, 31 May 2016

Mauro Palma, Chairman - National Guarantor

Daniela De Robert, Board Member - National Guarantor

Emilia Rossi, Board Member - National Guarantor