



*Garante Nazionale
dei diritti delle persone private della libertà personale*

Il Presidente

Birgit Sippel

Committee on Civil Liberties, Justice
and Home Affairs

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c.c. **Misachi Josef Ogawa**

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Dear Ms Birgit Sippel,

The National Guarantor for the Rights of Persons Deprived of Liberty (“the National Guarantor”) has been established as the Italian National Preventive Mechanism (‘NPM’) under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Since its creation, the National Guarantor has exercised its powers entrusted by OPCAT (including those referred in Article 19 of the Protocol) and conducted several monitoring visits to places of *de facto* and *de jure* deprivation of liberty (as described in Article 4 of the OPCAT), including those where third-country nationals are detained waiting for border procedures to start and applications for leave to enter to be considered (*i.e.* the hotspots¹ and the waiting zone in airports or ports²).

Such situations may amount to a *de facto* deprivation of liberty, on which each NPM is called upon to exercise its mandate under the Optional Protocol. To this end, as stated before, it is recalled that «[...] deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative, or other authority». (Article 4(2) OPCAT)³.

In light of the above, we would like to call your attention on Article 7(2) of the *Draft European Parliament legislative resolution on the proposal for a Regulation of the European Parliament and of the Council introducing a screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817* (from now on ‘Screening Regulation’), as amended by the Committee on Civil Liberties, Justice and Home Affairs (LIBE), which states «Each Member State shall establish an independent monitoring mechanism or designate an existing independent mechanism, if it meets the criteria set out in this Regulation [...] Member States shall involve national human rights institutions, national

¹ The National Guarantor’s report on hotspots at the following link
<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/6f1e672a7da965c06482090d4dca4f9c.pdf>

² The National Guarantor’s report on airport and port transit zones at the following link
<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/acd25386033036d9bc9c7f2231772399.pdf>.

³ For more details, see also the current Call for comments on the draft general comment of the Subcommittee on Prevention of Torture (SPT) on the article 4 of the OPCAT (optional protocol to the convention against torture) [CAT/OP/GC/R.1 \(ohchr.org\)](https://www.ohchr.org)



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ombudspersons and international organisations in the management and operation of the mechanism».

Hence, it does not make any clear reference to the National Preventive Mechanisms as eligible monitoring bodies to be designated as *per* the Screening Regulation, notwithstanding the fact that the amended text refers to the OPCAT in terms of the requirements and the principles that should inspire the new monitoring mechanism to be employed in the «border surveillance and the screening procedure».

The National Guarantor is sure that any missed mention of the NPMs has been an inaccuracy due to the fact that in many member states the NPMs are departments within an NHRI or an Ombudsman (which the Screening Regulation refers to), though in some others they are institutions *per se* (like in Italy⁴, France⁵, and Germany⁶).

In relation to said technical observations, the Italian NPM considers important to expressly include in the text the NPMs, also by reason of their expertise in human rights and deprivation of liberty.

We are certain that the upcoming parliamentary text definition can take these few of our commentaries into consideration.

Best regards.

Mauro Palma

President

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delle persone private della
libertà personale
*National Preventive Mechanism (MNP)
under the OPCAT - Italy*

⁴ The *Garante nazionale per i diritti delle persone private della libertà personale* <https://www.garantenazionaleprivatiliberta.it/gnpl/pages/it/homepage/ilgarante/chisiamo/>

⁵ The *Contrôleur général des lieux de privation de liberté* <https://www.cglpl.fr/missions-et-actions/autorite-independante/>

⁶ The *Nationale Stelle zur Verhütung von Folter* <https://www.nationale-stelle.de/besuche.html>