



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, 8 May 2020

Prisons

Many and varied are the discussions on prisons but their tones become dramatic when the topic deals with possible conspiracies or alleged laxness of the system. On the subject, the National Guarantor, in the person of its Chairman, has released an interview to the *Treccani Institute* to give his impressions on the situation. The interview is available on the Institute's website. Our focus shall be on two aspects. First, let us consider what has been done in these two months to get prisons capable of facing the risk of contagion inside their walls in a less hazardous way. Second, let us discuss about the controversy concerning prisoners belonging to the organised crime be included in the list of those who were granted a measure alternative to imprisonment.

On the first issue, the reply of the National Guarantor has been the following: «In the early days of the virus outbreak, on March 18, it was established that persons serving less than 18 months in prison could take advantage of a simplified procedure for accessing home detention. True enough, this has been a provision already envisaged by Law No.199/2010, but the new Decree-Law addressed its provisions only to those who were not indicated in art.4bis¹ and did not participate in the last weeks' riots. In addition to these specific provisions, two other factors were to be considered. On one hand, in order to respond in an effective manner to the risk of contagion in prison, it was paramount to speed up the Supervisory courts' procedures. In fact, the provision of March provided for the application of the electronic monitoring bracelet for those who had to spend more than 6 months. Still we refer to a complicated procedure. Such a provision and its eased procedure have resulted in 3,030 prisoners been granted home detention, among which 798 are under electronic monitoring. A different cultural approach to the matter arrived from the Prosecutor General of the Supreme Court. He remembered that imprisonment should be always considered as a last resort, and alternative measures to prison detention are to be fostered. The decrease in prison population is of 7,000 prisoners: so, if 3,000 persons are on home detention, the remaining 4,000 are the result of fewer people entering prison due both to the decreased number of crimes committed during the lockdown and to the diminished resort to pre-trial detention. However, the decrease in numbers was also the outcome of the eased procedures for the examination of cases referring to possible alternatives to detention waiting to be processed by the Supervisory justices. In this scenario, an assessment was started addressing cases much vulnerable to contagion — such as the elderly and those suffering serious underlying medical conditions — with the aim to undergo further evaluations on single cases. The survey also included prisoners belonging to particular forms of organised crime».

Today, we can give more precise on data given so far. 3,116 people have undergone home detention since March 18, out of which 835 are monitored electronically.

¹ Art.4bis of the Prison Law refers to categories of crimes perpetrated by dangerous offenders belonging to high-level crime organisations.

On the second issue, referring to the cases being granted alternatives to imprisonment — notwithstanding their relation to the organised crime — the National Guarantor's Chairman observed that the measures adopted could not be applied to persons accused of mafia crimes. They were explicitly excluded in the Law. Additionally, it is worth considering that «195 persons out of the total number were remand prisoners. For them, the benefit consisted in the conversion of the custodial order in prison into house arrest. These cases, however, have been judged by the ordinary Courts and by the Supervisory Court, which is only competent on convicted prisoners. All measures ordered by the Supervisory Court are addressing the prisoner's individual sentence plan, which can undergo periodical assessments, such procedure being provided by law. On the other hand, sanctions determined by trial judges cannot be challenged by the Executive through other measures on aspects that are preeminently in the competence of those justices». The National Guarantor then concluded, «It seems to me that all the great alarm raised on facts — that have specific motivations, instead — should have deserved political capacity and ability to govern processes, to check that there were no abuses, rather than the clamor of loud declarations. The whole matter should have been dealt softly, differently from the screaming tones used, while making the community understand that security reasons and the individual's health protection are not confronting each other. About this, I would like to say that there is no ministerial responsibility in fueling screaming tones, but also that it would be a mistake to give in to this type of pressures with measures that risk marking a step backwards in the progress so far experienced».

The entire interview is available at:

http://www.treccani.it/magazine/atlante/societa/La_situazione_nelle_carceri.html

Today, the number of persons detained in prison institutions is 52,878.

Migrant persons

In Lampedusa, the situation is still critical. Landings are ongoing intensively. In the current week, after the arrivals of May 4 — which were reported in the last bulletin — official news confirms that on May 6 another landing of 156 people occurred (118 men and 38 Unaccompanied Migrant Minors). On the evening of May 6, 70 persons were transferred to Porto Empedocle [Agrigento] with a ship of the Guardia di Finanza.

The National Guarantor have appreciated the initiative to resort to a vessel of the Guardia di Finanza to ease the transfer of the landed persons to Sicily. It hopes that any other suitable organisational measure will be implemented as soon as possible to guarantee the full respect for the rights of migrant persons and the health and safety of the Lampedusa inhabitants. In this regard, in order to ensure the availability of places in the immediate moments after the landings, the Ministry of the Interior announced its search for solutions to use the island's hotspot only to accommodate people in the short term awaited before their transfer to another destination, as suggested by the National Guarantor in its correspondence with this Authority.

In a nutshell, between April 25 and May 6, 580 people landed in Lampedusa for a total of eight landings. Out of them, 360 were men, 125 women, 49 children and 46 unaccompanied minors, the latter the majority have landed on May 6 (38). All people have been quarantined and then distributed in the hotspots of Pozzallo (100), Lampedusa (108) and in some other Sicilian sites, namely Comiso, Agrigento and Enna.

The total number of people present in the Immigration Removal Centres (CPRs) is today 210, once again with the highest figures in Turin (68), Gradisca d'Isonzo (41) and Macomer (37). To understand the trend in the last month, over a range of nine measurements, the number of persons held in CPRs has passed from the 344 of April 1 to the current figure, with an initial reduction of 20 people between two successive measurements. The value decreased once more of 10, in the last part of April while in the early days of May it boosted to 19 persons less than in the previous measurement.

International and national networking

The day of the victory of Europe (VE-Day) marks the end of the Second World War and reminds us how much fighting strenuously can win, in the end, the most treacherous enemy, perceived as invincible. Unfortunately, in the list of the many who died with coronavirus, there are also veterans who fought seventy-five years ago for the day that is now celebrated. International and national bodies — which are safeguarding human rights and preventing torture and severe ill-treatment — are also continuing to work at full speed and on this special day they celebrate the perseverance and resilience of those who have survived the War or have fallen under the fire of a deadly enemy.

Let us summarise some events of the week that is about to close.

No.6 of the new series of the Bulletin of the Council of Europe's *National preventive mechanisms* was issued on May 5. The *Newsletter* is an activity within the *European Npm Forum*, a joint project between the European Union and the Council of Europe, co-financed by both organisations and implemented by the Council of Europe. The National Guarantor was among the monitoring bodies participating in the *Newsletter's* drafting, with a contribution on its continued oversight activity during the pandemic. Said project has become a platform for exchanges and debate among the European NPMs. Its ultimate aim is helping monitoring overcrowding in prison and improving conditions of detention in the European Member States.

The *Newsletter* also highlights the Publication of the National Guarantor's report on the *Monitoring of Forced Returns in Europe. Strategies, critical issues and good practices*, translated into English. The research was carried out within the project *Implementation of a force return monitoring system* financed by the *Asylum, Migration and Integration Fund (AMIF) 2014/2020*.

The international *Newsletter* is also informing on the activities implemented by the international organisations that are members of the United Nations, of the Council of Europe, of the European Union, together with those performed by non-governmental organisations and research institutes, in such a particularly delicate phase for the promotion and protection of human rights.

Those interested in subscribing to the *Newsletter* can send an e-mail to NPM.newsletter@coe.int.

Here is the link to the *Newsletter*:

<http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/befcf537960cbdd3bebabacaad1da633.pdf>

Europe Day 5th May: the Secretary General of the Council of Europe Marija Pejčinović Burić dedicated a Statement to the celebration of the signature of the Treaty of London (71 years ago, on the 5th of May 1949) in the rooms of St. James's Palace. The Treaty marked the creation of the Council of Europe by its Founding States (including Italy). She also made a tribute to the 70th anniversary of the European Convention on Human Rights.

https://www.coe.int/it/web/portal/full-news/-/asset_publisher/5X8kX9ePN6CH/content/europe-day-5thmay-council-of-europe-works-with-eu-to-overcome-pandemic-crisis?_101_INSTANCE_5X8kX9ePN6CH_languaged=en_GB

On 5 May the Norwegian city of Kristiansand has hosted an international online conference to celebrate the 70th anniversary of the European Convention on Human Rights - ECHR (which was signed in Rome on 11th November 1950 at Palazzo Barberini). Topics will include the importance of the Convention and the European Court of Human Rights in Strasbourg, which ensures its accession by Member States. The conference will include an *anniversary address* from the President of the European Court of Human Rights, Linos-Alexandre Sicilianos from Greece.

<https://www.coe.int/en/web/portal/-/kristiansand-conference-to-mark-the-70th-anniversary-of-the-echr>

On 4 May, a video was published on *Twitter* in which the National Guarantor's Chairman Mauro Palma explains how and why monitoring places of detention, such as prisons, Immigration Removal Centres, health facilities, will continue in the context of the Covid-19 outbreak. The video was published by the Association for the prevention of torture (APT) in Geneva in the *Voices from the field* section.

<https://twitter.com/GaranteLiberta/status/1257385699122253824>

May 10 marks the 30th anniversary of the establishment of the Council of Europe's European Commission for Democracy through Law (better known as the Venice Commission). For this occasion, its President has already made a declaration in which, among other things, he underlines that now more than ever it is necessary to defend and promote the respect of human rights even in emergency situations, in *partnership* with the bodies of the Council of Europe and of the Union and of Europe.

<https://www.venice.coe.int/files/30-anniversary-declaration-E.pdf>

An online meeting will be held next Tuesday 12 May organised by the National Guarantor with the National Conference on Volunteering in the field of justice and the associations operating in the penitentiary sector.

Social care homes

The *Operational Research Protocol on places, forms and ways of segregated disability*, signed on 1 June 2017 by the National Guarantor, the "L'Altro Diritto" - Research Center on prison, deviance, marginality and governance of migration (Florence) and the CeRC - Centre for Governmentality and Disability Studies "Robert Castel" (Naples) is being renewed.

Among its objectives, the Protocol provides for the identification of practices determining *de facto* segregation and institutionalisation in facilities for people with disabilities, situations and practices at risk of violating of the mandatory principle of the prohibition of torture or cruel, inhuman and degrading treatments. Over the years, the activities foreseen by the Protocol supported the monitoring activities within the social care homes for people with disabilities and the elderly that the National Guarantor has conducted pursuant to its statutory mandate given by international and national norms. The renewal of the Protocol takes into account not only the need to continue the activities in consideration of its results, but also the need to implement monitoring on the consequences that the spread of the epidemic from Covid-19 has entailed in these structures, having seriously affected the nursing homes for the elderly, so-called RSAs, as well known.

2020 Report to Parliament

As already reported, the National Guarantor's Report to Parliament 2020 will be made public by 30 June using alternative means of communication that have become today more common than in the past. The idea is to organise a large online event (possibly a webinar) to which a participant can register. The venue will be chosen among the institutional sites available, but not open to the public. Around mid-May, the link to the event will be published on the National Guarantor's website (and sent to a wide mailing list) in order to register in the webinar. Those confirming their participation will be asked a postal address where the publication would be further mailed, as in past years.

The next bulletin will be released on Tuesday

All issues of the Bulletin are available on the National Guarantor's website in the Covid-19 page:

<http://www.garantenazionaleprivatiliberta.it/gnpl/it/covid19.page>