



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

Report  
to Parliament  
2020



Mauro Palma (*President*)

Daniela de Robert (*Board Member*)

Emilia Rossi (*Board Member*)

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



# Report to Parliament 2020

## *Credits*

The drafting of the Report has been collectively delivered by the different Operating Units in the National Guarantor's Office, with the coordination of the Board.

In particular, the drafting of paragraphs and the data preparation were finalised by: Alessandro Albano, Elena Adamoli, Luca Aquila, Massimiliano Bagagnini, Daniela Bonferraro, Silvia Casiraghi, Enza Coletta, Carmela D'Alessandro, Raffaele De Filippo, Daniela de Robert, Antonella Dionisi, Federico Ferretti, Gaspare Giglio, Maria Donatella Laricchia, Rossella Liaci, Gilda Losito, Davide Lucia, Gianni Massaro, Mauro Palma, Dario Pasquini, Emilia Rossi, Claudia Sisti, Corrado Spataro, Giovanni Suriano, Armando Vincenti.

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## Report to Parliament 2020 - Initials and Acronyms

AGCOM	<i>Communications Regulatory Authority (*)</i>	OHCHR	Office of the High Commissioner of Human Rights
AMIF	Asylum, Migration and Integration Fund	OPCAT	Optional Protocol to the Convention Against Torture
CAT	Convention Against Torture	OPG	<i>Exceedances</i>
CCME	Churches' Commission for Migrants in Europe	OPG	<i>Judicial Psychiatric Hospital</i>
CED	Committee on Enforced Disappearances	OSCE	Organization for Security and Cooperation in Europe
CeRC	<i>Center for Governmentality and Disability Studies</i>	OSCE-ODHIR	Office for Democratic Institutions and Human Rights
CNF	<i>National Bar Council</i>	PICUM	Platform for International Cooperation on Undocumented Migrants
CoE	Council of Europe	PoS	Place of safety
CPR	<i>Immigration Removal Centre</i>	REMS	<i>Residences for the Execution of Safety Measures</i>
CRPD	Convention on the Rights of Persons with Disabilities	RSA	<i>Nursing Home</i>
CSM	<i>Superior Council of Magistracy</i>	RSD	<i>Nursing Home for the Disabled</i>
CSS	<i>Social-Health Communities</i>	SAI	<i>Intensified Assistance Service</i>
DAP	<i>Department of Prison Administration</i>	SC	Standing Corps
DGMC	<i>Department of Juvenile and Community Justice</i>	SEAC	<i>Secretarial and Prison Assistance Bodies</i>
DPCM	<i>Decree of the President of the Council of Ministers</i>	SIMSPE	<i>Italian Society of Penitentiary Medicine and Health</i>
DPR	<i>Decree of the President of the Republic</i>	SMOP	<i>Information System for Monitoring</i>
EASO	European Office for Asylum Support	SPDC	<i>Psychiatric Diagnosis and Treatment Service</i>
ECHR	European Court of Human Rights	SPT	<i>Subcommittee for Prevention of Torture</i>
ECPE	European Code of Police Ethics	SSN	<i>National Healthcare Service</i>
EIO	European Institutions Office	UFM	Unaccompanied Foreign Minor
EORC	European Office of the Red Cross	UN	United Nations
EPR	European Prison Rules	UNHCR	United Nation high Commissioner for Refugees
EU	European Union	UPR	Universal Periodic Review
FRA	Fundamental Rights Agency	UUOO	<i>Operating Units</i>
FRONTEX	European Border and Coast Guard Agency	WHO	World Health Organization
IOM	International Organization for Migration		
IPM	<i>Penal Institution for Minors</i>		
IPO	Involuntary Placement Order		
ISPI	<i>Institute for International Political Studies</i>		
JRO	Joint Return Operations		
JRS	Jesuit Refugee Service Europe		
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex		
NBC	National Bioethics Committee		
NGO	Non-Governmental Organization		
NHRI	National Human Rights Institution		
NPM	National Preventive Mechanism of Human Rights and Fundamental Freedoms		

(\*) Italian Acronyms are italicized.

*When writing a report to Parliament on the activities carried out by the National Guarantor during 2019, we cannot leave out the context. The emergency caused by the Covid-19 contagion has changed our perception of difficulty and pain, as well as the ability to analyze the places where pain already existed before, as it was intrinsic to the deprivation of liberty, whatever the cause might be.*

*Some people have noticed that the rupture experienced in our social habits over the past months, and that still remains, albeit in a less intense way, identifies a before and after: the former full of known habits and critical issues, the latter which we know will surely be different.*

*The Report must also take into account the period that separates the two moments: a period that will perhaps be seen in the future as a simple transition phase, painful and discriminating,*

*but that will be considered for the effects it produced, rather than for its contingency in everyday life. Here, the Augustinian metaphor according to which the present time does not have any duration, the past is ceased to be, and the future is not yet, acquires a symbolic value in the tradition of our country as well as others, when residues are all that remain of an event or emergency phase. It is likely that some of the consequences of this emergency will be considered normal in the future, even though they are lived as an exception today.*

*We can skip this with a thorough analysis of the single traits that created this path of days and days and made the situations of just two months ago very distant in our mental perception. This analysis can help with the 'after the emergency' status that is going to be different from the previous one, but capable of recovering a dimension of ever-changing normality, molding itself around the elements presented by our social, material, individual context with variability and temporary nature.*

*This reconstruction is urgent in all the areas of analysis, monitoring and action of the National Guarantor of the rights of persons detained or deprived of liberty. 2019 had passed by with the forever unsatisfied pursuit of the alleged fears that inhabit our society. Last year we were preoccupied with the difference between real security and perceived security, going so far as to say that the latter was too often used as an indicator by those who have power of choice in the public scene. Grasping this aspect allowed us to explain the ever-increasing number of people in prisons, the extension of the administrative detention for irregular foreigners to be implemented in an ever wider set of places, including mere «suitable premises». It also allowed us to explain the growing social fear for people with mental illnesses and unusual behavior to be kept separate in an increasing number of structures, despite the fact that our country had just celebrated the fortieth anniversary of a revolutionary law the field of psychiatric treatments. At the same time, the number of places in which hospitality and care of elderly or disabled people often broke the weak boundary between assistance and internment, remained permanently high.*

*In this panorama, which despite the promise of changes announced by the new govern by the end of summer 2019, remained quantitatively unchanged until January of this year, the drama of contagion intervened, just like the sphere that breaks in among the players in the finale of the film Orchestra Rehearsal by Federico Fellini.*

*Thus, the tragic difficulty that forces different choices is experienced: the numbers in all the facilities monitored by the National Guarantor drop and, in accordance with authoritative voices, measures are taken, recalling the often-forgotten principle that the deprivation of liberty should be an extreme measure – the last to resort to, not the first. In those places that had received less attention, or that had been forgotten, perhaps because inhabited by people who are not functional to our economy, the hypothesis of a renewed unity in the moment of common difficulty is highlighted.*

*This Report also gives an account on that. However, we need to keep our eyes wide open. In fact, while we write this introduction, there are whispers coming from beyond the sense of awareness, it is that of some social feelings that find more reassuring boundaries and walls. The cacophony of the Fellinian orchestra after the invasion of the sphere returns, as does its desire to resume playing, albeit not as they did before. The risk for the conductor returns as well, but now, after the event, he ends up acquiring an increasingly harsh language.*

*As a guarantee institution, it is our responsibility to not let that orchestra lose the desire to play freely after the tragic event experienced.*

# Over the Past Year



Illustrazione di Carolina Calabresi



# Over the Past Year

## March 2019

**14** Monitoring of a forced return charter flight to Tunisia.

**15** Monitoring of a forced return charter flight to Egypt.

 **26** **Celebration of World Theatre Day** of the International Institute of Unesco Theater (Iti-Unesco) inside the "Villa Fastiggi" prison in Pesaro.

**27** **Meeting of the National Guarantor with the Local Guarantors** on the legislative Decrees modifying the Prison Law (Legislative Decree 2 October 2018, no. 121, 123 and 124) – Rome.

**28** **Meeting of the National Guarantor and the Regional Guarantors with the Presidents of the Supervisory Courts** – Rome.

**30** Monitoring of a forced return charter flight to Nigeria.

## April

**1** Monitoring of a forced return charter flight to Tunisia.



**2** **After twenty years, Abdelaziz Bouteflika leaves the Presidency of Algeria.** After the street protests, even the Army leaders had stopped supporting the Head of State.



**In the Rome district of Torre Maura, protests are carried out by far-right militants against the transfer of about 60 Roma people to a nearby reception Centre.** The City promises to move them elsewhere within a week.

**Rome, Italian Treccani Encyclopedia Institute, the National Guarantor presents** the volume *Norms and Normativity. Standards for the Deprivation of Liberty of Migrants* – Rome.



**4** The National Guarantor participates in the twentieth anniversary of the Mobile Operational Group of the Penitentiary Police – Rome.

**5** The National Guarantor participates in the inauguration of the academic year of the High School of Magistracy in the presence of the President of the Republic, Sergio Mattarella – Scandicci (Florence).



**8** The Chamber of Deputies approves a motion calling for recognition of the Armenian genocide. In the days leading up to the vote, Turkey had called its ambassador back to Rome as a protest.

**8-9** Hearing of the National Guarantor at the United Nations Committee on Forced Disappearances (CED) as an Italian Torture Preventive Mechanism – Geneva.



**9** The Cassation annuls an acquittal for rape based on aesthetic appearance. Rejected the claim of the judges of the appeal process, who mentioned that the aspect of the victim was «far from feminine».

**10** The National Guarantor participates in the celebration of the 167th anniversary of the Police Force at the High School of Police – Rome.



**11** President Omar Hasan Ahmad al-Bashir arrested in Sudan. After months of street protests, the military forces dismiss the dictator, in power since 1989.

The National Guarantor participates in the meeting organized by the Centre for International Political Studies (CESPI) on the establishment of a National Commission for human rights, urged on Italy for several decades by the United Nations – Rome.



**Julian Assange arrested in London.** Ecuador had just revoked the political asylum of the founder of WikiLeaks, hosted since 2012 by the country's Embassy in the United Kingdom.



**13** 64 migrants from the "Alan Kurdi" ship disembark in Malta. In the previous days, Italy had denied landing to the German NGO ship "Sea Eye".



**15** The cathedral of Notre-Dame is in flames. The world public opinion is concerned for the fire that has hit France.

Meeting of the National Guarantor with the managers of the Viterbo Health Authority following the visit to the city prison – Viterbo.

Monitoring of a forced return flight to Morocco, carried out with a commercial flight.



## Nel corso di un anno

2019

**16** Hearing of the National Guarantor at the Senate Extraordinary Commission for Human Rights on the relationship between prisoners and their minor children – Rome.



**18** Published the Mueller report on the Russiagate. In the version made public by the attorney general William Barr, some parts of the complete document do not appear, as they have been sealed.

**19** The Guarantor of persons subjected to measures restricting liberty of the Puglia Region monitors a joint charter flight of forced return to Nigeria, on a mandate from the National Guarantor.



**21** A wake of attacks in Sri Lanka causes 259 deaths. While the country's Authorities blame local groups, the self-proclaimed Islamic State claims the attack.



**23** Resolution of the United Nations against rape as a war weapon. Approved by the Security Council, with China and Russia abstaining.

**24** Visit to the High Security section 2 of the "Germana Stefanini" women prison of Rome-Rebibbia.



**28** Elections in Spain, socialists first party. Vox's far right enters Parliament for the first time.

**30** The National Guarantor participates as a professor in the training course for the Police Force personnel engaged in international escorts – Montelibretti (Rome).

## May

**2** The National Guarantor participates as a Professor in the training course for State Police personnel engaged in international escorts Montelibretti (Rome).

**2-5** Visit to the "Giuseppe Salvia" prison of Naples-Poggioreale.



**3** The Court of Bologna orders registration in the municipal registry for asylum seekers. Accepted the appeal of two people who had been denied international protection under the so-called 'Security Decree'.



**5** Brunei extends the suspension of the execution of death sentences to all crimes. The executions, suspended since 1957, had resumed against those convicted of sodomy, adultery and rape.

**6** The National Guarantor participates in the training course of the Carabinieri Officers within the framework of the Protocol stipulated between the Guarantor and the Army – Rome.

**8-9** The National Guarantor participates in the training course of the Marshals of Carabinieri within the framework of the Protocol stipulated between the Guarantor and the Army – Velletri.

**9** Meeting of the National Guarantor with the Work Group on the prison of the Procura of Naples, as part of the activities provided for by the agreement protocol signed by the two Institutions – Naples.

**10** Speech by the National Guarantor at the meeting “Trattamento sanitario obbligatorio, contenzione, salute mentale”. The Guarantors of persons deprived of their liberty meet operators and associations within the framework of the National Conference on Mental Health – Florence.



**12** The Pope's almoner turns the electricity meters back on in an occupied building in Rome.



**14** The European Court of Justice recognizes that, in the event of revocation or denial of refugee status, the rights related to the Geneva Convention remain. The Luxembourg courts confirm that the people at risk of persecution in their own country cannot be repatriated or turned away from EU countries.

Hearing of the National Guarantor at the Extraordinary Commission for Human Rights of the Senate, as part of the fact-finding survey on the levels and mechanisms of protection of rights in the Italian and international context.



**17** Families onboard the “Sea Watch 3” disembark. Eighteen vulnerable people among the 65 shipwrecked, rescued by the German NGO and blocked for two days at the edge of Italian territorial waters are authorized to enter the national territory; the other 47 will land in Lampedusa on May 19th.



**18** The UN expresses concern over the draft of the ‘Security-bis’ Decree. The part in which penalties are envisaged for those who carry out rescues at sea is particularly criticized.

**20** Presentation of the National Guarantor Institution to the Law Department of the University of Trieste.



## Nel corso di un anno

2019

**21** Visit of the “Home Work” section of the interns under special arrangements pursuant to article 41-bis (Prison Law) of the Tolmezzo prison.



**Carabinieri Force, Defense and Viminale form a civil party in the Cucchi trial.** Satisfaction of Stefano Cucchi’s family; the requests were accepted at the hearing on June 17th.

**23** Visit to the prison of Campobasso, following a protest that resulted in a fire start inside the Institute. The National Guarantor meets the prisoners and the prison staff.

**24** The National Guarantor participates as a speaker in the “Festival dei Matti” – Venice.



**Theresa May announces her resignations.** On June 7th, the British Premier will leave the leadership of the Conservative Party and, consequently, the role of Prime Minister.

**Monitoring of a forced return charter flight to Egypt.**

**25** Visit to the women’s prison in Venezia-Giudecca.



**26** European elections: the League is the first party in Italy, followed by PD and M5S. At European level, the People’s party is the first.

**27** Visit to the custody suites of the Carabinieri station in via Mentana – Rome.



**29** Prosecutor Luca Palamara is investigated for corruption. The Prosecutor was a councilor of the Superior Council of Magistracy and President of the National Association of Judges and Public Prosecutors; in the following days, two members of the High Council for the Judiciary involved in the investigation resign.

## June

**2** The National Guarantor participates in the celebration of Republic Day – Rome.



**4** Meeting between Cassa delle Ammende and Local Guarantors promoted by the National Guarantor – Rome.

**5** The National Guarantor participates in the celebration of the 205th year of the foundation of Carabinieri in Rome.



**9** **Street protests in Hong Kong against the Extradition Bill.** Hundreds of thousands of people demonstrate against the rule that allows the forced transfer of suspects or wanted persons to China.

**10** Monitoring of a forced return charter flight to Tunisia.



**11** **The Government approves the 'Security bis' Decree.** In the following months, the Guarantor of persons deprived of their liberty will send to Parliament his opinion on the measure, which is critical on several points.

Monitoring of a forced return charter flight to Egypt.

**11** and **18** The National Guarantor participates in the training course "I reclami del Garante" at the High School of Penal Execution "Piersanti Mattarella" – Rome.

**12** The National Guarantor meets the Minister of Justice, Alfonso Bonafede.

**13** Hearing of the National Guarantor at the bicameral anti-mafia Commission on the special prison regime pursuant to article 41-bis (Prison Law).

**14** The President of the National Guarantor participates in the solemn session of the City Council of Bologna.

**14-15** Speech by the National Guarantor at the National Conference on Mental Health "Diritti, Libertà e Servizi" – Rome.



**15** **"Sea Watch 3" case: the Viminal prohibits the entry of the ship into national waters.** The German NGO ship, with 53 shipwrecked people rescued three days earlier at sea, remains blocked in international waters.



**17** **Mohamed Morsi dies during trial.** The former Egyptian president suffered a heart attack.



## Nel corso di un anno

The National Guarantor participates as a speaker at the conference “Detenuti a lavoro: il lavoro di pubblica utilità tra opportunità e criticità” promoted by the prison of Lecce, in collaboration with the University of Salento – Lecce.

Visit to the Immigration Removal Centre (CPR) of Bari.

Visit to the premises of the border crossing of the port of Bari.

18 Visit to the CPR of Brindisi-Restinco.

Visit to the CPR of Palazzo San Gervasio (PZ).



19 Almost 71 million refugees in the world. The figure is in the UNHCR annual report.



21 Case closed for the January’s “Sea Watch 3” case. The Court of Ministers of Catania declares unsubstantiated the charge of kidnapping against the Prime Minister Conte and the Ministers Di Maio, Salvini and Toninelli.

**Declaration of the National Guarantor:** the Government assesses the absolute need to make the quality of life in the CPR compatible with the recent lengthening of detention times.

22 The volume of the Guarantor “Norms and Normativity. Standards for the Deprivation of Liberty of Migrants” is presented in Bari.

The Guarantor of persons subjected to measures restricting liberty of the Puglia Region monitors a joint charter flight of forced return to Nigeria, on a mandate from the National Guarantor.

23-26 Thematic visit to Sardinia. The focus is on mental health and deprivation of liberty.

24 The Guarantor of persons subjected to measures restricting liberty of the Piedmont Region and the Guarantor of rights of persons deprived of liberty of the City of Turin monitor the pre-return phase of a joint flight of forced return to Pakistan, on mandate from the National Guarantor.

25 The National Guarantor presents a complaint to the Procura of Rome on the case of the “Sea Watch 3” ship.

26 The National Guarantor participates in the training session of the School of Police Officers – Trieste.



Visit to the prisoners under article 41-bis (Prison Law) of the L'Aquila prison.



**The "Sea Watch 3" forces the blockade and enters Lampedusa.** Captain Carola Rackete is arrested. She will subsequently be released and expelled.

**28** The National Guarantor participates in the seminar meeting "La riforma penitenziaria. I decreti legislativi 121, 123 e 124/2018" – Bologna.

**On a mandate from the National Guarantor, the Guarantor of Human Rights of the Marche Region monitors the pre-return phase of a forced return flight to Morocco, carried out on a commercial flight.**



**30** The 50th anniversary of the Stonewall uprisings is celebrated in New York. According to the organizers and the Mayor of New York, more than 3 million people parade in the World Gay Pride.

## July

**1-4** Internal training seminar of the National Guarantor – Bologna.



**3** The Italian David Sassoli is elected President of the European Parliament. He succeeds another Italian, Antonio Tajani.

**4** Hearing of the National Guarantor at the Constitutional Affairs Commission of the Chamber of Deputies on the conversion of the 'Security bis' Decree into Law.



**First conviction for torture in Italy.** It concerns the violence inflicted by four minors on a peer.

**5** The National Guarantor publishes his opinion on the 'Security bis' Decree.

**6** Visit to the section ex article 41-bis (Prison Law) of the prison of Spoleto.



**7** The right-wing wins the election in Greece. The New Democracy party wins the absolute majority.



## Nel corso di un anno

**8** The National Guarantor participates in the “Giovani e Carcere” press conference at the Chamber of Deputies – Rome.

The National Guarantor participates in the celebration of the Penitentiary Police Corps – Rome.



**9** The sailing ship “Alex” with the rescued migrants on board forces the blockade in Lampedusa; in Malta the migrants of the “Alan Kurdi” ship disembark. Forty-six shipwrecked of the NGO ship “Mediterranea Saving Humans” land on Italian soil, while another 65 aboard the NGO “Sea Eye” are transferred to the mainland by the Maltese authorities.

**Involuntary Placement Orders: The National Guarantor’s first report on a SPDC (Services for Psychiatric Diagnosis and Treatment), specifically that of Colleferro (RM), has been published.**

The National Guarantor gives a presentation on the prison emergency at the national demonstration of the Criminal Lawyers Association of Naples - Naples.

**9-10** Visit to the prison of Crotone.

**10** Presented in Turin the volume of the Guarantor, *Norms and Normativity – Standards for the Deprivation of Liberty of Migrants* – Turin.

Monitoring of a forced return flight to Albania, carried out with a commercial flight.



**16** Ursula von der Leyen is head of the European Commission. The German politician reaches the necessary quorum of votes.

**18** The National Guarantor meets the General Commander of the Carabinieri, Giovanni Nistri.



**23** Boris Johnson is the new leader of the British conservatives. The Brexit politician takes up the role of Prime Minister the following day.

**24** The National Guarantor participates in a dinner with the President of Republic, the Minister and the Undersecretaries of the Department of Justice and with a representation of prisoners from the prison of Rebibbia - Rome.

The National Guarantor participates as a speaker at the National Convention of the Secretarial and Prison Assistance Bodies (SEAC) in the prison of “Regina Coeli” – Rome.



## Monitoring of a forced return flight to Egypt, carried out with a commercial flight.



**26** **Carabiniere Mario Cerciello Rega is killed in Rome.** One of the two young men accused of the murder appears blindfolded in a photo while in custody.

The National Guarantor sends two reports on the media representation of judicial events to AGCOM.

**27-28** Visit to the CPR of Gradisca d'Isonzo (GO) during its opening process.

**28** The National Guarantor writes to Carabinieri and Procura of Rome on the issue of a young man accused of the Cerciello murder, photographed handcuffed and blindfolded.

**29** Visit to the "Regina Coeli" prison in Rome. The National Guarantor exercises his visiting powers to verify the conditions of the suspect for the Cerciello Rega crime.

## Monitoring of a forced return charter flight to Tunisia.

**30** "Gregoretti" ship: The National Guarantor requests urgent information from the Coast Guard on the conditions of migrants detained on board for five days.

Hearing of the National Guarantor at the Constitutional Affairs Commission of the Chamber of Deputies. New opinion on the "Security bis" Decree, after its changes in Parliament.

## August

**1** Monitoring of a forced return flight to Kosovo, carried out with a commercial scheduled flight.



**3** **Far-right terrorism, 23 dead in El Paso.** New massacre carried out by a young man in the United States.



**5** 'Security bis' Decree, final go-ahead from the Senate. The provision was converted into Law, following the approval of the Chamber.



## Nel corso di un anno

**8 Declaration of the National Guarantor on the waiting rooms of airports and ports:** «in no area of the national territory can the fundamental rights of persons be suspended».

**The National Guarantor publishes the Report on visits to premises used by the Police at some border crossings.**

**Monitoring of a forced return flight to Kosovo, carried out with a commercial flight.**



**9 The Minister of the Interior, Matteo Salvini, opens the Government crisis.** The League presents a motion of no confidence against the Prime Minister.

**The National Guarantor writes to the Coast Guard Commander General for clarifications about the "Open Arms" ship, after the ban on entry into national waters from the Ministry of the Interior.**

**13 Fire in the Bergamo hospital and death of a young patient contained in her bed.** In the related investigation, initiated by the Public Prosecutor, the National Guarantor presents himself as offended party, pursuant to article 90 CPP (Code of Criminal Procedure).



**14 Green light by the TAR (Regional Administrative Court) of Lazio for the landing of the "Open Arms".** The Minister of the Interior's entry ban is suspended and the ship with 121 shipwrecked onboard is escorted to Italian waters; they will disembark only on August 20th after an intervention by the Procura of Agrigento, which will open an investigation for refusal and omission of official documents.

**16 In a direct dialogue with Prime Minister Giuseppe Conte, the National Guarantor expresses concern** about the situation of people rescued at sea and held for two weeks onboard the "Open arms" ship. Consequently, he sends a letter on this matter to the Ministers of the Interior, Transport and Defense.



**20 Prime Minister Giuseppe Conte resigns.** After the breakup between the M5S and League, the Premier announces his resignation to the Senate and formalizes it before the President of Republic.



**UN conference on torture in Egypt is postponed.** The decision is announced following protests by human rights associations.

**21 The Guarantor's Report on the visit to the "Giuseppe Salvia" prison in Naples-Poggioreale is published.**

**22 "Ocean Viking" case.** The National Guarantor invites his counterparts from Malta and Norway to coordinate an action to protect the rights of people on board the ship.



**27** **At least 40 people drowned off the Libyan coast.** New shipwreck of a ship filled with migrants.



**28** **Boris Johnson closes the English Parliament.** The prorogation is accepted with disdain by the leader of the House of Commons and by the opposition. In September, the act will be declared unconstitutional by the Supreme Court.



**29** **Toward the "Conte bis" Government.** The outgoing Prime Minister accepts the task of forming a new government.

**30** **Appeal for the situation of the "Mare Jonio" ship.** The National Guarantor writes to Prime Minister Giuseppe Conte to solicit a solution for the issue of the ship stuck at sea.

## September

**1** **"Il reato impossibile", the second volume of the series "Da dove" by the National Guarantor, is published.** The book addresses the crime of plagiarism, abolished by the Constitutional Court, and traces the process that led to the conviction of Aldo Braibanti.



**2** **The last 31 shipwrecked stranded on the "Mare Jonio" disembark in Lampedusa.** Another 64 people, most of whom were children, had been transferred to the island on August 29th; the "Mediterranea Saving Humans" NGO, owner of the ship, is fined.



**3** **M5S members ratify the Government alliance with the Democratic Party.** Green light for online voting on the "Rousseau" platform.

**The National Guarantor presents the Guarantee Institution within the framework of the Police Force course aimed at the operators of the Immigration Offices of the Police Headquarters – Rome.**



**5** **The new Conte Government takes the oath at the Quirinal Palace.** The day after releasing the reserve, the Prime Minister goes to the Quirinal with the other Ministers and gains confidence on September 9th in the House and on September 10th in the Senate.

**6** **Monitoring of a forced return flight to Albania, carried out with a commercial flight.**

**9** **On a mandate from the National Guarantor, the Guarantor for the protection of the fundamental rights of detainees and for their social reintegration of the Sicily Region monitors the pre-return phase of a forced return charter flight to Tunisia at the Palermo Airport.**



## Over the Past Year

2019

**10** Monitoring of a forced return charter flight to Egypt.

**12** The National Guarantor meets the Minister of Justice, Alfonso Bonafede.

Visit to the section 41-bis (Prison Law) of the prison of Cuneo.



**14** Eighty-two shipwrecked aboard the "Ocean Viking" disembark in Lampedusa. The Ministry of the Interior indicates the island as a safe harbor.



**16** Former Premier Matteo Renzi leaves the Democratic Party and founds a new political party, Italia Viva.

**15-20** Visit to the Marche Region.

**18** Visit to the prison of Saluzzo.

Visit to the CPR "Centro Armonia" of Saluzzo.

**19-20** Visit to "San Vittore" prison in Milan.

**21** Visit to the section 41-bis (Prison Law) of the prison of Opera (MI).

**Press release by the National Guarantor:** the situation in the CPR of Ponte Galeria (Rome), is under observation, following some unrest.

Monitoring of a forced return joint charter flight toward Nigeria.



**22** The "Ocean Viking" lands in Messina: shipwrecked are all rescued. As for other similar situations the Ministry of the Interior indicates the safe harbor.

**23** Press Conference by the National Guarantor on the judicial investigation concerning the alleged case of torture in the prison of San Gimignano.



The Guarantor's Report on the visit to the prison of Tolmezzo (UD) is published.

**24** Meeting with the Regional Guarantors promoted by the National Guarantor – Rome.

**26** Monitoring of a forced return *charter* flight to Tunisia.

**27** The National Guarantor participates as lecturer at the 'preventive seminar' *Per sempre dietro le sbarre? L'ergastolo ostativo nel dialogo tra le Corti* - Ferrara.

**27-29** Visit to the women's prison "La Giudecca" - Venezia.



**29** **Austria: victory for Kurz's right-wing.** In the early elections for the renewal of the lower Chamber, the Popular Party of the young Prime Minister has clear success.

## October

**2** Joint declaration of the National Guarantor and the spokesperson of the Local Guarantors on the value of support for social reintegration.



**4** **Inter-ministerial Decree for accelerated return procedures to countries considered safe.** Ministers Di Maio e Bonafede sign the act with the aim of reducing the time for the examination and the evaluation of asylum requests by citizens of thirteen countries, including Tunisia and Albania.

The National Guarantor participates as lecturer at the 20th National Congress of the Italian Society of Penitentiary Medicine (SIMSPE) "Agorà Penitenziaria. Il carcere è territorio" – Milan.



**7** **The Cassation denies house arrest to Giovanni Brusca.** According to the Court, the repentance of the convicted cannot be considered sufficient.



## Over the Past Year

2019



**Ruling of the Grand Chamber of the European Court of Human Rights against life without parole.** By rejecting Italy's appeal, the Strasbourg Court establishes that the rule which does not allow the convicted to access any benefit is contrary to Article 3 of the CEDU.

**8** The National Guarantor organizes a meeting for the "Nafplion Group" in Rome for an independent monitoring of the forced return made by Frontex.



**The Chamber approves the cutting of the number of parliamentarians.** The constitutional reform brings the Deputies from 630 to 400 and the Senators from 315 to 200. In the following months, some parliamentarians collect the necessary signatures to hold a referendum asking for the cancellation of the reform.

**9-10** Training meeting organized by the National Guarantor, as part of the FAMI project on the monitoring of forced return. Sessions are held at the Rome Police School and at the Alitalia Training Academy at Fiumicino Airport – Rome and Fiumicino.



**11** Nobel Price for Peace to Aby Ahmed. The Norwegian Nobel Committee awards recognition to the Ethiopian Prime Minister for his constant efforts to achieve peace with Eritrea.

**Workshop by the National Guarantor on the protection of vulnerable health in forced returns – Rome.**



**12** Kurdish-Syrian activist Hevrin Khalaf killed. The Party Leader of the Future Syria Party was probably assassinated by militants participating in the Turkish offensive in the north-east of the country.



**13** Poland, the ultra-conservatives win. In the parliamentary elections, Jaroslaw Kaczynski's Law and Justice Party is clearly affirmed.

**15** Monitoring of a forced return joint charter flight to Nigeria.



**17** EU-UK Brexit agreement. After years of negotiations, an agreement was reached between the two parties.

**Hearing of the National Guarantor by the "Joint Committee" of the High Council for the Judiciary.**

**21** Press release of the National Guarantor on investigations. The increased number of abuses raises concerns.

**A Letter-Report about a death case at the SPDC in Bergamo has been published.**



On a mandate from the National Guarantor, the Guarantor of persons subjected to measures restricting liberty of the Piedmont Region and the Municipal Guarantor of the rights of persons deprived of liberty in Turin monitor a forced return charter flight to Tunisia

**22** The National Guarantor intervenes before the Constitutional Court asking to participate in the judgment on the constitutional legitimacy related to the automatic foreclosure of the leave of absence bonuses to the “life without parole” prisoners.

**23** The National Guarantor presents the Guarantee Institution within the framework of the Police Force course for the operators of the Immigration Officers of the Police Headquarters – Rome.



The Constitutional Court declares illegitimate the automatic exclusion of leave of absence bonuses to those convicted of crimes of article 4-bis (Prison Law) who do not collaborate with justice.



**24** The UE Parliament rejects the resolution on migratory flows in the Mediterranean. The proposal, presented by the Commissioner for Home Affairs, urged Member States to proactively favor measures for rescues at sea, launching a redistribution mechanism and keeping ports open to NGOs.

**26** Monitoring of a forced return charter flight to Tunisia.



**27** Caliph Abu Bakr al-Baghdadi dies during a blitz by US forces. The leader of the self-proclaimed Islamic State was hit in his compound in the Syrian province.

**28** “Spazio e libertà negata”, study seminar of the National Guarantor at the Italian Encyclopedia Institute Treccani – Rome.



**29** The “Ocean Viking” ship is authorized to dock in Pozzallo. The Ministry of the Interior allows the disembarkation of the 104 rescued shipwrecked.

Monitoring of a forced return joint charter flight to Pakistan.

**30** Monitoring of a forced return charter flight to Tunisia.

## November

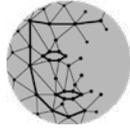


**1** The impeachment procedure against Donald Trump is underway. The House of Representatives has started the process against the US President, but the Senate – where Trump has the majority – will be decisive.



## Over the Past Year

2019



**1-3** **The work of the International Network Theatre in Prison**, official partner of the International Institute of Unesco Theatre, begins in Urbino.

**4** **Monitoring of a forced return to Georgia** in the pre-return phases from the CPR of Trapani, pre-departure at the Palermo Airport and the flight phase from Palermo to Rome on a commercial flight.

**5** **Honorary Degree to Mauro Palma by Roma Tre University.** The President of the National Guarantor Board is conferred the title of Doctor of Law.

**The National Guarantor presents the Guarantee Institution**, within the framework of the Police Force course for the operators of the Immigration Officers of the Police Headquarters – Rome.

**6** **Monitoring of a forced return flight to Romania on a commercial flight.**



**7** **Liliana Segre under escort.** The Life Senator has been subjected to countless threats from far-right extremists.

**Selection procedure** for the assignment of the second level Manager position for the Guarantor's Office.

**8** **The National Guarantor participates as offended party, pursuant to Article 90 of the CPP (Code of Criminal Procedure), in the trial on alleged episodes of mistreatment of prisoners in the prison of San Gimignano.** This role, recognized by the judge for the preliminary investigations of the Court of Siena, will allow the National Guarantor, in line with the practice followed in similar cases, to follow the investigation closely.



**10** **Attacks to the Italian Military in Iraq.** Rudimentary device explodes under an armored vehicle, three seriously injured.

**11** **The National Guarantor participates as a lecturer, together with the President of the Constitutional Court Giorgio Lattanzi, in the Conference entitled "Meriti e limiti della pena carceraria", promoted by the University of Florence – Florence.**

**12** **Visit to the prison of Cuneo.**

**On a mandate from the National Guarantor**, the Guarantor of persons subjected to measures restricting liberty of Piedmont Region monitors a forced return flight to Albania, carried out on a commercial scheduled flight.

**The National Guarantor presents the Guarantee Institution** within the framework of the Police Force course for the operators of the Immigration Offices of the Police Headquarters – Rome.



**14** **Cucchi case: two Carabinieri convicted of pre-intentional murder.** The sentence is 12 years, two other military men convicted for forgery, including the prosecution witness.



**The Cassation sanctions the non-retroactivity of the so-called Safety Decree.** The Court establishes that the provisions do not apply to those who arrived in Italy before its entry into force.

**15** **The National Guarantor participates in the international conference “Rising to the challenge: a look at data protection and beyond” – Rome.**

**16** **The National Guarantor participates in the annual assembly of the National Coordination of Supervisory Judges – Rome.**

**17** **Lectio magistralis of the National Guarantor at the Department of Law of the University of Catania – Catania.**

**17-30** **Regional visit to western Sicily,** carried out by two delegations in the provinces of Agrigento and Palermo. They visit prisons for adults and minors, therapeutic communities and psychiatric services for diagnosis and treatment.

**19** **On a mandate from the National Guarantor,** the Guarantor of persons subjected to measures restricting liberty of the Piedmont Region and the National Guarantor’s Staff monitor the pre-return phases from the prison of Genova Marassi and pre-departure from the airport of Milano Linate for a forced return to Peru, carried out with a commercial flight.

**20** **Procedure for selecting** the professional profile of administrative assistant to OU II of the Guarantor’s Office.

**The National Guarantor presents the Guarantee Institution** within the framework of the Police Force course for the operators of the Immigration Offices of the Police Headquarters - Rome.

**21** **The National Guarantor meets the Minister of Justice and other institutional figures of the Palestinian National Authority** at the *Center for Security Sector and Governance* of Geneva for consultations and establishment of the National Prevention Mechanism in OPCAT scope by the Palestinian Authority – Geneva.

**22** **Visit to the prison of Opera (MI).**

**23** **The National Guarantor participates as a lecturer at the advanced training course “Profili teorici e pratici dell’esecuzione penale” on the prison regime ex article 41-bis (Prison Law), at the University of Milan-Bicocca – Milan**



2019

## Over the Past Year

**23-25** Thematic visit to the hotspot of Lampedusa and to the CPRs of Caltanissetta and Trapani.

**25-29** Regional visit to western Sicily. A third delegation continues visiting the area.



**27** **Green light to the new European Commission.** The Europarliament votes in favor to the team of Ursula von der Leyen, while clashing over the States Rescue Funds.

**Monitoring of a forced return flight to Albania, carried out with a commercial scheduled flight.**

**28** **The National Guarantor meets the Conference of Italian University Rectors** about the presence of university departments in prison – Rome.

**30** **Monitoring of a forced return joint charter flight toward Nigeria.**

## December



**2** **The preventive distribution of migrants rescued at sea between some EU countries is fully operational.** Germany, France and Malta indicate the number of people they are willing to welcome.

**3** **The National Guarantor participates as a lecturer** in the training session organized by the Inspectorate of Chaplains about detention under special regime ex article 41-bis (Prison Law) – Rome.

**Monitoring of a forced return charter flight to Tunisia.**

**5** **The National Guarantor participates in the conference on “Istruzione e detenzione”** at the Senate – Rome

**Lesson of the National Guarantor on “Le operazioni di accoglienza dei migranti e il rimpatrio forzato: il ruolo dell’Autorità di garanzia”** at the Degree course in Human Rights and ethics of international cooperation. University of Bergamo – Bergamo.



### Monitoring of a forced return charter flight to Tunisia.



**11** Elected the first woman President of the Constitutional Court. The National Guarantor sends his congratulations to Marta Cartabia.

**12** The National Guarantor participates as a lecturer in the conference “Il ruolo dei poteri imitativi della libertà personale nelle politiche migratorie europee” organized by the University of Bari – Bari.



**V**ictory of Boris Johnson’s conservatives in Great Britain. After the election results for the House of Commons, Brexit comes closer.

### The National Guarantor is received by the President of the Senate, Maria Elisabetta Alberta Casellati.



**14** Demonstration of the “Sardine” movement in Rome. Thousands of supporters of the spontaneous movement invade San Giovanni Square.



**17** Pedophilia, the Pope’s turning point. The Pontifical secret on abuses committed by clerics is abolished.

**20** The National Guarantor participates as lecturer in the conference on “Ergastolo ostativo”, organized by the Association “Nessuno tocchi Caino” – Milan.

2020

## January



**3** The powerful Iranian general Qasem Soleimani is killed in a US raid on Iraq. Iran sends rockets against US targets.



**8** A Ukrainian plane shot down in the skies of Iran, 176 victims. Iran initially denies but then admits: shot down by our Air Force.

**13** The National Guarantor meets the Director General of the “Rule of Law and Human Rights” Unit of the European Council – Strasbourg.

### Monitoring of a forced return charter flight to Tunisia.

**14** The National Guarantor meets the Tunisian NPM in view of an agreement on the post-return monitoring of forced return – Rome.



## Over the Past Year

2020

**17** The National Guarantor organizes a press release on “Le vulnerabilità in carcere. Riflessioni di inizio anno” – Rome.



**20** Coronavirus has infected 1,700 people in China. Chinese experts say: it can be transmitted from man to man.

Visita to the prison Padova.

Visit to the prison of Gorizia.

Visit to the CPR of Gradisca d’Isonzo, following the death of one of its residents.



**The CPT publishes the report on the visit to Italy.** The mission, in March 2019, was focused on criminal detention.

**21** Visit to the prison of “San Vittore” in Milan.

The President of the National Guarantor, Mauro Palma, at the meeting with Senator Liliana Segre with the residents of the prison of “San Vittore” - Milan

Visit to the prison of Opera.

Monitoring of a forced return charter flight to Egypt.



**22** Luigi Di Maio leaves the leadership of M5S. The announcement during a conference in Rome.

**23** The National Guarantor meets the Minister of the Interior, Luciana Lamorgese.

**24** The National Guarantor participates in the inauguration of the academic year of the School of Carabinieri – Rome.

The National Guarantor participates as a lecturer in the conference “Legalità e Giustizia” organized by the University Roma Tre – Rome.



**27** The results of the regional elections. The Democratic Party holds Emilia-Romagna, the center-right wins in Calabria.



## 27 Visit to the prison in Sollicciano (FI).

**Positive recognition by the UN on the Institution of the National Guarantor as NPM.** The assessment is expressed in the scope of the "Universal Periodic Review". Satisfaction of the National Guarantor.

## 30 Monitoring of a forced return charter flight to Tunisia.



## 31 The United Kingdom officially leaves the EU. Brexit takes place at midnight.

**The National Guarantor participates in the opening ceremony of the judicial year of the Court of Cassation – Rome.**

## February



## 3 Four years without Giulio Regeni. The parents of the young researcher killed in Egypt accuse the shyness of Italian politics in the identification for those responsible.

## 6 Visit to the prison of Santa Maria Capua Vetere (CE).

## 7 Monitoring of a forced return charter flight to Egypt.



## 10 Student at the University of Bologna arrested in Egypt. Patrick George Zaki, of Egyptian nationality, was reportedly subjected to torture.



## 12 Gregoretti case: The Senate approves trial for Matteo Salvini. The Leader of the League advises his group to vote for the go-ahead to the proceeding.



**The Consulta cancels the retroactive interpretation of the "spazzacorrotti".** The Court declares the application of the Law to crimes committed before its entry into force unconstitutional.



## Over the Past Year

2020



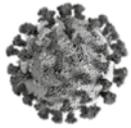
**13 Grand Chamber judgement on rejections in Strasbourg.** The Court finds no violations of the European Convention in the case of two automatic rejections in Spain. The National Guarantor issues a statement: he is disappointed but respects the sentence.

**The Mayor of Florence, Dario Nardella, receives the National Guarantor:** at the Centre of the meeting, some hypothesis on the commitment of the City toward the penitentiary reality of the territory.

**18 Final conference of the project of the National Guarantor "Realizzazione di un sistema di monitoraggio dei rimpatri forzati" at the Spazio Europa in Rome.** The President of the CPT, Mykola Gnatowsky, also participates – Rome.

**19 Visit to the Quarantine Centre at the "Mario de Bernardi" Military Airport of Pratica di Mare, Pomezia (RM).**

**20-21 Visit to the prison "Lorusso e Cutugno" of Turin and to the prison of Novara.**



**21 First cases of Covid-19 contagion in Italy.**



**25 Hosni Mubarak dies.** The former President of Egypt was 91 years old. He was leader of the North African country for almost 30 years, until 11 February 2011, when he was forced to resign following a popular uprising.



**29 Tension and conflicts on the border between Greece and Turkey,** after Ankara allowed the passage of hundreds of refugees and asylum seekers in response to the escalation with Syria. Greece locks down its borders.



**Historic agreement between the White House and the Taliban on Afghanistan.** The US is committed to progressively dismantling the presence of its military and allied forces, the Taliban, to prevent Afghanistan «from becoming a platform for international terrorist groups».

## March



**2 The Law-Decree no. 9 is issued.** The measures address urgent support for families, workers and businesses.

**3 Note from the National Guarantor and the Conference of Local Guarantors on the measures taken to prevent Covid-19 in prison Institutions for adults and minors.**



**Prime Minister Giuseppe Conte receives the President of the National Guarantor, Mauro Palma.** The meeting focuses on the different aspects of the work of the Guarantee Authority and its commitment in the many areas of competence.



**4** Approved DPCM on measures to contain the spread of Coronavirus. The lockdown begins. Among other measures, schools are expected to close until March 15th.

**5-8** **Visit to the prison of Sassari-Bancali and to the CPR of Macomer.** The National Guarantor meets the Prefect of Nuoro and the Supervisory Judges of the Court of Sassari.

**ZONA  
ROSSA**

**8** A new Decree-Law on the Coronavirus emergency has been approved. Travel bans to Lombardy and 14 other provinces of Northern Italy. DPCM establishes a "red zone" throughout Lombardy and in the provinces of Modena, Parma, Piacenza, Reggio Emilia, Rimini, Pesaro and Urbino, Venice, Padua, Treviso, Novara, Asti and Alessandria, Verbano-Cusio- Ossola, Vercelli. The Decree also provides for measures to be taken in prisons, including the temporary suspension of meetings with family members.



Riots begin in the prisons of Salerno. In Modena five prisoners die; another four die in other Institutes after the transfer, then another in Bologna. In the following days, the protest will spread to dozens of other prisons. According to the first hypotheses, the deaths are due to overdoses from drugs and substances taken from the infirmaries. In Foggia, 72 prisoners escape. About fifty are caught immediately, others in the following days. Among those escaped, some exponents of organized crime.

**9** **The Guarantor sends his presentation as offended party to the Public Prosecutor's Office which investigates the deaths following the riots, pursuant to Article 90 CPP.**

**The Guarantor's Board enters the prison of Regina Coeli in Rome during the protest. Moments of strong tension, solidarity with the operators and dialogue with the prisoners. Order is restored in the evening, with no intervention from other Police Forces.**

**ZONA  
ROSSA**

Red Zone extended to all Italy. A new DPCM extends the measures restricting the movement of people to the whole national territory.



**10** First meeting of the prison emergency task force: at the table, beside the Minister of Justice and the Undersecretaries, the heads of the two Departments of the Penitentiary Administration and of Juvenile Justice and the National Guarantor.



Three prisoners die in the prison of Rieti following the riots.

**Even in this case, the National Guarantor presents himself as injured party in the trial.**



## Over the Past Year

2020

**11** The National Guarantor releases the first Covid-19 emergency bulletin.

New visit of the National Guarantor to the roman prison of "Regina Coeli".

**13** The National Guarantor asks the Minister of the Interior to keep record of the migrants hosted in the CPRs, especially those whose custody terms are expiring, given the impossibility of their repatriation in a reasonable time.



**14** Spain declares lockdown in the whole country. The restrictive measures are comparable to the ones in Italy.



**16** France orders a complete lockdown. Beyond the Alps, citizen's freedom of movement becomes strictly limited.



**17** The so-called "Cura Italia" Law-Decree is issued. The provision, in addition to measures strengthening the National Health Service and economic support related to the Covid-19 emergency, contains norms that aim to favor a reduction of presences in the Institutes (articles 123-124), through a more agile application of the home detention in the last 18 months of punishment and an extension of the licences of the semi-free.



**20** The CPT on the treatment of people deprived of their liberty in front of Covid-19. The Council of Europe publishes its guiding principles in the Covid-19 pandemic.

The National Guarantor visits the prison of Rieti.

**21** Video message by the National Guarantor to the prison population. The Guarantor assures that he will supervise the effective access to telephone and video communication methods to replace visits by family members.



**23** 'Soft' lockdown in the UK. Gatherings are forbidden, but leaving the house is not.

**24** The National Guarantor participates in the videoconference of the Association for the prevention of torture (APT) on the impact of the virus containment measures on monitoring activities.



**27** Boris Johnson tests positive to Covid-19. The British Prime Minister will be transferred to intensive care and subsequently discharged after recovering.

The National Guarantor visits the CPR of Rome-Ponte Galeria.



**Participation in the videoconference of the Latin-American National Prevention Mechanism (NPM). Italy presents the experience of the National Guarantor.**



**28** Exceeded the threshold of 10.000 deaths for Covid-19 in Italy.



**29** The Pope dedicates the Angelus prayer to those forced to live the pandemic in closed communities, such as prison and retirement homes. The Pope also calls for the cessation of the conflicts and the opening of humanitarian corridors.

**31** The National Guarantor participates in the press conference to present the research of the Higher Institute of Health on Covid in the RSA, carried out in collaboration with the Guarantor himself.

## April

**2** The National Guarantor participates in a meeting by the videoconference with the residents of the prison of Monza.



Exceeded the threshold of 10,000 deaths for Covid-19 in Spain.



**6** More than 10,000 Covid-19 deaths also in the USA.



**7** The death toll for Covid-19 reaches 10,000 deaths in France as well.



**11** State of emergency declared in all US states. It is the first time in the history of the country, severely hit by Covid-19



**12** The UK reaches the threshold of 10,000 victims for Covid-19.

**17** Meeting of the National Guarantor with the Supervisory Office of Santa Maria Capua Vetere. Appreciation for the commitment to ascertaining alleged mistreatment following a protest rally and the subsequently extraordinary search in the local prison.



## Over the Past Year

2020

**20** The National Guarantor is now on Twitter. The page to follow is @GaranteLiberta

**22** Telematic meeting with the network of Local Guarantors. The focus of the conversation is the issue of the spread of the virus in liberty-depriving structures.

**23** Participation in the APT videoconference on the issue "Monitoring Places of Detention and "Do No Harm" Principle: from Theory to Practice".

**28** Perplexity of the National Guarantor on the modalities on the quarantine of migrants onboard the "Rubattino" ship: «No to legal limbos, they must be able to exercise fundamental rights such as asylum application and protection to victims of trafficking».

**Videoconference with Local Guarantors.** The focus on health, migrants and international network.

**29** Videoconference for the RAI organized round table on social initiatives.



**30** Approval on Decree-Law on Justice, which provides for further urgent measures on the penitentiary system for the prevention of Covid-19.

## May



**1** Head of Department of Prison Administration Francesco Basentini resigns. Press release of greetings and thanks from the National Guarantor.



**2** The new Head of Department of Prison Administration, Dino Petrali, is appointed. The National Guarantor sends his wishes for a good job.



**4** Roberto Tartaglia takes over the new Deputy Head of the Prison Administration Department.

**5** Greeting visit by the Deputy Head of the Prison Administration Department, Roberto Tartaglia, to the National Guarantor.



**12 Meeting of the National Guarantor with the voluntary associations operating in prison.** The discussion, organized together with the National Conference for volunteering in the field of Justice (CNVG), revolve around Phase 2 in prison and the need to vigorously resume activities in the Institutes.

**14 Hearing of the National Guarantor at the Senate's Justice Commission** on the conversion into law of the Decree-Law 10 May 2020 no. 29 on urgent matters regarding house-arrest or the replacement of the pre-trial prison detention with house arrest for persons detained under a charge of organized crime, due to Covid-19 health emergency reasons.

**19 Greeting visit by the Head of Prison Administration Department, Dino Petralia, to the National Guarantor.**



# 1. Courts And Punishment

Between summer and fall 2019, two high Courts, that of Strasbourg and the Italian Constitutional Court, started a long-distance dialogue on the issue of the sentence execution, showing that they speak the same language, albeit with a different approach: the European is more systematic, whereas the Italian acts “surgically”, focusing on the enforcement of the judgment. They find common ground, however, in the guidelines for the criminal execution, which affirm the values of the reintegration path matured during the sentence and the individual responsibility of the person convicted.

Between summer and fall 2019, two high Courts, that of Strasbourg and the Italian Constitutional Court, started a long-distance dialogue on the issue of the sentence execution, showing that they speak the same language, albeit with a different approach: the European is more systematic, whereas the Italian acts “surgically”, focusing on the enforcement of the judgment. They find common ground, however, in the guidelines for the criminal execution, which affirm the values of the reintegration path matured during the sentence and the individual responsibility of the person convicted.

The dialogue started with the European Court of Human Rights on the *Viola vs Italy no. 2 (77633/16)* case of 13 June 2019, with which the Strasbourg judges ruled on the Italian regime of life imprisonment, outlined in the combined provisions of article 22 of the Criminal Code with articles *4-bis* and *58-ter* of the Prison Law, considering that this discipline violates the mandatory prohibition expressed by article 3 of the European Convention on Human Rights, in so far that «it restricts his prospects for release and the possibility of review of his sentence to an excessive degree» limiting the possibility to reduce the permanent sentence to the mere prospect of collaboration with the justice system. In fact, the Court concludes by «remarking that human dignity, which is the center of the system created by the Convention, prevents a person from being deprived of his freedom, without working for his reintegration, and without providing him with a chance to regain it.»<sup>1</sup>

In summary, the legitimacy of the automatic collaboration falls if confronted with the prohibition of inhuman or degrading treatment established by article 3 of the *European Convention on Human Rights*.

The Court also recognized the centrality that the resocialization principle has acquired in European criminal policies, in the relevant international norms and in its own jurisprudence, underlining that this objective also applies to prisoners sentenced to life imprisonment.

The case-law leitmotif of the Court of Strasbourg is represented by the expectation of a *review* system that evaluates the original purposes of the sentence and that must be based on the behavior held in prison by the life prisoner. This system must also evaluate his dangerousness and re-education: the personality of the condemned person is not frozen at the time of the crime committed, but may evolve during the execution of the sentence, that has as its founding values the variability of a person’s destiny and dignity.

1. Judgment mentioned, para.136.



We must now ask ourselves what measures the Italian State intends to take to eliminate the detrimental consequences of the violation found.

Although this is not a pilot sentence, the Strasbourg judges highlight the existence of a structural problem<sup>2</sup> in the Italian legal system, also considering the appeals pending in Strasbourg which are likely to increase.

The European judges suggest that the Italian legal system should adopt a «reform of the life imprisonment regime that guarantees the possibility of re-examining the sentence, preferably by legislative initiative, which would allow the authorities to determine whether, during the execution of the sentence, there is an evolution of the prisoner to the point that no legitimate reason of a penological nature would justify the continuance of detention. Furthermore, the reform must guarantee the possibility for the offender to benefit from the right to know what he must do for his release to be possible and what conditions apply. The Court, while admitting that the State can demand the demonstration of “dissociation” from the mafia environment, considers that this break can be expressed with instruments other than collaboration with the justice system and the legislative automatism currently in force»<sup>3</sup>.

An important step was taken in 2018, when a sentence established that the inability to access any penitentiary benefit for some categories of prisoners, based on the crime committed, for an excessively long period, was unconstitutional<sup>4</sup>. Thus, the importance of the path taken for social reintegration valid for all prisoners (as stated in the fourth paragraph of article 58-*quater* of the penitentiary system) was reiterated.

An important step was taken in 2018, when a sentence established that the inability to access any penitentiary benefit for some categories of prisoners, based on the crime committed, for an excessively long period, was unconstitutional

More recently, in October of the past year, the Constitutional Court declared the illegality of article 4-*bis*, paragraph 1 of the Prison Law<sup>5</sup> in the part in which it does not envisages the granting of bonus permits

in the absence of collaboration with justice, even when elements have been acquired that exclude both the existence of links with organized crime and the danger of re-establishing such links.

This decision originates from a meeting with the First Section of the Court of Cassation and the Supervisory Court of Perugia, in which they raised questions regarding the constitutionality of the preclusive provisions of the bonus leaves referred to in Article 4-*bis* (Prison Law) in regard to the principles of reasonableness and re-educational function of the sentence, sanctioned respectively by articles 3 and 27 of the Constitution.

2. In October 2019, the number prisoners sentenced to “irreducible life sentence” in Italian prisons was 1,258 out of 1,794, equal to approximately 70% of the total of prison population sentenced to life imprisonment.

3. Judgment mentioned, para. 143.

4. Judgment no. 149 of 21 June 2018, editor Francesco Viganò.

5. Judgment no. 253 of 23 October 2019, editor Nicolò Zanon.



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Even though the legitimacy of life imprisonment was not subject of discussion, as specified in the Court judgement, however, with this ruling, a reflection started on the purpose of the sentence, which cannot simply be restricted to the mere content of the sanction. At the same time, a *bagarre* started, from those who see every attempt of reconciliation to the constitutional track as a reduction in the incisiveness of the fight against criminal activity.

Too often, moreover, bonus leaves and alternative measures are simply considered mitigation of the affliction, granted in a discretionary way, forgetting that they must be stages of a path that returns to the social context.

As part of this dialogue, the Constitutional Court mentioned another sentence, in order to address the question raised by the Juvenile Court of Reggio Calabria, concerning the application of article 4-*bis* paragraph 1 and 1-*bis* of the Prison Law to juvenile and young adult offenders. According to said article, those convicted of one of the crimes indicated therein, who do not collaborate with the justice system, cannot access prison benefits<sup>6</sup>. In this case, there is a strong reference to the re-educational and resocialization purposes of the sentence, which must preside over the juvenile criminal punishment.

The common ground of all Italian and European rulings on the matter is the reaffirmation of the value of the progression of reintegration path for all prisoners, as a tool for the reconstruction of a person's identity that is not crystallized at the time of the crime committed and not identified with it.

The common ground of all Italian and European rulings on the matter is the reaffirmation of the value of the progression of reintegration path for all prisoners, as a tool for the reconstruction of a person's identity that is not crystallized at the time of the crime committed and not identified with it. The rehabilitation purpose of this exercise of justice must, in summary, offer to each actor in the tragedy determined by the crime, a prospect of hope to look forward to: a gaze directed towards the future and not turned to the past, like the unwary Orpheus looking back at Eurydice's cave.

6. Judgment no. 263 of 5 November 2019, editor Giuliano Amato.



## 2. Rethinking Oviedo

This past year has unexpectedly brought back into discussion the relationship between ethics, scientific progress, rights and self-determination of each person, in particular those with a cognitive or mental disability.

*The Convention for the Protection of Human Rights with regard to the Application of Biology and Medicine*, also known as the *Oviedo Convention*<sup>7</sup>, marked a fundamental step in protecting people's rights against the potential threats of biotechnological discoveries and in guiding research in the field of biomedicine and related policies. It was the first international legal instrument aimed at protecting the person's dignity, rights and liberties against any risk of abuse of biology and medicine, always giving priority to informed consent and the right to *privacy*.

However, the recent years have witnessed the development of a heated scientific and legal debate around the elaboration of an additional Protocol in the field of psychiatry, in particular on two fundamental points: the involuntary placement order and hospitalization of the person with mental disabilities.

The Protocol should help the States that ratify it to introduce a regulatory framework which, in the context of involuntary placement orders, can produce a concrete protection of human rights and dignity of the person. It should also contain a clear affirmation of the principles of the *UN Convention on the Rights of Persons with Disabilities*<sup>8</sup> (CRPD) and testify to the development and spread of a psychiatric culture for the person with psycho-social disabilities that would not resort to coercive measures, as they are typical traits of internment.

First of all, what is being discussed is the very structure of this new text, which is not too compatible with other international documents signed by the member states of the Council of Europe and, in particular, with the aforementioned *UN Convention*. The international relevance of the document is testified by the high number of countries that have ratified it (181 and all those of the Council of Europe, except Liechtenstein). The absence in the Preamble of the Protocol of a clear and explicit

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7. *The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine*, promoted by the Council of Europe and signed in Oviedo on 4 April 1997.

8. *UN Convention on the Rights of Persons with Disabilities* adopted by the UN General Assembly during its 61<sup>st</sup> session on 13 December 2006. The Convention provides for a special Committee (CRPD) in charge of monitoring the compliance of States with the provisions of the Convention itself.



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The provision in the draft of the Involuntary Placement Protocol is also a critical point. Not only does its prevision as part of the involuntary measures amaze, but the vagueness and indefiniteness of the concept itself also leaves us perplexed, as well as the lack of explicit indication of what the maximum duration terms and place of hospitalization should be (they only mention an 'appropriate environment'). This leaves a wide margin of interpretation for non-voluntary hospitalization, exposing the person with mental disabilities to the risk of internment or hospitalization in places inappropriate to the purpose, which is always personal care. In this regard, it is worth noting the lack of clarification of the purpose of mandatory hospitalization in some parts of the Protocol. It is a fact that even today, in some European countries, there are places of internment for people with mental disabilities.

reference to Article 12 of said *Convention*<sup>9</sup> is likely to weaken the right of the person with disabilities to benefit from legal capacity in every aspect of life, at the same level as all the other citizens. This right could also be exercised by adopting measures in support of the person's full autonomy in this context. The Spanish Bioethics Committee also underlined the ever-present tendency to reduce or cancel the recognition of the ability of a person with psychosocial disability to act, and their corresponding potential replacement by someone else who speaks for them.

There is another aspect troubling the National Guarantor: the reference, again in the Preamble, to the admissibility of restrictions on liberty «in the interest of public safety, for the prevention of crime and for the protection of the rights and freedoms of others»<sup>10</sup> also agreeing with what has been expressed, *inter alia*, by the Spanish Committee. In the *Oviedo Convention* such restrictions are not provided for, except in relation to the person's protection. In fact, Article 7 states that «Subject to protective conditions prescribed by law, including supervisory, control and appeal procedures, a person who has a mental disorder of a serious nature may be subjected, without his or her consent, to an intervention aimed at treating his or her mental disorder only where, without such treatment, serious harm is likely to result to his or her health».

The provision in the draft of the Involuntary Placement Protocol is also a critical point. Not only does its prevision as part of the involuntary measures amaze, but the vagueness and indefiniteness of the concept itself also leaves us perplexed, as well as the lack of explicit indication of what the maximum duration terms and place of hospitalization should be (they only mention an 'appropriate environment'). This leaves a wide margin of interpretation for non-voluntary hospitalization, exposing the person with mental disabilities to the risk of internment or hospitalization in places inappropriate to the purpose, which is always personal care. In this regard, it is worth noting the lack of clarification of the purpose of mandatory hospitalization in some parts of the Protocol. It is a fact that even today, in some European countries, there are places of internment for people with mental disabilities. At the same time, it is important to highlight the risk that a provision of compulsory

9. *UN Convention on the Rights of Persons with Disabilities*, article 12: «Equal recognition before the law 1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law».

10. Council of Europe, Bioethics Committee, *Draft on the Protection of Human Rights and Dignity of Persons with Mental Disorders with Regard to Involuntary Placement and Involuntary Treatment: Preamble*: [...] «Recognizing that the limitations on rights established by the Convention on Human Rights and Biomedicine are acceptable only if prescribed by law and necessary in a democratic society in the interests of public security, crime prevention and the protection of the rights and freedoms of others» (*Unofficial translation*).



hospitalization places included in the Protocol in such a generic way, without exceptions and in the absence of therapeutic purposes and explicit treatment, can in fact consolidate the existence of such places instead of starting the process of closing them, as it has happened forty years ago in Italy.

Finally, just to note how this theme has characterized the discussion in many environments related to psychiatry and psycho-social disabilities, it should be emphasized that the cultural concept that has been - and still is - at the center of different points of view, is the legitimacy of 'treating' a person against his will.<sup>11</sup>

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11. As the Spanish Bioethics Committee remarked: «We are concerned that once these measures are approved, standards will no longer be raised and, on the contrary, methods that run against the CRPD will be legitimized, as the CRPD Committee has repeatedly stated.» (*Unofficial Translation*)



### 3. The Security-bis Decree

The enactment of the Decree-Law of June 2019 solidifies as a general and abstract rule what had been empirically produced in twelve months: the Minister of the Interior, together with those of Defense, Infrastructure and Transport, can prevent civil ships from entry, transit and stop in territorial waters for reasons of public order or security, or when the ship is engaged in unloading or loading of people in violation of immigration laws. Those who violate this prohibition can expect, once the mooring line is launched, a fine, the seizure and the confiscation of the ship.

The year 2019 was marked by a new Decree on «public order and security»<sup>12</sup>. This is obviously interpreted in terms of impossibility of disembarkation for migrants who arrive irregularly by sea and of how to provide for their return.

A year had passed since June 10<sup>th</sup> when, for the first time, the authorization to disembark for a ship chartered by some humanitarian organizations<sup>13</sup>, the “Aquarius”, that had operated a rescue at sea, was denied. Afterward, similar situations had occurred, with ships loaded with people rescued and stalled for days off the coast or in ports. The enactment of the Decree-Law of June 2019 solidifies as a general and abstract rule what had been empirically produced in twelve months: the Minister of the Interior, together with those of Defense, Infrastructure and Transport, can prevent civil ships from entry, transit and stop in territorial waters for reasons of public order or security, or when the ship is engaged in unloading or loading of people in violation of immigration laws<sup>14</sup>. Those who violate this prohibition can expect, once the mooring line is launched, a fine, the seizure and the confiscation of the ship.

The opinions and advices of all those who, like the National Guarantor<sup>15</sup>, had immediately highlighted the incompatibility of the forecast in the case of ships engaged in search and rescue activities at sea with international obligations

12. Decree-Law 14 June 2019 no. 53, converted into law 8 August 2019 no. 77.

13. Gibraltar-flagged ship chartered by the German NGO “Sos Mediterranée” and managed in partnership with “Doctors without borders - Holland”.

14. Decree-Law mentioned in note 1, article 1. Measures to protect public order, security and immigration. [...] «1-ter The Minister of the Interior, National Authority for Public Security pursuant to article 1 of the law 1 April 1981, no. 121, in the conduct of the coordination functions referred to in paragraph 1-bis and in compliance with the international obligations of Italy, may limit or prohibit the entry, transit or anchoring of ships in the territorial sea, unless it concerns military vehicles or ships in non-commercial government service, for reasons of public order and security or when the conditions referred to in article 19, paragraph 2, letter g) are fulfilled, limited to violations of the immigration laws in force, of the Convention of United Nations on the law of the sea, with annexes and final act, made in Montego Bay on 10 December 1982, ratified by law 2 December 1994, no. 689. The measure is adopted together with the Minister of Defense and the Minister of Infrastructure and Transport, according to their respective competences, informing the President of the Council of Ministers».

15. In accordance with his mandate, the National Guarantor gave his opinion in two hearings, respectively on June 14 at the reunited Commissions for Constitutional Affairs and Justice of the Chamber of Deputies and on 31 July at the Commission for Constitutional Affairs of the Senate, expressing various remarks on the text.



to which Italy is bound<sup>16</sup>, remain unheard. With the approval of the Decree, the «ministerial entry bans» into Italian territorial waters begin to be communicated to the Commanders of the rescue ships, on the basis of the amendment to Article 11 of the Consolidated Immigration Act, which introduced paragraph 1-ter.

The Recommendation published a few days after the Decree came into force by the Council of Europe Commissioner for Human Rights Dunja Mijatović<sup>17</sup>, also fell on deaf ears. In particular, the Commissioner focuses on the situations of *de facto* deprivation of liberty of the rescued people, determined by the delays in identifying the *place of safety* (POS): «When confinement on board is the result of state action, this may give rise to questions over the lawfulness of deprivation of liberty, and the existence of sufficient safeguards, such as judicial review, under Article 5 of the Convention»<sup>18</sup>.

Similarly to what already happened in 2018, rescue ships stranded in the open sea without a route constitute the living space of hundreds of people, trapped in a borderline as extended as the time of negotiations on redistribution between the various European states<sup>19</sup>. The legal subjectivity of migrants takes a back seat with respect to the exercise of the prerogatives of state sovereignty, which only recedes when faced with the materiality of the most tried bodies, recipients of continuous medical evacuation measures.

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In the summer 2019, the news paraded images of the “Sea Watch 3” ship - just to remember this single case. The Dutch-flagged ship was blocked from the day of the rescue (12 June) for seventeen days at sea, three of which in Italian territorial waters. Not only, the patrol ship “Bruno Gregoretti” of the Italian Navy, was blocked from the day of the rescue (25 July) for six days at sea, three of which while being

16. United Nations Convention on the Law of the Sea of Montego Bay 10 December 1982 (ratified by Law no. 689 of 2 December 1994), the so-called “SAR” Convention of Hamburg of 27 April 1979 (ratified by Law no. 47 of 3 April 1989), the so-called “Solas” Convention adopted on 1 November 1974 (ratified by Law no. 313 of 23 May 1980). According to the National Guarantor, incompatibility with the Montego Bay Convention consists in defining «not harmless» the entry into territorial waters of a ship that has carried out a rescue operation.

17. Lives Saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean, June 2019

18. On January 31, the Commissioner had already sent a letter to President of the Council of Ministers Conte expressing strong concern about «some recent measures hampering and criminalising the work of NGOs who play a crucial role in saving lives at sea, banning disembarkation in Italian ports, and relinquishing responsibility for search and rescue operations to authorities which appear unwilling or unable to protect rescued migrants from torture or inhuman or degrading treatment». The Commissioner underlined the laudable efforts to save lives put in place by Italy in recent years, she committed herself to continue to put pressure on other European countries so that Italy was not left alone in the management of migrants, but - she wrote - «At the same time, I urge you to ensure that the human rights of persons rescued at sea are never put at risk because of current disagreements between member states about disembarkation, and that humanitarian considerations always take priority».

19. In reference to Alessandro Leogrande who wrote on the border: «Quella parola indica una linea lunga chilometri e spessa anni». *La frontiera*, Feltrinelli, Milan, 2017.



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docked at the NATO in the port of Augusta. The Spanish-flagged ship “Open Arms” was blocked from the day of the rescue (1 August) for twenty days at sea, six of which in territorial waters. A similar story for the Norwegian-flagged ship “Ocean Viking”, blocked from the day of the rescue (9 August) for fourteen days at sea. Same story for the Italian-flagged ship “Mare Jonio”, which remained blocked from the day of the rescue (23 August) for six days at sea.

Against their own will, their crews and passengers become actors of what a scholar, referring to the island of Lampedusa, defined the «show of the border»<sup>20</sup>.

Faced with these situations, the National Guarantor does not remain an inert spectator and on various occasions directs his assessments to the responsible Authorities, with regard to the profiles of responsibility that Italy is likely to face due to violation of the principle of *non-refoulement*, the rights relating to unaccompanied foreign minors and the right to protection from unlawful deprivation of liberty.

The political events leading to the formation of a new executive and some court rulings that reaffirm the overarching nature of obligations of rescue at sea contribute, in part, to halting the impact on the rights of migrants that the law has had for weeks. However, if the Legislator does not take a step back and if border management policies are not globally revisited, the Mediterranean is still likely to remain the scene of violations and exercise of a disproportionate sanctioning power against the rescue ships that are responsible for the prohibitions imposed on them.

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The critical issues expressed by the President of the Republic in the letter sent to the Presidents of the Senate, Chamber of Deputies and Council of Ministers during the promulgation of the conversion law constitute the unavoidable starting point for a necessary and undeferrable parliamentary discussion. Considering that Italy has been condemned by the Grand Chamber of the European Court of Human Rights in the case of *Hirsi, Jamaa and others vs. Italy* (no. 27765/09 of 23 February 2012) for the rejections operated in the open sea towards Libya, as well as the full and shared awareness<sup>21</sup> about the violations that people rescued at sea would suffer in case of return in that country, it is the task of the National Guarantor to promote the broadening of the debate to a careful and rigorous reflection, involving the international community as well. The crux is the irreconcilable logical contrast between the provision of a

20. Paolo Cuttitta, *Lo spettacolo del confine: Lampedusa*, Mimesis Edizioni, Milan, 2012. The author, in the wake of other scholars, focuses on the sensationalism of border control policies and on the transformation of the border into the limelight.

21. See the letter that Council of Europe Commissioner for Human Rights Dunja Mijatović sent to Italy on 13 February 2020. In relation to the impossibility of considering Libya as a safe harbor, see also the multiple declarations of the United Nations High Commissioner for Refugees, the declaration in June 2019 by the then-current Foreign Minister Enzo Moavero Milanesi, as well as the Court of Trapani, which with a sentence of 23 May 2019 recognized the legitimate defense of a group of migrants who between 8 and 9 July 2018, after being rescued by the Italian tugboat “Vos Thalassa”, attacked the crew who wanted to bring them back to Libya.



search and rescue area (SAR) of Libyan competence and the impossibility of considering Libya a *place of safety*, something no one can doubt.

Finally, among the regulatory measures of significant impact adopted in 2019, in the filed of laws of immigration and asylum, the National Guarantor must take into account the Decree of the Minister for Foreign Affairs and International Cooperation of 4 October 2019 which, in accordance with the choices of numerous European countries, has introduced a list of safe countries of origin, applicable in the procedures for examining requests for international protection. Those coming from one of the countries on the list<sup>22</sup> can benefit from rules, such as presumption of safety of the country and groundlessness of the asylum application unless proven otherwise against the applicant, accelerated procedure and immediate enforceability of the rejection decision. An old theme, this one, repeated several times in Europe and always opposed by non-governmental Organizations that often know first-hand the reality of those countries and above all the extreme volatility of their democratic solidity: appearing on a list is often simpler than being deleted once the democratic accessibility has strongly weakened.

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Many doubts and criticisms were brought up at the judgment and the judicial authority has already intervened by resizing the scope of application of the rule<sup>23</sup>. The National Guarantor, also as a monitoring body for forced return, detects the possible risks in any automatism and procedural simplification set in place for system efficiencies that are not compatible with the fundamental right of people to seek protection from persecution, torture and inhuman and degrading treatment in a state other than their own.

22. The list prepared by the Ministry of Foreign Affairs and International Cooperation includes Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ghana, Kosovo, Macedonia del Nord, Morocco, Montenegro, Senegal, Serbia, Tunisia e Ukraine.

23. In particular, on 22 January 2020, a ruling by the Court of Florence intervened, declaring the designation of Senegal as a safe country to be illegitimate without the exclusion of the categories of people considered at risk, such as those belonging to the LGBTIQ+ community, of which the applicant was part.



### 4. *Taser*: Beyond the Experimental Phase

The common ground of all these Italian and European rulings is the reaffirmation of the value of the progression of reintegration path for all prisoners, as a tool for the reconstruction of a person's identity that is not crystallized at the time of the crime committed and not identified with it.

Over the past year, the *Taser*, defined a «less-lethal weapon», «smart weapon» or «electroshock weapon» in the provisions of the law, began to make itself widely known in Italy. As already highlighted in the previous Reports to Parliament<sup>24</sup>, the Police Forces have launched it for trial in twelve Italian cities between September 2018 and June 2019. Specifically, the weapon was used in 62 cases (46 by the State Police, 11 by the Carabinieri, 5 by the Revenue Guard Corps)<sup>25</sup>. In 49 of these cases, launching electric darts was unnecessary, the weapon was simply displayed or used in *warning arc* mode (“electric crackle warning”), with a consequent deterrent effect.

The inclusion of the *Taser* in the Police Forces' regular equipment requires an amendment of the Regulations provided for by the Decree of the President of the Republic no. 5 October 1991 no. 359, which establishes the determining criteria for the equipment supplied to the administration of public security and to the personnel of the State Police who carries out police functions. In this regard, last January, the Presidency of the Council of Ministers approved the preliminary examination of the new Regulation that modifies the previous one; however, the modification process has not yet been completed. It will take some time before the *Taser* enters permanently among the weapons authorized as permanent equipment<sup>26</sup>. In the meantime, however, as already highlighted by the National Guarantor, the provisions of article 19 of Decree-Law no. 113 had introduced the possibility of using the *Taser* on a trial basis also for the local police. The rule only concerns 45 Italian cities, based on the numerical consistency of the population and other economic-social indicators expressly indicated by the law.

Regarding the diffusion of the electric impulse weapon among the local police, so far the situation is not homogeneous, as some large Italian municipalities have preferred to give up any form of experimentation: Milan, Florence, Rome, Trento, Palermo and Turin. Others, such as Perugia, Piacenza, Novara and Verona have instead authorized it.

In a situation that is still so fluid, the National Guarantor, as happened previously, reaffirms his own doubts and questions on the subject, while hoping that the debate and research will not stop,

24. National Guarantor, Report to Parliament 2018, *Tasers in Italy?* p. 258; National Guarantor, Report to Parliament 2019, *Un'arma*, p. 42.

25. Data updated on 5 March 2020.

26. The contract notice prepared by the Ministry of the Interior should provide for a supply of 4,482 weapons which will be distributed as follows: 1,600 to the State Police, 2,262 to the Carabinieri and 256 to the Revenue Guard Corps.



considering the results of the experiences carried out in other countries<sup>27</sup>.

Fifty years after its conception, in fact, the *Taser* is used by the police forces in 107 countries, including Australia, Canada, Kenya and the United States. In Europe, only Bulgaria, Finland, France, Germany, Greece, United Kingdom, Czech Republic and Spain use it, in addition to Italy and the Vatican City State, where the *Taser* was supplied to a selected group of members of the Gendarmerie.

In this regard, it should be noted that the supporters of an extended use of the *Taser*, exalting its presumed less-lethality<sup>28</sup>, hope for its wider diffusion among the Police Forces, identifying it as a tool potentially capable of leading to the almost total zeroing of the use of traditional weapons by *law enforcement* agencies, with a consequent drastic drop in the number of deaths on the one hand, and the reduction in the percentage of police officers injured or killed in direct confrontations on the other.

It is no coincidence that Rick Smith, CEO of the Taser manufacturing company and world monopolist (the American *Axon Enterprise*<sup>29</sup>), considered the “Steve Jobs of the *Taser*”, entitled his best-selling book *The end of killing, how our newest technologies will solve humanity’s oldest problem*<sup>30</sup>. Rick Smith states that the *Taser* is effective in approximately 90% of cases (more precisely between 80% and 97%) and that he is working to bring its effectiveness to 100%. Effectiveness means, technically, *subduing a suspect in the field*, which is, in simpler terms, the ability of the weapon to immobilize a person on the ground for a time sufficient for the Police to contain him through other means (for example, by handcuffing him).

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27. His doubts and questions concern the provision of a regulatory framework that can prevent Italy and the users of the electric impulse weapon from being condemned for violation of Article 3 of the European Convention for Human Rights. As early as 2014, the Strasbourg Court condemned a European State (case 51284/09, *Anzhelo Georgiev and others vs. Bulgaria*, 30 September 2014) precisely for the violation of the obligation expressed in that article, following the use by police operators of *Taser* guns in situations that do not correspond to the requirements of necessity and proportionality. In the decision, the European Court also cites the European Committee for the Prevention of Torture (CPT), which states that the mere introduction of the *Taser*, used extensively without correction, can open the door to disproportionate responses to possible dangerous situations.

28. «Less-lethality» which, in absolute terms, has been repeatedly denied by studies and statistics carried out at an international level. In this regard, see the Reports to the Parliament of the National Guarantor, years 2018 and 2019.

29. *Axon Enterprise* has produced and marketed more than 400,000 *Tasers* in the United States alone, with a relative annual turnover of nearly \$240 million; its production, in fact, is not limited to the *Taser*, but extends to drones and audio-video recording tools (*body cameras*) to be installed on the uniforms of Police officers for the purpose of video recording of operations, as well as simulators.

30. Published by Page Two Books, Canada, on 21 May 2019. It has not been translated into Italian yet. The Italian title could be written as follows: *La fine delle uccisioni. Come le nuove tecnologie metteranno fine al più vecchio problema dell’umanità*.



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In 2019, a research conducted by *APM Reports* in the United States<sup>31</sup> on the Police Departments of twelve major American cities, including New York and Los Angeles, revealed, on a statistical basis, that the *Taser* was actually effective only about 60% of cases and that between 2015 and 2017, for 250 times, its ineffective use was followed by a shooting; finally, in 106 cases, its use caused an increase in the violent reaction of the person who was supposed to be subdued.

The study strongly doubts that the electric impulse weapon could be considered almost totally effective, especially if used in operational scenarios of a certain type (for example, in confined spaces) or even against people with mental disorders, who could have an acute reaction in terms of disproportion and aggression, which could be controlled by other means, and such to induce police operators to use traditional weapons with even fatal consequences<sup>32</sup>.

In the light of international experiences, far from wanting to take categorical positions on the use of the electric impulse weapon in Italy, the National Guarantor looks at its gradual introduction in a positive way, keeping a constructive but critical attitude. This is in the awareness that there are no miraculous recipes in the context of the restriction of personal liberty and that weapons, however intelligent, remain the *extrema ratio*, to be resorted to in a proportionate and necessary way, only after all other means have failed.

However, it should be reiterated, as already expressed by international control bodies, that the *Taser* cannot be applied in certain contexts, such as closed environments and prisons<sup>33</sup>.

European countries using the *Taser*



31. <https://www.apmreports.org/story/2019/05/09/when-Tasers-fail>. *APM Reports* has been established since November 2015 by an investigative and research journalism *team* dedicated to the production of high-quality investigations on issues that often escape the general public.

32. For example, the study highlights how, following many cases of ineffectiveness of the *Taser*, some attributable to the reduction in power of about 50% of the weapons compared to the first generation (models M26 and X26), the *Axon Enterprise* has developed a 'third generation' of electric pulse weapons, moving from the many popular X2 and X26P models to the 'Taser 7' model that produces shorter and more concentrated bursts. The model tested in Italy was the X2.

33. *CPT General Report 2009-2010, Special section on electric discharge weapons*, para. 71 et seq.



## 5. The European Border Police

The Regulation no. 1896 of the European Parliament and of the Council of 13 November 2019 set new rules for the European Border and Coast Guard, commonly known as Frontex. The new text repeals the previous Agency regulations, one of which had been approved only three years earlier<sup>34</sup>.

The objective of this regulation appears clear from the reading of the *considerations* that precede the enacting terms: providing the Agency<sup>35</sup> with a stronger mandate than the European management of the external borders, through the creation of a permanent body of the European Border and Coast Guard with executive powers over the external borders, in the matter of trans-border, secondary movements and returns. According to the objectives set by the regulation, in fact, by 2027 the Agency will have a Police Force composed of 10,000 members between statutory<sup>36</sup> staff and short and long-term staff seconded from the Member States. Even though the composition of the *standing corps* needs to be analyzed more thoroughly<sup>37</sup>, this is relevant news. The permanent body, in fact, is configured as a real European Police Force, the first ever created.

The *standing corps* has executive powers. This means that the “European border guards” are entitled to exercise Police powers, such as vehicle inspections, document checks, checks on people, the carrying of weapons and the use of force in case of need. These are armed Police staff, with their own uniform, operating along the entire perimeter of the Union’s external borders, especially on land. They will be selected based on their knowledge of weapons<sup>38</sup> and off-road vehicles. However, since a Police force cannot operate uncoupled from a Sovereign Authority, the Regulations clarify that the actions of the

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34. Regulations (EU) no. 1052 of 2013 and no. 1624 of 2016.

35. Frontex is a body of the European Union established in 2004 and with legal personality.

36. Statutory as in directly hired by the Agency and holding the same status of European officials.

37. The *standing corps* (SC) have four categories: the statutory staff of the Agency (articulated on three levels of qualification); the staff seconded from Member States for two years, which can be extended for another two; personnel on mission for three months a year, and the rapid intervention reserve which is used only in case of need. In 2025 this last category will be cancelled, and its functions will pass to the SC, according to the provisions of the regulation.

38. Regulation of the European Parliament and of the Council no. 1896 of 13 November 2019, Annex V, Rules on the use of force, including training and the supply, control and use of service weapons and non-lethal equipment, applicable to statutory staff deployed as members of the teams.



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Permanent Corps must take place under the coordination of the Police of the host member state<sup>39</sup>.

Furthermore, the 2021-2027 multiannual financial framework will allow Frontex, also in partnership with one or more Member States, to purchase, maintain and manage aircrafts, naval assets and vehicles, as well as technologies for border control. As explained in point 71 of the Preliminary Considerations of the new Regulation, this aspect is only partly new, since this possibility was already envisaged in 2011, but never implemented due to lack of financial resources. The Agency's budget has increased considerably, as the economic funding is expected to grow from € 331 million to € 1 billion 871 million<sup>40</sup> between this year and 2025.

As part of this strengthening, it is not only the Agency's operational and executive capacity that has grown significantly, but also its capacity to collect data and information. In fact, the new Regulation assigns the Agency the role of administrator of a series of data and information regarding border surveillance, with the specific purpose of allowing Frontex to play a key role in the efficiency of border controls, also increasing its ability to intervene on multiple scenarios<sup>41</sup>.

Such a large operational capacity is functional and corresponds to the general mandate that the Union assigns to the Agency under the new Regulation: an efficient border control and the implementation of an effective return mechanism for persons illegally present on the European territory.

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The Regulation repeatedly recalls the role and prerogatives that each Member State exercises on its own territory in terms of border control, reiterating the function exercised by Frontex as a support, in view of its extended powers, of quantity of allocated resources and of the increase of *intelligence* capacity. However, the Agency is destined to become more and more autonomous in the field of surveillance of external borders and control of migratory flows; in the years to come, in fact, it is much more likely that, seen its increased capabilities the Member States will end up delegating to the Agency significant portions of

39. On 24 October 2019, Frontex launched the first procedure for the recruitment of the new European Border Police within its statutory staff (SC); the notice concerned three levels of recruitment: basic, intermediate and advanced (the advanced one corresponds more or less to the qualification of Italian Police Officer). Approximately 7,000 applications have been submitted which are currently under evaluation; the selection procedure was slowed down by the Covid-19 health emergency. Once the selection is complete, the first European "border policemen" should start the training phase between May and November 2020 and then be used in operational scenarios starting from January 2021.

40. *RSA and PRO-Asyl*, "The making of a super agency", December 2019; <https://rsaegean.org/en/the-making-of-a-super-agency/>

41. The new Regulation, for example, incorporates the border surveillance system, Eurosur, created in 2013 by the EU, as a «multi-purpose system to prevent illegal immigration and cross-border crime at the EU's external borders» (EU Regulation no. 1052 of 2013), under Frontex direct control; the same is for ETIAS operating system, which manages authorizations for travelling to the external borders of the Member States.



competence on the management of the migration impact<sup>42</sup>.

Such an increase in responsibilities and roles assigned to Frontex in matters of control and surveillance of the external borders of the Union should necessarily find a counterbalance in the existence of a mechanism for verifying compliance with fundamental rights during any financial operation, coordinated or carried out by the Agency itself. In fact, as recalled in the preliminary *Considerations* preceding the article of the Regulation (no. 24) «The extended tasks and competence of the Agency should be balanced with strengthened fundamental rights safeguards and increased accountability and liability, in particular in terms of the exercise of executive powers by the statutory staff», considering that «... migratory routes are also taken by persons in need of international protection» (no. 39). It must be noted that the need to respect human rights, the principle of *non-refoulement*, the prohibition of torture, inhuman or degrading treatment and punishment, during the operations conducted by Frontex, runs through the entire fabric of the new Regulation.

In substance, however, the European legislator chose to confirm the existence of an internal mechanism within the Agency, responsible for monitoring compliance with fundamental rights, albeit reinforced in its new regulatory version. It is the person responsible for fundamental rights (Article 109), the *Fundamental Rights Officer*, already envisaged in the previous regulation, but assisted by a deputy in the new one. The person responsible for fundamental rights is identified by the Agency's management board<sup>43</sup> based on a list of three candidates. This figure acts independently and is accountable only to the Board of Directors that appointed him. The fundamental rights officer has an office to which 40 fundamental rights monitors are assigned (Article 110). This is an absolute first for which, however, the Agency has not yet started the relevant selection<sup>44</sup>. The monitors who strengthen the operational capacity of the Fundamental Rights Officer who selects them, are called to assess the compliance of operational activities with fundamental rights, providing advice and assistance and contributing to the promotion of fundamental rights in the context of integrated European border management. They

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42. The new Regulation, for example, establishes the so-called "Antenna Offices" (see consideration no. 75 and article 60 of Regulation no. 1896/2019) which, created on the territory of the host Member States, constitute an interface between them and the Agency, in order to provide more logistical and staff support. Furthermore, the Regulation also strengthens the role of Frontex in terms of cooperation with third countries (articles 71-78); in particular, «The Agency may cooperate, to the extent required for the fulfilment of its tasks, with the authorities of third countries competent in matters covered by this Regulation», furthermore «The Agency may coordinate operational cooperation between Member States and third countries and provide technical and operational assistance to third countries in the context of European integrated border management».

43. The Frontex Board of Directors is composed by the top figures of the public administrations of the respective countries that deal with immigration and border control. In Italy, for example, the Director of Immigration and Border Police of the Department of Public Security is part of the Frontex board.

44. The monitors are part of the statutory staff; they are organic to the Agency and become part of it in a stable and continuous manner, after being selected on a European basis. The 40 monitors are expected to be recruited by the end of 2020.



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are at the disposal of the deputy and are used in the operational scenarios, including return activities conducted by the Agency. The person in charge is called upon to contribute and approve the strategy and action plan on fundamental rights of the Agency pursuant to Article 80 of the new Regulation<sup>45</sup>.

Regarding the protection of fundamental rights, we must also recall the role played by the *Consultative Forum*, already present since 2012 in the Frontex Regulations and provided for in Article 108. The Forum is established within the Agency to assist in issues about fundamental rights through independent advice. The *Forum* includes, by invitation, organizations such as the European Asylum Support Office (EASO), the European Union Agency for Fundamental Rights (FRA), the United Nations High Commissioner for Refugees, together with other organizations active in the migration field<sup>46</sup>. Among the prerogatives of the *Consultative Forum*, in addition to the implementation of the strategy on fundamental rights, is that of supervising the functioning of the complaint mechanism, the codes of conduct and the common basic program for training. In this regard, it should be remembered that Frontex's overall strategy in terms of fundamental rights is also based on some institutes, that had been there for years, relaunched by the new Regulation, namely the mechanism for complaints for violations of fundamental rights during operations financed or coordinated by Frontex (*complaint mechanism*) required by Article 111<sup>47</sup> and the codes of conduct related to the participation of staff in

45. Regulation (EU) 1896/2019, article 80, *Protection of fundamental rights and fundamental rights strategy*, «1. The European Border and Coast Guard shall guarantee the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the Charter, and relevant international law, including the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the Convention on the Rights of the Child and obligations related to access to international protection, in particular the principle of non-refoulement. For that purpose, the Agency, with the contribution of and subject to the endorsement by the fundamental rights officer, shall draw up, implement and further develop a fundamental rights strategy and action plan, including an effective mechanism for monitoring respect for fundamental rights in all the activities of the Agency».

46. Regulation no. 1896 provides that «On the basis of a proposal from the fundamental rights officer that was made after consulting the executive director, the management board shall decide on the composition of the consultative forum and the terms of the transmission of information to the consultative forum. The consultative forum shall, after consulting the management board and the executive director, define its working methods and set up its work programme». At the moment it includes: the European Asylum Support Office (EASO), the European Union Agency for Fundamental Rights (FRA), the UN High Commissioner for Refugees (UNHCR), the European Council (COE), the International Organization for Migration (OIM), The Organization for Security and Cooperation in Europe - Office for Democratic Institutions and Human Rights (OSCE - ODHIR), the Office of High UN Commissioner for Human Rights, Amnesty International, *European Institutions Office* (EIO), the *Churches' Commission for Migrants in Europe* (CCME), the *International Commission of Jurists* (ICJ), the *Jesuit Refugee Service Europe* (JRS), the Platform for international cooperation on undocumented migrants (PICUM, still not confirmed), the Red Cross EU Office (RCEU) and *Save the Children*.

47. On the effectiveness of the complaint mechanism which gives the possibility to report a violation of fundamental rights by the action or inaction of the personnel responsible for carrying out a Frontex operation, there is some perplexity. For example, with respect to the complaint mechanism *form* prepared for violation of fundamental rights during forced return operations, there were some difficulties related to its distribution during an operation, also for safety reasons; similar perplexities have arisen about the real possibility for repatriated persons to send the completed *form* to the Agency once they have returned to their country of origin.



those operations<sup>48</sup>. In addition, the *Consultative Forum* prepares a public annual report on its activities and has power of access to all information regarding the respect for fundamental rights, including on-site visits.

Regarding the activities of forced returns, for which the National Guarantor has a specific interest, being a monitoring authority in this area, the new Regulation does not introduce significant elements<sup>49</sup>, confirming what had already been established in the previous Regulation. The most significant innovation is the establishment of a reserve of monitors to be used on request of Member States as observers of forced returns procedures<sup>50</sup>.

At the end of the concise review of such complex and articulated regulation, which consists of 133 preliminary considerations, 124 articles and six annexes, we can try to draw some reflections on the relationship between the strengthening of Frontex and the issue of the protection of fundamental rights in operations coordinated by the Agency for Border Control and Impact Management migration on the external borders of the Union.

There is no doubt, in fact, that the creation of a European border police with executive powers, the considerable increase in the financial resources available to the Agency for the purchase of technologies and means aimed at the control and surveillance of external borders, the increase of *intelligence* capacity, with the direct management of databases and IT platforms relating to migratory phenomena, and overall the autonomy and independence assigned to the European “super agency” by the new Regulation, pose a balancing problem with respect to activities potentially capable of entering, in many cases heavily, in conflict with the fundamental rights of the migrants involved in the operations managed by Frontex. The choice made in this sense by the European legislator, as already mentioned above, is part of an approach aimed at identifying a mechanism entirely internal to the Agency or monitoring the *compliance* of its activities with respect to protection of fundamental rights.

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48. There are two, a general one for staff participation in operations coordinated by Frontex and another dedicated to return activities that refer to the agency, in particular to joint flights (JRO).

49. Regulation (EU) no. 1896/2019, section 8 articles 48–53, *Actions by the agency in the area of returns* «Without entering into the merit of return decisions...provide technical and operational assistance to Member States in the area of return, ...» particularly in regard to «the organization and coordination of return operations and provide assistance in relation to voluntary returns in cooperation with the Member States». This assistance also concerns information support in preparatory activities for returns. In this regard, the statutory staff will also be interested in return activities, as the formation of Frontex teams is expected at the main European airports in order to facilitate and support operations, especially transit.

50. Article 51 of Regulation (EU) no. 1896/2019 “Pool of forced returns monitors”. The National Guarantor contributes to Italy with four of its own representatives within the European pool for the monitoring of forced returns, since its constitution at the end of 2016, which is still under development, but already fully operational. More than twenty countries of the European Union contribute to the pool.



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Although it is undeniable that the new regulation gives more strength to the fundamental rights officer, especially with the creation of a team of fundamental rights monitors, the mechanism remains internal to the Agency and responds to the appointing body, which is Frontex Board of Directors.

On the other hand, however, the *consultative Forum* could play a role in triggering the action of the person in charge of fundamental rights and his team of monitors, with the deployment of a synergistic activity, in the field, aimed at the prevention of behaviors that are potentially harmful to rights, rather than the reaction resulting from their violation. An activity that could lead to recommendations coming from both the person responsible for fundamental rights and the *Forum*, capable of building a more solid fabric for the protection of rights over time.

However, an underlying perplexity remains, linked to the lack of a real control mechanism external to the Agency that fully complies with the principle of third-party control over the controlled, based on the principle that all fundamental rights prevention bodies should abide by “*nemo monitor in re sua*”.

However, an underlying perplexity remains, linked to the lack of a real control mechanism external to the Agency that fully complies with the principle of third-party control over the controlled, based on the principle that all fundamental rights prevention bodies should abide by “*nemo monitor in re sua*”<sup>51</sup>.

51. In this regard, the National Guarantor, while participating in the European pool of forced return monitors established by Frontex on the basis of Regulation no. 1624 of 2016 and reaffirmed by the new Regulation no. 1896 of 2019 (article 51 “Pool of forced returns monitors”), has joined the process launched in October 2018 by the Greek Ombudsman together with other European bodies, such as the National Prevention Mechanisms, for a review of the overall rules regarding the functioning of the pool and the question of its independence from the Frontex Agency. The so-called “Napflion Group” benefits from the participation of the following: Italy, represented by the National Guarantor, Greece, the Council of Europe and the representatives of independent guarantee institutions at European level of countries such as Spain, Slovenia, Poland, Portugal, Austria, Cyprus, Holland and Albania, in quality of members or observers.



## 6. A Universal Periodic Review for Italy

In 2019 Italy had its third *Universal Periodic Review* – an examination by the *United Nations Human Rights Council* that takes place on a cyclical basis of four and a half years and is aimed at analyzing the health status of rights in different countries<sup>52</sup>. Italy underwent its first review cycle in 2010<sup>53</sup> and the second in 2014<sup>54</sup>.

The session involving Italy was held in Geneva<sup>55</sup> on the morning of 4 November 2019. During the standard three and a half hours dedicated to the debate, the Italian delegation first conducted a *presentation* and then met with the representatives of the States (during the *interactive dialogue*): one hundred and twenty-one States issued *declarations* and by the end of the *review*, Italy received, a total of 306 Recommendations. Here below are the items more closely related to National Guarantor.

The Recommendations received by Italy in 2014 also concerned the obligation deriving from the approval of the OPCAT to establish an independent and effective National Preventive Mechanism (NPM) against torture, fulfilled only in part at the time because it had been provided for by law but not yet established<sup>56</sup>. The delegation recalled this in its initial presentation<sup>57</sup>, also illustrating the working method of the National Guarantor and the activities it has carried out over the years as a UN terminal in the OPCAT context. In three different declarations<sup>58</sup>, the States underlined the positivity of the foundation of this independent Mechanism. The absence of Recommendations on this item reflects the unanimous agreement on the action taken by the National Guarantor. In fact, the only recommendation to this effect, received by the Paraguayan delegation, aimed at allowing the NPM access to the administrative detention centers for migrants<sup>59</sup>, is destined to be automatically included in the category of those accepted and implemented, as the National Guarantor has regular access to

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52. See the *Report to Parliament 2019*, pp. 45 ss.

53. The debate was set for 9 February from 10.00am to 1.00pm.

54. Our country was *under consideration* on 27 October 2014 from 9.00am to 12.30pm.

55. The session was scheduled from 9.00am to 12.30pm.

56. See Recommendation 145.49 in *Report of the Working Group on the Universal Periodic Review (A/HRC/28/4)*, Italy, 10 December 2014.

57. Cf. *Report of the Working Group on the Universal Periodic Review (A/HRC/43/4)*, Italy, 27 December 2019, para. 15.

58. *Therein*, para. 51, 68, 133.

59. *Therein*, para. 148.13.



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The Recommendation presented to the National Guarantor according to which Italy must continue to take steps towards the full implementation of its obligations through the approval of the UN Convention against Torture (CAT) and its optional Protocol has been accepted as an invitation to never let our guard down on the subject of prevention and repression of torture

these facilities since the beginning of his mandate<sup>60</sup>.

On the other hand, the Recommendation presented to the National Guarantor according to which Italy must continue to take steps towards the full implementation of its obligations through the approval of the UN Convention against Torture (CAT) and its optional Protocol has been accepted as an invitation to never let our guard down on the subject of prevention and repression of torture, also because as Malta, the author of the recommendation, knows, the Italian obligations regarding the Convention and especially the optional Protocol have been fulfilled.<sup>61</sup>

A completely different issue is the establishment of the *National Human Rights Institution* (NHRI). The *Independent National Institution for the Promotion and Protection of Human Rights and Fundamental Liberties* has not yet seen the light of day, even twenty-seven years after the approval of Resolution no. 48/134 of the UN General Assembly of 20 December 1993 on the status of National Institutions for the Protection of Human Rights – the one containing the ‘Paris Principles’<sup>62</sup>. The issue was so central that it led the delegation to make a commitment to the *working group* of the *Human Rights Council*: in the initial presentation, the first point «reaffirmed the will» by the «Italian Government [...] to establish a national independent Institution on human rights in accordance with the [...] Paris Principles». In this regard, the delegation mentioned the bill pending in the Chamber of Deputies on the establishment of an independent body, currently - and for a long time - under examination of the relevant Commission. Speaking of bills pending in Parliament, it must be also said that twenty-seven years after the adoption of the ‘Paris Principles’ and fourteen years of bills that have never come to the approval<sup>63</sup> - not to mention the declarations of intent already expressed, and never implemented, to the Council of Human Rights<sup>64</sup> – did not seem enough to reassure the supervisory bodies. In fact, we received forty-five (out of the total three hundred and six) Recommendations on the establishment of the NHRI. For that matter, it does not reassure the National Guarantor either, nor the many Associations and academic centers that have continued to spend their reflections, intelligence and planning skills on this issue.

60. The accepted Recommendations also include those that are in the implementation phase. This is not the case of the no. 148.134 which is accepted because it has already been created and is the result of the questioner’s not knowing.

61. *Therein*, para. 148.132.

62. In 1978 the *UN Commission on Human Rights* organized a seminar in Geneva with the participation of the various human rights Institutions. The guidelines elaborated on that occasion, and subsequently approved by the General Assembly, became the basis of another international seminar promoted by the Commission, during which a systematic exposition of the criteria that should inform these institutions was drafted. This is what we refer to when speaking of the ‘Paris Principles’: they are the basis of the wording of Resolution no. 48/134 of 1993.

63. Consider that the proposed bill with first signatory Tana De Zulueta on the *Establishment of the Italian Commission for the promotion and protection of human rights, in implementation of resolution no. 48/134 of the United Nations General Assembly, of 20 December 1993*, was presented on 1 December 2006.

64. *See Report to Parliament 2019*, pp. 45 ss.



Italy could continue to ignore, not without difficulties, these forty-five Recommendations.

The National Guarantor, in line with the observations already expressed last year<sup>65</sup>, recommends the adoption of a primary rule establishing an independent body for the promotion and protection of human rights, to protect the work of the independent Authorities in office. As is the case with the *National Preventive Mechanism* in the OPCAT area, that is the National Guarantor, which, as the report of the *Human Rights Council* also shows, is recognized and accredited in the international community.

In conclusion, the Italian institutional architecture related to human rights - which aims to promote and protect these rights, those of civic defense, those of preventing torture and other forms of mistreatment and offenses against personal dignity - would seem to better fit the French and German models, which are structurally similar. They provide for three different Bodies, one for each function<sup>66</sup>, with well-defined roles and tasks, unlike the Spanish model - for instance - in which the three functions are attributed to a single body<sup>67</sup>.

The experience of the National Guarantor leads to cultivate skepticism when it comes to generalist institutions holding together different areas.

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65. *Ibidem*.

66. In France, the *Commission nationale consultative des droits de l'Homme* (like NHRI), the *Défenseur des droits* (which is the *Ombudsman*) and the *Contrôleur général des lieux de privation de liberté* (like NPM) coexist. In Germany, the *Deutsches Institut für Menschenrechte* (like NHRI), the *Deutscher Bundestag Petitionsausschuss* (which is the *Ombudsman*) and the *Nationale Stelle zur Verhütung von Folter* (like the NPM) are established.

67. In Spain, the *Defensor del pueblo*, designated as NHRI, is the national *Ombudsman* and also the NPM.



### 7. Before the UN Committee on Enforced Disappearances

Regarding the activities involving the National Guarantor before the *treaty-based bodies* of the United Nations - that is, the control bodies of the effective protection of human rights, consisting of specific treaties - 2019 was the year of the first hearing before the *UN Committee on Enforced Disappearances* (CED), which oversees the implementation of the special Convention on this serious problem<sup>68</sup> by the States that have ratified it.

It is an important instrument that introduces measures to contrast and prevent the phenomenon of *enforced disappearance*, as defined by Article 2 of the Convention: «arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law».

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With its ratification, Italy has also committed not to «expel, return (*refouler*), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance»<sup>69</sup> and to respect a series of guarantees in terms of transparency and accountability when exercising its detention power.

The meeting took place in April, at the *United Nations High Commissioner for Human Rights* (UNHCHR), in Palais Wilson, Geneva, during the sixteenth working session of the Committee established by the Convention- composed of ten members in total, one of which is meaningfully Argentine. Among many things, the session was dedicated to the examination of the first Report of the Italian Government on the implementation of the obligations defined by the Convention. In the same days, the international experts also heard the Italian government delegation, as well as the National Guarantor. With the hearing of the National Guarantor, the CED wanted to understand whether in Italy the *National Preventive Mechanism* against torture and ill-treatment (NPM) was

68. The *International Convention for the Protection of All Persons from Enforced Disappearance*, approved by the General Assembly of the United Nations on 20 December 2006, was ratified by Italy with Law no. 131 and has been operational since 21 December 2010, at the twentieth ratification. To date, it has been ratified by 68 states, while others 48 signed and are planning to ratify it.

69. Article 16, paragraph 1 of the Convention.



implemented and effectively functioning: an even more crucial issue in a country like ours where, as mentioned before, *the National Institution for the Promotion and Protection of Human Rights* (NHRI) has not yet been established.

As foreseen by the Convention, the Committee made known its concluding observations addressed to our country. In the document, it was positively emphasized that the National Guarantor, as NPM, constitutes a body of control for the situation of persons deprived of liberty that effectively fulfills the mandate attributed to him by the OPCAT Protocol. During the hearing, at the time of the conclusions, one of the two *rapporteurs* of the Committee underlined, talking about preventive protection, that he was extremely impressed by the creation of the National Guarantor in Italy.

At the same time, the Italian Government was invited to promptly disclose the list of so-called «suitable premises» where migrants are held during the execution of the expulsion - a concept introduced by the so-called *Security Decree*<sup>70</sup> - in order to allow effective and full access to them by the National Guarantor. In fact, a torture preventive mechanism must be able to plan visits to all places of deprivation of liberty, including «suitable premises», to fully fulfill its role<sup>71</sup>. Among other recommendations addressed to our country, there are those related to the need to increase efforts to prevent the disappearances of migrant persons, especially minors, to locate those missing and to provide effective cooperation and legal assistance to foreign states in the matter of missing persons.

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70. Law-Decree 4 October 2018, no. 113 converted with amendments by law 1 December 2018, no. 132.

71. On suitable premises, see the *Report to the Parliament 2019*, pp. 79 ff.



### 8. Restricted Residences

What happened in the nursing homes (RSA) in the months after the raging spread of Covid-19 should not be forgotten.

The serious consequences of the spread of the virus in the RSA is shown by the data. According to the *Indagine nazionale sul contagio Covid-19 nelle strutture residenziali e socio-sanitarie*<sup>72</sup>, an epidemiological research conducted on a representative sample of RSA, carried out by the Italian National Institute of Health in collaboration with the National Guarantor, the deaths caused by Covid-19 are a total of 6,773, according to data from the 1,082 structures that responded to the survey in the period between March 25 and April 14. On February 1, the number of residents in nursing homes was 80,131, with an average of 74 people per facility.

To restore the order of magnitude of the fragile population group exposed to the risk of contagion and consequently to the transformation of their own residency into a de facto form of segregation during the Covid-19 emergency, it must be said that, according to *CNPL National Register*<sup>73</sup> data, the total number of RSAs present in our country, including public, private and affiliated ones, is 4,629. Taking into consideration only the public or affiliated ones - therefore a total number of 2,603 structures - the number of beds available is 88,571. Number that, to give an idea, exceeds that of the inhabitants of the province of Isernia, (the smallest in Italy, with about 85,000 inhabitants).

The National Health System, in its regional articulation, became structured according to a logic that has favored hospitalization and hospital residences rather than home-based specialist services, which are spread across the territory.

People who live in social and health care facilities of this type, widespread especially in the regions of northern Italy, are mostly elderly people with difficulties in living an independent life, often with various pathologies, even if not in their acute phase, and a limited level of possible recovery for a self-sufficient life. Some of them, due to the severity of their disability, cannot be assisted at home due to the inadequate presence of local services that should be provided for by the National Health System. In some parts of the country, the National Health System, in its regional articulation, became structured according to a logic that has favored hospitalization and hospital residences rather than home-based specialist services, which are spread across the territory.

In some cases, the information collected and the gruesome news of the recent months describe the risk that, precisely because of the insufficient territorial responses, these elderly people may have been abandoned in a discriminatory way to the “non-care” of Covid-19, also because of the necessary closure to visits by non-medical support figures, which brings the further risk of a *de facto* deprivation of personal liberty. The news emerged from interviews and journalistic inquiries also reported that

72. National Survey on Covid-19 Contagion in Nursing Homes (RSA)]. The document, in Italian, can be downloaded in pdf format from the website <https://www.epicentro.iss.it/>

73. National Guarantor database with the geo-localization of the *Health and Social Care Institutions*.



the local health authorities did not send medical specialists for the management of the infection within these structures. Sometimes, they also reported of a greater recourse to restraint and, more infamously, of deaths without adequate treatment. Certainly, the responsibility of supplying personal protective equipment, held by the managing bodies – according to an erroneous view of subsidiarity by some regional authorities and their health units – has produced slowdowns in the interventions. For this reason, while public prosecution offices are investigating what happened, the National Guarantor, solicited by such news, considered it appropriate to include in the survey scheme prepared by the National Institute of Health some questions related precisely to the effects of the closure on the daily life of the residents.

We still know nothing of what may have happened within other structures similar to the RSA. This similarity regards the type of service, but not the type of user: just think of health residences for young people or adults with disabilities, like the nursing *homes for the disabled* (RSD) or *disabled communities* (CSS). In this regard, it should be noted that the panorama of acronyms identifying social-health residences and nursing homes varies from north to south of Italy, from region to region. Sometimes it is difficult to trace back from the acronym the type of structure and of user<sup>74</sup>.

The information available on facilities for people with disabilities during the Covid-19 emergency is fragmentary and conflicting. On the one hand, they reveal that the interventions implemented by the managing bodies were sufficient to avoid serious consequences, on the other, they indicate the lack of proper support from the regional health system. It is certain that the National Guarantor has received alerts from some Associations that reported «people with disabilities infected, sick and unfortunately also deceased».

This observation is important to understand that the monitoring work on the spread of Covid-19 within the multiplicity of social and health care structures is not yet concluded and that the risk of new outbreaks within them is still real. Many of these structures have remained unattended by the regional health system which should, instead, provide for political strategies and work plans capable of protecting the health of people with disabilities at the same level of that of other citizens. They should avoid forms of discrimination in relation to the age of the person or the degree of disability, as well as forms of segregation.

The exasperation of methods of exclusion, segregation or discrimination already in place before the Covid-19 emergency, witnessed and considered unacceptable by the National Guarantor, should not be repeated again.

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<sup>74</sup>. We must distinguish RSA from Retirement Homes: both names, in fact, are often considered interchangeable and misused – also by journalists and, surprisingly, by scientists as well.



### 9. Riot in Prison

The news could report the events as follows: 7-10 March 2020, serious riots in several Italian prisons. In some cases, the protests did not cause any damage, but more frequently real riots lasted for hours and led to tragic consequences. Many damages, thirteen dead inmates, some injured officers, multiple escapes from a prison.

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It might prove useful to analyze each fragment of information contained in this supposed chronicle – which, in any case, is not different from the one reported by the media in March, that apparently was not supported by any further consideration in the days to follow. Yet, this was the most serious issue of recent decades and such a high number of victims had not even been registered during those unrests which were believed to belong to the past of our detention system. It might prove useful to analyze each fragment of information contained in this supposed chronicle – which, in any case, is not different from the one reported by the media in March, that apparently was not supported by any further consideration in the days to follow. Yet, this was the most serious

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Let us start from the beginning. In particular, from the thirteen deceased people, highlighting the fact that their names were barely reported, almost dismissing their death as a ‘side effect’ of the riots, *casualties*. Eleven of the deceased were foreigners (five in Modena, another four coming from Modena died respectively in Alessandria, Verona, Parma, Ascoli Piceno, three more in Rieti and one in Bologna). According to initial findings, all deaths are attributable to the ingestion of drugs and/or methadone, after breaking into the infirmaries, or even to smoke poisoning due to fires as a contributing factor. The National Guarantor, as in similar cases, presented himself as offended party pursuant to Article 90 of the Prison Code in the procedures relating to the ascertainment of the causes of deaths that occurred in prison during the days of the riots, also in order to clarify the medical attention paid in arranging the transfers of those who deceased as soon as they arrived in the new Institute or in the hours immediately after. He received feedback from the competent public prosecutors and proceeded to appoint his own lawyer, as well as his own medical legal consultant for the analysis of autopsy results.

Moving backwards, the injuries emerge - many of which, however, not critical - among both the persons restricted and those who have tried to deal with the unrests: sixty-nine injured among the inmates, more than a hundred among the prison police officers and five health workers. Two policemen were held hostage for eight hours in Melfi and seventy-two inmates escaped from the prison in Foggia, all of which are currently being taken back to prison, except for one. Many sections have been destroyed, causing an estimated damage of millions of euros and a reduction of more than a thousand places available, according to an assessment by the Department of Prison Administration.

Diverting the attention from this specific turn of events for a minute, the lack of ‘physical’ closeness



to those who have faced the difficulties of these moments, by the people who had that as their primary task, is striking. These are events which, beyond any triggering reason, require a relationship of trust, a solid one, corroborated by a physical presence in the place where actual deaths took place.

Further back, the gaze turns to the causes and the unfolding of the events of those days. Certainly, they are placed within the emergency that Italy is experiencing due to the Covid-19 pandemic. The fear of contagion inside restricted places, which are a destination of deprivation of liberty for those who inhabit them, has become an additional element of anxiety that multiplied the one already present beyond the walls and the gates that separate them from the rest of the community. This double anxiety became increasingly palpable in prison because it entered a situation that was already critical in many ways.

In fact, our detention system, regardless of the epidemic contingency, experienced the problem of endemic overcrowding, only cyclically softened by some sporadic measure, immediately replaced by the desire to lock up every difficulty of experiencing 'social life'. In some prison, the number of inmates was three times higher than the places available. The 'social distancing' invoked so much by all experts to limit contagion everywhere - and, therefore, also in prison - appeared to those who needed it the most, sitting inside a narrow and crowded detention room, as a sad, ironic message.

These pre-existing difficulties and anxieties have been upheld by poor communication, which started introducing the impending necessary measures as totally preclusive of any possibility of contact with the outside and of continuation of paths undertaken. Not only that, but understandably, no more meetings with loved ones, who were prevented from moving in the territory anyway, and no more semi-liberties or permits or activities that saw the support of external figures. And somewhere, we had set out along this road.

When on 8 March there was news of the approval of the Decree-Law which, instead, only limited -for fifteen days- the meetings with the loved ones and announced their replacement with additional phone and video calls, it felt like the proclamation of total segregation. In Modena, this was temporally connected to the announcement of the first ascertained positive case of a detainee.

There have been many subsequent stories of what happened in the prisons, with different intensity and violence. Much attention has been paid to the rapid speed of protest often repeating a typical Italian refrain, according to which such events are to be directed by some grey key-figure and cannot be read as spontaneous riots in multiple places, triggered by all the extenuating circumstances.

As it happens, we cannot exclude that during the escalation of the events, the organized crime might have infiltrated in some contexts. Certainly, the reasons behind it have not been read by the National Guarantor as implementation of a preordained plan. Nor can the indisputable fact that most of the detainees did not take part in the riots and violence be neglected: the estimate is limited to a few thousand participants out of a detained population which at the time exceeded sixty thousand.

The local mediation of some regional directors, commanders and supervisors

The local mediation of some regional directors, commanders and supervisors of the prison administration was particularly important, as well as that of some magistrates and guarantors. In those situations, the communication deficit was healed, and hypotheses were put forward to reduce the difficulties that were about to be determined, without any doubts, by the new reality of separation from other figures, especially the loved ones.



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Many ruins remain. The concrete ones of the deceased, of the devastated sections, of the unavailability of common spaces and their reflection on the emphasis of the limited number of places available, of the lack of outdoor time for over a month for a few hundred people in the prison of Bologna, due to the impossibility of going to the courtyards in safety conditions, of the sudden transfers of people who, in some cases, had not even participated in the events. Alongside, there are the ruins, alleged and reported by many, related to treatments that do not comply with the principle of intangibility of people when they are brought under control: episodes reported by many and which, despite the necessary caution of the effective investigation, always remain a shadow, for a detention system, that is cast on that great majority of those who act in full compliance with the law even when they have to resort to the legitimate use of force.

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There are also ruins in the public opinion, already nervous and trying not to take any further anxiety on its shoulders. These events are likely to set aside the debate on why and how to punish those who have committed a crime in that limbo where no reflection is allowed: just throw away the keys. This can be the most severe of ruins, if analyzed in the perspective of the daily democratic establishment of civil life, because democracy is never reached once and for all and also feeds on the ability to get out of dramatic events. It looks towards a reconstruction that does not lose anything of the acquisition reached before an emergency and that, from this experience, draws the ability to build a more solid base, not to weaken it.



## 10. The New Emergency

When the pandemic problems started in the closed yet highly permeable prison community, it immediately sent out an emblematic representation of its disruptive effect on ordinary people's lives. The danger of contagion in its manifestation has immediately highlighted the needs, risks and consequences on everyday life, affecting constrained situations with physical and regulatory parameters.

Parallel to what was happening in the whole country - and in the whole world - unprepared to face the pandemic caused by Covid-19, the health emergency has confronted the prison system with the pre-existing shortcomings and criticalities that emphasized its inadequacy to cope with the phenomenon that was emerging: overcrowded prisons, lack of spaces dedicated to health needs, widespread structural and hygienic degradation in many prison areas and weakness of the health service.

The situation, which required extreme timeliness of interventions, was dealt with on a legislative level, basically acting on two fronts: preventing the contagion from entering the prison and reducing the density of the prison population. In early March, this exceeded 61,000 residents with an effective capacity of just over 47,000 places. Reaching smaller numbers was immediately seen as the goal to contain the spread of the contagion and, at the same time, to identify spaces intended for sanitary isolation and quarantines that would soon be necessary.

The first front saw the implementation of a progressive and heterogeneous series of measures, by the prison administration and the government Authorities, aimed at limiting access for people other than operators and reducing circulation and transfer of inmates from one prison to another as much as possible. Measures that were similar, for both the effects produced and their implicit references, to the ones that at the beginning of the emergency prevented the free movement of people and the closure of all activities: productive, commercial, social, study, recreational. In the free world as well as in prison, contacts with family members were interrupted; treatment activities, social activities, education, study and work were suspended. The prison became an 'empty' world, closed and yet open to the many who entered it every day to ensure essential services.

In the urgency dictated by the sudden spread of the infection, the Central Prison Administration and some of its regional branches, in particular those of the most affected areas, preceded, with their own circulars, the provisions that would have been dictated by the Government: on 22 February, the DAP (Department of Prison Administration) invited the Prisons Management to prohibit the access to

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people (family members, teachers, external staff, volunteers etc.) coming from some municipalities<sup>75</sup>. On 23 and 24 February, the Regional Procurement Office of Emilia-Romagna and Marche arranged, with the First Act<sup>76</sup>, the activation of a dialogue with the Supervisory Judge for the reduction or suspension of detainees' current benefits and bonus leaves and, with the Second Act<sup>77</sup>, starting from 1 March, the suspension of any treatment activity, being it of cultural, recreational or sporting nature that required access from the outside community, as well as the suspension of meetings with family members, in all the prisons of the area of competence. Local prison management was entrusted with the preparation of compensatory forms of contact, through phone or video calls. These provisions were adopted in different forms by other Procurement Offices, and in specific situations they were not opposed to general benefits. With a circular dated 25 February<sup>78</sup>, the Department issued a few indications of preventive nature, limiting access without interfering with the issue of semi-liberty and treatment activities. However, these themes are discussed in the note of the following day<sup>79</sup>, addressed to ten regions (Piedmont, Liguria, Lombardy, Veneto, Friuli-Venezia Giulia, Trentino-Alto Adige, Emilia-Romagna, Marche, Tuscany and Sicily), which indicates, in the wake of the Emilian approach, that it might «prove instrumental and appropriate to take measures that tend to: a) suspend treatment activities that require access by the external community; b) limit external and internal work activities for which the presence of people from outside is expected; c) suspend meetings with family members or third parties, other than lawyers, [...]»<sup>80</sup>.

These first administrative actions also included the creation of departments for sanitary isolation and the limitation of transfers to the geographical areas most affected by the health emergency, in addition to the adoption of the necessary hygiene measures and the provision of personal protective equipment. The subsequent action of the Legislator stressed these measures further life in prison, for adults and minors. The Decree-Law 2 March 2020 no. 9, in fact, required the prisons of Lombardy and Veneto to replace in-person meetings with family members and others with phone and video calls.

The extension of this measure throughout the national territory, up to 22 March, was ordered a few

75. Note of the DAP (Department of Prison Administration) of 22 February 2020 no. 00611554, *Raccomandazioni organizzative per la prevenzione del contagio da coronavirus*.

76. Letter from the Regional Procurement Office for Emilia-Romagna and Marche to the Directorates of the Institutes and the President of the Courts of Appeal and of the Surveillance Courts of Bologna and Ancona, dated 23 February 2020, prot. no. 248, *Disposizioni organizzative prevenzione diffusione Coronavirus*.

77. Letter from the Regional Procurement Office for Emilia-Romagna and Marche transmitting the urgent and counting ordinance no. 1 of the Minister of Health, in agreement with the President of the Emilia-Romagna Region to the Directorates of the Prison Institutes of Emilia-Romagna and Marche and to the Directors of the Offices, of 24 February 2020 prot. no. 2272.

78. Note of the DAP addressed to the Regional Administrators, Directors and Commanders of the departments of the Prisons, to the Directors and Commanders of the Departments of Schools and Institutes of education and to all service personnel of 25 February 2020 no. 0065630, *Ulteriori indicazioni per la prevenzione del contagio da Coronavirus*.

79. Note of the DAP addressed to the Regional Administrators, Directors and Commanders of the department of prison institutions of the Regions indicated in the text of 26 February 2020 no. 0067298, *Indicazioni specifiche per la prevenzione del contagio da Coronavirus*.

80. Note, 26 February cit.



days later, with the Decree-Law of 8 March 2020 no. 11 which was followed by the well-known riots in prisons and their dramatic outcome. Certainly, the previous provisions which led to the belief that bonus leaves would also be suspended did not help to keep the calm. At the same time, on the National territory, the provisions of the Prime Minister's Decree of 9 March determined the suspension of all unessential activities, especially those carried out in prison with external operators. Finally, the prohibition to move from the current municipality of residence imposed on the entire population with the Prime Minister's Decree of 22 March<sup>81</sup>, determined the extension of the suspension of meetings in person until 3 April: the goal to protect the entire population from the risk of spreading the infection through urban and extra-urban travels and interpersonal contacts put the prisoners and the free population on a paradoxical similar level.

On this occasion, the National Guarantor, taking on the particular situation of isolation from the outside world that was occurring in prisons and the risks of new manifestations of discomfort and despair that could derive from it, in collaboration with the spokesperson of the Local Guarantors, sent a message of information and explanation of the measures adopted to the prison population<sup>82</sup>, ensuring the commitment of all the Guarantors to supervise the strengthening of alternative forms of communication ordered by the Department of the Prison Administration, together with other measures intended to make up for the lack of contact with family references (free laundry services, online bank transfers, increased spending limits for each prisoner, postal parcel services etc.)<sup>83</sup>.

The situation of suspension of ordinary life inside prisons lasted until the first days of May, just before completing this Report, based upon further provisions of the Government, which extended the suspension of movements and activities for the entire Italian population: on April 26, in the Prime Minister's Decree - effective until May 18 - which provided for a wider possibility of movement of people, the replacement of in-person meetings with other forms of remote communication, with the clear aim of avoiding the impact of visits inside structures that are not yet adequately prepared to accommodate them, and of regulating them in such terms as to ensure the preventive measures

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81 Decree of the Prime Minister, following a proposal from the Minister of Health, after hearing the Ministers involved and the President of the Conference of Presidents of the Regions of 22 March 2020.

82 <https://www.youtube.com/watch?v=jPjY6V2kf2M>.

83. Note of the DAP to the Directors and Commanders of the prison departments of 21 March 2020, no. 0096018, *Colloqui detenuti con i propri familiari*.



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The second front, the one designed to reduce the density of the prison population, was limited to the provisions of articles 123 and 124 of the Decree-Law of 17 March 2020 no. 18, which respectively introduced in the prison system a dedicated procedure to access home detention regime and the extension of the licenses granted to people admitted to bonus leaves, both until 30 June.

that the pandemic still make necessary. Meetings in person will be gradually reintroduced on 18 May<sup>84</sup>.

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The first provision, whose temporary effectiveness has been established until 30 June, intervenes on the measure of home detention provided for by Law 26 November 2010 no. 199 and its subsequent amendment, introducing a simplified procedure for the concession, with the elimination of the constraints deriving from the assessment of the risk of escape and repetition of the crime, placing, however, further parameters for exclusion from its application to a series of subjects, as well as the obligation to use the electronic bracelet for cases in which the sentence to be served exceeds six months.

With reservations regarding the application of the electronic bracelet, certainly dependent on the availability and effective applicability to the personal circumstances of potential users, the National Guarantor immediately found that it was an important first step, especially from a cultural point of view, towards the goal of reducing that density of population detained in prisons which, during the health emergency, clearly gave signs of its unsustainability. This first step should have been followed by other more incisive measures, in order to tackle a systemic criticality that requires an overall rethinking on the execution of sentences and on the uniqueness of the prison sentence as a response system to the commission of the crime. The theme of “panpenalism” and prison bulimia that have always plagued our prison system could have, even now, grasped from the negativity of dealing with an unexpected event, such as the pandemic, the necessary push for a rethinking not only limited to contingency.

As expected, the new legislative development produced rather limited effects, but it certainly gave rise to a general orientation from the Supervisory Judge which, by dealing with the requests that had been dormant for some time, contributed with the necessary timeliness to the substantial reduction of crowds in prison that took place between the months of March and May<sup>85</sup>. On 18 March, the day the Decree-

84. The provision is contained in article 4 of the Decree-Law 10 May 2020 no. 29, which is being converted into Law as we write this Report, just like the Decree-Law 30 April 2020 no. 28. Both Decrees, on which the National Guarantor is expressing his opinions, are not subject of analysis in this Report, nor is the main theme from which they arose, that is related to the need to set up tools for further acquisition of opinions from the investigating bodies, as well as the review of the measures adopted by the Supervisory Judge in order to grant home detention and/or the mandatory or optional suspension of criminal execution, linked to the potential predisposition to contagion, when such measures concern persons convicted for organized crime. A similar provision is introduced for the replacement measures of pre-trial detention in prison for the same categories of defendants.

85. As of today (May 9, 2020), 3,188 house detentions were granted after 18 March, 381 of which with the application of the electronic bracelet. The remaining 2,807 are divided between those granted based on the pre-existing law and those concerning people with a remaining sentence of less than six months.



Law came into force, there was a reduction of about 7,000 people and a total of about 8,500 people since the beginning of the health emergency. By 9 May 2020, 52,718 people were detained in prison, a number certainly determined also by the drop in prison admissions, due to the lower number of crimes committed during the lockdown period and the limited adoption of precautionary measures, according to the appropriate suggestion made by the Attorney General of the Court of Cassation<sup>86</sup>. In the juvenile prison system, which in Italy has always contained the placement in juvenile detention centers, favoring the assignment to external communities, the number of those who are in the IPM has gone from 382 to 31 December 2019 (of which 165 minors) to 294 (of which 127 minors) as of 30 April of this year.

On a systematic level, the most significant yet indirect result of the emergency legislation was to show, on the one hand, that the operation of the judicial bodies is the main factor in regulating crowding in prisons, on the other hand, that another form of execution, other than imprisonment, is not only possible, but also effective and just. The extreme difficulty of applying the measure provided to people without a permanent address and therefore unable to take advantage of it, has brought out a third factor: the territorial responsibility and the outcome of the progressive dismantling of its protective networks, which should support the socially weaker people so as not to make criminal execution an element of accentuation of inequity<sup>87</sup>. The permanence in prison of 962 people who have been sentenced for less than one year is an eloquent indicator of this issue.

There is always something positive to learn from a dramatic experience, like that of the pandemic that hurt the country: an example is the reflection that has been produced on the execution of the sentence and its concrete achievements. It would be a terrible mistake to leave them behind along with the emergency once it is over.

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<sup>86</sup> Note from the Attorney General of the Court of Cassation, Giovanni Salvi, to the Attorneys General at the Courts of Appeal of 1 April 2020, titled *Il pubblico ministero e la riduzione della presenza carceraria durante l'emergenza coronavirus*.

<sup>87</sup> To deal with the difficulties deriving from not granting the measure due to the absence of a home, both the Department for Juvenile and Community Justice and the 'Cassa delle ammende' have prepared appropriations, in the second case significant, to operate with the Third Sector in order to provide the possibility of temporary hospitality to people sent to home detention and without sustenance.



# 11. New International Standards for the Pandemic

The pandemic spread of Covid-19 altered the framework of resources for the prevention of torture in places of deprivation of liberty.

Here below we illustrate the main opinions, declarations, recommendations and guidelines contained in various documents prepared by the several International Organizations - the UN, the Council of Europe and the European Union on the safeguard of Human Rights and conditions under deprivation of liberty.

Considering the mandate of the National Guarantor, it is worthwhile to dwell at least on this last opinion. It is quite detailed and contains measures addressed to the Authorities that manage all the places formally intended for the deprivation of liberty (from criminal detention to administrative detention of migrants, to closed refugee camps, to psychiatric hospitals, up to all other areas, especially health care ones) and a part dedicated to the measures that the Authorities will have to adopt against those who are in places intended for quarantine.

At a global level, the **United Nations** intervened with the *Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (SPT). In the first place, the STP expressed an opinion on the extension of the mandate of the *National Preventive Mechanisms* (NPM) to protect public health in places of mandatory quarantine, including quarantine from Covid-19<sup>88</sup>; later, it adopted a more general opinion, addressed to all Member States, on how the *Subcommittee* and the various NPMs should continue to exercise their mandate during the emergency situation determined by the Covid-19<sup>89</sup>.

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The pandemic – as stated in the principles expressed in the aforementioned document - has subjected the entire population to severe restrictions, not only with respect to freedom of movement, but also in general with respect to all personal liberty.

88. *Advice of the Subcommittee on Prevention of Torture to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland regarding compulsory quarantine for Coronavirus*, adopted at its 40th session (10 to 14 February 2020), in [www.ohchr.org/Documents/HRBodies/OPCAT/NP-M/2020.03.03-Advice\\_UK\\_NPM.pdf](http://www.ohchr.org/Documents/HRBodies/OPCAT/NP-M/2020.03.03-Advice_UK_NPM.pdf)

89. *Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic*, adopted on 25 March 2020, in [www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf](http://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf)



Obviously, in prisons, inconveniences and challenges are amplified, while pre-existing problems are intensified. Just to give a couple of examples, think of overcrowded detention facilities which, beyond certain limits, prevents the social distancing expected by the rules, or of their often-precarious hygienic conditions. The *Subcommittee* notes that persons deprived of their liberty in formal places represent a particularly vulnerable subset, precisely because of their situation. That is why attention and supervision in places of deprivation of liberty must be maximum. In order to effectively protect those who are hosted there - and consequently the outside world *tout court* - it is necessary to align the absolute protection of the rights of all persons deprived of their liberty with that of the same rights pertaining to their families, and to the personnel that operates in such places with custody, medical-assistance or other functions.

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The document stresses the importance, in this period, of two principles: the «*do no harm*» that is the duty not to cause harm - the *primum non nocere* of medical gnoseology - and the principle of «*equivalence of care*» - evoked by UN sources since the Nineties<sup>90</sup> - according to which the level of attention and care towards people deprived of their liberty must be equivalent to that of any other patient. Obviously, the abstract equivalence interpreted as 'equality of performance' is the cause of maximum inequity when applied to radically different subjects: this tendency to simplify the principle of equivalence is often found in European prison institutions - and also in Italy - where we could argue that, for example, prolonged waiting for medical treatment is equal for a person in prison and one in free life, forgetting that the latter has the possibility of turning elsewhere, whereas the former does not. 'Equivalence' implies equal effective possibilities and, therefore, proactivity toward the most disadvantaged subjects, in order to reconcile that social gap that would otherwise make any *equivalence of care* speech hypocritical.

The UN Committee also highlights the need and the opportunity to enable transparent communication: the limitations for reasons of public health must be explained in advance and thoroughly, to avoid vagueness that might turn into protests and violence. Finally, the document clarifies that, now more than ever, the *National Mechanisms* and the *Subcommittee* must carry on their mandate of supervision, monitoring and visit of the places of deprivation of liberty, because the more the structures are closed to the outside - even if for God-given reasons -, the more it is likely for improper behavior to increase, if not real mistreatment. In short, the legal perspective must know how to connect with the health one and vice versa: in these times of Covid-19 it is «responsibility of the SPT and NPMs to respond in an innovative and creative way to the new challenges they have to face when exercising their mandate defined by OPCAT».

90. See point 9 of the *Basic Principles for the Treatment of Prisoners*, contained in resolution 45/111 adopted and proclaimed by the General Assembly of the United Nations on 14 December 1990 according to which «*Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation*», as well as the *Partnership for Health in the Criminal Justice System*, whose member is the World Health Organization Regional Office for Europe (WHO Europe), which deals with health in prison and whose members share, among others, the aim of encouraging «*all prison health services, including health promotion services, to reach standards equivalent to those in the wider community*».



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The Commissioner released different statements on the subject: on 26 March she asked for «the release of immigration detainees during Covid-19 crisis to the maximum extent possible», on 2 April she recalled that «people with disabilities musty not be left behind in the response to the COVID-19 pandemic, on 6 April she stated that «urgent steps are needed to protect the rights of prisoners in Europe», on 16 April she exhorted the States to «ensure rescue at sea and allow safe disembarkation during the COVID-19 crisis»; finally, with a letter dated 5 May she urged «Malta to meet its obligations to save lives at sea, ensure prompt and safe disembarkation, and investigate allegations of delay or non-response to situations of distress»

Two days before the *Subcommittee's* intervention, the *World Health Organization* had published a 'provisional guide' entitled *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*<sup>91</sup>. On the same day, the *High Commissioner of United Nations for Human Rights*, Michelle Bachelet issued a statement in which she invoked «Urgent actions needed to prevent COVID-19 'rampaging through places of detention'»<sup>92</sup>. On 9 April, the same *High Commissioner* released another statement in an informal briefing at the *UN Human Rights Council*, in which she stressed that «COVID is "a colossal test of leadership" requiring coordinated action»<sup>93</sup>.

At a regional level, the **Council of Europe** expressed itself especially through the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Commissioner for Human Rights Dunja Mijatović, Secretary General Marija Pejčinović Burić and the European Bioethics Committee. The CPT promptly came out with a Statement of principles in which ten «Principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic» are condensed. Among all of them the tenth stands out, dedicated to the dutiful continuation of activities of the Preventive Mechanisms<sup>94</sup>.

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91. *Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance (15 March 2020)*, in [www.euro.who.int/data/assets/pdf\\_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1](http://www.euro.who.int/data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1) Published on 23 March 2020.

92. *Urgent action needed to prevent COVID-19 "rampaging through places of detention"*, in [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E)

93. *COVID is "a colossal test of leadership" requiring coordinated action, High Commissioner tells Human Rights Council* in <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25785&LangID=E>

94. *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic (issued on 20 March 2020)*, in <https://rm.coe.int/16809cfa4b> Principle no. 10) underlines that: «Monitoring by independent bodies, including National Preventive Mechanisms (NPMs) and the CPT, remains an essential safeguard against ill-treatment. States should continue to guarantee access for monitoring bodies to all places of detention, including places where persons are kept in quarantine. All monitoring bodies should however take every precaution to observe the 'do no harm' principle, in particular when dealing with older persons and persons with pre-existing medical conditions».

95. *Commissioner calls for release of immigration detainees while Covid-19 crisis continues*, in <https://www.coe.int/en/web/commissioner/-/commissioner-calls-for-release-of-immigration-detainees-while-covid-19-crisis-continues>



pandemic<sup>96</sup>, on 6 April she stated that «urgent steps are needed to protect the rights of prisoners in Europe»<sup>97</sup>, on 16 April she exhorted the States to «ensure rescue at sea and allow safe disembarkation during the COVID-19 crisis»<sup>98</sup>; finally, with a letter dated 5 May she urged «Malta to meet its obligations to save lives at sea, ensure prompt and safe disembarkation, and investigate allegations of delay or non-response to situations of distress»<sup>99</sup>.

The Secretary General of the Council of Europe on 7 April released an information document containing a «*toolkit* for member states respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis»<sup>100</sup>. On April 14, it was the turn of the Bioethics Committee which published a statement containing «human rights considerations relevant to the COVID-19 pandemic»<sup>101</sup>.

Lastly, a document drafted by **European Union**, which is not a collection of *standards* but a *report* on the measures taken by the 27 current European countries to protect public health during the pandemic<sup>102</sup>. It is worth to mention because in presenting it, the director of the EU Agency for Fundamental Rights (FRA), the Irishman Michael O’Flaherty, stressed that if on the one hand «we clearly need strong public health responses», on the other, «we can protect health and respect human rights. This is not a zero-sum game»<sup>103</sup>. Therefore, the more we respect human rights, the better the public health strategies will be. As in a ‘cooperative game’ where the actors are the different Organisms: national, regional, global.

96. *Persons with disabilities must not be left behind in the response to the COVID-19 pandemic*, in <https://www.coe.int/en/web/commissioner/-/persons-with-disabilities-must-not-be-left-behind-in-the-response-to-the-covid-19-pandemic>

97. *COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe*, in <https://www.coe.int/en/web/commissioner/-/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe>

98. *States should ensure rescue at sea and allow safe disembarkation during the COVID-19 crisis*, in <https://www.coe.int/en/web/commissioner/-/states-should-ensure-rescue-at-sea-and-allow-safe-disembarkation-during-the-covid-19-crisis>

99. *Commissioner urges Malta to meet its obligations to save lives at sea, ensure prompt and safe disembarkation, and investigate allegations of delay or non-response to situations of distress*, in <https://www.coe.int/en/web/commissioner/-/commissioner-urges-malta-to-meet-its-obligations-to-save-lives-at-sea-ensure-prompt-and-safe-disembarkation-and-investigate-allegations-of-delay-or-no>

100. *Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis. A toolkit for member states*, in <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809ef40>

101. *DH-BIO Statement on human rights considerations relevant to the COVID-19 pandemic*, in <https://rm.coe.int/inf-2020-2-statement-covid19-e/16809e2785>

102. *Coronavirus pandemic in the EU - Fundamental Rights Implications - Bulletin 1*, in <https://fra.europa.eu/en/publication/2020/covid19-rights-impact-april-1>

103. *Protect human rights and public health in fighting COVID-19*, in <https://fra.europa.eu/en/news/2020/protect-human-rights-and-public-health-fighting-covid-19>



# Subjectivity





*Just like in the 'false friends' that often besiege translation works, producing embarrassing texts, also in the language we use to describe social phenomena and their contradictions it is likely to find improper terms. They might not be entirely distant from the accurate ones by linguistic analogy but could still be radically different in their profound meanings. However, the semantic value of words and phrases does not tolerate approximations when describing complex situations concerning the interactions between individuals, groups and social aggregations within the public scene. From this semantic value can derive either coexistence or conflict between different realities and, consequently, the policies through which the former might be supported, and the latter reduced.*

*After all, the improper use of terms and expressions is a builder of widespread cultures, whereas, in the words of Albert Camus: «naming things properly can decrease the chaos and suffering in the world». Often, references to the person, the individual or the subject alternate in many non-scientific comments to define their rights, potentials and even duties. These terms, which in many ways are similar, are certainly not synonymous. In fact, when we refer to the individual, we emphasize his/her uniqueness or, at the most, the sense of awareness that acknowledges his/her own singularity; when we refer to the person, on the other hand, the relationships which define us take strength. In a certain way, the person is our being individual yet perceived and understood based on our interactions with others. In the linguistic and conceptual use of the modern era, the word "subject" indicates a sentient activity, to denote the conscious capacity, as opposed to that of the mere object.*

*These distinctions create different perspectives and ways of dealing with the meaning of these words, as well as the nouns that derive from them. However, they also create the will to keep together - albeit with different roles - all three terms, when referring to those who are deprived of personal liberty. It is a matter of recognizing the individual uniqueness, understanding the absolute need to be seen as a person, with a position that is not outside, but within any universe of speech that knows how to reflect itself in its condition and, finally, feeling as a subject capable of building knowledge and autonomy, with a personal history, even of defeat, but always an expression of overall feelings and behaviour. Therefore, we will talk about people deprived of their liberty, considering each of them both individually and collectively, in the relational setting in which they are temporarily placed and in the setting of their life beyond the limits imposed by deprivation. In fact, we are talking about their subjectivity.*

*We have focused attention on the different subjectivities in this Report to Parliament. Last year's Report focused on the various 'places' where this deprivation takes place - at times these places were intended for it, at times they were repurposed because of certain situations - while this Report focuses on the different subjectivities highlighted in them. These subjectivities differ from each other by role, function, and reason for being in those places, but they are similar in the overall interconnection that these places determine.*

*The following reflections are organized through the points of view of observers external to the Guarantor who, from different perspectives, question the person, its conceptualization, the connotations and rights that define this concept, and the variations that the deprivation of liberty puts on all of this. The scope of these reflections also encompasses the questions posed by those who are requested to create rules for persons deprived of liberty, while preserving their subjectivity. Furthermore, in the following pages, we tried to question ourselves about various attributions that are placed on the word "person" either by the materiality of their condition or by the materiality within those structures monitored by the National Guarantor; finally, in a game of symmetry, we also touch the implicit attributions given to the person acting to limit or take care of the liberty of other people. Thus, we do not only focus on the person being "old", vulnerable or in need of care, we investigate the attributions given because of his/her behavior and, lastly by those in charge of defining new ones for others. Enjoy the read.*



## 12. The Free Person

by Marco Ruotolo

Full Professor of Constitutional Law at the Department of Law of the University of Roma Tre and Vice Rector, in charge of the relations with schools, companies and institutions. He runs the II level Master's Degree in Penitentiary Law and Constitution, now in its seventh edition.

Originally, the term *person* (from the Greek *prosopon*) had a 'theatrical' meaning: it indicated the *mask* and its role, the 'part', introduced by others. In a way, this origin also conditioned the progression of legal reflection: going from 'man' intended as a real physical entity to man as a juridically relevant entity, up to the emergence of the figure of the *subiectum iuris*<sup>1</sup>, between the end of the 18th and the 19th century. Man becomes a subject of law and the subjective rights become predicates of his existence. However, being capable of rights is a quality that positive law can also recognize in 'artificial subjects', such as corporations and foundations, through a procedure that Savigny would have defined as 'fiction'<sup>2</sup>. The notion of 'legal person' develops, also with other theoretical foundations, admitting that the Legislator can pretend «in an association of men or in a set of goods the existence of a unity, also considered a "person" and as such assumed as a subject of law»<sup>3</sup>.

The progression of legal reflection, which inevitably goes hand in hand with the evolution of history, leads towards an abstraction of subjectivity functional to the full, real, recognition of rights only in favor of some. Undoubtedly, the *subject* becomes the center of imputation of rights and duties, he defines himself as man, *formally* free and equal, but in a perspective that is still far from the concreteness of *reality*. The reference is to the individualist paradigm of the 18th century declarations of rights and 19th century constitutions, which indisputably broaden the sphere of legally protected interests, but still involve a restricted circle of recipients, mostly members of the middle class.

Only after overcoming the mono-class state, with the socio-economic transformations of the early 20th century and the struggles of the newborn trade unions and mass parties, that model would no longer work. In that historical moment, a new need arose to return to the *person*, to reinvent the concept, abandoning the 'mask' to let the person emerge for what he is<sup>4</sup>. It is no coincidence that the main

1. For further details, see Riccardo Orestano, *Il «problema delle persone giuridiche» in diritto romano*, vol. I, Giappichelli, Turin, 1968, pp. 10 ff.

2. Friedrich K. von Savigny, *Sistema del diritto romano attuale* (translated by V. Scialoja), Turin, 1886.

3. Riccardo Orestano, *Il «problema delle persone giuridiche»*, cit., p. 24.

4. Stefano Rodotà, *Dal soggetto alla persona*, Editoriale Scientifica, Naples, 2007, pp. 8, 19 - 20.



international charters of the mid-20th century<sup>5</sup> and the most important European Constitutions<sup>6</sup> are built around the principles of dignity and freedom of the person, considered essential after Auschwitz.

The Constitutions, especially the Italian one, finally open up to society. They are no longer indifferent to the living conditions of the person, claiming to protect their *real* freedom<sup>7</sup>, especially through the required removal of material obstacles which exclude the possibility of participation of the individual in the community life.

In order to achieve actual freedom, rights must be made effective. The breakthrough of contemporary constitutionalism lies in this claim, which translates into the affirmation of the principle of social justice. Everyone «has the right to have rights»<sup>8</sup>: what is being exalted is the supreme principle of *freedom-dignity*, which is opposed to the individualistic principle of *freedom-property*<sup>9</sup>. In our Constitution this is particularly evident in the affirmed «substantial precedence of the human person [...] over the State»<sup>10</sup> (recognition-guarantee of inviolable rights, art. 2 of the Constitution) both in the proclamation of the equal social dignity of all (art. 3, first para. of the Constitution) and in the specific commitment to the achievement of substantial equality (art. 3, second para. of the Constitution). At the basis of these basic choices there is the *value of the person*, who «is not only individual, but is society in its various forms, a society that does not end in the state»<sup>11</sup>. The person is no longer the «abstract being placed at the center of 18th century declarations»<sup>12</sup>, but, considered in the social dimension, «it acquires meaning

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5. See: UN Statute of 1945, Universal Declaration of Human Rights of 1948, European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950

6. See, mainly: the preamble of the French Constitution of 1946, art. 1 of the Basic Law of the Federal Republic of Germany, arts. 2 and 3 of the Italian Constitution, art. 10 of the Spanish Constitution.

7. Peter Häberle, *Le libertà fondamentali nello Stato costituzionale* (1983), Italian translation by Paolo Ridola, La nuova Italia scientifica, Rome, 1993, p. 49.

8. Stefano Rodotà, *Il diritto ad avere diritti*, Editori Laterza, Roma-Bari, 2012, in the explicit reference to the words of Hannah Arendt, *Le origini del totalitarismo* (1951), Italian translation by Amerigo Guadagnin (on the American edition of 1966), Edizioni di Comunità, Milan, 1996, p. 413.

9. Franco Modugno, *I 'nuovi diritti' nella giurisprudenza costituzionale*, Giappichelli, Turin, 1995, p. 107.

10. Giuseppe Dossetti, Session of Monday 9 September 1946, Acts of the Commission for the Constitution – First Subcommittee, Abstract, p. 323 f. This is the well-known Dossetti agenda which contains the reference (point *a*) to the requirement that the Constitution «recognizes the substantial precedence of the person, intended in the completeness of his values and needs, not only material but also spiritual and the destination of this at the service of that».

11. Aldo Moro, Afternoon session of Monday 24 March 1947, Acts of the Constituent Assembly– Discussions, shorthand accounts, p. 594. Dossetti's prompted agenda contained a reference to the need to recognize «the necessary sociality of all people» (point *b*), affirming the existence of rights, not only of persons but also of communities, «prior to any concession by the State» (point *c*).

12. Francesco Viola, *Dalla natura ai diritti*, Editori Laterza, Rome-Bari, 1997, p. 309.



## Subjectivity

and value from the relationship with other men»<sup>13</sup>.

The person is finally looked at in a dynamic perspective, giving reference to their «full development», consequently prescribing the removal of obstacles that hinder the objective: (art. 3, para. 2), and importance to the progress of their personality within social groups (art. 2). The free development of the personality becomes the pivot around which the entire constitutional framework of rights unfolds, hand in hand with the convergence point of the personalistic, pluralistic and solidarity principles that characterize our democracy.

Personality is expressed in different contexts and requires *respect* in each one of them, as a minimum condition for being able to express itself. This is what happens in the Italian constitutional system with regard to health, as health treatments can never «violate the limits set by respect for the human being» (Art. 32, para. 2, Const.); in the workplace, where, among other things, the remuneration must be such as to ensure the worker and his family «a free and honourable existence» (Art. 36, para. 1, Const.); in situations of restriction of freedom, where «all acts of physical and moral violence [...] shall be punished» (Art. 13, para. 4, Const.) and «measures contrary to a sense of humanity» are not allowed (Art. 27, para. 3, Const.).

The mask falls, the person is no longer fiction, no longer the result of a process of abstraction. Instead, it is a man who must always be enabled to express his own personality. From the *subject* to the concrete *person* - his material existence and needs, of which the formally recognized rights are a normative projection - and from this to the *free development of his own personality*, to be also considered as a right according to the formulation of the German Constitution: «everyone has the right to the free development of his personality insofar as he does not violate the rights of others or offend the constitutional order or morality» (art. 2.1).

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indicating the way of a treatment path for the offender that privileges the expression of his personality - in terms of self-determination and empowerment - in the perspective of full reintegration into society. These provisions place particular attention to situations of vulnerability, in the affirmation

13. Lelio Basso, Afternoon session of Thursday 6 March 1947, Acts of the Constituent Assembly – Discussions, shorthand account, p. 206.



of the necessary respect for the human being and the enhancement of their self-definition which requires, among other things, to safeguard those who are recipients of mandatory treatments or containment practices, as often happens for the elderly or psychic sufferers.

In short, the freedom to express one's personality, while undergoing unavoidable situations of restriction of personal freedom, should never be completely compromised, but always valued. Otherwise, we would lose the *sense of freedom* itself, the perception of its importance, our love for it, in a process of degradation that is harmful to innate dignity, which takes place precisely when a man ceases to be a person to become an object<sup>14</sup>. As Georges Bernanos wrote, «the worst threat to freedom is not the fact that people allow it to be taken away – for someone who lets it be taken away can always bring it back - but is that people forget how to love it, or no longer understand it»<sup>15</sup>.

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With these interpretations - marked by the spirit of a humanism that does not want to be prejudicially 'unscientific' - I believe it is also necessary to frame the delicate issues that face the post-human era, which already come to the attention of the jurist for the eruption of robots potentially capable of making autonomous decisions and interacting with third parties. The 'mask' seems ready to take back the stage in the guise of the 'electronic person', to whom rights could be recognized and against whom duties and obligations could be imposed<sup>16</sup>. However, unless history is proved wrong, it seems difficult to foresee a world where robots replace man, rather than assist him, at least if we can still consider valid the presumption that man's conscience and creativity cannot be supplanted by machines that are able to decide but not to desire<sup>17</sup>. Rather, it is necessary to be aware of the inevitable integration between artificial and natural intelligence by finding ways of regulating the phenomenon suitably for guaranteeing sustainable development. This is achievable as long as we put the person at the center of its material existence and keep in mind Gandhi's warning that a 'science without humanity' can be the prelude to the destruction of man.

14. As Cesare Beccaria wrote, *Dei delitti e delle pene* (1764), Tascabili Economici Newton, Rome, 1994, cap. XX, p. 41, «non vi è libertà ogni qual volta le leggi permettono che in alcuni eventi l'uomo cessi di essere *persona* e diventi *cosa*». («Liberty is at an end, whenever the laws permit that, in certain cases, a man may cease to be a *person* and become a *thing*».)

15. Georges Bernanos, *A che serve questa libertà?* (1947), in Id., *Rivoluzione e libertà*, Italian translation by Gennaro Auletta, Borla editore, Turin, 1963, p. 16.

16. In this regard, see the Resolution of the European Parliament of 16 February 2017 P8 TA (2017) 0051, p. 59.

17. On this topic see Roberto Cingolani – Giorgio Metta, *Umani e umanoidi. Vivere con i robot*, il Mulino, Bologna, 2015, as well as, more recently, Roberto Cingolani, *L'altra specie. Otto domande su noi e loro*, il Mulino, Bologna, 2019.



## 13. A Person in Prison – for an Ethics of Conflict

by Grazia Zuffa

Member of the National Bioethics Committee and President of *La società della ragione*. Veteran parliamentarian of the Communist Party and the Left Democratic Party. She has been a professor of Psychology of drug addiction at the Faculty of Psychology of the University of Florence and a member (2006-2008) of the National Scientific Committee on Addiction at the Ministry of Social Solidarity.

Speaking of ‘person’ when referring to those who are in prison or are otherwise deprived of their liberty is no small challenge. Without going into the merits of the philosophical reflection and the different points of view on the concept of ‘person’, I remain close to the meaning it has gradually assumed in the common sense: today, ‘person’ indicates the individual, male or female, in their human dignity, of which freedom and responsibility are fundamental requirements. In other words, we are fully ‘persons’ when our subjectivity (made up of ‘sense and sensibility’, of beliefs, desires, life plans) can express itself freely and consciously, recognized as such and respected by the world around us.

The first consequence is that persons deprived of their liberty are thereby deprived of a fundamental component of being a ‘person’. For this reason, the very existence of the prison as a place of confinement for human beings constitutes, or should constitute, a constant ethical preoccupation for our society. It is a situation that can only be ‘tolerated’ (term to be emphasized) as exceptional, provided that all the necessary guarantees are offered to the person deprived of liberty. From the point of

view of our Constitution, which is centered on the person and his rights (just as in other democratic countries), what I am saying is well established and may seem obvious to repeat. It is not obvious, though, if we consider the recurrent invocations to the harshness of the prison sentence, presented as a symbolic key in the ‘moral compensation’ for the victim, which overshadows and even denies that the sentence should be oriented to the social reintegration of the offender. Therefore, it is useful to recall the ethics of penalty, as reflected in our Constitution: a penalty that is proportionate and limited, not the other way around; punishment with prison should represent the *extrema ratio*, to respect the exceptional nature of the state of deprivation of liberty. Also, let us not forget the importance of underlining the status of ‘person’ of those who, with imprisonment, have had a piece of «being a person» taken away from them: it is a way to point out the contradiction between the rights of the person and prison, and an implicit invitation to exercise conflict.

Conflict: the keyword that allows us to read the evolution of the concept of person from a historical perspective. The association between the person and human subjectivity, of free and responsible individuals, is the culmination of a long and difficult path, which for some subjects is recent and constantly being questioned. That is how it is for women, who have challenged their reduction to a pure maternal function, ‘objects’ of a ‘destiny’ established by the patriarchy. It is also a tackled culmination for other ‘abnormal’ figures, as they are unable or not fully capable of expressing and determining themselves (like minors); or deemed ‘impaired’, such as people with mental disorders; or deviant, such as offenders, prone to be seen as objects (rather than subjects) of the process of re-education and social reintegration.

Women’s journey to claim subjectivity is precious, because it shows black on white the construction of the normal/abnormal dualism, which has transformed sexual difference into ‘abnormality’, as women are



not included in the male norm. An abnormality that in modern society acquires all pathological characteristics. This makes it possible to exercise new forms of social control and power over lives, precisely by denying one's own voice and surrounding world to 'pathologized' figures, such as drug addicts, criminals or social deviants. Moreover, the contiguity between the construction of the feminine and the construction of the pathological is witnessed by history, not too long ago: the asylum was the institution for which women deviant from the female sexual norm were destined (when I personally visited the asylum of Agrigento in 1989, there were still many locked up from time immemorial for this reason).

Women's journey to claim subjectivity is precious, because it shows black on white the construction of the normal/abnormal dualism, which has transformed sexual difference into 'abnormality', as women are not included in the male norm.

If today we are prone to denounce the mechanisms of 'infantilization' of the prison regime that afflict men, we must also remember that for female inmates the same mechanisms are supported and strengthened by the representation, widespread in prison, of women that by their own 'nature' are not fully adults, victims of their 'innate' fragility: therefore less responsible for the crimes committed, but for this reason more in need of correction, according to the classic authoritarian paternalism. The result is that women are more at risk of 'losing themselves', with some women inmates reporting that in prison «two words are missing: rights and respect».<sup>18</sup>

Today, women inmates want to speak about themselves and about the world around them, and this is an indication of how the feminist revolution has become a widespread common sense; on the other hand, however, the prison, as a place enclosed by walls, materially and symbolically, is the amplified mirror of the resistances that persist in society. Therefore, the gesture of reading the prison through the she-subjectivity or he-subjectivity is a way to make a progress in conflict and make prison more transparent. It is a way to restore meaning to that «being a person» in the state of deprivation of liberty.

It goes without saying that the contradictions become more acute as social sensitivity about the centrality of the person, with his inalienable rights, grows. The scenario in which today's conflict takes place is described by the National Bioethics Committee in 2013; and takes its cue here to recall 'ethical responsibility':

«Prison is a place of contradiction: between the principle of equal rights inside and outside the walls (except freedom of movement), and the security requirements that tend to limit them [...] between the meaning of penalty, based on individual responsibility, and the concentration in prison of a growing number of people belonging to the most deprived strata of the population; between the health deficit of those entering prisons and a prison that produces suffering and disease».<sup>19</sup>

18. From an interview with a female inmate in a Tuscan prison. Cf. Susanna Ronconi, Grazia Zuffà (2020), *La prigioniera delle donne. Idee e pratiche per i diritti*, Ediesse, Rome, p. 32. Cf. also Susanna Ronconi and Grazia Zuffà (2014), *Recluse. Lo sguardo della differenza femminile sul carcere*, Ediesse, Rome (in particular pp. 218 ff.).

19. National Bioethics Committee (NBC, 2013), *La salute 'dentro le mura'*, pp. 6 ff. The NBC also refers to *Comité Consultatif National d'Ethique pour les Sciences de la Vie et de la Santé*, avis n. 94, 26 octobre, 2006 "*La santé et la médecine en prison*".



## 14. Looking Upon the Detained Person

by Flavia Perina

Journalist and writer. She has been a member of the Chamber of Deputies from 2006 to 2013, first elected with the *Alleanza Nazionale* group, then with the *Popolo della Libertà* and *Futuro e Libertà per l'Italia* parties. From 2000 to 2011 she directed the newspaper *Secolo d'Italia*. In the following years she has collaborated with various newspapers. She published the novel *Le Lupe*.

Deprivation of liberty is an extreme act which is only justified, in democratic societies, when all other measures have been taken into consideration and judged insufficient to safeguard personal or public interest. Even in these cases, the way we see a person who is restricted in any capacity remains one of the cornerstones of the opinion we have of ourselves, which makes us feel different and better than the barbarous ages of public pillory or dungeons dug under the castles. We cannot call ourselves liberal, democrat or civilized just because we have built a sophisticated and very extensive regulatory building that establishes how, if and when the state has the right to deprive a citizen of liberty. We feel like that because -at least in theory- inside this building a person remains a person, not just a number, an offender, a convict, a migrant awaiting identification, a psychiatric patient, but a man just like the rest of us. A life that brings with it experiences, hopes, projects or even despair and deviance, but still a life. A man, a woman, a boy.

It is becoming increasingly difficult for the Legislator to deal with this cornerstone of modern age, essentially for two reasons. The complexity of our world tends to favor a statistical approach to the problems of society that strips the recipients of public action of any specific peculiarity and tends to make us forget what lays behind the percentages: lives in flesh and blood, which can be radically changed for better or worse by political decisions. When these existences represent a minority that is not too visible, not too active and influential, the tendency to consider them marginal and uninteresting is accentuated. Those who are deprived of liberty are at the bottom of the list of 'voices that matter': they have no voice at all, they have little or no access to the media, little or no social impact, they are, in fact, mere numerical entities and too often they are treated as such.

The second question is more recent and problematic. It relates to the spread of a social demand, often angry, for simple solutions to complicated problems: immigration, widespread crime, deviance, the great refugee emergencies generated from the wars in the Middle East and the Arab revolutions. What simpler than choosing internment over other solutions? Politics is at the same time the author and prisoner of this emotional climate; it pursues public opinion and at the same time is pursued by it. Social networks have made things worse: they are apparently a warm, emotional media, territories of possible connection and empathy, but in reality, they consolidate the tendency to dehumanize every story by transforming each situation, each person, into a *casus belli* to wave like a flag, like a scapegoat stripped of subjectivity.

Restoring an identity, a face, the status of individuals with rights to the slice of humanity that we deprive of liberty every day for the most diverse reasons is a high task: we should address it not only in compliance with abstract principles or the many rules and conventions dictated on the subject, but for



a broader political and cultural consideration. Without a turnaround on this point, it will be difficult to support the story we have always told ourselves, that of a ‘special nation’, the cradle of law and the sense of *pietas*, the cathedral of humanism, the epicenter of the religion that more than any other has made “the last” first. If this story falls, we lose ourselves. We go back to being a group of tribes. We lose our millenary nature.

Our country is not doomed to give into the times or to the simplifications of a part of public opinion. In fact, we have what it takes when it comes to the difficult task of keeping rules and humanity together, looking at the law and the person. In the peacekeeping missions abroad, for example, Italy is considered an excellence, by virtue of its specific “cultural-historical DNA”: a reputation that makes us proud, often mentioned by politics as a sign of distinction. We are a model of dedication to people even in the field of volunteering: probably no European nation has such an active network as ours, widespread and available for intervention wherever people suffer or ask for help. These are two examples that tell us a simple thing: humanizing the intervention of the authority is always possible, even in extreme conditions, and contrary to what the commonplace claims, it is not a sign of weakness but an important element of strength.

Our country is not doomed to give into the times or to the simplifications of a part of public opinion. In fact, we have what it takes when it comes to the difficult task of keeping rules and humanity together, looking at the law and the person. In the peacekeeping missions abroad, for example, Italy is considered an excellence, by virtue of its specific “cultural-historical DNA”: a reputation that makes us proud, often mentioned by politics as a sign of distinction.



## 15. The Imprisoned Subjectivity

by Jacques Mourad

A Syrian Catholic monk kidnapped by jihadists in Syria and miraculously escaped after months of imprisonment. Together with Father Paolo Dall'Oglio he founded the monastic community in Syria of Mar Musa, dedicated to Islamic-Christian dialogue. His experience is told in the book "A monk held hostage: a jihadist prisoner's struggle for peace". Today he lives as a «refugee among refugees» in Iraqi Kurdistan in Sulaymaniyah.

Freedom is the ultimate goal of every human being. It is related to our humanity since the beginning: «He himself made man from the beginning and left him in the hand of his own counsel» (Book of Sirach 15:14). For this reason, if our existence is based on our faith in God-Love, it is totally driven and inspired by this impulse which makes life flow in us and which is called «freedom».

What does it mean to be free, according to Christ? In his conception, being free requires two conditions: authenticity and love. To be free is to decide with *honesty*: man is a being who decides. However, in order for this decision to lead him to his freedom, it must be taken in *truth*: «you will know the truth and the truth will set you free» (Gospel of John 8:32). Being free also means deciding with *love*: «Love and do what you will». With these words, St. Augustine of Hippo, considered the first great Christian philosopher in history, means that a human being animated by authentic love cannot be wrong or act falsely. Thus, he can decide freely, and this love sets him free.

Taken hostage by a group of jihadists<sup>20</sup>, imprisoned for almost five months, threatened several times with beheading, witnessing the kidnapping and segregation of 250 people from my parish, I lived an experience of liberation, but how? Which part of this experience was reserved for love? In which signs did I recognize my freedom as a reflection of an honest and loving decision? What plea am I being called to hear today? Abducted in the middle of the desert, surrounded by the noise produced by the vehicle that was carrying us and the sound of the radio, a cry rose from within me: «I am on the path to freedom». How could it be? What did that mean? Where would this cry lead me? Could it be the voice of the Lord? The questions were spinning in my head.

I was held captive in a bathroom because, as a Christian, I was considered impure, and yet, I lived that experience as a true inner freedom. Yes, that is where I experienced my freedom. I felt freer than the people who put me in that prison. They were prisoners of their hatred and their fears; I was free from such feelings; feelings that could have locked up my heart and prevented me from seeing life and reality in the right dimension. Amid that situation, I was happy to be able to concretely live these words of the Christ in the Gospel of St. Matthew: «Love your enemies, bless those who curse you, do good to those who hate you, and pray for those who spitefully use you and persecute you» (5:44). It is not

20. Father Jacques Mourad was kidnapped on 21 May 2015 from the Mar Elian monastery in Syria and returned free over four months later, on 11 October.



a small thing to be able to live the Gospel, especially these difficult verses, that before then were only words to me. Still, compassion for my kidnappers lived in me.

True freedom exists when I can welcome the one who made me suffer so much and whom I refused. True freedom is this rising of forgiveness towards those who have hurt me, those who wanted to destroy my dreams and the love in me. True freedom is this incessant waiting for the gushing of the True Light: the only one that can illuminate our heart and dispel any darkness that enslaves us.

War and violence only generate violence. Weapons cannot bring justice to men. Faced with the situation of suffering experienced by countries at war, faced with the feelings of betrayal and the loss of human values, what does the Bible tell us? In the Old Testament it tells us of the Promised Land and in the New of the Kingdom of Heaven. Therefore, we see that every human being is a pilgrim on this earth and always tends towards his true country: The Heavens. «For great is your love, higher than the heavens; your faithfulness reaches to the skies» (Psalm 108:4). So, this Kingdom and this hope are not just dreams. We are responsible for creating this Kingdom here, on this earth, among God's people. Christ became incarnate to allow us to live the Kingdom of Heaven from this day. He said: «the kingdom of God is among you and within you» (Gospel of Matthew, 5).

If we ever put ourselves in the shoes of those living in exile, the homeless, the refugees, then we would really understand what hell is: it is also people disappearing because of violence, ignoring who is responsible and where they have been taken.

If we ever put ourselves in the shoes of those living in exile, the homeless, the refugees, then we would really understand what hell is: it is also people disappearing because of violence, ignoring who is responsible and where they have been taken.

The silence of the world in the face of the evil that rages every day on the Syrian people and refugees makes me suffer more than my own imprisonment did. If in the Middle East, as in Syria, the war has now a religious aspect, it is because someone has transformed a peaceful and civil revolution into an inter-religious conflict and a bloody civil war for their own interests. Even some religious leaders take a clear stand alongside the local forces as they go against their own teachings, against human rights, against the rights to equality, justice, defense and protection.

God created man and woman in his image. They are God's temple. In recent years we have witnessed the destruction of the human identity and the characteristics of the creature He loves. In the face of all the persecutions, threats, war, torture, forced displacement, exile, what measures has the international community taken? Today, evil also reveals itself in the form of an intolerable rift in our world between East and West, North and South. Violence is at the service of economic or strategic interests, which generate nothing but suffering and injustice.

This brings us to the issue of respect for individual and collective freedom. We live in an age in which slavery takes different forms: exiles and migrants lose their freedom and their right to live free; some are exploited along the way; some families find themselves scattered in different countries with their ties destroyed. All of this goes against 'primordial' rights.



## Subjectivity

My experience as a hostage of the so-called Islamic State, which lasted four months and twenty days, helped me realize that prison cannot in any case be the solution to convince inmates of anything. They will return to their actions or other forms of violence.

My experience as a hostage of the so-called Islamic State, which lasted four months and twenty days, helped me realize that prison cannot in any case be the solution to convince inmates of anything. They will return to their actions or other forms of violence.

The idea of creating refugee camps directly affects human dignity and human rights. Every person has the right to live where he was born and to travel wherever he wishes: God did not create the earth to be divided according to ethnic, religious or linguistic identities. Therefore, it is unfair to lock up a population and force it to the harshness of the fields; not only that, but this concentration causes serious human and cultural problems, as well as health and psychological issues. Moreover, these fields create favorable conditions for

the formation of new jihadist groups, which find fertile ground to grow new conflicts based on hatred, taking advantage of innocent people who live in the pain and loss of their women, their children, their land. There is no greater pain than becoming a victim of war, a refugee, a foreigner in a country, living for years in a camp in inhuman conditions, despite all the aid that comes from the countries that have the decision in their hands and the power to stop that war. It is intolerable to know that an entire generation now lives without school education, in terrible health conditions and that many of these refugees died, not from bombs but from lack of medical care.

Nevertheless, the situation in Syria cannot be resolved by the people. There are countries involved that feed the conflict, also determining the responsibility of the international community to choose whether to stop it or not. Nobody wants to acknowledge this reality that concerns international justice and should strike all human sensibilities. The Syrian people is completely abandoned. The choice of the international community to engage in wars to fight terrorism, without seeking a way to dialogue with fanatical and terrorist groups is unfortunately, in my opinion and in my experience, a terrible mistake. We are facing a world crisis that will never stop if decision-makers do not give up all kinds of wealth and power, if the countries that are directly and indirectly responsible for wars do not take the clear and immediate decision to dialogue with the different communities to stop this spiral, as they did after the Second World War. Our world needs a real peaceful revolution against all the reasons that fuel conflicts, particularly the arms trade that has helped destroy our country as well as Yemen and Iraq. The Syrian people do not want war, nor the dead, nor destruction. It astounds me that even today - despite the many deaths and planned destruction of historical monuments in Iraq and Syria, including one that is being bombed just now as I write these words - all this continues in the Idlib region.

If we do not reach a maturity that makes us feel - beyond any ethnic, religious and cultural difference - one people, one family despite our differences, our world has no hope. After all, forgiving means abandoning our personal interests.



## 16. A Question of Identity

by Cristina Cattaneo

According to the estimates, 33,000 people have died crossing the Mediterranean in the last 25 years. More than half of these remained without identity and buried in single or common graves in the cemeteries of southern European countries. Regardless of whether the identification of corpses is a duty towards the dead and their loved ones, whether it is a civil, criminal and humanitarian obligation mentioned in the Geneva Convention and in International Humanitarian Law, there is absolutely no response to this need from the whole world.

Why is it important to identify the dead? This requirement arises from moral, legal, administrative and even public health needs. The dead need to be identified for the living. Every culture or religion honors their dead in some way and expresses the need to know where they are buried, where to mourn them. It is now well-established that not knowing whether a child or a father is alive or dead leads to psychological disorders, if not even to dangerous behaviors and habits (depression, alcoholism) or real organic pathologies. Besides, if there are no death certificates of fathers, mothers, husbands and wives, how can the survivors proceed with the *administration* of their own life? The identification of the corpse and the subsequent possibility for the living relative to obtain the death certificate is important especially in the case of minor children left orphaned. Without the death certificate, for example, it is difficult to start the bureaucratic process to carry out the reunification of an orphaned minor with a relative currently living in another country.

These values and obligations must be respected; the right of human beings not to lose their identity is now universally recognized. This right must apply to everyone: we must cultivate it at a domestic level but, especially in this historical moment, also at an international level. All this must be valid without discrimination. However, to the thousands of men, women and children who try to cross the Mediterranean every year and fail, this fundamental right is denied; and it is especially denied to their loved ones, to the living.

In 2014, Italy was the first to promote these identification operations, thanks to the work of the Office of the Extraordinary Commissioner for Missing Persons, assisted by the University of Milan (supported for specific purposes respectively by the Universities of Catania, Messina, Palermo, Ancona, Bari, Brescia, Bologna, Milan-Bicocca, Turin, Pavia, Parma, Ferrara), together with the Navy, the Fire Service, the Prefectures, the Prosecutions and Forensic Services, the provincial health authorities of Sicily and the International, Italian and Swiss Red Cross.

Thus began - in a context where it seemed unlikely to be successful, where supposedly nobody was looking for them, and that perhaps «for them» was not so important - a great and long technical work of identification.

It all began with the shipwreck that took place off the coast of Lampedusa on 3 October 2013, in which

Director of the Laboratory of Forensic Anthropology and Odontology (LABANOF) of the University of Milan and medical-legal consultant for the Extraordinary Commissioner for Missing Persons of the Ministry of the Interior and for various Public Prosecutors. She led the pilot project aimed at restoring an identity to the dead at sea in the Lampedusa shipwrecks of 2013 and 2015, an experience she recounted in "*Naufraghi senza volto. Dare un nome alle vittime del Mediterraneo*".



## Subjectivity

almost 400, mainly Eritrean migrants, lost their lives. This was an unprecedented case in our country and represented a turning point, in a sense, in the approach to the problem of unidentified corpses, thanks to the greater attention dedicated to the procedures for data collection starting from that moment. The activity promoted by the *Commissioner* was the first of its kind, not only in our country, and led to the collection of data from about 150 people who were looking for their dead in that disaster and who mobilized from various parts of Europe, showing that family members strongly feel the need to identify the corpses.

The second pilot project concerned the victims of the tragedy of 18 April 2015, which took place in the international waters between Libya and Italy, where a ship carrying about 1000 people (the so-called *barcone*) sank. In this case, the wreck and its victims were recovered and examined to collect data useful for identification. Data was collected from over 300 families who were looking for their loved ones, especially from sub-Saharan Africa.

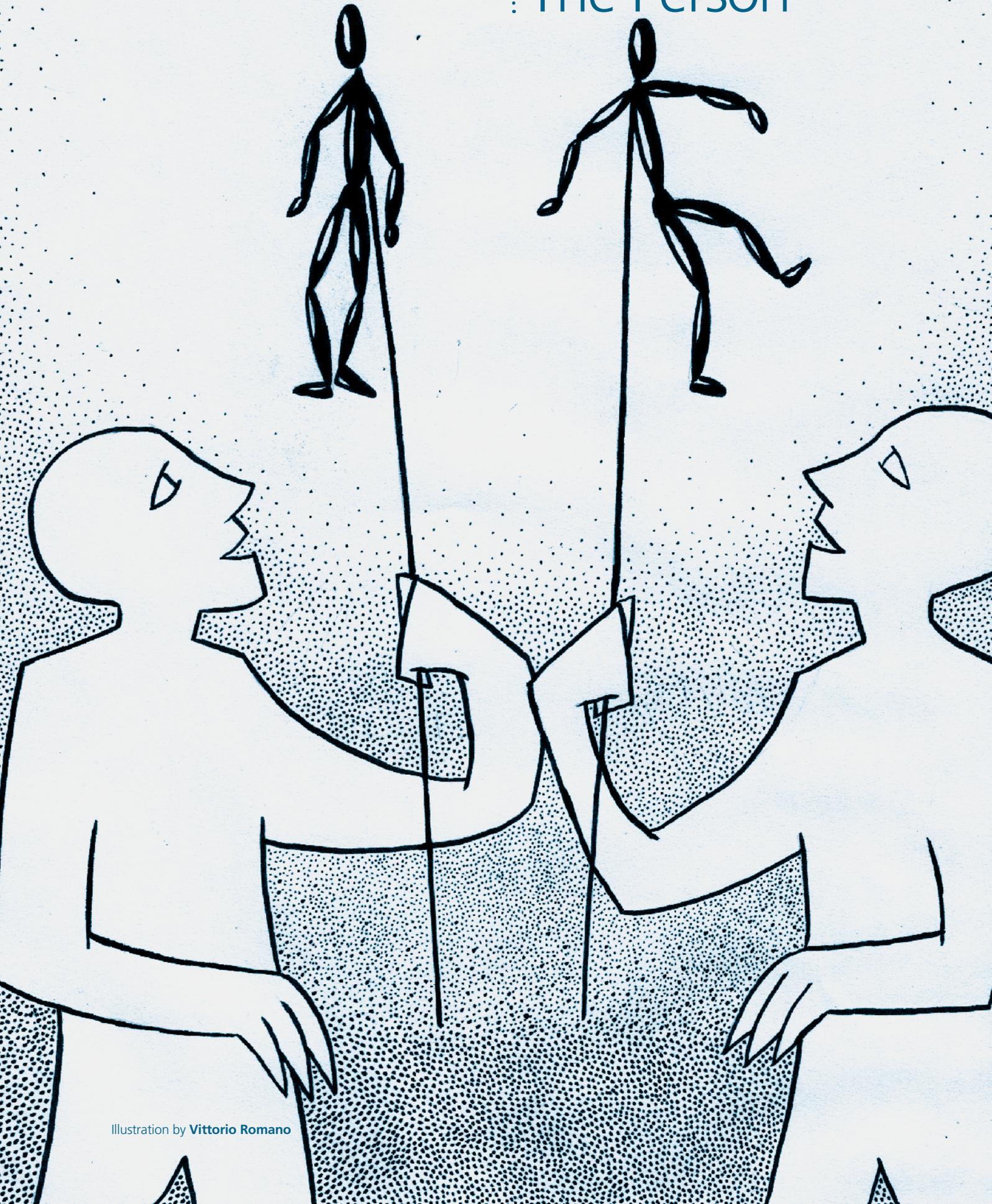
So far, the bodies identified - and therefore the families that have received a response - are forty. The number could be far greater if these victims, and consequently their families, had the same treatment as the victims of 'our' European disasters. The activities carried out to date have had the important task of demonstrating that the families of these survivors claim their dead and that these corpses can be identified, just like it happens in case of a plane crash or mass disaster. And it is a fundamental right for the living who look for them.

However, the total lack of funds and attention for the identification of the dead in the Mediterranean has meant that for now there are only few families, orphans, widows, parents and children to benefit from a death certificate and to finally be able to start the path of mourning. A right cannot be delegated to the 'charity' of private foundations (*Isacchi Samaja Foundation, Cariplo Foundation, Terres des Hommes, American Academy of Forensic Science Humanitarian and Human Rights Research Center*) and to the goodwill of civil society, as it has been so far. It is therefore essential to make Europe take responsibility - since logistically it is in the ideal position to identify these victims, as many of their living relatives are in northern Europe and the corpses in the south - to treat the victims of this huge disaster in the Mediterranean, diluted in time and space, like those of everyone else.

The identification process has already been traced by the cases of Lampedusa and Melilli and we have seen what the difficulties are and how they can be overcome. It would be enough for each European country to create data collection points from relatives and corpses through the offices and laboratories already internal to the institutions that carry out identification operations every day and that these data came from the same shared agencies - with the necessary safeguards. This relatively simple operation would greatly increase the numbers of identified and family members finally reconciled with their loved ones.

Will Europe be able to remedy the enormous violation of human rights it has committed in recent years?

# The Person







## 17. Minor

*Minori in tutto*<sup>1</sup> is the title of a survey on juvenile prisons conducted almost fifty years ago. The expression «in everything» refers to the many aspects of ‘being a minor’, which is not simply given by the minor age, especially when the child is restricted in a closed and punitive institution. In these places, ‘being a minor’ often includes other attributes: minors are identified as such in the consideration of opinions, in the dialogue with an internal regulatory world that is of course ‘major’. They are minors in the attribution of responsibility and in their very capacity of perceiving themselves as a subject. Thus, in terms of rights, being a minor may be taken as being recipient of minor rights.

Yet, the principle remains that «the minor has neither fewer nor minor rights». Therefore, it is necessary to start from here, and think about how the condition of ‘being a minor’ is experienced in places of deprivation of liberty, and what attitudes and projects must be put in place to eliminate or at least reduce all associations with the word ‘minor’ that would go beyond the simple recording of personal data. On the other hand, the very objectivity of this fact should lead us to grasp elements of reflection in the needs, desires and errors, which are inherent to the youngsters, in order to reconstruct a possible physiognomy, not only of the detention places for juveniles, but of the whole system of deprivation of liberty, also when strictly developed for adults. Thus, particular attention must be paid to the minor and to the protection of their identity and needs; especially when their daily life and progress in the pathway of full and conscious self-determination are assigned to the public authority that regulates the exercise of their liberty. The actions of the institutions to which, in certain cases, the minor is entrusted, must be directed towards adequate protection, care and treatment, based on the provisions of the *UN Convention on the Rights of the Child*<sup>2</sup>, with particular reference to the principles of non-discrimination<sup>3</sup> the importance of the interest of the children<sup>4</sup> and their right to freely express their own views<sup>5</sup>. These principles acquire greater relevance in situations of deprivation of liberty such as, for example, detention in criminal institutions for juveniles, in closed communities, as well as in procedures for ascertaining the age of undocumented foreign nationals, in involuntary placement

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1. AA.VV., *Minori in tutto. Indagine sul carcere minorile in Italia*, [Minors in Everything. Survey on Juvenile Prisons in Italy], Emme Edizioni, Trieste, 1974.

2. Convention on the Rights of the Child, approved by the United Nations General Assembly on 20 November 1989, ratified by Italy with law of 27 May 1991, no. 176.

3. Article 2 of the Convention.

4. Article 3, para 1, of the Convention: «In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration».

5. Article 12 of the Convention.



## The Person

orders or in the admission to social and health care homes.

The reference to a wider range of situations depriving of liberty that may concern minors is found in the second paragraph of rule 11 of the so-called *Havana Rules*<sup>6</sup>: «Any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority». Consequently, any type of structure, public or private - criminal, educational, protective, social, medical, and administrative - from which the minor is not allowed to leave according to his or her will is a place which deprives them of their personal liberty.

As far as the imprisonment of minors is concerned, it is important to remember that their needs are specific and, above all, different from those of adults. This is a superfluous but necessary statement: not because those who work in these institutions do not keep this concept in mind, but because in the external cultural debate there is a strong tendency to apply, albeit to a limited extent, the conceptual scheme of regulation defined for adults. This approach is confirmed by the fact that it took forty-three years (since the prison reform of 1975) to have a Code specifically intended for the juvenile system<sup>7</sup>, despite the fact that it was expected by a specific article of that reform<sup>8</sup>. For all those years in between - apart from important interventions especially related to the juvenile criminal trial - the young offender has been implicitly considered as a reduced version of the adult.

As it has always been said for adults and it is even more evident for minors, the use of restrictive measures must take place only as the last resort and reduced to the minimum possible figures, making the main choice fall on alternative sanctions and measures to imprisonment.

As it has always been said for adults and it is even more evident for minors, the use of restrictive measures must take place only as the last resort and reduced to the minimum possible figures, making the main choice fall on alternative sanctions and measures to imprisonment. In the international panorama, Italy is characterized by having given effect to this principle: on 31 December 2019, 363 juveniles were held in prison institutions, while 1,072 were displaced in the various communities nationwide. The number has recently fallen to 302 - as of April 15 - and of these only 138 are actually juveniles, since the remaining 164 are young adults aged between 18 and 25, judged by the Juvenile Court anyway, according to their minor age when the crime was committed.

The objective of establishing a delicate balance between the best interests of the child and their actual safety needs is effectively pursued in our country and this generally allows for re-educational paths that foster empowerment processes, as well as interventions that protect the

6. *Un Rules for the Protection of Juveniles Deprived of their Liberty* adopted by the United Nations General Assembly on 14 December 1990. Rule 11 gives a definition of juvenile as follows: «A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law». Subsequently, the rule indicates the scope of definition of «deprivation of liberty» as reported on this page.

7. Legislative Decree 2 October 2018 no. 121 “Disciplina dell’esecuzione delle pene nei confronti dei condannati minorenni”, published in the Official Gazette of 26 October 2018 and enacted on 10 November 2018.

8. Article 79, para. 1, of the law of 26 July 1975 no. 354: «The provisions of the present Act shall apply to juveniles under the age of 18, subjected to criminal measures, until provisions are made by a specific law ».



physical and psychological development of the minor, in preparation for their release. However, in this as in other areas of deprivation of liberty, the imbalance towards particular ‘categories’ of persons held in custody remains as such. This is due to a range of factors that are also related to socio-economic contexts and to cultural stereotypes that lead, in fact, to a situation of cultural minority. Thus 42% of the minors restricted in criminal institutions are foreigners and, in some cases, within this subset, the actual assessment of the age that would determine the criminal responsibility of the child is very debatable.

The age assessment procedure itself is an even bigger critical issue, in case of foreign minors who have arrived irregularly and often adventurously in the national territory. Frequent doubts arise in the case of unaccompanied minor migrants, first of all for the practice repeatedly reported by the National Guarantor as unacceptable, to register the arriving children, who report only the year of birth but not their birth day, as born on January 1st: the evidence of the possible registration of minors as adults is so obvious that no further comments are required. But, above all, the ordinary application required by law has not yet been established in our country, after three years from the enactment of the legislative provision to regulate the age assessment procedure<sup>9</sup>. The minor’s age determined through the only wrist X-ray, in order to estimate the maturity of the child’s skeletal structure, is still the most recurrent procedure. Certainly, for its rapidity in delivering outcomes but also perhaps for an implicit neo-positivist revival that completely neglects the contribution of social and psychological disciplines that the last century has consolidated, but which seems still not to be implemented by bureaucratic procedures.

Not only that, but also the reception procedure does not always follow the legislative provision, according to which, while the outcome of the age assessment procedure is pending, hospitality must be guaranteed by the dedicated first reception facilities for minors provided by law<sup>10</sup>. In an Immigration Removal Center (CPR), the National Guarantor found the practice of moving people who declare themselves minors to a specific area of the Center, dedicated to the alleged minors and vulnerable persons: only if the age assessment procedure confirms that the young person is a minor, is they are accompanied to an appropriate open facility. It should also be stressed that the reception of people subject to age assessment in dedicated structures, as required by law, does not totally eliminate the risk of promiscuity: in fact, there have been cases in which these structures have accepted people who, upon verification, were actually in their age of majority. This problem is not easy to solve, although the principle of presumption of the minor age should be considered prevalent over other needs.

Minors are also accommodated in residential structures and de facto deprived of other forms of liberties. This is the case of minors with disabilities. In these cases, we refer to the *UN Convention*

The objective of establishing a delicate balance between the best interests of the child and their actual safety needs is effectively pursued in our country and this generally allows for re-educational paths that foster empowerment processes, as well as interventions that protect the physical and psychological development of the minor, in preparation for their release.

9. Law no. 47 of 7 April 2017, the so-called ‘Zampa law’, from the name of the parliamentary first signatory in the past Legislature.

10. Article 5, para. 2, of the aforementioned ‘Zampa law’.



## The Person

*on the Rights of Persons with Disabilities*<sup>11</sup>, which establishes the adoption of all necessary measures to guarantee the full enjoyment of all fundamental rights and freedoms, on an equal basis with other minors. As a matter of fact, in the construction of the identity and autonomy of a disabled child, critical issues remain evident, which cannot be solved by scientific, clinical and technological progress alone. One of these involves disability during the developmental age and the loneliness in which families are left to manage their children that can make the family decide for the minor to be held in a residential care home.

It is not uncommon to find situations where the minor is substituted in taking decisions and making choices in the different phases of their life which are fundamental for the development of their autonomous self or situations where it is not assumed - by the adults in their family - that even a disabled child needs to be considered as a growing, transforming person who will take an active and responsible role in their future. Often family and care services relationships focus exclusively on the dimensions of medical care and protection, preventing the adolescent from having decision-making experiences. All these are protective elements that can determine a void in the transition from childhood to adulthood.

It may seem simple to say *minor*, and it may also seem clear what the implications of the concept evoked by this term are. In fact, it is not. Many meanings are accorded to this concept, especially when the condition of 'being a minor' is entrusted to adults who regulate the minor's everyday life, liberty and even their evolutionary development. Many and important implications that may help preventing the person to become 'minor in everything'.

## 18. Old

Old, as an adjective, was not too used until recently. People would prefer less direct expressions: 'at advanced age', 'an elder person' and so on with other euphemisms. Suddenly, however, the irruption of this adjective into the language has almost led us to use it straightforwardly, to indicate a certain subset of the population more exposed to the risk of contagion, more affected by the virus in the places of a reshaped kind of family, when departing from the familiar ones is eventually accepted by the person as an inevitable detachment.

The old age has been progressively looked upon as a social burden, to the extent that even the return

11. UN Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006, ratified by Italy with law no. 18 on 3 March 2009.



to normality, to free movement and time disposal, has been outlined by age groups: hence, the proposal to leave to the old ones in the last temporally-indeterminate slot. Among other things, with an anticipation of the age threshold to be considered as such, in full dystonia with the repeatedly affirmed extension of a person's age in terms of working life. The ancient hendiadys 'wise old age' seems to disappear under the wind of a different one, summarized in the 'unproductive old age', because subjectivity is likely to be increasingly related to the ability to affect the growth - primarily economic - of the community. Being young is a criterion for selecting personnel for politics and decision-making posts, for recognizing value to regulatory and institutional systems, for using their opinions in constructing the public space. There is even the risk of it being a selection criterion for access to healthcare treatments.

Certainly, the rapidity of social and cultural changes has been particularly accentuated in recent decades and accelerated by a technological development with its impact on contemporary habits, language and conceptual representations. Moreover, it requires the ability to develop a collective thought capable of measuring itself against what this change produces and accepting it as a new paradigm on which to shape cultural, relational and political choices. Even the most advanced technology brings about a 'shape' in the present that does not fit into it as an elusive dust. This form can be captured and positively acquired only if it is able to connect the present to the past, to recognize it as part of a path, even if it is not linear and without crisis, which, however, brings to the need of enclosing the sense of past into the present. Therefore, the old age becomes a builder of the present, and the man of Antikythera can finally connect with the man of Turing<sup>12</sup> and with his current grandchildren. Neither of them is old.

The *Universal Declaration of Human Rights* is not old and perhaps it also connects to *Magna Carta* and to all the tools that humanity has 'provisionally' created to regulate internal conflicts and recognize the freedom of every person whose limit is placed only by that of the other and by being part of a community. All these are implications that do not cease with the coming of age.

This happens even though post-modern society and the rapid exchanges of virtual communication impose, as a result, the fear of deterioration and of being perceived as 'old', both with respect to aesthetic standards and cultural settings. When a person is perceived as old, in a society centered on the productive aspect of all relationships, also his or her interpersonal and emotional spheres

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12. The Antikythera machine, around the 1st century BC, formed by a set of gear wheels, can be considered the first analog computer. Alan M. Turing in the 1930s developed the logical design of a universal machine capable of simulating other machines and thus constituting the scheme of what the computer would be in later developments.



## The Person

What happens is that the 'old' person is left out of the logical horizon - which is far more important than the material and living one - of his circle of affections, until his or her knowledge becomes irrelevant and opens the way to forgetfulness.

risk diminishing, thus weakening the individual's relational capability. This is also true in the relationships of those who are in contact with the elders. As a result, the active participation and sense of belonging is reduced to a minimum, and the educational and value potential of each of the two interlocutors is devalued: it is a common loss.

Therefore, what happens is that the 'old' person is left out of the logical horizon - which is far more important than the material and living one - of his circle of affections, until his or her knowledge becomes irrelevant and opens the way to forgetfulness.

For people living in residential facilities, advanced age and conditions of physical and mental vulnerability sometimes end up becoming a key to interpret behaviors, leading to marginalization or denigration even within the *health and social care institutions* or in the hospital environment. In some situations, it seems that treatment strategies are chosen according to the patient's life expectancy. This is a form of discrimination - defined by literature as 'ageism' - which makes the person who has lost autonomy and who is entrusted to the institution no longer aware of his or her rights, and therefore unable to overcome difficult situations: actually 'old'.

On the contrary, there are other areas where someone's old age is not taken into account, even if it should.

Looking at criminal cases, in 2019, 986 people over the age of 70 were hosted in 190 prisons, an increase compared to the previous four years<sup>13</sup>. In the Prison System, attention to old age is paid when it is possible for those over 70 to have access to house detention<sup>14</sup>, provided that they are not regular offenders, professionals, convicted with the aggravating circumstance of recidivism or sentenced for the series of crimes that have become part of article 4-*bis* and similar, because they are considered to be of serious social alarm. These are hypotheses that the Legislator has foreseen in response to this factor that affects public opinion and its widespread sentiment. However, this still raises questions about the purpose of the penalties that the Constitution wants to aim at re-education, since in prison there are also people in their eighties.

The Executive Regulation does not make a clear distinction, suggesting that for the prison system, the young and the elderly - even the 'old' - have the same individual, medical and social needs. The poor attention paid to older detainees came to the examination of the national and international Supreme Courts, to evaluate if the material conditions of detention are compatible with age and the consequent psycho-physical decline. However, in the public debate, the typology of the perpetrator continues to have priority over his age, his health conditions and the constitutional purpose of his sentence. A sort of 'criminal execution *d'autueur*', in which importance is given to the crime committed and to the

13. 642 in 2015 (1.23% of the prison population); 715 in 2016 (1.31%); 776 in 2017 (1.35%); 881 in 2018 (1.48%); 986 in 2019 (1.62%).

14. Art. 47-ter para. 01 of the law 26 July 1975 no. 354.



criminal connotation of the person responsible, if not to the notoriety of the specific case. The current media campaigns against the supposed ‘ease’ with which ‘old people’ are released based on the risk of exposure to contagion show that people have lost sight of what the Constitution wanted to set as limit and purpose of the State’s punitive power.

## 19. Foreigner

Diversity, the unknown, strangers and foreigners are elements that complicate the daily flow of life. They can induce fear, trigger distrust and hate. The ‘foreigner’ is often attributed a negative and threatening connotation. Whoever comes from outside and enters our world is considered a danger, because of distorted information and some political campaigns purposely aimed at designing enemies. The ‘foreigner’ has always been the enemy *par excellence*, especially in a globalized world crossed by powerful migratory flows, with millions of people looking for a life that can offer them hope of security, better work opportunities or, simply, more dignity.

In Europe, Italy is perhaps one of the countries that experienced immigration for last. From a country of emigrants, it has become “Lamerica”<sup>15</sup> of the new poor who come from other continents - Africa, Asia, Latin America - or from the eastern areas of old Europe. It is well known, though, that history rarely teaches the new generations. Memory is quickly erased, and linearity is preferred to a complexity<sup>16</sup> that has little to do with real life. A «permanent electoral campaign», to use the expression of the sociologist Ilvo Diamanti, founded on the opposition between ‘us’ and ‘them’, has contributed to making Italy one of the European countries with the biggest perception of an overlap between immigration and crime, combined with the idea that a foreigner is a person that «cannot be trusted»<sup>17</sup>, simply because he is not one of us.

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15. *Lamerica*, film with the subject of Gianni Amelio, Andrea Porporati and Alessandro Sermoneta, directed by Gianni Amelio, 1994.

16. We use the term ‘complexity’ in its positive sense, underlined by Edgar Morin in one of his best-known books, *La sfida della complessità*, Feltrinelli, Milan, 1994.

17. Pino Petruzzelli, *Non chiamarmi zingaro. Perseguitati e diversi da sempre. A loro la parola*, Chiarelettere, Milano, 2008.



## The Person

Foreigners become a category of their own, and those who fall into it acquire a new subjectivity in which individual differences are erased in favor of a collective, indistinct and negative identity: foreigners are invaders, carriers of diseases, criminals, thieves of work and women. The national identity is confused with the religious one, enough to make an operator say «I don't speak Islamic»<sup>18</sup>.

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This stereotype, like a *blob*, has invaded the common thought and is deeply rooted in the country. Eradicating it is difficult, even when reality does not support it. This is what happens, for example, in the prison world. In the past year, the number of foreigners in Italian prisons has decreased<sup>19</sup> and the rate of foreign population has gone from 1.16% in 2003 to 0.71% in 2008, up to the current (December 2018) 0.38%. For many of them, however, prison ends up being the only option, due to their social situation: the lack of a home, a regular job, stable relationships in Italy, sometimes a residence permit, lack of knowledge of the language are conditions that are difficult to reconcile with penalties or alternative measures. Thus, being a foreigner translates into what is called a 'double penalty': for having committed a crime and for being a foreigner in the first place.

Although in the *incipit* of the Council of Europe Recommendation on the detention of foreigners we read that a *foreign person* is only «a person who has no nationality in the State in which he is located»<sup>20</sup>, reality is different, as different is the subjective perception that those confined to a prison are 'foreigners' on their own. «My foreigner face tell you I am real, even if it does not seem so to you » [translated from the Italian Lyrics T.N.] echoes Mikis Theodorakis in the verses composed by Georges Moustaki, to remind us that he no longer dreamed: seeing foreigners in a prison of our country is not a dream, and much less is seeing them in clusters in which work assumes, more than a century later, those characteristics of slave labor that has been erased by the twentieth century's Constitutions.

How to rebuild hope for that dream, in the unfortunate situations in which the National Guarantor comes to meet those who have left the security of their places, considered uninhabitable, and travelled towards unknown lands, thought of as livable but actually deeply insecure? Perhaps the figures of linguistic and cultural mediation can help to reconnect some sort of bond, to rebuild a possible communication. This could also work for the places of deprivation of liberty, responding to the different worship needs, not limiting them to some rare and not always guaranteed different distribution of food in the holy month of Ramadan or to the sadness of small spaces dedicated to

18. Expression noted by the National Guarantor during a visit to a prison.

19. From 20,255 units on 31 December 2018, it fell to 19,888 on 31 December 2019, according to data from the DAP up to 17,750 on 10 April 2020, equal to 33% of the total population.

20. See Article 1 of the *Recommendation CM/Rec(2012)12 of Committee of Ministers of CoE to Member States on foreign prisoners* adopted on 10 October 2012.



prayer, only recognizable by a sign hanging on the door. Without mentioning the despicable yet rare cases in which religious disavowal becomes the line of hatred of the person detained and, as such, entrusted to those in custody of his rights<sup>21</sup> as well.

For this reason, in 2012 the Council of Europe set principles and rules, contained in the aforementioned recommendation, aimed at «alleviating» their «possible isolation» and «facilitating their treatment with a view of their social reintegration»<sup>22</sup>. A Recommendation which recognizes a doubly denied subjectivity: being deprived of liberty and being a foreigner. However, the gap between rules and reality remains wide and it is likely for foreign prisoners to serve a sentence more severe than the rest of the detained population, encountering difficulties as soon as they enter prison: the lack of knowledge or poor mastery of the language make it difficult to directly manage the main treatment opportunities, as well as the understanding of one's own judicial course, with the risk of weakening the right of defense. All this can be a source of physical and mental discomfort and an increased sense of isolation, a feeling aggravated by the distance from affections and the difficulty in receiving visits and calls, as well as by the lack of social network.

Furthermore, the poor territorial roots and the impossibility of relying on stable ties represent some of the reasons why the Prison Administration often resorts to them in the event of 'displacements', also considering the fewer choices of reintegration paths they have, and the lack of access to alternative measures of detention. For them, on the contrary, the supposed reintegration has only a bitter word at the end of the prison term which sounds like an oxymoron, if we read it together with article 27 of the Constitution: *expulsion*.

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21. Cf. National Guarantor, *Report on the visit to the prison of Tolmezzo of 21 May 2019*, p.10. The *Report* is published on the institutional website of the National Guarantor, <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/d3548f3fbecder780738ac4af75c29bc.pdf>

22. *Preamble of Recommendation CM/Rec(2012)2, cit.*



### 20. Vulnerable

In an essay written for the *Oxford - Amnesty International Lectures* of 1993, the American philosopher Richard Rorty argues that «Most people [...] simply do not think of themselves as, first and foremost, human beings. Instead, they think of themselves as being a certain good sort of human being - a sort defined by explicit opposition to a particularly bad sort. It is crucial for their sense of who they are that they are not an infidel, not a *queer*, not a woman, not an untouchable»<sup>23</sup>.

If being different, or completely foreign, compared to a certain group, is so important for the definition of the self, then it is necessary to seriously reflect on the concept of difference for the vulnerable minorities in closed communities, which are places of deprivation of liberty.

We have all been subjected, at least once in our lives, to discrimination for our appearance, for our personal history or for what we do or say. There are groups of people, however, who are likely to be discriminated more often than others, because their characteristics - or those that others attribute to them - frequently encounter contempt and social reprobation.

We have all been subjected, at least once in our lives, to discrimination for our appearance, for our personal history or for what we do or say. There are groups of people, however, who are likely to be discriminated more often than others, because their characteristics - or those that others attribute to them - frequently encounter contempt and social reprobation. In particular, «the modalities of human perception, as they are culturally constructed from physiological data, may result in a specific position of vulnerability within a particular group»<sup>24</sup>. However, not all positions of specific vulnerability are worthy of protection. US jurisprudence, for example, scrutinizes every potentially vulnerable group, verifying the existence of a series of criteria, among which the characterization of an «immutable condition of the human being», a «relative 'lack of power'» to «influence the legislative production process» and a «appreciable history of stigma and discrimination»<sup>25</sup>.

Even if we consider that the condition of deprivation of liberty is itself a form of vulnerability, within the communities of prisoners there are sub-categories characterized by more specific fragility, which, just like in normal life, too often are not guaranteed adequate listening and protection. If, on the one hand, the condition of reclusive women may not seem to arouse strong concerns, also due to the fact that female Institutes are generally less crowded and in better conditions than male ones (because women take better care of their environments), on the other hand, there are, especially in the female sections of male-dominated Institutes, situations of unacceptable compression of social relationships, where it is nearly impossible to get access to training and educational courses, and backward stereotypes are reaffirmed. Where,

23. Later published in Richard Rorty, *“Human Rights, Rationality, and Sentimentality”* in Richard Rorty, *Truth and Progress: Philosophical Papers*, Cambridge, Cambridge University Press, 1998 (167-185).

24. Gianfrancesco Zanetti, *Filosofia della vulnerabilità. Percezione, discriminazione, diritto*, Roma, Carocci, 2019, p. 9.

25. *Ibidem*, p. 47.



moreover, the numbers are particularly small and the belonging to the same circuits is lower (in particular, of high security), sharing those moments of common life envisaged by the regulations becomes purely theoretical.

The situation is more complicated in *hotspots*, other places of deprivation or of strong limitation of personal liberty in the health sector, where women's vulnerability is accompanied by life situations in common with men, with consequent greater risks of being exposed to abuse.

In the case of homosexual and transgender people, on the other hand, these risks are very concrete, especially in prison - just as the National Guarantor was able to find out last year during a visit, in one situation of verbal aggression. Instead of addressing specific vulnerabilities related to sexual orientation and identity through provisions, which are ultimately illegitimate, like that of the dedicated sections, the most urgent matter seems to be the education to respect differences, both for prisoners and for operators and managers.

About homosexuality in places of deprivation of liberty, a discussion should be started - it might seem late now, but unfortunately it is still relevant - about the right to affectivity and sexuality for all, even among inmates, which implies the possibility of emotional spaces not only for heterosexual, but also for same sex couples. Following the same logic, the punishment should exclusively consist in deprivation of personal liberty, with no additional unjustified and unjustifiable restrictions.

The conversation about a specific education on respect also applies to another type of vulnerability: the one linked to the condition of being a foreign and migrant, imprisoned in a country where nobody speaks his language. Not only because discrimination in confinement situations, such as prison, is unfortunately always a latent phenomenon, but also because it is flanked by the risk, especially for foreigners, of finding themselves in a de facto linguistic and cultural isolation.

There are many more levels of vulnerability than those mentioned above, some of them even more fragile, especially when someone's liberty is in the hands of others: even more if in the hands of the public Authority which, called to protect its rights, ends up also being the bearer of widespread subcultures. Another example of vulnerability concerns, for example, people with physical or mental disabilities. It is striking that the immaturity of our community is still ongoing, more than forty years after the affirmation of the principle that there are no disabilities incompatible with the possibility of living a full life, nor psychiatric situations that can be read with the lens of impending danger. The National Guarantor is directly invested in this issue, as a *National Preventive Mechanism* provided for by the *UN Convention on the Rights of People with Disabilities*. It is a complex matter, but an unavoidable challenge, while all eyes must be kept wide open to be able to read all the other vulnerabilities so far not fully understood.



## 21. Disabled

The frequent use, in common language, of the adjective ‘disabled’ not accompanied by a noun - ‘person’, ‘minor’, ‘elderly’ or ‘adult’ - reveals that the person’s subjective dimension is often underestimated or not fully considered. Subjectivity often denied and stolen by family members, operators and structures when, replacing the person with disabilities, they make decisions regarding their place to live, schools or friends to hang out with, television programs to watch, fruit to eat, shoes to wear. We tend to forget that disability is a condition, not a disease. Moreover, disability can step in at any moment in life, taking on a physical connotation that is completely free from any psychic characteristic; it can lead to discover different skills in the person’s subjective potential, and converse in a mutually fruitful way with the so-called ‘normality’.

The images of the Paralympics, among other things, have shown us the potential that determines the ability to plan and take initiatives, as the disabled person was used to do before any accident or since birth. These are the actual lives of people we meet, which present decision-making methods much different from those we have always known. Full lives, different ones, with which we learn to interact with, acknowledging what unites and appreciating what distinguishes.

No compression of a decision-making processes is legitimate and, even in the case of mental disability, the awareness of being able to make decisions, in various possible degrees, must be preserved through a network of legal and technical professional figures, capable of developing, interpreting and supporting the processes of self-determination.

No compression of a decision-making processes is legitimate and, even in the case of mental disability, the awareness of being able to make decisions, in various possible degrees, must be preserved through a network of legal and technical professional figures, capable of developing, interpreting and supporting the processes of self-determination. However, external influences can sometimes hinder the expression of potential of the person with disabilities, both in terms of personal contribution to the development of civil society and in terms of autonomy: interests, tastes, aspirations, inclinations and deep affections are flattened on a single straight line, traced by the lack of recognition of the ability to choose. There is still a long way to go, even in our country, to admit that the disabled person can have a life plan, with respect to his profession, affectivity, sexuality, and interpersonal relationships. Building one’s self is a difficult task for everyone, but it is even less attainable for those with disabilities. Being a person with disability might mean facing social loss, especially in terms of interpersonal relationships, where one can end up recognizing others as ‘different’, in a positive yet unreachable way. There is no doubt, in fact, that negative prejudice still weights on various areas of daily life, including work, and can reflect someone’s personal identification as a deforming mirror.

The urban design and traditional architecture that until recent years have regulated the organization of the interiors, even of public offices, is certainly no help. The same can be said for the cars parked in front of the rare slides that allow wheelchairs to overcome the obstacle of the sidewalk. Barriers in mobility, usability, communication, information, comprehensibility, and deficiencies in orientation are in fact impediments to access resources and services, therefore hindering their accessibility in conditions of concrete equality. Some glimpses, however, appear in the reflection present in this



sector. The social dimension of architectural design and connotation of spaces is no longer a niche reflection, but the expression of an unstoppable tendency of those disciplines, which tend to not consider themselves as areas of their own content, separate from each other and not interacting with the concreteness of people's lives, but to wonder how one's knowledge can be an element, among others, that helps building a different sociality.

## 22. Migrant

The first to disembark are those critically ill, followed by women and children, then all the others, leaving behind a ship that for days, if not weeks, has been a refuge from the stormy sea for those who have survived a shipwreck.

In an orderly and silent line upon arrival at the port, people are subjected to medical *triage* activities, in order to identify, already in this first phase, who requires specific medical attention or has evident issues. Some, despite their tiredness, smile to the rescuers, others thank those who were waiting for them at the dock, many others slowly get off the ship.

There are plenty of evident frailties that fall into the categories of vulnerabilities listed by the legislative decree on the reception of migrants<sup>26</sup>, which includes people with physical and mental disabilities, minors, pregnant women, people suffering from serious chronic diseases and from infectious diseases. What does it mean to be vulnerable when you finally land in a safe harbor of a foreign country, fleeing a land torn apart by war, as well as other conditions of uninhabitability? It also means not being able to understand the language spoken by those who welcome you, being disoriented because you have landed in a completely unknown territory, alone, sometimes having lost your son, your parent, your spouse, brother or even just a friend at sea. But most of all, it means acquiring a new identity in just a few seconds: 'migrant'.

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26. Legislative Decree 18 August 2015, no. 142, *Implementation of Directive 2013/33/EU containing rules relating to the reception of applicants for international protection, as well as Directive 2013/32/EU, containing common procedures for the recognition and withdrawal of international protection status.*



## The Person

The identity of 'migrant' is not a positive quality, since the common perception gives it an implicit disvalue: one is migrant when he comes from situations of poverty and need, from a context that is 'inferior' compared to the one in which the natives live. This need will inevitably pose other questions to the new context, even when migrating is the primary need to solve issues. The new identity of 'migrant' can sometimes lead to become recipients of 'lesser rights', often not respectful of the standards required by the international Conventions.

Lesser rights come in many forms. The first and hardest is that of being directly downgraded to the dawn of the last century in regard to the job situation and the protection against the risk of becoming prey to illegal hiring, that endemically poisons the labor market.

Lesser rights come in many forms. The first and hardest is that of being directly downgraded to the dawn of the last century in regard to the job situation and the protection against the risk of becoming prey to illegal hiring, that endemically poisons the labor market. Lesser rights means bodies available for the appetites of the locals on the side of the road, a daily wage that does not allow those who keep their shoulders bent over the fields to get up a little and being able to live a day worthy of its name. But, lesser rights also means housing in agglomerations that are first spontaneous, then tolerated, then looked upon as normal, where the greatest risk is not only the hygienic conditions and the possibility of affirmation within criminal hierarchies that tend to manage this amorphous community, but the fact that the overall society conceives such settlements as ordinary places, whether they are in Sangatte, San Ferdinando, Borgo Mezzanone or Patrasso. They are the outcome of a path that has taken difficult and unsuccessful routes. Luckily, they do not summarize all the fates of people who arrive in a foreign country: there are many positive experiences, even in our country; progress has also been made to understand that a lot of new cultural, anthropological, proxemic and behavioral elements can be learned from migrants, which must be taken seriously and make them structural in the construction of knowledge of all of us.

However, fates are varied and often marked by their beginnings.

Upon arrival on Italian soil, the 'migrant' is reserved a place in a *hotspot*, waiting to be identified, perhaps in a structure with only two bathrooms for 40 people and a sleeping mattress outdoor<sup>27</sup> or shared rooms, hot or cold, with people from other countries who, as 'migrants', have a slightly less right to temporary accommodation meeting the minimum sanitation standards. It is likely to remain in such conditions for a long time, much longer than established by the standards. In the *hotspot* - theoretically, a junction point - it is likely to be deprived of liberty without the possibility of appeal before the judicial authority, in a condition that the National Guarantor has defined a «limbo of legal protection<sup>28</sup>». In this period, hotspots are also used for quarantine, which can sometimes be prolonged indefinitely, if - as the Guarantor has noted - the period of precautionary isolation starts

27. This situation was encountered by the National Guarantor during his visit to the Lampedusa *hotspot* on 23 November 2019.

28. National Guarantor, Report on visits to identification and expulsion centers and *hotspot* in Italy (2016/2017: first year of activity).



again every time new arrivals are added to the structure.

Being ‘migrants’ might mean that articles 3, 13, 27 of the Constitution and in particular article 32, which guarantees health protection to all citizens indiscriminately, are less enforceable, to the point that a ‘migrant’ is discharged from an CPR without regular documents and information on where to stay overnight even though it is already night and no adequate accommodation is provided by the local authorities<sup>29</sup>.

Fate is not always like this. There are also many positive experiences in a country which is full of open doors. It is important to make them visible and present them as a source of pride for our society.

## 23. Guilty

«And, gasping, the blood spouted like dark spray that splashed, it came, a salt and deathly dew; [...] Oh, if such a thing might be as o’er the dead thank-offering to outpour, on this dead it were just, aye, just and more»<sup>30</sup>.

The Greek tragedy gives us the words of Clytemnestra who, having completed her revenge on her husband Agamemnon, converses with the coryphaeus and the chorutians, describing in detail her husband’s brutal murder. Her guilty plea is almost shouted because Agamemnon himself, in the past, was protagonist of horrendous crimes against his wife, such as the killing of her previous groom and newborn baby and, subsequently, the sacrifice of their common daughter Iphigenia to allow the Greek fleet, victim of a spell by Artemis, to leave for Troy. Key figure of *Oresteia*, Clytemnestra, with her violent vital parable culminating in her own murder by her son Orestes, marks the beginning of the transition from tribal justice, based on personal vendetta, to the justice of State, administered by the courts, which will take place in the third tragedy of *Oresteia* when, prompted by Athena, a judgment will be formed, putting an end to personal vendetta.

In Clytemnestra’s drama, however, the tension between individual choice and fate, between the

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29. The reference is to a case that the National Guarantor intercepted during his visit to the CPR of Caltanissetta on 24 November 2019. It is only following the decisive intervention of the Guarantor that this person was not placed on the street, but insured under the care of a hospital which, however, had already given his availability to hospitalize him.

30. Aeschylus, *Oresteia: Agamennone*, vv 1387 – 1391, it. trans. by Manara Valgimigli, Rizzoli, Milano, 1980.



## The Person

necessary action and the free one, is outlined clearly. If it is true, yesterday as today, that individual action is always affected by factors beyond control, both of a divine nature - for the classics - and of a social and political nature - for contemporaries -, there is still a margin of freedom of choice for the individual facing the action. What to do? The heroes of Greek tragedy wonder. When questioned, the gods are often ambiguous or even inscrutable, so the decision remains personal. But the classical legacy transmits to us the unspoiled core of each person's personal drama, which is the intrinsic ambiguity of guilt: we are guilty and innocent at the same time. Clytemnestra is the executioner, but at some point she was the victim, as she will be again by the hand of her son Oreste; the fate chosen by the gods fatally leads her to a path of crime; personal and social circumstances, as well as her own lineage, inexorably push her on the path of revenge, since in the classical world crime knows no restoration, but only cleansing and atonement.

The modernity of Clytemnestra's drama, in its continuous oscillations between action induced by circumstances and self-determination, or implicitly between 'innocence' and 'guilt', offers contemporaries a powerful point of reflection on the concept of guilty person. It also reminds us how easy, but at the same time sterile if not misleading, it can be to only consider one point of view, without taking into account the subject behind the fault.

Yet, this is what often happens, especially in cases that, more than others, can provoke media hype. Public opinion (as the chorus in the classical tragedy) immediately splits on the merit of the punishment and its setup, fueling a debate in which the person is identified with the crime he has committed or is assumed to have committed. In these cases, the social elements of prejudice, stigma and labeling clearly emerge, especially if the person blamed for the crime belongs to a specific social or ethnic group. These elements are precisely evoked to affirm *a priori* the alleged guilt and to indicate the possibility or not that the sanction to be paid corresponds to what the Constitution prescribes. Thus, a trial is carried out, before the criminal one, that obviously needs longer times, in which we witness the progressive dehumanization of the subject, losing sight of the centrality of the person, his reasons, his free will.

The doctrine of right of the modern era has taught us that we must pay attention to the weak subject in the various phases of a crime: in the phase of the event he is the victim, in the procedural one he is the accused, in the criminal execution he is the culprit.

The doctrine of right of the modern era has taught us that we must pay attention to the weak subject in the various phases of a crime: in the phase of the event he is the victim, in the procedural one he is the accused, in the criminal execution he is the culprit<sup>31</sup>.

The person, moreover, is never free from social, family, economic conditionings, but the reasoning about the guilty party is first and foremost a reasoning about responsibility, about awareness of the consequence of his actions. «Criminal responsibility is personal» sanctions the Constitution, but the restoration of the actual acknowledgement of the consequences of one's action - except in cases of exclusion of personal will or of its absolute coartation, when the reasons of force majeure are invincible - is important because it indicates the

31. Luigi Ferrajoli, *Nove massime di deontologia giudiziaria*, in "Questione Giustizia" no. 6/2012.



path to take. That, however, helps to answer a crucial question: what to do with the offender after the sentence has been established? Supporting the individual in the process of maturing his own personal responsibility and full awareness of the value and consequences of his actions is perhaps the only way to set him free from the destiny chosen for him by the gods.

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## 24. Prisoner

In the famous 1973 movie *Papillon* set in a penal colony in French Guiana, one of the sergeants responsible for surveillance, in welcoming the new arrivals to Devil's Island, says: «We make no pretense of rehabilitation here... We process dangerous men into harmless ones»<sup>32</sup>. Although such an affirmation may appear abnormal and exaggerated to contemporary sensitivity, linked to the idea that punishment equals annihilation and therefore, at least theoretically, outdated, it is not uncommon to see echoes of this vision of the punitive capacity of the State in some public affirmation, further relaunched and expanded by social media: keys to be thrown away or the possibility of rotting in a place, as an epiphany of a request for *certainty* that does not grasp its radical difference from the *fixity* of the penalties.

Much rarer is to incur in quotes, even approximate ones, declared by the Constitutional Court: «Whoever is in detainment, although deprived of most of his liberties, always retains a residue of it, which is all the more precious as it constitutes the last area of expansion of his individual personality»<sup>33</sup>. Therefore, being imprisoned certainly implies the reduction of personal liberty, but does not cancel the prisoner's personality, nor the right to expand it in the residual free space that his objective situation leaves untouched.

A person can be imprisoned for a variety of reasons and, consequently, the deprivation of liberty is declined in different forms according to legal conditions. For the one immediately perceived, which takes place in prison, what Mario Tagliani wrote in his work *Il maestro dentro*, always applies. He notes: «Jail is a temporary place, for people who make mistakes, a place meant to allow you to rethink your wrong choices: you must then overcome the guilt to get to the responsibility. The sentence must become a right and not just a punishment. It must be the right to have a new time»<sup>34</sup>. The

32. *Papillon*, movie directed by Franklin J. Schaffner, 1973.

33. Constitutional Court, Judgment 24 June 1993 no. 349, editor Mauro Ferri.

34. Mario Tagliani, *Il maestro dentro. Trent'anni tra i banchi di un carcere minorile*, ADD Editore, Torino, 2014.



## The Person

establishment of a «new time» cannot fail to consider that internal and external time have radically different rhythms: the first is cyclic and repeats itself in a monotonous way, the other is linear in its development, recently more and more accelerated. The distance, the circularity and the tangential escape that separates the two times is likely to make a possible reconciliation between them purely theoretical once you walk out of the prison doors.

The key for a possible reconciliation - or for a decrease of its unattainability - is the subjectivity of the detained person, a fundamental element on which to base every possible hypothesis of the so-called in-cell re-educational 'treatment'. These three words have ambiguous meanings and have aged badly over the years: the word 'treatment' is likely to undermine the responsibility of those who can only be seen as 'objects' of a treatment defined by others; the adjective 're-educational' acquires its original value only if released from the ethical principles of the State's action and instead refers to its natural social sphere; 'in-cell' indicates the oxymoron of a social reeducation that people want to implement by de-socializing. Yet, together they represent the perspective that the deprivation of liberty as a penal sanction must pursue in order to give a *future* to the imprisoned *present*.

«Life in prison must be as similar as possible to the positive aspects of life in free society» establishes the fifth of the Fundamental Principles of the European Penitentiary Rules and the prisons must strive towards its implementation, promoting a dignified quality of life, respectful of the adulthood of people who are restricted and able to offer them paths of responsibility and awareness.

«Life in prison must be as similar as possible to the positive aspects of life in free society» establishes the fifth of the *Fundamental Principles of the European Penitentiary Rules*<sup>35</sup> and the prisons must strive towards its implementation, promoting a dignified quality of life, respectful of the adulthood of people who are restricted and able to offer them paths of responsibility and awareness.

Yet, as it is known, prisons, in Italy as in other countries of the world, are not the only places designed for the deprivation of people's liberty: even foreign citizens submitted to measures of repatriations can be detained in special Centers, for administrative purposes, up to 180 days. Just like the detention of foreigners that are waiting for repatriation, the same is now possible, in the wait for validation procedure, also in the so-called suitable premises available to the Authority of Public Security: the time of this 'imprisonment' is however limited to a maximum of four days, but can be extended for two more in 'special border premises', always with the authorization of a judge<sup>36</sup>.

The tendential increase of places of detention and the increase in the types of people imprisoned, detained, secluded, restricted to places from which they are not allowed to leave, raises further questions in the case of migrants, but above all poses an unavoidable question on what is the «new time» for which this deprivation should prepare. Especially if less than one in two people in

35. Council of Europe Recommendation R(2006)2 adopted on 11 January 2006.

36. Decree-Law 4 October 2018, n. 113, converted into law 1 December 2018 no.132, article 2 paragraph 2 and article 4 paragraph 1. The National Guarantor has already had the opportunity to intervene on these forecasts with his own opinion, highlighting the risks compared to a news that introducing a peculiar form of detention of excessively generic nature, risks opening the doors to forms of discretion that are not allowed when it comes of personal liberty.



the Immigration Removal Centers (CPR) will actually be returned. How do we look in the eyes of 515 people discharged from CPRs in 2019 with no identification, after 180 days of mere subtraction of their lifetime?

## 25. Sick

The sick person *is* a 'patient' to his doctors, but at the same time he *must be* patient «toward all that is unsolved» to say it as Rainer Maria Rilke<sup>37</sup>.

When a person develops a pathology, he comes into contact with the system in charge of his treatment, thus assuming two personal conditions: that of sick, and another of relational nature, that of patient: in regard to what? Essentially, in regard to his illness that will certainly involve a certain amount of discomfort, if not pain and endurance. Any other aggravation of this condition of intrinsic personal distress deriving from factors that are external to the status of "sick" is unfair and unacceptable. First of all, personally unbearable: delay in medical intervention, inadequate care facilities, scarcity or unavailability of treatments, lack of information. Second of all, it is unacceptable for the sick person to lose ownership of his rights, including the respect for his dignity, to become a 'case' with a confidentiality that does not indicate a caring approach, but a diminishing one. In such cases, patience must not become acceptance of a one-sided relation that accentuates the vulnerability in the sick person and turns it into total dependence.

The challenges of the relationship between those who need to recognize their need for help - even in simple terms of access to health services - and those who must professionally provide for or support them, enter into a particular crisis, since treatment is not voluntary, but imposed and ordered by the administrative authority. On the protections in this area, the National Guarantor has had the opportunity to comment on several occasions; not only that, but also to intervene in dialogue with the Authorities involved in cases where some implementations of these interventions took place in public and were filmed by video-recordings that required further study, for the apparent irrelevance of the police operational modalities called for the occasion. Whether it is about sudden actions for unexpected behavior, a moment of particular intensity, or about interventions planned and discussed with the addressee, the fact remains that they define the conceptual space within which the person identifies that his situation has passed from 'disturbed' to 'sick' and, as such, often housed in a material

37. «Be patient toward all that is unsolved in your heart [...].», from Rainer Maria Rilke, *Be patient* in "Letter to a young poet", 1929, it. trans. by Leone Traverso, Adelphi, 2014.



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The sick person ends up bearing the stigma of not being capable of self-determination, which can be seen as another problem to add to his being sick, losing any other individuality.

space that defines this new situation: a hospital service.

In this context, as well as others, the sick person ends up bearing the stigma of not being capable of self-determination, which can be seen as another problem to add to his being sick, losing any other individuality.

The concepts of health and disease take on a particular physiognomy when they are confronted to the deprivation of liberty, even in areas other than the Services intended for psychiatric treatments and almost always carried out behind closed doors.

Many organizational factors, especially in prison, impose interferences in the health services management. This should lead to a careful reflection on why it is considered almost inevitable for a prisoner to live a doctor-patient relationship different than the one who lives a free person, and why access to reduced-intensity health services should happen almost naturally. We are satisfied with «essential levels of assistance», as if they were the goal to aim for, thereby confusing what is defined as essential or minimal with what should be elementary, which means potentially able to develop. Develop, by providing a health service that is based on prevention and not on the mere response to pathological situations already highlighted, thus reducing the risk that the person falls into the category of 'sick'. The places of deprivation of liberty - especially prisons - are 'pathogenic' not because they do not cure, but because they treat sick people instead of being focused on how to prevent sickness.

Obviously, there is no place where the right to health is not set in written rules and presented as a factor of scrupulous attention. This happens in prison, as well as in CPRs for illegal immigrants. The point is how this commitment is expressed and what attention is paid to recognize the possibility that a person is 'sick', that he is consequently being given the proper care, that his situation leads to reviewing the reason for his being in that place, which is certainly not the most suitable to reassure and take care of him, and that its connotation of illness does not lead to excluding him from that residue of planning that these Centers should also provide. By keeping in mind all these factors, it is easy to realize how far is the proclaimed protection from the one that is actually in place.



## 26. Protected

Article 12, paragraph 4 of the *UN Convention of the Rights of People with Disabilities*, expects States Parties to ensure adequate and effective guarantees for the exercise of legal capacity in order to prevent abuses of human rights<sup>38</sup>.

In our legal system there are several tools prepared for people in need of protection and representation, from the historical institutes of protection and curatorship to the most recent one, in force since 2004, of support administration<sup>39</sup>. The latter, which has almost completely replaced the interdiction and incapacitation processes, involves a simplified procedure, before the monocratic judge, instead of the collegial one, and the exemption from the obligation of legal assistance for the parties involved. According to a widespread stereotype, the person affected by mental illness, neurocognitive or behavioral disorders is judged unable to exercise his right to self-determination, and the guarantee of his legal capacity is totally or partially compressed by the protection tool that often adds marginality and loneliness to people already marked by some form of exclusion.

Even in countries of advanced democracy, the opportunities that take rights away from those with a weaker social protection, such as the elderly, the disabled, the poor, are increasingly traced. Economic and social solidarity fades together with the growth of inequalities and, in this context, the freedom and dignity of the most fragile people are also reduced. Care, listening and hospitality need resources, they need a presence dedicated to those rights and principles shared by the *Convention*; attention that is less and less feasible, and risks undertaking solutions that go in the opposite direction to the supposed welfare - social well-being.

Thus, the institutes provided for by the system for the person's protection, through the appointment of a representative speaker, become a practical management tool for marginalization, discomfort,

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38. *UN Convention on the Rights of People with Disabilities*, adopted by the United Nations General Assembly during the 61<sup>st</sup> session on 13 December 2006, ratified by Italy with law 3 March 2009 no. 18, article 12, paragraph 4. Equal recognition before the law. «States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect person's rights and interests».

39. Law 9 January 2004 no. 6.



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illness, even when the latter does not completely compromise one's ability to self-determine.

It is an intervention that stands between the *before* and the *after* of the judgment of incapability, where the *before* is represented by the perception of the interested party as a vulnerable person that must be kept separate from the rest of society (what the Anglo-Saxons define with the term of *seclusion*) and the *after*, is the condition that the subject, who has been protected, is managed with an inclusive approach. The reality says differently, namely that protection does not always encourage the transition from *seclusion* to *inclusion*, turning into *exclusion* instead.

In this perspective, it is often likely that the legal instrument of protection can paradoxically become a 'guarantee' of exclusion of the person, certainly fragile, but not unable to understand his life and the decisions that concern him, thus finding himself, in spite of and despite the provisions of the supranational regulations, being stolen from a free life.

## 27. Expelled

Destiny, Tomi, Parzia, Mohamed, Ahmed, Ivane, ... there is a long list of 6,531 foreign people forcibly returned in 2019, almost eighteen per day, tracked among the approximately 600,000 unauthorized people estimated to be present on Italian territory<sup>40</sup>. Unique stories and experiences, impossible to be traced back to a single category, if not for that common trait that sees them opposed to a community for which they do not qualify. The world is small for them, as much as the liberty of movement that they can exercise based on the passport they possess<sup>41</sup> and the regular entry channels into foreign states which they can access.

For some of these people it is not about following a natural aspiration to improve their living conditions, but a forced choice, dictated by the need to seek protection from persecution, inhuman living conditions, or dictated by the impossibility of exercising those democratic freedoms that our Constitution guarantees. Or, again, it is only because they are victims of exploitation and human trafficking. In these cases, the choice of the state to exclude them from its territory gives way to the obligation to protect their fundamental rights, which they own as individuals. The task of the National Guarantor is, therefore, to monitor compliance with this obligation of non-return, verifying, in

<sup>40</sup>. Data from the Institute for International Political Studies (ISPI).

<sup>41</sup>. See <https://www.passportindex.org/> which classifies world passports based on the number of countries that the holder of that passport can visit without applying for a visa before leaving.



particular, the implementation of all the guarantees that the Order provides for the protection of asylum seekers or other vulnerable categories: only this close monitoring can ensure the legitimacy of a possible removal decision. This implies examining individual cases, but this is not enough to complete the task of those who must guarantee the coexistence of different rights. We must also ask ourselves about the architecture of the system which, in facing the high migratory pressure, has often followed security drifts, progressively reducing the procedural protections, thus weakening even more the already dim voices of fragile identities<sup>42</sup>.

The risks of losing and depriving individuality and rights is wedged in the waivers of the hearing of applicants for international protection, in the grip of repeated requests, in the brief handling of accelerated procedures, in the anticipation of a list of safe countries, in the lack of reserved spaces in the places of arrival and detention where people actually have the opportunity to tell their stories confidentially and therefore be identified not exclusively for expulsion purposes. And when it is the person himself who has difficulty expressing his vulnerability, as in the case of those suffering from psychiatric conditions, the control over the conditions of expulsion must be even more rigorous, extending to the verification of the adequacy of the available treatments in the State of destination, as the Court of Strasbourg recalled in a recent ruling<sup>43</sup>.

Once the line between those entitled to be part of the community and those excluded from it has been traced, in the gear of the devices for controlling irregular immigration and in the provision of the return of expelled people, the bodies remain: bodies to be contained, traced back to a personal or national identity, to associate with a document that allows their return, to nourish, to protect, to assist for the sole purpose of removal, because for them life must be elsewhere.

The eye of the responsible Authorities must follow along, even beyond the return journey. The same must be done by the National Guarantor's system for monitoring forced returns, in order to verify that the person's fundamental rights are not violated after his repatriation<sup>44</sup>. This is the path that

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42. Please note that the National Guarantor, according to his mandate, presented his opinion on the Decree-Law 4 October 2018, no. 113, both as part of a hearing at the Senate Constitutional Affairs Commission on 15 October 2018, and with a written text; also presented his opinion on the Decree-Law of 14 June 2019, no. 53, both in the context of two hearings, respectively on 4 July 2019 at the constitutional affairs and justice committees of the Chamber of Deputies and on 31 July 2019 at the Senate's Constitutional Affairs Commission and with a written text, expressing various remarks on both measures by law.

43. European Court of Human Rights, Section IV, judgment of 1 October 2019, *Savran v. Denmark* (57467/2015).

44. For an in-depth analysis of the critical issues raised by the National Guarantor during its monitoring of the return execution phases, please refer to the previous Reports to Parliament and the publication of *Norms and Normativity, Standard for the deprivation of liberty of migrants*, March 2019. <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/36d47f89b40b649a8dde6a5e5968e706.pdf>



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the *European Commission* already indicated in 2011<sup>45</sup>, promoting the launch of projects designed to control the situation of people readmitted on the basis of the agreements that the *Commission* signed and glimpsing, even then, the possible role of the National Organizations for post-return monitoring. This same communication from the *Commission* established the principle that member states should suspend the application of the readmission agreement in the event of persistent human rights violations in the third country involved.

The case of Egypt comes to mind which, as reported in a European Parliament Resolution of last 24<sup>th</sup><sup>46</sup> October, has been affected, starting from 20<sup>th</sup> September 2019, by a series of anti-government demonstrations faced by Egyptian authorities with executions and a large number of arrests. A series of actions that were repressive and harmful to fundamental rights and freedoms, as well as numerous forced disappearances of activists and human rights defenders. In the same Resolution, member states are urged to ensure that any migration agreements with Egypt strictly complies with international human rights standards<sup>47</sup>.

Italy, however, continued to organize returns for Egyptian citizens: 363 in 2019, and 294 the previous year (an increase of 19%)<sup>48</sup>. Is this a greater efficiency or the worrisome symptom of a system that is not inclined to review its own readmission policies?

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45. Communication from the Commission to the European Parliament and the Council of 23 February 2011, *Evaluation of EU readmission agreements*.

46. European Parliament resolution on Egypt (2019/2880 (RSP)).

47. In the document, the European Parliament, in addition to firmly condemning the repression and sending multiple invitations to the Egyptian Authorities to cease the current situation and to restore full respect for human rights, the EU legislative body makes an explicit reference to the states members underlining «[...] the importance of ensuring that any EU-Egypt migration agreement strictly complies with international human rights standards, respects the fundamental rights of migrants and refugees and ensures adequate levels transparency and obligation to account».

48. From 1 January to 29 February 2020, two forced return *charter* flights were made to Egypt which involved forty-eight Egyptian citizens.



## 28. Afraid

Fear is different from anguish: the first identifies an object that provokes a reaction, which can be the one of 'being afraid'; the second no longer identifies an object and remains as a fully enveloping perception of inevitability or impossibility of overcoming the situation in which a person finds himself. An invisible, widespread enemy is likely to turn an initial fear into anguish. This is, perhaps, the feeling experienced by many in recent months: especially by those who added the new situation to a previous one, which had already caused anxiety and concern for not being able to get out of it. Therefore, if people living outside of places of deprivation of liberty feared for not being able to return to normal life, people living in places of restriction had to add this new situation to the already negative one of their previous life. The two anxieties blended together develop a feeling of anguish, which was heightened when the presences of people from the outside almost disappeared, and the internal space became empty and deaf to voices other than those of the internal actors.

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The Covid-19 virus pandemic has affected entire communities, having them face completely new enemies: ourselves, our behaviors, our daily lives. The impalpability of a virus, the fear of contracting it, the fear of being carriers or of being infected by others have always been so rooted that can lead to being overwhelmed by anguish. This fear is generally kept under control by accessing clear information, heard by multiple sources, validated in the exchange of experiences with others and, above all, by the possibility of resorting to healthcare facilities. However, when you are confined to a place, these possibilities decrease, and institutional information is the only channel to diminish the fear experienced. Only if this is unambiguous and able to show the end of the tunnel, can the additional anxiety of being enclosed within a perimeter be controlled. This was not the case of the experience lived in the past few months and more likely to take place again. The viral and rapid diffusion of partial and contradictory news, sometimes not even truthful, contributed to creating a state of unease in everyone. For those who could only receive a possible message on what the situation was and what prospects emerged by this contradictory source, it has determined the sliding in anxiety and, in some cases, in real anguish. The so-called *infodemic* was, therefore, an additional factor in determining this process during the spread of the infection.

We have not all been in the same position with respect to the virus. We are not all the same, as some cheesy advertising message wanted us to believe. There is a part of the population, relegated by many to a corner, which is particularly vulnerable and has been even more vulnerable in this period: people deprived of personal liberty. Among them, a particular physiognomy of anguish has involved those detained in penitentiary institutions, for adults or minors. But if, for the latter, a method of communication and dialogue that managed to moderate this feeling was created - perhaps also thanks to their overall numerical consistency - in the former it exploded. The anguish for the contagion struck them in an enhanced way, strengthened by the feeling of being subjected to a 'double imprisonment': the deprivation of liberty proper to the contingent situation was added to the inevitability of a disaster, in case the contagion entered within the prison walls.



## The Person

The prison was already in a situation that should have generated fear in those who managed it, as was generating it in those who were hosted there. This was added to the fluctuating information that dictated a set of rules which were in fact opposed to those of daily prison life. Hearing about the need to keep a safe distance between people and avoid crowded places on television and knowing that your roommate is a few centimeters away, sharing toilets and showers, preparing and eating meals together in the cells, often in poor hygiene conditions; learning that the virus could become lethal if it affected people with a weakened immune system and seeing that people nearby are often debilitated by a history of drug addiction or other serious illnesses.

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Fortunately, to date, the internal spread of the infection has been contained and even the measures of further restriction have been gradually accepted, after the first moments of tension. The light at the end of the tunnel seems to be emerging, even if we already know that this will not be the only tunnel that will characterize this journey. Perhaps, we can go back to being only 'afraid' and no longer 'anguished': to build personal ways of life, even within prison walls, which can convince us that only our behaviors can stop us from being our own enemies. However, this alone is not enough; just as the attentive and responsible behavior of restricted people is not enough. They are necessary but will not suffice. The challenges of crowd density, promiscuity and poor centrality assigned to prevention and information for health protection must be overcome once and for all. Not only because they are pivotal to a dignified detention system, but also because they are the tools to learn how to cope with fears that will never be completely expelled from these places.



## 29. Blocked

A closed gate, a locked chain to prevent its opening and, on the opposite side, a police van to make sure that no one goes in and no one comes out<sup>49</sup>. What happened? There is a suspicion of contagion: one of the people hosted in that migrant center has a high fever, difficulty breathing. Everyone is stuck inside.

More than a thousand tourists of the “Costa Smeralda”<sup>50</sup> cruise ship, docked at the port of Civitavecchia, are also blocked: two passengers show symptoms compatible with the coronavirus. Nobody can disembark, and the image of the ship standing on the dock with its passengers on board reminds of that of other ships and other passengers who were forbidden to disembark in different times.

In an entire floor of one of the buildings of the military hospital of Rome at Celio<sup>51</sup>, the first Italian citizens arriving from China, including two newborns, were confined, separated and isolated from everyone. This was when the danger of contagion only seemed to concern that country.

On 23 February 2020, with a Decree, the Prime Minister<sup>52</sup> established the first Italian ‘red zones’: from Bertinico, Casalpusterlengo, Castelgerundo, Castiglione D’Adda, Codogno, Fombio, Maleo, San Fiorano, Somaglia, Terranova dei Passerini and Vo, nobody can leave and nobody can enter.

What do these situations have in common? What do a reception center, a cruise ship, a hospital ward and a Municipality, such different realities, have in common? Their transition, suddenly and by an external factor, from places of free people, to places where people are deprived of their liberty of movement, becoming effectively blocked: quarantine.

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The pandemic has therefore led to new forms of deprivation of liberty: among these are the ones that have occurred in formal places of compulsory quarantine, so much so that the United Nations have invited the *National Preventive Mechanisms* to extend their mandate there as well, making sure that the rights of people restricted there are respected. It is in this perspective that the National Guarantor paid a visit to the Quarantine Center at the military

49. Reception center for migrants “Usignolo” in Rome, quarantined on 1 April 2020 following the discovery of a case of positivity among the guests.

50. The cruise ship “Costa Smeralda” coming from Hong Kong at the end of January remained blocked for 24 hours at the port of Civitavecchia with 1,143 passengers on board for the suspicion of two cases of contagion from Covid-19.

51. In February eight Italian citizens arriving from Wuhan, China were quarantined for 14 days in the Celio military health facility.

52. Prime Minister’s Decree of 23 February 2020 - attachment 1.



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airport “Mario de Bernardi” in the hamlet of Pratica di Mare of Pomezia, as well as started a dialogue with the prefecture of Rome to acquire information on two hospitality centers for foreigners whose gates had been closed with a lock to ensure compliance with the quarantine imposed on all the people who resided there.

The twofold reference to health protection, expressed by article 32 of the Constitution, obliges to find a way to combine the need to protect the community with the deprivation of liberty that can derive from it, making the people subjected to this measure part of the common objective. Hence, we do not refer to them as ‘blocked’ people but as protagonists of that need for protection.

### 30. Anonymous

There is always a sadly bureaucratic, almost computational aftertaste when, in dealing with difficult social issues, the statistical context becomes more relevant than the subjective one. After all, it is necessary to tackle the problems in their complexity, and this often requires not dwelling on the singularities of the people who constitute the community being analyzed. Even Tolstoy, in the great analysis of the overall changes in *War and Peace*, warns how the flows of history should not look at the individuals who constitute the evolution of collective situations, but at the phenomenon itself,

The people who make up any community subject to social analysis have names, experiences, personal stories: often nobody knows them and even more often nobody is interested in knowing them. The lack of knowledge of subjectivities characterizes many different areas and, in some cases, takes on a specific connotation, that should make us think: anonymity.

assumed as if the individuals could not be distinguished one from the other, as if - he writes, influenced by the scientific and mathematical development of those years - individuals are «infinitesimally small units» and only by «attaining to the art of integrating them can we hope to understand the laws of history»<sup>53</sup>.

Yet, the people who make up any community subject to social analysis have names, experiences, personal stories: often nobody knows them and even more often nobody is interested in knowing them. The lack of knowledge of subjectivities characterizes many different areas and, in some cases, takes on a specific connotation, that should make us think: anonymity.

It is often minors who do not benefit from subjective attention, especially when they are taken care of by the norms or institutional ways established to resolve conflicts or to decide on them. Children and adolescents become numbers,

53. Lev Nikolaevič Tolstoj, *War and Peace*, 1860, It. trans. by Enrichetta Carafa d’Andria, Einaudi, Torino, 1963, p. 964.



anonymous, a heritage to be shared in diatribes between adults, or almost annoying obstacles to the full development of ‘other’ needs, such as, for example, those of justice. In fact, children become anonymous when justice makes heavy, dutiful choices for them, following their parents’ sentences. These choices are aimed at diminishing negative consequences on the child’s psychological development, which in these cases is still considered of minor relevance compared to the exercise of justice itself. It is like this, for example, in the well-known situations of children forced to spend their first years behind bars, but also in other choices, when little attention is paid to the effects that the experience that a child or teenager may have in entering that place of imprisonment to visit that parent who has been taken away from his everyday life by a power unknown to him and seen as an enemy.

Children who, together with families, face the risk of abandoning their own environment, familiar yet unlivable, to go to another, unknown but full of hope, are often anonymous and find death in this path: they are only numbers to be added to the balance of the victims. «Among them also a certain number of children» report the bulletins of despair and death at sea to which we have unfortunately become accustomed in recent years. Unaccompanied foreign children who land in our country and whose number is communicated periodically to signal the difficulty of our hospitality duty. We will likely never know their names, but only the total number. Nor will we ever know the distress of their travel and the fear of the waves. Only the outcome.

However, minors are not the only ones to remain anonymous. Anonymity very frequently concerns foreign people who must be identified, accepted or rejected: the frequent tendency of some of them to provide *aliases* to make recognition difficult, often because of previous negative events, accentuates anonymity, as it is almost a self-renunciation to their name. After all, they too are part of a flow of history: this is the object of interest, not the singularity of the cases.

At the same time - as we have also noted in this Report - it was difficult (and for many only a useless addition) to learn the names of the people who died in the riots of early March within some Institutes. The interest in information and analysis was for the situation occurred, not for the subjectivity of the deceased people: as is obvious, they needed to know about the people who organized the riots, which required measures to be taken, decisions to make.

Even the parade of the coffins that went to ‘other’ cemeteries, coming from areas particularly affected by the recent and still persistent pandemic, projected a message of anonymity, and the daily numbers of the deaths did not even contain the indication of the different ages of the missing people.

However, this was not the case for their family members, as it was not the case for those of people who emigrated from their own countries, let alone the families of unaccompanied minors. They know names and stories very well, and perhaps wish they would not be forgotten. Some media did well to symbolically report some of the individual stories: they are a heritage of humanity and should not be lost.

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Those themes appear distant from one another, the one of families who disappear, the one of minors who emigrate, the one of death tragedies, the one of people housed, hosted, restricted to places where anonymity is accentuated. It is not like that, because they are themes held together by indifference towards people's names, too often an indication of indifference towards their subjectivities - which remain as such only for the circle of those related to them. The task of giving people their name back should instead be considered a priority by those who exercise a guarantee function. Because the name is the first right of every person.

### 31. Observing

Standing before the *Boy bitten by a lizard*<sup>54</sup> by Caravaggio, the observer seems to feel the pain of the reptile's grasp himself: everything around the boy seems irrelevant - even the green lizard is almost imperceptible and merges with the color of the still life.

A question debated amongst artists and neuroscientists<sup>55</sup> explains the reaction by tracing it back to the system of mirror neurons that «reproduce in our brain every observed action [activating] the same nervous circuits that would switch on if we ourselves were to perform them [...] This discovery has a significant importance because it suggests that empathy does not arise from a cognitive effort, but it is part of the genetic makeup of our species»<sup>56</sup>.

The work of the person observing situations experienced within contexts of institutions of deprivation of liberty- whether it is a prison, an Immigration Removal Center, a hospital psychiatric service - develops around his ability to grasp those profound aspects of a condition that can escape the first glance. Therefore, he understands their deep structure and implicitly interacts with them, making them clear and modifying them, as well as modifying himself. When the observation takes place, the person who has the task - as are, institutionally, the National Guarantor and the various international monitoring bodies or, on the civil society front, the numerous associations engaged in the themes

54. Michelangelo Merisi da Caravaggio (1571-1610), one of the two versions of the work is kept at the Longhi Foundation in Florence.

55. David Freedman and Vittorio Gallele, *Motion, Emotion and Empathy in Aesthetic Experience* in "Trend in Cognitive Science" (2007), with their studies on 'embodied simulation' and, before that, Semir Zeki's neuroaesthetic experiments of the end of the eighties.

56. Based on the essay by Luca F. Ticini, *Caravaggio sa coinvolgerci emotivamente con i neuroni-specchio*, 2007 in <https://www.stilearte.it/caravaggio>.



of personal liberty - must be able to always consider the element of materiality - that is, the essential needs of the person deprived of liberty, the space in which he moves, the relations that surround him: his dignity. They are all elements that interact with those deprived of their liberty, making them rise from objects of a condition to subjects of an existence.

It is not simple, this is certain, because the totalizing systems are complex and because the act of observing implies the collective involvement of all the actors, including the observed, which becomes an active part of the system and, in turn, observes as well. Also, because the situations are not static, fixed on canvas and limited in that space. They come alive and make themselves perceptible. They belong to the observer.

Furthermore, however scientific one may be in observing - that is, adhering to the empirical detection and collection of information - and fully immersed in the purpose and intentionality of the act of observing, as well as objective in the registration of details, the reading is always enriched by «elements of subjectivity, linked to one's way of 'observing' reality, one's own cultural parameters of reference, one's beliefs, [one's] values»<sup>57</sup>. Nor is one exempted from social solicitations, even when being careful not to be overwhelmed by them. Observation must never be an other-directed operation, even if - it is well known - it is never neutral.

Therefore, “observation not only implies data collection or data recording, but it is [...] to exercise a form of democratic control [...] and [...] to provide help to those who act in various ways within the ‘microcosm’ represented by each total institution and who, to give meaning to their daily lives, needs an external point of view [...] it is to make the world of the repressed visible to a wider social audience [...]”<sup>58</sup>. Borrowing one of the most promising premises of contemporary physics, observation always determines a change in the observed. And the more you observe, the more you interact with it, the more changes are produced.

In fact, the combinations of variants are the expectations of the system that the observer has subtracted from the internal gaze, to open it to the outside.

Therefore, “observation not only implies data collection or data recording, but it is [...] to exercise a form of democratic control [...] and [...] to provide help to those who act in various ways within the ‘microcosm’ represented by each total institution and who, to give meaning to their daily lives, needs an external point of view [...] it is to make the world of the repressed visible to a wider social audience [...]

57. *Ibidem*.

58. M. Palma, *L'idea della pena nel mondo globalizzato*, in *Rassegna penitenziaria e criminologica*, 2015, no. 2, pp. 215 and ff.



### 32. Judging

«And a judge, a judge with a man's face sent me to browse sunsets in prison»<sup>59</sup>: an abstract entity, far from humanity, which has of a human only the looks, is the judge who condemns the doctor in the song by Fabrizio de André, loosely based on the *Spoon River Anthology* by Edgar Lee Master. An image that is the antithesis of the person who judges: this is, in fact, necessarily defined in relation to the object of his judgment, since the relationship with the other and with the elements of reality is the condition that determines the identity of every person.

What is, then, the object of the judgment that the judge relates to? In the different phases that form a judicial affair, the gaze of the judge is necessarily multiple. The judge who has to decide on a person's responsibility for a crime analyzes, first of all, what is said to have happened: the historical fact, its legal qualification, its traceability, the conscious will or the guilt of the person accused of having committed it. However, the gaze focuses specifically on the person judged, on his identity, since the object of the judgment is the motivation and the intensity of his action, the conditions of his individual, family and social life, his history, the damage it caused to the victim and the relationship eventually established with them.

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Finally, the consideration of the person being judged is related to the moment in which his responsibility is judged, and it is certainly crucial when the sentence is decided. This also occurs because the elements that assess the seriousness of the crime for the purposes of the penalty, established by Article 133 of the Prison Law, refer to the subjective sphere of the person responsible. With the determination of a constitutionally oriented penalty, in fact, the person who judges establishes the form in which the convict can restore the social pact cut with the commission of the crime, thus fully reintegrating into the community. The person who judges a crime and those who have committed it, therefore, has his gaze necessarily turned to the past, to what has happened. However, he creates the first projection step towards the future when he decides on the tools for its restoration.

The eye of the person who supervises and judges the execution of the sentence is, instead, turned to the future: the Supervisory judge leaves the crime in the past, and relates to the path that leads the convict towards the overcoming of that past. To make sure that the sentence respects the constitutional objective

59. Fabrizio de André, *Non al denaro non all'amore né al cielo - Un medico*, 1971, text loosely based on Edgar Lee Master, *Spoon River Anthology - Dr. Sigfried Iseman* (1915), translated in Italian by Fernanda Pivano, Einaudi, Turin, 1971.



of resocialization, the judged person needs to be projected into a life dimension that is different from that in which the crime was committed.

Those who judge the needs or difficulties of an individual in the course of their life and take on their protection have a similar orientation: the judge who validates the Involuntary Placement Order or who orders the return of a foreigner, the one who supervises the protection of rights of people who do not have full capacity for self-determination, whether they are minors or people entrusted to support figures. In cases like these, it is the relationship that connects the judge to the people being judged and to their subjective conditions.

The deprivation or restriction of liberty, therefore, in all the fields in which it takes place and not only by virtue of the punitive power of the State, always creates a relationship between the person who judges and the object of his judgment, fundamentally focusing on the person in front of the judge. This is the relationship that builds the identity of the judge, incompatible with any possibility of abstractness in regard to the perspectives of human life on which he acts. Significant evidence of this is the fact that it is not unrelated to the formation of judgments of the highest body of jurisdiction, the Judge of laws. The path of direct knowledge of the situation of both Italian schools and prisons, conducted in 2019 by the judges of the Constitutional Court with the initiative of the *Viaggio in Italia* and the openness to listening to the representative subjects of civil society introduced with the modification of the *Norme integrative per i giudizi davanti alla Corte costituzionale*<sup>60</sup> indicate that also in the judgment of this field, the relationship with the human subjectivity that it affects is an essential requirement of the act of judging.

### 33. Taking Charge

Persons deprived of their liberty by a public authority are entrusted to the responsibility of the state and the institutions are not only *in charge* of them, as if they were objects to be well preserved in a warehouse, but are called to *take charge of them*, that is, to elaborate a set of specific interventions designed around their condition as subjects experiencing a moment of particular weakness and fragility.

Too often, on the contrary, people are reduced to the problem they manifest, limiting their inner

60. [Supplementary Rules for judgments before the Constitutional Court] Presidential resolution of the Constitutional Court of 8 January 2020, President Marta Cartabia.



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complexity to one aspect. The metonymy acts as follows: the subject fades away and only the issue remains. The sick become their disease, the prisoners their crime, irregular migrants are identified with the lack of documents (in France, not surprisingly, they are referred to as the *sans papiers*), people with disabilities are their disability. The same happens for perpetrators of acts of aggression, regardless of the factors that might have triggered them, with the violence that is supposed to pervade society more and more, thus increasing the perception of insecurity.

When people are not there, we simply move away from the problem, forgetting about the subject who is experiencing that difficulty. The shift becomes the way to postpone every action to the hypothetical solution of a wider question, in a chain of deferments that leave the person more and more in the background, almost a footprint, meanwhile moved here and there just like a parcel that, in any way, ends up wrecked. It might happen to meet in prison a person with serious mental discomfort who went through 32 institutions before finding a medical team of psychiatrists who would take him in charge, restoring his human dimension, with all its frailties.

The logic behind this process of reducing people to their problem is often a logic of removal, that dismisses the here and now. The implicit burden that the person with a problem entails is rejected and, addressing this only, apparently, in order to bring everything back to a wider reflection, the person himself and the need to take charge of him are lost. The logic of deferment is the basis of many admissions to places of deprivation of liberty.

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It is only when this logic breaks, when we go back to considering people, every single person, in his identity and in his complexity, also made of errors, sometimes serious, critical issues and unacceptable behavior, can we find ways and solutions, which open up hope for the person involved to *find themselves*, to go back to see themselves as people, because seen as such by others.

Therefore, taking charge of a person means first and foremost recognizing them as a subject, fragile, but a subject with an identity nonetheless. It means considering them as part of a social community whose relationships sometimes need to be built or rebuilt. This was the process that took place - almost a miracle in an Italy that lacks major reforms - with the institution of the Residences for the Execution



of Psychiatric Security Measures (REMS)<sup>61</sup>, thus definitively abolishing the archaic and structurally violent reality of judicial psychiatric hospitals. Archaic, as a remnant of a reform - that of psychiatric structures and psychiatry in general - which, despite being more than forty years old and representing the apex of a scientific, human and political synthesis capacity, had left behind this residual mentality represented by the internment of those who had been declared not imputable to what was committed. Structurally violent because, even beyond the proposed living conditions, it effectively took any subjectivity away from the hospitalized and restricted people. The REMS have transformed the *inmates* into *patients*, and this significant process of cultural, personal and therapeutic transformation has been possible through the underlining of *taking charge*, in its double meaning of recognizing the competence of the territorial Health Services in building paths for people assigned to the structures, and of concretely finalizing these paths and reconnect the threads to the external community, for a life as autonomous as possible, and no more tracing a furrow that keeps them separate from it. There are still many recurring forces to review what has finally been accomplished in recent years, and the periodical push to rebuild separations and barriers is strong, as a fleeting reassurance given by the invisibility of those entrusted to closed institutions. However, the experiences that have been gradually consolidated are equally important, showing that another way is not only possible, but also concretely implemented where each person has been, in fact, *taken in charge*, facing his difficulties, strengthening and enhancing his resources and capabilities.

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## 34. Ensuring

In the action of those who make an arrest, the person is, first of all, ensured *to* the State and so is *the* complexity of his faculties and rights. The two actions are intertwined and essential to one another because it is the State, the moment it exercises the first act of its coercive power and takes custody of a person, that must ensure dignity, physical and mental integrity, effectiveness of the rights. The

61. Decree-Law 22 December 2011, no. 211, converted into Law 17 February 2012, no. 9. After extensions of the deadline then formulated, the final closure of the judicial psychiatric hospitals was ordered by Decree-Law 31 March 2014, no. 52, converted into Law 30 May 2014, no. 81 which set the latest possible extension to 31 March 2015.



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constricting force that suddenly puts the person in the total availability of the public authority is in fact legitimate only if supported by the guarantees in favor of those subjected to this force and by the access to the rights that they own.

A double function that is assigned to every police officer, and its foundation is seen in what the Constitution considers for the restriction of personal liberty and which derives from the premise that «personal liberty is inviolable»<sup>62</sup>. A foundation that is projected in the various conventions on the rights of people detained or arrested and which has found its explanation also in the different codes of conduct that regulate the action and intervention of law enforcement: *the European Code of Ethics for the Police*<sup>63</sup> establishes in the General Principles of Chapter V, in addition to the prohibition on «inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances», the obligation to respect the rights of the person, the use of strength «only when strictly necessary and only to the extent required to obtain a legitimate objective», the constant control over the «lawfulness of their intended actions»; globally, the United Nations *Code of Conduct of Law Enforcement Officials*<sup>64</sup>, in the eight articles that compose it, affirms the same principles and establishes the same duties.

There are three fundamental rights to be guaranteed to those who are detained or arrested, in addition to the preliminary one to be informed on the rights available in a language and wording that the person is able to understand.

The right to notify a third person of their situation, except in specific cases and for a small time in order not to hinder the ongoing investigation. The right to have access to a lawyer, possibly appointed ex officio. The right to be visited by a doctor, even the person's own physician - also in this case, any refusal in regard to the indicated person must be fully detailed, given his exceptional nature.

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In the premise of these rights, there is the action of bringing to justice the person wanted, arrested or who has been reported for the danger he is representing for other people: it is the action of arrest, often difficult, full of emotion and potentially marked by the risk of impulsive reactions. The absolute principle applies: when a person has been brought back under the control of those who have the power to stop and contain them, no further violent action is legitimate. It is up to the professional ability of those who act to know how to control every impulse, even if reactive. It is up to those who monitor the correctness of these actions to know how to duly identify why they are sanctioned. This ensures the *accountability* of the Police's actions.

62. Article 13 paragraph 1 of the Constitution.

63. *European Code of Police Ethics* adopted by the Council of Europe on 19 September 2001, with Recommendation Rec (2001) 10.

64. *Code of Conduct of Law Enforcement Officials* approved by the United Nations General Assembly on 17 December 1979, Resolution 34/169.



By virtue of the mandate assigned by his establishing law and by the inclusion in its areas of intervention of any situation depriving of liberty, the National Guarantor exercises his supervision on this variegated set of guarantees. Not only in the places of temporary detention of people arrested or detained such as the custody suites used by the police, but also in other places where detention can be carried out: that is, the interrogation places, which are often offices, the so-called «suitable premises » for the detention of irregular foreigners if places are not available in the Immigration Removal Centers<sup>65</sup>, the various *waiting rooms* of ports and airports intended for those who are not allowed on the national territory.

The magnitude of the task of *ensuring* the person requires specific preparation and training: a training action that must start from the initial training schools and then be repeated, in a constant update, addressing in particular the protection of rights and vulnerabilities, with which the Police forces are most often confronted. In this perspective, the National Guarantor has started a collaboration, for several years now, with the Carabinieri and the State Police, as well as with the Prison Police, for the organization of training interventions at different levels of responsibility and degree of the respective operators.

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## 35. Protecting

There is no doubt, the first protection of a person entrusted to the public authority is exercised by those who have direct responsibility for them: those who, by keeping control of the implementation of a restrictive measure against them, also exercise the role of ensuring the person all the rights of which Conventions, Constitution and laws recognize as owner. In addition, of course, to those who derive from the recognition of his humanity. This exercise of primary protection - on which a large part of the training of those who carry out this difficult task should dwell - derives from the mandate entrusted to those who have the power to validate or not their deprivation of liberty and to control the ways in which this is carried out. The centrality of the judicial authority whenever a citizen is deprived of liberty is expressed in every sector that the National Guarantor deals with, developing from the beginning to the return to the free world. No substitute task, but a coordinated and complementary - and basically

<sup>65</sup>. Introduced by article 4 paragraph 1 of Decree-Law 4 October 2018, no. 113, converted into Law 1° December 2018 n. 132.



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supportive - action that the Guarantor is called to exercise also by virtue of his modality of action which finds its *focus* in the continuity of *going to see*, places, people, documents.

His action is places in this context, as recipient of reports by those who are restricted to the various institutions in which the deprivation of liberty takes place and, in the case of prisoners, also of non-jurisdictional complaints that the Prison Law has always considered.

The areas of competence of the National Guarantor - we have stressed it several times in these pages - are manifold and compared to them the audience of stakeholders includes, first of all, precisely those who are subject to the restriction or deprivation of the possibility to freely decide about their time and their actions. Alongside these, it also includes the responsible Administrations and all those actors, institutional, associative or attentive observers who dedicate their profession, analysis or proximity of any sort to this large world. The Guarantor has a cooperative dialogue with all of them.

The areas of competence of the National Guarantor - we have stressed it several times in these pages - are manifold and compared to them the audience of *stakeholders* includes, *first of all*, precisely those who are subject to the restriction or deprivation of the possibility to freely decide about their time and their actions. Alongside these, it also includes the responsible Administrations and all those actors, institutional, associative or attentive observers who dedicate their profession, analysis or proximity of any sort to this large world. The Guarantor has a cooperative dialogue with all of them.

This frame, and its 'cold' compilation nature, must be declined in the spaces inhabited by the relationship between the Guarantor Authority and the people deprived of their personal liberty. They are basically two: visits to places and related meetings with restricted people and sets of written reports and complaints. In the first case, the relationship is tangible, 'physical', with a high emotional impact by the speaker from the room where he is restricted; in the second case, the relationship is 'at a distance', entrusted to the pen that hides expectations and hopes, anger and mistrust. On the other hand, there are people called to protect, even before reassuring, because it is first of all a person who 'meets' the other person and in this 'meeting', close or at a distance, there is a need for an anthropologically primary communication, which prescinds, or entrusts at a later time, the assessment of the contextual situation.

It is no coincidence that the National Guarantor, in particular with regard to criminal detention, is also entrusted with the task of intercepting that 'submerged' unease that does not require judicial intervention in the strict sense, but from which arise the possibility of investigating individual matters, also as an indication of widespread critical issues.

Reassured does not mean favoring or even defending *tout court* in the strict sense, because the way of protecting rights passes through observation, knowledge, listening. Being present, answering a letter already means 'being there' and this is already reassuring. The next step is to *guarantee, protect, give visibility*, guiding those who meet the National Guarantor in giving awareness of their rights and, at the same time, empowering their choices.

These are sections of life that are often consumed in solitude, which is why, when he talks about relationships, the National Guarantor speaks of *care*; it means protecting not only through direct assistance - for example, in the medical field through adequate healthcare responses - but by taking care of the evolution of the situation envisaged without depriving the person of his or her right to act.

*Protected* encompasses a widespread surveillance activity to guarantee the essential elements of livability within the places of deprivation of liberty. *Protected* implies making sure that emotional



relationships are not neglected by those who must take steps to maintain this fundamental aspect of life, in prison or outside. *Protected* means addressing a treatment proposal that is qualitatively and quantitatively suitable to give meaning to the constitutional principle towards which penalties must strive. *It* also means making sure that the time of detention is not only empty, albeit dignified, but a time full of institutional and voluntary initiatives that make it meaningful and not disconnected from the time in the outside life.

## 36. Reconnecting

It is in the dialogue between *us* and the *others* that the complex dynamic which links identity and coexistence is played out. It is valid in the relationship with the foreigner, who increasingly lives in our cities, but it is more generally valid for all those we consider *foreigners*, considered strangers, *others*. The distance separating these two polarities can become a bridge or an abyss.

Some of the contexts strongly mark this difficult dialogue, such as the places of deprivation of liberty: separated, isolated, more and more often deliberately built far from the inhabited centers, as if to accentuate the abyss. Contacts with the loved ones outside become difficult, the visits sometimes become less frequent, the relationship with the free world thins out.

However, distance is not only physical. In these structures, the rules of life are different and they have very little to do with those of 'normal' life, which flows outside, often indifferent: times, rhythms, the possibility of moving, deciding, planning, acting, everything it is different, everything is unknown. The complexity of the world that one belonged to until just before is canceled. The loss or weakening of the emotional and relational ties to the outside world activates that process of institutionalization in which the new subjectivity, based on the cultural system of the institution depriving of liberty, prevails until it cancels the other. The real world, the free one, becomes foreign as time goes by, and the abyss deepens.

Collectivity is thus turned into a set of separate islands, each one closed in its own *us*. But if it is true, as Edmond Jabès writes, that «the distance that separates us from the foreigner is the same that separates us from us»<sup>66</sup>, every *us* needs the other. Rebuilding the social bond, often broken by the individual

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66. Edmond Jabès, *Uno straniero con, sotto il braccio, un libro di piccolo formato*, SE, Milano, 2001.



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intrinsic condition - due to illness, age, disability or other - and even more frequently by prejudice and fear in the face of guilt, is then necessary to allow people to find their own subjectivity. Thus, also finding a place in the world, creating significant bonds with others to overcome the abyss through the complex and intricate web of relationships. This way, the bridge with *the other* is rebuilt, and that feeling of «being nothing for anyone, just a vague memory» vanishes<sup>67</sup>.

To weave the silk threads to reconnect the bonds with life are, first of all, the volunteers who keep alive relationships with families far away or alienated by problems, sufferings, mistakes. But it is also the operators of the boarding houses who host the homeless for short or long periods, waiting for them to reorganize themselves; it is the leaders of the cooperatives who bring real work into the prisoner world, the one that is on the market and requires commitment and rules; it is the teachers of the school or university, who together with librarians, directors and theater actors bring culture; it is the representatives of associations for the protection and promotion of rights, who fight against women trafficking, exploitation of minors, abuse and violence against the elderly or people with disabilities, it is the citizens who enter the Centers for migrants, in the psychiatric wards, in nursing homes, in prisons, in communities, taking care of the most fragile people; it is the institutional and social operators who take charge of all the people who live in their territory, whatever their legal, administrative or individual status is.

The interruption of contacts with external people, following the health emergency, halted these relations. The detention institutes emptied themselves of external presence: teachers, volunteers, employers, social workers have remained outside. The detention centers for migrants, which have always been empty of significant external presence, have become even more empty and, in any case, the usual absence of looks from outside has been perceived even more heavily from within. Hospitals and residences for elderly or disabled people have become inaccessible even to the loved ones, even to those who kept one of the ends of that precious thread of relationship with life, the one outside. In this situation, the bridge risks becoming an abyss.

Hence the urgency, having overcome the first phase of radical measures aimed at contrasting the spread of the virus, of rebuilding bridges, activating that indispensable relationship between the many insides and the outside, all part of a single community, composed by many, but constituting a single social body.

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67. Jacques Mourad, *Un monaco in ostaggio, La lotta per la pace di un prigioniero dei jihadisti*, Effatà editrice, Cantalupa (TO), 2019, p. 107.



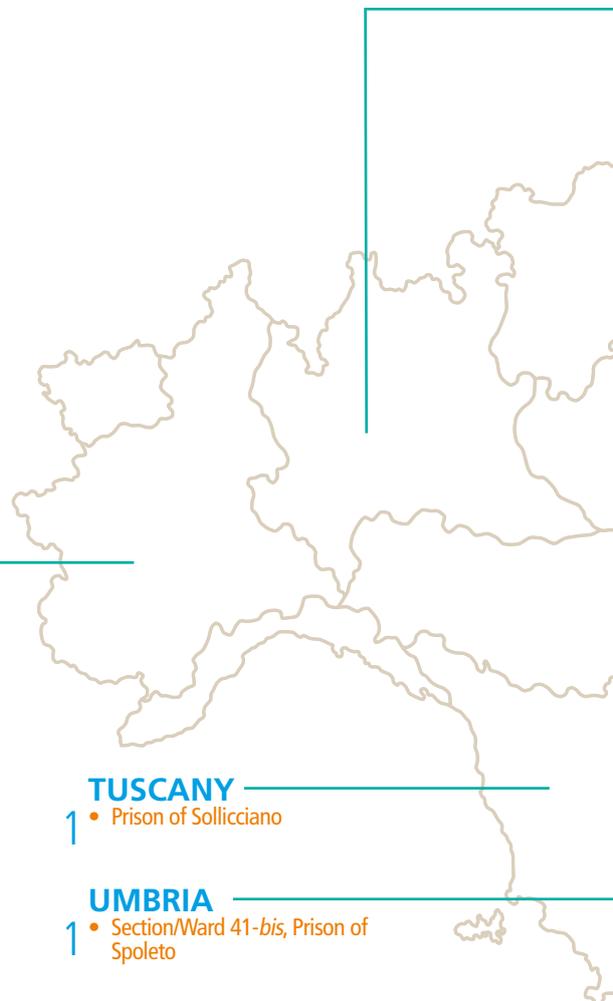
# The Year of Guarantors

Map 1.1 – Map of the facilities visited (01/01/2019-30/04/2020)

## legenda

- CRIMINAL AREA
- HEALTHCARE AREA
- MIGRANTS AREA
- POLICE FORCE AREA

## Facilities visited 70

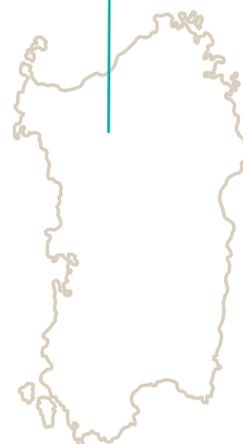


- 5** **PIEDMONT**
- "Rodolfo Morandi" Prison, Saluzzo
  - Section/Ward 41-bis, Prison of Cuneo
  - Section/Ward 41-bis, Prison of Novara
  - CPR, Turin
  - Immigration Center "Centro Armonia", Saluzzo

- 1** **TUSCANY**
- Prison of Sollicciano

- 1** **UMBRIA**
- Section/Ward 41-bis, Prison of Spoleto

- 9** **SARDINIA**
- "Salvatore Soro" Prison, Oristano
  - "Salvatore Soro" Prison, Oristano
  - "Giovanni Bacchiddu", Prison, Sassari-Bancali
  - REMS of Capoterra
  - Psychiatric Care in Hospital "SS. Trinità", Cagliari
  - Psychiatric Care in Hospital "San Martino", Oristano
  - Psychiatric Care in Hospital "San Francesco", Nuoro
  - CPR, Macomer
  - Carabinieri Station, Cagliari



- 14** **SICILY**
- Prison of Agrigento
  - "Pagliarelli" Prison, Palermo
  - "Antonio Burrafato" Prison, Termini Imerese
  - "Ucciardone" Prison, Palermo
  - "Malaspina" Prison for minors, Palermo
  - Psychiatric care in "San Giovanni di Dio" Hospital, Agrigento
  - Psychiatric care in "Villa Sofia-Cervello" Hospital, Palermo
  - Psychiatric care in "Karol" Community, Palermo
  - Nursing Homes "Giacomo Cusumano", Palermo
  - Hotspot, Lampedusa
  - CPR, Caltanissetta
  - CPR, Trapani
  - Carabinieri Station, Termini Imerese
  - State Police Station, Agrigento

## LOMBARDY

4

- Section/Ward 41-bis, Prison of Opera (MI)
- Section/Ward 41-bis, Prison of Opera (MI)
- Section/Ward 41-bis, Prison of Opera (MI)
- Border premises in international airport, Milan-Malpensa

## VENETO

1

- Female prison, Venezia Giudecca

## FRIULI VENEZIA-GIULIA

4

- Prison of Gorizia
- Section/Ward 41-bis, Prison of Tolmezzo
- CPR, Gradisca d'Isonzo (in opening phase)
- CPR, Gradisca d'Isonzo

## MARCHE

12

- Prisons of Ancona, seat of Montacuto, Ancona
- Prisons of Ancona, seat of Barcaglione, Ancona
- "Casa Cristiano", Foundation "Exodus" onlus, Jesi
- REMS "Casa Badesse", Macerata-Feltria
- Psychiatric care in "Carlo Urbani" Hospital, Jesi
- Psychiatric care in "San Salvatore" Hospital, Pesaro
- Psychiatric care in "Santa Maria della Misericordia" Hospital, Urbino
- Psychiatric care in "Santa Croce" Hospital, Fano
- Border premises in the port of Ancona
- Carabinieri Station of Pesaro
- Carabinieri Station of Ancona
- Prison of Pesaro

## ABRUZZO

2

- Section/Ward 41-bis, Prison of L'Aquila
- Section/Ward 41-bis, Prison of L'Aquila

## APULIA

3

- CPR, Bari
- CPR, Brindisi-Restinco
- Border premises in the port of Bari

## CAMPANIA

3

- Santa Maria Capua Vetere, Military prison
- "Giuseppe Salvia", Prison of Poggioreale, Naples
- "Francesco Uccella" Prison, Santa Maria Capua Vetere

## LAZIO

14

- "Germana Stefanini" Female Prison Rebibbia, Rome
- "Regina Coeli" Prison, Rome
- "Regina Coeli", Rome
- Section/Ward 41-bis, Prison of Viterbo
- "Nuovo Complesso" Prison, Rieti
- "Casal del Marmo" Prison for minors, Rome
- NURSING HOMES "Le Querce", Nemi
- CPR Ponte Galeria, Rome
- CPR Ponte Galeria, Rome
- Border premises in the port of Civitavecchia
- Border premises in the international airport, Rome-Fiumicino
- Brogo Police Station, Rome
- Carabinieri Station, Via-Mentana Rome

## BASILICATA

1

- CPR, Palazzo san Gervasio (PZ)

## CALABRIA

1

- Prison of Crotona

**Table 1.1 - Types of facilities visited (01/01/2019-30/04/2020)**

Type	Region	Facility	Date of the visit
Adult Prisons	Campania	Prison of Poggioreale "Giuseppe Salvia", Naples	02-05/05/2019
Adult Prisons	Campania	"Francesco Uccella" Prison, Santa Maria Capua Vetere	03/05/2020
Adult Prisons	Calabria	Prison of Crotona	10/07/2019
Adult Prisons	Lazio	Female Prison of Rebibbia "Germana Stefanini", Roma	24/04/2019
Adult Prisons	Sardinia	"Salvatore Soro" Prison, Oristano	25/06/2019
Adult Prisons	Lazio	"Regina Coeli" Prison, Roma	29/07/2019
Adult Prisons	Marche	Prisons of Ancona, seat of Montacuto, Ancona	15/09/2019
Adult Prisons	Marche	Prison of Pesaro	15/09/2019
Adult Prisons	Piedmont	"Rodolfo Morandi" Prison, Saluzzo	18/09/2019
Adult Prisons	Marche	Prisons of Ancona, seat of Barcaglione, Ancona	16/09/2019
Adult Prisons	Veneto	Female Prison, Venezia Giudecca	27-29/09/2019
Adult Prisons	Sardinia	"Salvatore Soro" Prison, Oristano	09/11/2019
Adult Prisons	Sicily	Prison of Agrigento	18-21/11/2019
Adult Prisons	Sicily	"Pagliarelli" Prison, Palermo	18-22/11/2019
Adult Prisons	Sicily	"Antonio Burrafato" Prison, Termini Imerese	19/11/2019
Adult Prisons	Sicily	"Ucciardone" Prison, Palermo	26-29/11/2019
Adult Prisons	Friuli Venezia Giulia	Prison of Gorizia	20/01/2020
Adult Prisons	Tuscany	Prison of Sollicciano	27/01/2020
Adult Prisons	Sardinia	"Giovanni Bacchiddu" Prison, Sassari-Bancali	06/03/2020
Adult Prisons	Lazio	"Regina Coeli" Prison, Roma	09/03/2020
Adult Prisons	Lazio	"Nuovo Complesso" Prison, Rieti	20/03/2020
Military Prison	Campania	Military Prison, Santa Maria Capua Vetere	06/02/2020
Section ex. Art. 41-bis Prison Law	Abruzzo	Prison of L'Aquila	07/02/2020
Section ex. Art. 41-bis Prison Law	Lazio	Prison of Viterbo	22/02/2020
Section ex. Art. 41-bis Prison Law	Friuli-Venezia Giulia	Prison of Tolmezzo	20-22/05/2019
Section ex. Art. 41-bis Prison Law	Abruzzo	Prison of L'Aquila	26/06/2019
Section ex. Art. 41-bis Prison Law	Umbria	Prison of Spoleto	06/07/2019
Section ex. Art. 41-bis Prison Law	Lombardy	Prison of Opera (MI)	21/09/2019
Section ex. Art. 41-bis Prison Law	Piedmont	Prison of Cuneo	12/11/2019
Section ex. Art. 41-bis Prison Law	Lombardy	Prison of Opera (MI)	22/11/2019
Section ex. Art. 41-bis Prison Law	Lombardy	Prison of Opera (MI)	21/01/2020
Section ex. Art. 41-bis Prison Law	Piedmont	Prison of Novara	21/02/2020
Juvenile Detention Centre (IPM)	Lazio	Juvenile Detention Centre "Casal del Marmo", Roma	01/01/2019
Juvenile Detention Centre (IPM)	Sicily	Juvenile Detention Centre "Malaspina", Palermo	20/11/2019
Prison Communities	Marche	"Casa Cristiano", Foundation "Exodus" onlus, Jesi	16/09/2019
REMS	Sardinia	Capoterra	26/06/2019
REMS	Marche	"Casa Badesse", Macerata-Feltria	18/09/2019

\* following

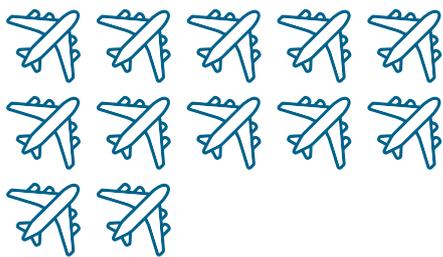
Type	Region	Facility	Date of Visit
SPDC - Psychiatric Care	Sardinia	"SS. Trinità" Hospital, Cagliari	23/06/2019
SPDC - Psychiatric Care	Sardinia	"San Martino" Hospital, Oristano	24/06/2019
SPDC - Psychiatric Care	Sardinia	"San Francesco" Hospital, Nuoro	25/06/2019
SPDC - Psychiatric Care	Marche	"Carlo Urbani" Hospital, Jesi	16/09/2019
SPDC - Psychiatric Care	Marche	"San Salvatore" Hospital, Pesaro	18/09/2019
SPDC - Psychiatric Care	Marche	"Santa Maria della Misericordia" Hospital, Urbino	19/09/2019
SPDC - Psychiatric Care	Marche	"Santa Croce" Hospital, Fano	20/09/2019
SPDC - Psychiatric Care	Sicily	"San Giovanni di Dio" Hospital, Agrigento	20/11/2019
SPDC - Psychiatric Care	Sicily	United Hospitals "Villa Sofia-Cervello", Palermo	25/11/2019
Psychiatric Communities	Sicily	"Karo!" Community, Palermo	22/11/2019
Nursing Home (RSA)	Sicily	"Giacomo Cusumano", Palermo	24/11/2019
Nursing Home (RSA)	Lazio	"Le Querce", Nemi	20/04/2019
Hotspot	Sicily	Lampedusa	23/11/2019
CPR	Lazio	Ponte Galeria, Rome	06/06/2019
CPR	Sicily	Caltanissetta	24/11/2019
CPR	Sicily	Trapani	25/11/2019
CPR	Friuli-Venezia Giulia	Gradisca d'Isonzo (in its opening phase)	27-28/07/2019
CPR	Friuli-Venezia Giulia	Gradisca d'Isonzo	20/01/2020
CPR	Sardinia	Macomer	07/03/2020
CPR	Apulia	Bari	19/06/2019
CPR	Apulia	Brindisi-Restinco	20/06/2019
CPR	Apulia	San Gervasio Palace (PZ)	18/06/2019
CPR	Piedmont	Turin	17/04/2019
CPR	Lazio	Ponte Galeria, Rome	27/03/2020
Immigration Centre	Piedmont	"Centro Armonia", Saluzzo	18/09/2019
Border premises	Lazio	Port, Civitavecchia	15/01/2019
Border premises	Lazio	International Airport, Rome-Fiumicino	15/01/2019
Border premises	Lombardy	International Airport, Milan-Malpensa	01/02/2019
Border premises	Apulia	Port, Bari	20/06/2019
Border premises	Marche	Port, Ancona	16/09/2019
Police's Suitable Premises	Lazio	Audit of Brogo Office, Rome	09/04/2019
Police's Suitable Premises	Lazio	Carabinieri Station, Via Mentana Rome	27/05/2019
Police's Suitable Premises	Sardinia	Carabinieri Station, Cagliari	23/06/2019
Police's Suitable Premises	Marche	Carabinieri Station, Pesaro	15/09/2019
Police's Suitable Premises	Marche	Carabinieri Station, Ancona	17/09/2019
Police's Suitable Premises	Sicily	Carabinieri Station, Termini Imerese	19/11/2019
Police's Suitable Premises	Sicily	State Police Station, Agrigento	19/11/2019

Source: National Guarantor for the rights of persons detained or deprived of liberty

Map 1.2 - Monitoring on Forced Return Flights (01/01/2019 07/02/2020)



Tunisia



Nigeria



Marocco

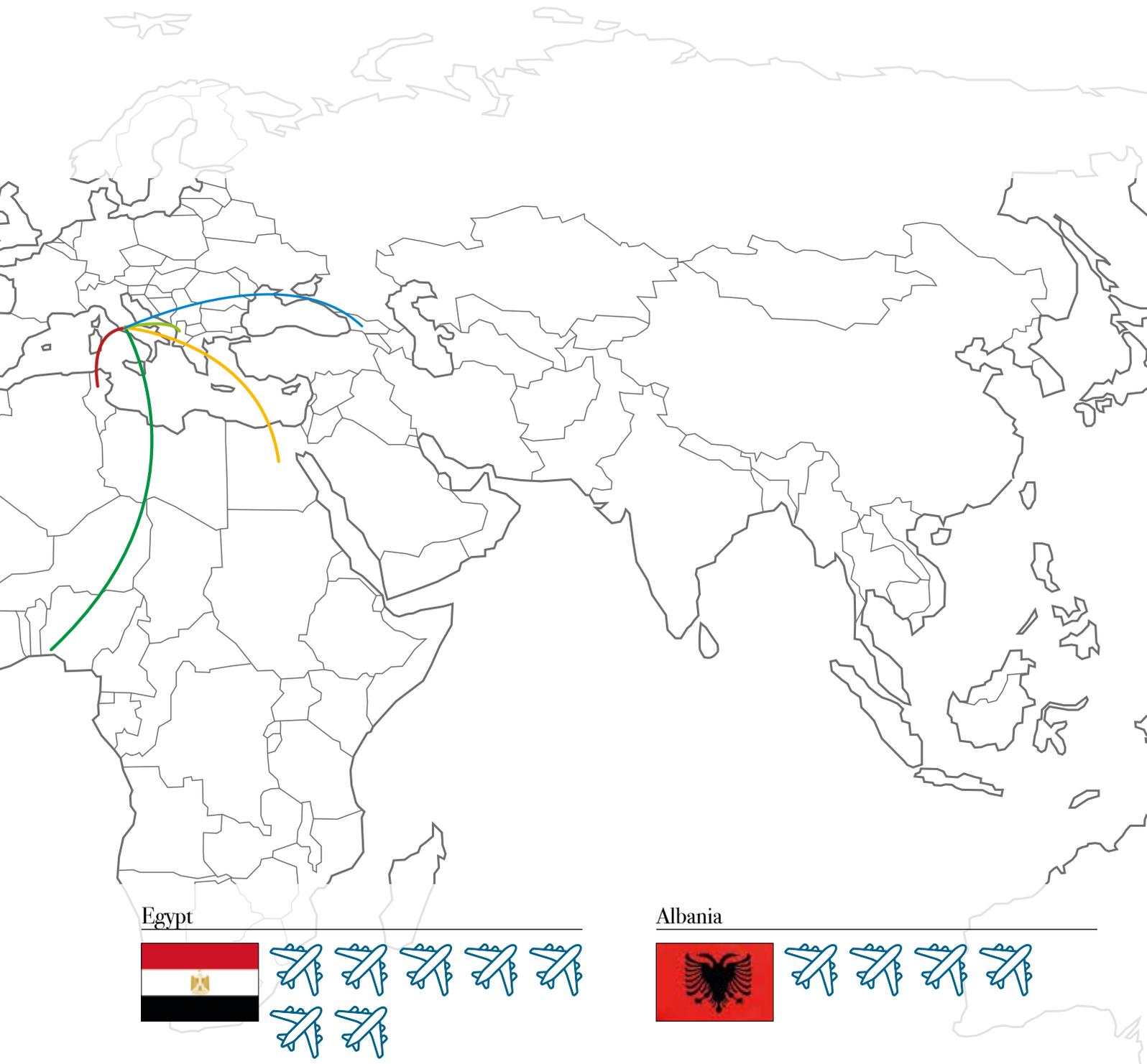


Kosovo



Romania





Egypt



Albania



Pakistan



Gambia



**Table 1.2 - Monitoring activity for forced returns (01/01/2019 - 07/02/2020)**

Return Country	Activity	Date
Tunisia	National <i>charter</i> flight	10/01/2019
Morocco	Commercial flight	18/01/2019
Gambia	Joint <i>charter</i> flight	30/01/2019
Tunisia	National <i>charter</i> flight	18/02/2019
Nigeria	Joint <i>charter</i> flight	19/02/2019
Tunisia	National <i>charter</i> flight	14/03/2019
Egypt	National <i>charter</i> flight	15/03/2019
Nigeria	Joint <i>charter</i> flight	30/03/2019
Tunisia	National <i>charter</i> flight	01/04/2019
Morocco	Commercial flight	15/04/2019
Nigeria	Joint <i>charter</i> flight	18/04/2019
Tunisia	Pre-departure phase monitoring at the Airport of Palermo	18/04/2019
Algeria	Pre-departure phase monitoring at the Airport of Rome	20/05/2019
Egypt	National <i>charter</i> flight	24/05/2019
Tunisia	National <i>charter</i> flight	10/06/2019
Egypt	National <i>charter</i> flight	11/06/2019
Morocco	Pre-departure phase monitoring at the Airport of Venice	16/06/2019
Nigeria	Joint <i>charter</i> flight	22/06/2019
Pakistan	Pre-return phase monitoring at the CPR of Torino	24/06/2019
Morocco	Pre-return phase monitoring at the Prison of Ancona	28/06/2019
Albania	Commercial flight	10/07/2019
Egypt	Commercial flight	24/07/2019
Tunisia	National <i>charter</i> flight	29/07/2019
Kosovo	Commercial flight	01/08/2019
Kosovo	Commercial flight	08/08/2019
Albania	Commercial flight	06/09/2019
Tunisia	Pre-departure phase monitoring at the Airport of Palermo	09/09/2019
Egypt	National <i>charter</i> flight	10/09/2019
Nigeria	Joint <i>charter</i> flight	21/09/2019
Tunisia	National <i>charter</i> flight	26/09/2019
Nigeria	Pre-return phase monitoring at the CPR of Bari	15/10/2019
Nigeria	Joint <i>charter</i> flight	15/10/2019
Tunisia	National <i>charter</i> flight	21/10/2019
Pakistan	Joint <i>charter</i> flight	29/10/2019
Tunisia	National <i>charter</i> flight	30/10/2019
Georgia	Pre-departure phase monitoring at the Airport of Palermo	04/11/2019
Romania	Commercial flight	06/11/2019
Albania	Commercial flight	12/11/2019
Peru	Pre-return phase monitoring at the Prison of Genova	19/11/2019
Albania	Commercial flight	27/11/2019
Nigeria	Joint <i>charter</i> flight	30/11/2019
Tunisia	National <i>charter</i> flight	05/12/2019
Tunisia	National <i>charter</i> flight	13/01/2020
Egypt	National <i>charter</i> flight	21/01/2020
Tunisia	National <i>charter</i> flight	30/01/2020
Egypt	National <i>charter</i> flight	07/02/2020

Source: National Guarantor for the rights of persons detained or deprived of liberty

**Table 1.3 - Visits and monitoring per day and number of persons**

	Number of visits	Number of flights monitored	Number of facilities visited	Days of visits	Total of people involved
Visits	62		60	92	127
Flights Monitored		36		38	58
<b>Total</b>	<b>62</b>	<b>36</b>	<b>60</b>	<b>130</b>	<b>185</b>

*\*In this total, we also counted the collaborations with experts who participated in the monitoring activities of the National Guarantor from 1 January 2019 to 30 April 2020  
Source: National Guarantor for the rights of persons detained or deprived of liberty*

**Table 1.4 - External collaborations for visits and monitoring (01-01-2019 - 30-04-2020)**

	Experts							FAMI Experts
	Apulia	Piedmont	Campania	Lazio	Sardinia	Marche	Sicily	
Visits			1	1	2	4	4	4
Flights Monitored	4	3						1
<b>Total</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>5</b>

<b>Guarantors of Lazio</b>	Stefano Anastasia Rita Di Quinzio	Guarantor of Lazio Region Support Structure for Guarantor of Lazio Region
<b>Guarantors of Piedmont</b>	Bruno Mellano Monica Crisitna Gallo Lisa Massafiero Anna Amorosini	Guarantor of Piedmont Region Comunal Guarantor of Turin Support Structure for Guarantor of the City of Turin Support Structure for Guarantor of Piedmont Region
<b>Guarantors of Apulia</b>	Piero Rossi Elisabetta De Robertis Alessandro Pascazio	Guarantor of Apulia Region Support Structure for Guarantor of Apulia Region Support Structure for Guarantor of Apulia Region
<b>Guarantors of Sicily</b>	Pietro Valenti Daniela Russo Alfredo Grasso	Guarantor of Sicily Region Support Structure for Guarantor of Sicily Region Support Structure for Guarantor of Sicily Region
<b>AMIF Experts</b>	Maria Donatella Laricchia Salvatore Fachile Aldo Morrone	Legal Expert Expert of rights of immigration and asylum Medical Scientist
<b>Experts Collaborators of the National Guarantor</b>	Michele Miravalle Silvia Talini Antonella Calcaterra Antonio Labianco Daniele Piccione Annamaria Alborghetti Gennaro Santoro Laura Cesaris Michele Passione Alberto di Martino Ciro Tarantino	Psychiatric and disability care area/ Area of deprivation of liberty in the prison context Area of deprivation of liberty in the prison context Area of Police custody Psychiatric and disability care area/ Area of protection of health in prison Area of deprivation of liberty in the prison context Area of Police custody Psychiatric and disability care area/ Area of deprivation of liberty in the prison context Area of deprivation of liberty in the prison context Area of Police custody Area of deprivation of liberty in the prison context Area of reception and treatment of irregular migrants Area of protection of health in prison Area of deprivation of liberty in the prison context Psychiatric and disability care area/ Area of deprivation of liberty in the prison context Psychiatric and disability care area/ Area of deprivation of liberty in the prison context Psychiatric and disability care area/ Area of protection of health in prison

*Source: National Guarantor for the rights of persons detained or deprived of liberty*

## Domestic events



### Basilicata

- Participation in the national seminar "Right of access and participation of prisoners in the cultural life of the community"



### Calabria

- Speaker at the conference "Prison in Italy between security policies and international sentences"
- Meeting with the Regional Director of the Prison Administration of Calabria Liberato Guerriero, the Director of the Prison of Catanzaro Angela Paravati and the President of the Supervisory Court of Catanzaro Maria Antonietta Antonini
- Meeting with the Juvenile Criminal Chamber
- Meeting with the Mayor of Crotona
- Participation in the conference on "Penalty and universal rights"



### Campania

- Participation in the conference "Xenos. The foreigner and the voices of the city", organized by the Italian Institute for Philosophical Studies
- Meeting with the Chief Prosecutor of Naples
- Speaker at the workshop "Peace building in the Mediterranean, health of women and children migrants from war zones"
- Participation in the round table organized by the Criminal Chambers of Naples



### Emilia Romagna

- Speaker at the conference "The Decree and the emergency: cause or effect? Insecurity at the Government"
- Participation in the formal sitting of the City Council of the city of Bologna
- Speaker at the seminar meeting "Prison reform. The legislative Decrees no. 121, 123 and 124/2018" organized by the Regional Guarantor of Emilia-Romagna
- Speaker at the seminar Amicus Curiae 2019 entitled "Forever behind bars? Life imprisonment in the dialogue between the Courts"



### Friuli-Venezia Giulia

- Meeting with the Prefect of Gorizia



### Lazio

- Participation in the inauguration of the Carabinieri's academic year
- Meeting with the deputy head of DAP Lina Di Domenico at its headquarters
- Participation in the inauguration of the judicial year of the Court of Cassation
- Participation in the seminar on Human Rights "A national authority for human rights in Italy" organized by CESPI
- Participation in the conference "My voice counts - concluding event and presentation of the results of the ANFFAS project 'Capacity, we are all equal before the law', support for decision making of people with intellectual disabilities and neurodevelopmental disorders"
- Preliminary meeting with the Committee for the Prevention of Torture of the Council of Europe on the visit to Italy scheduled for 12 to 22 March 2019.
- Meeting with the liaison officer of the Instance Nationale de Prévention de la Torture (INPT) of Tunisia (NPM)
- Meeting with the Secretary General of the Presidency of the Council of Ministers
- Participation in the meeting of the Council of Europe's Committee for the Prevention of Torture with the Intra-ministerial Committee on Human Rights
- Meeting with the Presidents of the Supervisory Courts of Italy
- Meeting with representatives of the association ARCI Migranti
- Participation in the celebration of the 20th anniversary of the Flying Operation Group
- Dissemination event of the book Norms and Normativity "Standard for the deprivation of liberty of migrants" - Collection of Recommendations 2016-2018
- Meeting with representatives of the ANCI Federsanità Association
- Participation in the conference of Prison Police Unions
- Event celebrating the 167<sup>th</sup> anniversary of the State Police at the Police School of Rome
- Participation in the meeting organized by CESPI on the National Commission on Human Rights
- Participation in the seminar organized by the Department of Juvenile and Community Justice "Thirty years of experience: integrated operational models in the Lazio Region"
- Meeting with Prefect Mara Di Lullo
- Meeting with representatives of the Italian Refugee Center
- Hearing at the Human Rights Commission of the Chamber of Deputies
- Meeting with a delegation of the Office of the United Nations High Commissioner for Refugees (UNHCR)
- Meeting with the Head of the Department of Prison Administration

- Meeting with the Head of Cabinet of the Ministry of Justice
- Participation in the presentation to Parliament of the Annual Report of the Guarantor for the protection of personal data
- Meeting with Euromed representatives
- Meeting with the President of the Republic
- Participation in the conference "The right to play and practice sports for children and minors with disabilities" organized by AGIA
- Audience with the Senate of the Republic
- Participation in the presentation of the Annual Report of the Antigone Association
- Participation in the celebration of Republic Day at the Quirinale
- Participation in the celebration of the 205<sup>th</sup> Anniversary of the Foundation of the Carabinieri Corps
- Convocation to the Ministry of Foreign Affairs and Cooperation
- Participation as a Speaker at Table no. 4 entitled "The necessary treatments and abuses, bad and good practices (IPO, restraint, abandonment, taking charge)" within the "National conference for mental health. Rights, liberties and services"
- Participation in the "National mental health conference. Rights, liberties and services"
- Participation in the presentation to Parliament of the Annual Report of the Guarantor Authority for Children and Adolescents
- Participation in the meeting of the permanent Table ex Art. 8 "Charter of rights for children of detained parents" organized by the Guarantor Authority for Children and Adolescents
- Proposal submitted to the Constitutional Affairs Commission of the Chamber of Deputies
- Participation in the Feast of Prison Police Corps
- Participation in the press conference "Youth and prison" at the Chamber of Deputies of Rome
- Meeting with the Head of the Legislative Office of the Ministry of Justice
- Meeting with the Head of the Department for Civil Liberties and Immigration of the Ministry of Interior
- Meeting with the Commander General of the Carabinieri Corps Giovanni Nistri
- Meeting with the Head of State, the Minister of Justice and the Head of the Department of Prison Administration at the Prison of Rome Rebibbia
- Proposal submitted to the Constitutional Affairs Commission of the Chamber of Deputies
- Meeting with the Head of the Department of Prison Administration
- Meeting with the President of ACRI
- Meeting with the President of the Republic

# Domestic events

- Meeting with the Regional Ombudsman of the Prison Administration of Lazio - Abruzzo and Molise
- Meeting with the Director General for External Criminal Enforcement and Probation of the Juvenile and Community Justice Department
- Meeting with the Director of Office V - High Security Prisoners of the Directorate General of Prisoners and Treatment (DAP)
- Participation in the fourth meeting of the Permanent Table pursuant to Article 8 of the Memorandum of Understanding "Charter for Rights of Children of Detained Parents".
- Meeting with the deputy head of DAP Lina Di Domenico at its headquarters
- Press conference of the National Guarantor on the San Gimignano case
- Meeting with the Prefect of Rome
- Meeting with the Minister of Justice
- Meeting with the Head of the Department of Prison Administration
- Meeting with the Head of the Judicial Organization Department
- Meeting with the Head of Cabinet of the Ministry of the Interior
- Meeting with the Director of the Central Directorate of State Police Education Institutes
- Proposal submitted to the High Council for the Judiciary
- Meeting with the Minister of Justice
- Meeting with the President of the Constitutional Court
- Meeting with the President of the Republic
- Meeting with the National Forensic Council
- Study seminar entitled "Space and denied liberty" organized by the National Guarantor
- Participation in the inauguration event of the new headquarters of the association Mecenatè 90
- Meeting with a delegation of Egyptian democratic civil society
- Meeting with the President of the Republic
- Interview with the Association for Legal Studies on Immigration (ASGI)
- Meeting with the Head of the Department of Juvenile and Community Justice
- Participation in the international conference "Rising to the Challenger: A Look at Data Protection and Beyond"
- Participation in the annual meeting of the National Coordination of Supervisory Judges
- Invitation to the reading of the De Sanctis Foundation at the Finance Guard Corps headquarters
- Meeting with the Conference of Italian University Rectors
- Participation in the conference on "Education and detention" in the Senate
- Meeting with the President of the Senate of the Republic
- Meeting with the Chairman of the Independent Evaluation Body
- Meeting with the Head of Civil Liberties Department and the Prefects of Italy

- Meeting with the President of the Instance Nationale de Prévention de la Torture (INPT) of Tunisia (NPM) and a representative of his staff with the liaison officer
- National Guarantor press conference on "Vulnerabilities in prison. Reflections at the beginning of the year"
- Meeting with the Minister of the Interior
- Participation in the inauguration of the academic year of the School of the Carabinieri Corps
- Speaker at the conference "Legality and justice" organized by the University RomaTre
- Participation in the opening ceremony of the judicial year of the Court of Cassation



## Apulia

- Meeting with the Prefect of Bari
- Participation as a Speaker at the conference "Beyond bars" at the Prison of San Vittore, Milan
- Participation as a Speaker at the conference "The role of the powers restricting personal liberty in European migration policies" organized by the University of Bari



## Lombardia

- Participation in the conference "S-confinare libertà", organized by Diaconia Valdese
- Speaker at the seminar "Constitution and privacy: internet and the right to be forgotten"
- Speaker at the seminar "Beyond prison" organized by the University of Bergamo
- Participation in the conference organized by the International Studies Department of the University of Milan
- Speaker at the conference "The uncertain boundaries of prison overcrowding. The point on the state of the art" organized by the University of Bergamo
- Speaker at the conference entitled "The rejection of the foreigner"
- Speaker at the XX National Congress "Agorà penitenziaria. Prison is territory"
- Speaker at the Congress on "Hostile Life" organized by the Association "Nessuno tocchi Caino" – Hands Off Cain
- Meeting with Senator Liliana Segre at the Prison of San Vittore, Milan



## Sardinia

- Meeting with the Regional Ombudsman of the Prison Administration of Sardinia
- Participation as a Speaker at the seminar "Course in Prison Law"
- Meeting with the University Centre - University of Sassari
- Meeting with the Prefect of Nuoro



## Sicily

- Participation in a meeting with the Regional Director of the Prison Administration of Sicily



## Tuscany

- Participation in the conference "Women and Mathematics", organized as part of the project of the Comprehensive Institute "The Prince" of San Casciano Val di Pesa.
- Participation in the inauguration of the academic year of the Scuola Superiore Magistratura in the presence of the President of the Republic
- Speaker at the "Day of Solidarity, an in-depth study of the persons in prison or deprived of personal liberty, in collaboration with associations working in the field"
- Speaker at the meeting "Involuntary placement order, restraint, mental health. The guarantors of people deprived of liberty meet operators and associations"
- Meeting with the Minister of Justice
- Speaker at the national seminar of sociology of law "Silvia Corticelli" (XV edition)
- Participation as a Speaker at the conference "Merits and limits of a prison sentence" organized by the University of Florence



## Marche

- Meeting with the President of the Marche Region



## Piedmont

- Participation in the Biennale Democrazia "Invisible visible"
- Participation in the conference "Rot in jail? The role of the Guarantors of prisoners"
- Speaker at the seminar "Doing school in prison: paths of education towards an aware citizenship"
- Participation in the conference organized by the University of Turin on the theme of 41-bis

## International events



### Umbria

- Speaker at the "The network of restricted schools' debate on the educational paths in prisons"



### Veneto

- Speaker at the 31<sup>st</sup> Convention at the Franciscan Listening Center
- Speaker at the international conference "On women's rights: between violence and exploitation"
- Speaker at a training initiative of the Judiciary School of Trieste
- Meeting with the mayor of Padua and the president of the "Giotto" cooperative.
- Speaker at the "Festival dei Matti" event



### Belgium

- Participation in the seminar event "The importance of appearances: how suspects and accused persons are presented in the courtroom, in public and in the media"



### France

- Meeting with Christos Giakoumopoulos, General Director of the Rule of Law and Human Rights Unit
- Meeting with Régis Brillat, Executive Secretary of the European Committee for the Prevention of Torture of the Council of Europe (CPT)



### Spain

- Participation in the event for the conferring of the honorary Degree to Prof. Luciano Vandelli at the University of Barcelona



### Switzerland

- Participation in the international meeting for the examination of the first periodic report of Italy before the Committee on Enforced Disappearances with respect to the implementation of the UN Convention for the Protection of Persons from Enforced Disappearance (CED)
- Meeting with the high-level delegation of Palestine for consultations on the establishment of the OPCAT National Preventive Mechanism of Palestine
- Participation in the oral discussion of the first National Periodic Report (UNDOC CED/C/ITA/1) drafted by Italy on the UN Convention on Enforced Disappearances

### International NPM Coordination Meetings

- The National Guarantor participates in the webinar "NPM monitoring in times of public health crisis: exchange of experience and practices in the context of Covid-19" organized by Association pour la Prévention de la Torture (APT)
- The National Guarantor participates in the Reunión Regional Mecanismos Nacionales de Prevención de Tortura organized by UNHCHR-South America Region

**Tabella 1.5 - Formazione erogata 2019-2020**

Subject	Promoter	Headquarter
Training Day on forced returns for the Staff of the Guarantor of Sicily	National Guarantor	Palermo
Training Day on forced returns for the Staff of the Guarantor of Piedmont	National Guarantor	Turin
Workshop on legal writing at the University of Perugia. The National Guarantor gives a lecture on the methodology for writing the Reports and Recommendations, in the perspective of defining national standards	University of Perugia	Perugia
Training course on "The complaints of the Guarantor"	Dictatorate-General for Training - DAP	High School for criminal execution "Piersanti Mattarella" - Rome
Training Course for Carabinieri Officers on human rights and the role of the National Guarantor	Ministry of Defense	Carabinieri Officers School - Rome
Training Course for Carabinieri Warrant Officers on human rights and the role of the National Guarantor	Ministry of Defense	Carabinieri Officers School - Velletri (Rome)
Training day on the mandate of the National Guarantor and the protection of human rights	Dictatorate-General for Training - DAP	Training school for prison staff - Sulmona
Training course for social service professional officers of the Department of Juvenile and Community Justice	Department of Juvenile and Community Justice	Rome
Course in penitentiary law at the University of Rome "La Sapienza" on the theme "The National Guarantor of the people deprived of personal liberty"	Sapienza University of Rome	Rome
Course in Human Rights and Ethics of International Cooperation on "The Reception of Migrants and Forced Return: The Role of Guarantor Authorities".	University of Bergamo	Bergamo
Training course for social service professionals and penitentiary operators of the interdistrict office of external criminal enforcement of Sardinia	Department of Juvenile and Community Justice	Cagliari
14° Training Course for the Staff of the State Police to be qualified for employment in services of escorting people's returns	Ministry of the Interior	Fire Department Operational Training School of Montelibretti di Roma
In-training day on DGSIA software for whistleblowing management	National Guarantor	Rome
Training course for State Police officers trainees	Ministry of the Interior	Training School for State Police Officers of Trieste
Degree course of the Department of Law of the University of Rome Tor Vergata	University of Rome Tor Vergata	Roma
Training activities for the staff of the Office of the National Guarantor, the territorial Guarantors and stakeholders on "Privation of liberty and protection of fundamental rights".	National Guarantor	Bologna
Master's Degree "Prison Law and Constitution"	University of RomaTre	Rome
Training course of the Italian police headquarters on the new platform "Forced Return Management" of the State Police on the topic "Interview of the National Guarantor on the monitoring of forced returns with the immigration sections of the Italian police headquarters"	Ministry of the Interior	Rome
Course in penitentiary law: lectio magistralis on "Functions and role of the National Guarantor of the rights of persons detained or deprived of personal liberty"	University of Catania	Catania
Degree course at the University of Milan Bicocca. Training Session on the subject of detention in the regime 41-bis Prison Law	University of Milano Bicocca	Milan
Training Session on the subject Detention in the regime 41bis Prison Law	Inspectorate of the Chaplains - DAP	Rome
Bachelor's degree in law from the Federal University of Pelotas on "Human rights and the penal and penitentiary system" (online classes on platform)	Faculdade de Direito da Universidade Federal de Pelotas	Pelotas (Rio Grande do Sul) - Brazil
Training course within the initiative "Palestine - AID 10807 'Karama' - Towards a system respectful of human rights and dignity of the person".	Italian Agency for Cooperation and Development (AICS)	Jerusalem
Theamatic Webinar on "Monitoring Places of Detention and 'Do No Harm' Principle: From Theory to Practice"	Association pour la Prévention de la Torture (APT)	online

Source: National Guarantor for the rights of persons detained or deprived of liberty

**Tabella 1.6 - Eventi FAMI 2019-2020**

<b>Description</b>	<b>Promoter</b>	<b>Headquarters</b>
Course on Statistical Package for Social Science (SPSS)	National Guarantor	Rome
International Meeting "Ombudsman/NPM meeting on strengthening the independence and increasing the accountability of the FRONTEX pool of monitors"	The Greek Ombudsman	Athens
Workshop ESRC-IAA "Epo Monitoring Human Rights in Immigration Detention"	The Greek Ombudsman	Athens
Meeting with the Supervisory Judge and the Regional Guarantors on the subject "Migrants and foreign detainees: forced returns of foreign detainees, with a focus on information, training and debate with those involved in forced returns operations".	National Guarantor	Rome
Presentation of the volume: "Norms and Normativity: standards for the deprivation of liberty of migrants"	National Guarantor	Rome
Presentation of the computer platform for forced returns monitoring activity	National Guarantor	Rome
Multidisciplinary training days for the deepening of issues related to the monitoring of forced returns	National Guarantor	Palermo
Multidisciplinary training days for the deepening of issues related to the monitoring of forced returns	National Guarantor	Bari
Presentation of the publication "Norms and Normativity: standards for the deprivation of liberty of migrants"	National Guarantor	Bari
Training session addressed to the monitors of forced repatriations of the Guarantor of Piedmont Region	National Guarantor	Bari
Training session addressed to the monitors of forced repatriations of the Guarantor of Apulia Region	National Guarantor	Turin
Presentation of the volume: "Norms and Normativity: standards for the deprivation of liberty of migrants"	National Guarantor	Turin
Presentation of the portal for forced returns monitoring activity	National Guarantor	Rome
First meeting of the Napflion Group with similar bodies at European level responsible for monitoring forced returns	National Guarantor	Rome
Multidisciplinary training session aimed at monitors joining the national forced return monitoring network	National Guarantor	Rome
Workshop "The protection of health vulnerabilities in forced return procedures"	National Guarantor	Rome
Conference "Monitoring returns. Challenges for Greece and Europe"	The Greek Ombudsman	Athens

*Source: National Guarantor for the rights of persons detained or deprived of liberty*

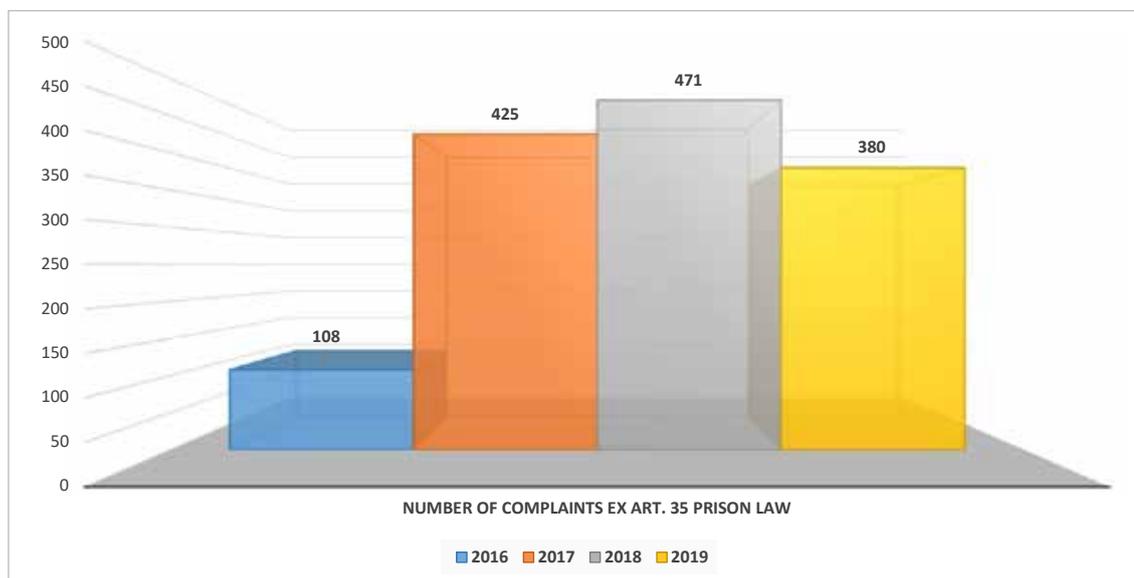
**Table 1.7 - Complaints ex Art. 35 Prison Law - Records 2016-2019**

Year	Number of complaints ex art. 35 Prison Law
2016	108
2017	425
2018	471
2019	380
<b>Total</b>	<b>1,384</b>

As of 31 December 2019 the Committee has reviewed all the Complaints ex Art. 35 Prison Law

Source: National Guarantor for the rights of persons detained or deprived of liberty

**Chart 1.1 - Complaints ex Art. 35 Prison Law - Records 2016-2019**



Source: National Guarantor for the rights of persons detained or deprived of liberty

**Table 1.8 - Complaints ex Art. 35 Prison Law divided by place of origin - Year 2019**

<b>Prisons</b>	<b>Number of Complaints ex Art. 35 Prison Law</b>	<b>of which under 41- bis</b>
Oristano - "Salvatore Soro" Prison	20	
L'Aquila - Prison	17	13
Tolmezzo - Prison	14	5
Spoletto - Prison	13	12
Opera - "ICR" Prison	11	1
Parma - Prison	11	2
Turin - "G. Lorusso" Prison	10	
Cuneo - Prison	10	9
Catanzaro - "Ugo Caridi" Prison	10	
Naples - Secondigliano - "Pasquale Mandato" Prison	9	
Sassari - Prison "Giovanni Bacchiddu"	9	6
Novara - Prison	8	5
Terni - Prison	7	2
Teramo - Prison	7	
Sanremo - Prison NC	7	
Lecce - Prison NC	7	
Reggio nell'Emilia - Penal Institutes - Prison	7	
Ferrara - "Costantino Satta" Prison	6	
Milan - San Vittore - "Francesco Di Cataldo" Prison	5	1
Siracusa - Prison	5	
Rome - Rebibbia - "Raffaele Cinotti" NC Prison	5	
Pesaro - Prison	5	
Matera - Prison	4	
Agrigento - Prison	4	
Bologna - "Rocco D'amato" Prison	4	
Santa Maria Capua Vetere - "F. Uccella" Prison	4	
Rossano - NC Prison	4	
Ancona - Prison	3	
Caltanissetta - Prison	3	
Caltagirone - Prison	3	
Prato - Prison	3	
Viterbo - NC Prison	3	
Bari - "Francesco Rucci" Prison	3	
Velletri - Prison	3	
Vibo Valentia - NC Prison	3	
Palermo - "Pagliarelli" Prison	3	
Alessandria - "San Michele" Prison	3	
Pavia - Prison	3	
Reggio Calabria - Arghillà - Prison	3	
Porto Azzurro - "Pasquale De Santis" Prison	3	
Latina - Prison	3	
Frosinone - "Giuseppe Pagliei" Prison	3	
Nuoro - Prison	3	
Verona - "Montorio" Prison	2	
Foggia - Prison	2	
Pescara - Prison	2	
Lanciano - Prison	2	
Messina - Prison	2	

\* following

<b>Prisons</b>	<b>No. of Complaints ex Art. 35 Prison Law</b>	<b>of which under 41-bis</b>
La Spezia - Prison	2	
Padua - Prison	2	
Augusta - Prison	2	
Asti - Prison	2	
San Gimignano - Prison	2	
Genoa - Marassi - Prison	2	
Melfi - Prison	2	
Voghera - NC Prison	2	
Piacenza - Prison "San Lazzaro"	2	
Campobasso - Prison	2	
Uta (Cagliari) - Prison "Ettore Scaldas"	2	
Trapani - Prison	2	
Palermo - Prison "Ucciardone"	2	
Rome - Rebibbia - Prison	2	
Ivrea - Prison	2	
Genoa - Pontedecimo - Prison	2	
Massa - Prison	1	
Sulmona - Prison	1	
Rome - "Regina Coeli" Prison	1	
Avellino - Bellizzi - "Antimo Graziano" Prison	1	
Rome - Rebibbia - "III° casa" Prison	1	
Reggio Calabria - "Giuseppe Panzera" Prison	1	
Naples - Poggioreale - "Giuseppe Salvia" Prison	1	
Pordenone - Prison	1	
Paola - Prison	1	
Rovigo - Prison	1	
Giarre - Prison	1	
Imperia - Prison	1	
Carinola - "G.B. Novelli" Prison	1	
Busto Arsizio - Prison	1	
Barcellona Pozzo di Gotto - Prison	1	
Chieti - Prison	1	
Lucera - Prison	1	
Alessandria - "G. Cantiello" Prison	1	
Catania - Piazza Ianza - Prison	1	
Nuoro - "Mamone-Lodè" Prison	1	
Bollate - "Il CR" Prison	1	
Aversa - "F. Saporito" Prison	1	
Venice - Giudecca Female Prison	1	
Larino - Prison	1	
Cremona - Prison	1	
Bergamo - Prison	1	
Vigevano - Prison	1	
Catania - Bicocca - Prison	1	
Cosenza - "Sergio Cosmai" Prison	1	
Rome - Rebibbia - Female Prison	1	
Non Specified	37	
<b>Total</b>	<b>380</b>	<b>56</b>

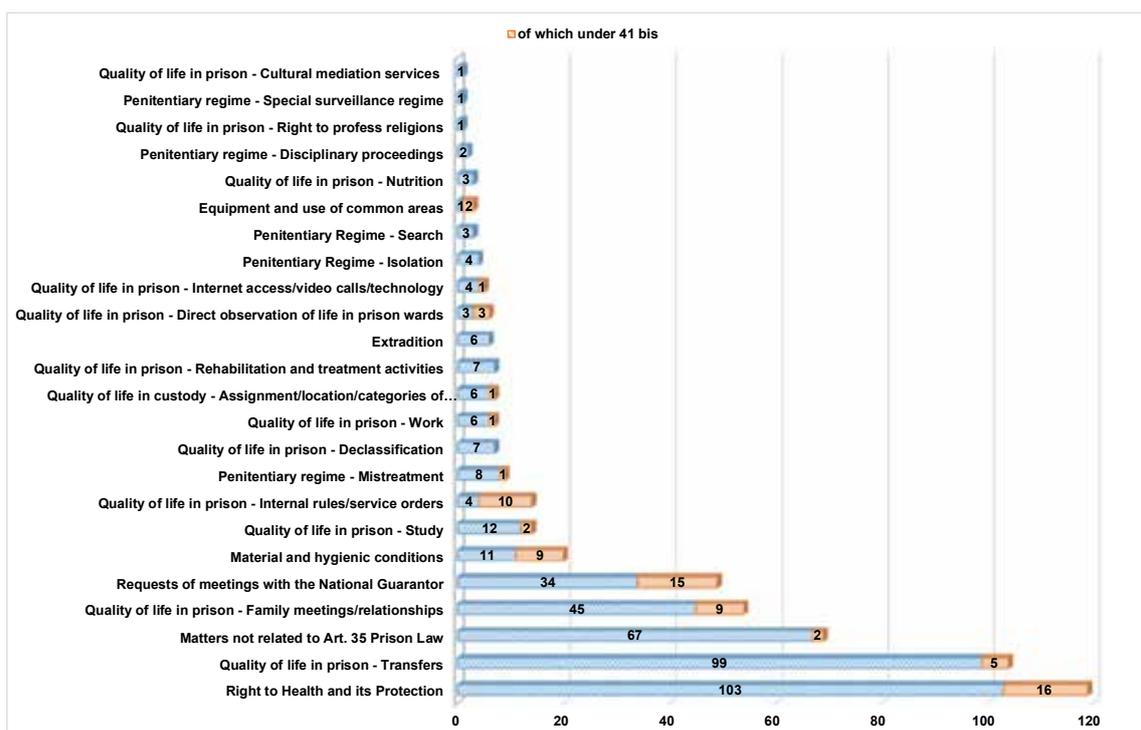
Source: National Guarantor for the rights of persons detained or deprived of liberty

**Table 1.9 - Complaints ex Art. 35 Prison Law received by the National Guarantor, divided by areas of criticalities - Year 2019**

Areas of Criticalities*	No. of complaints ex Art. 35 Prison Law	
	Law	of which under 41-bis
Right to Health and its Protection	119	16
Quality of life in prison - Transfers	104	5
Matters not related to Art. 35 Prison Law	69	2
Quality of life in prison - Family meetings/relationships	54	9
Requests of meetings with the National Guarantor	49	15
Material and hygienic conditions	20	9
Quality of life in prison - Study	14	2
Quality of life in prison - Internal rules/service orders	14	10
Penitentiary regime - Mistreatment	9	1
Quality of life in prison - Declassification	7	
Quality of life in prison - Work	7	1
Quality of life in custody - Assignment/location/categories of restricted persons	7	1
Quality of life in prison - Rehabilitation and treatment activities	7	
Extradition	6	
Quality of life in prison - Direct observation of life in prison wards	6	3
Quality of life in prison - Internet access/video calls/technology	5	1
Penitentiary Regime - Isolation	4	
Penitentiary Regime - Search	3	
Equipment and use of common areas	3	2
Quality of life in prison - Nutrition	3	
Penitentiary regime - Disciplinary proceedings	2	
Quality of life in prison - Right to profess religions	1	
Penitentiary regime - Special surveillance regime	1	
Quality of life in prison - Cultural mediation services	1	
<b>Totale</b>	<b>515</b>	<b>77</b>

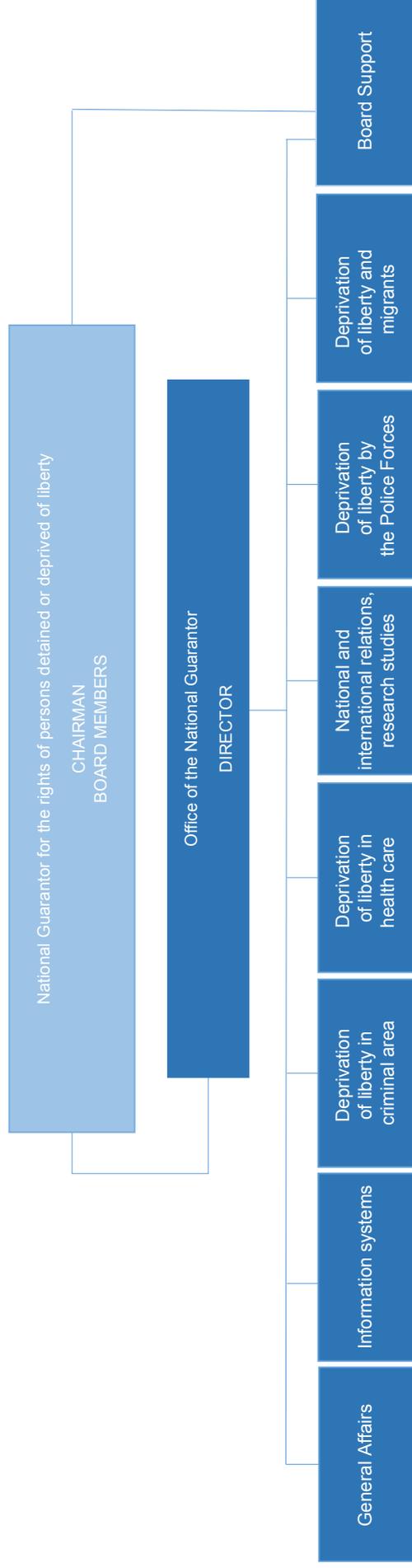
\* For each complaint may correspond to one or more areas of concern  
 Source: National Guarantor for the rights of persons detained or deprived of liberty

**Grafico 1.2 - Complaints ex Art. 35 Prison Law received by the National Guarantor, divided by areas of criticalities - Year 2019**



Source: National Guarantor for the rights of persons detained or deprived of liberty

Chart 7.1 - Organization Chart of the Office of the National Guarantor



## section 2. Organization Chart of the Office

**Table 7.1 - Office Composition**

<b>Staff for Areas/Roles and Qualifications</b>			
<b>Area/Profile - Role/Qualification</b>	<b>Women</b>	<b>Men</b>	<b>Total</b>
<b>Central Functions, Area 2</b>	<b>2</b>	<b>3</b>	<b>5</b>
Administrative assistant		2	2
IT Assistant	1		1
Legal Assistant	1	1	2
<b>Central Functions, Area 3</b>	<b>6</b>	<b>1</b>	<b>7</b>
Administrative Director	1		1
Administrative Officer	1		1
Accounting Officer	1		1
Social Service Professional	1		1
Pedagogical Legal Officer	1	1	2
Language Officer	1		1
<b>State Police, managerial role</b>		<b>1</b>	<b>1</b>
Deputy Commissioner		1	1
<b>Prison Police, Agents and Assistants role</b>		<b>7</b>	<b>7</b>
Assistant Chief Coordinator		1	1
Special Agent		3	3
Agent		3	3
<b>Total</b>	<b>8</b>	<b>12</b>	<b>20</b>

Source: National Guarantor for the rights of persons detained or deprived of liberty

**Table 7.2 - AMIF Consultants**

<b>Name</b>	<b>Professional Activity</b>	<b>Type of Collaboration</b>
Maria Donatella Laricchia	Consultant	Legal Assistant
Dario Pasquini	Publicist journalist	Communication Expert
Salvatore Fachile	Lawyer	Expert jurist on immigration and asylum law
Antonio Marchesi	Full Professor	Expert in international human rights protection
Agatino Lipara	Statutory Auditor	Auditor
Michele Gorga	Lawyer	Legal Expert
Silvia Casiraghi	Consultant	Expert in European project reporting
Aldo Morrone	Consultant	Forensic physician expert in the application of the Istanbul Protocol UN 2004

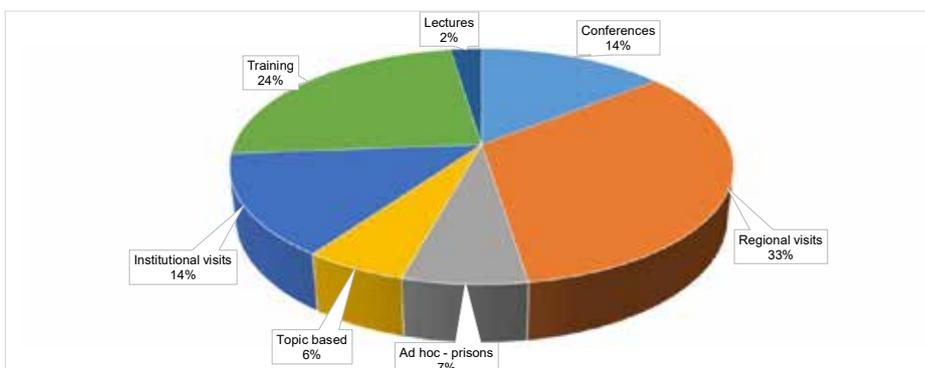
Source: National Guarantor for the rights of persons detained or deprived of liberty

**Table 7.3 - Balance sheet as of 31/12/2019**

Item of expenditure	Amount
<b>Staff expenses</b>	
GROSS Compensation for members of the Guarantor Board	135,863.64
on which net	100,176.00
Personal Income Tax	35,687.64
GROSS Salaries for Board Members of the Guarantor's Office	borne by the home Administration
<b>Operating costs</b>	
Expenses for publication of annual report	25,180.80
Printing expenses for publications and translation of the thesaurus volume	25,088.08
Publication fees	5,500.00
Press review service	9,057.00
Office operating costs	9,310.48
<b>Total</b>	<b>74,136.36</b>
<b>Missions:</b>	
→ Conferences	9,987.90
→ Regional visits	23,274.62
→ Ad hoc - prisons	4,716.89
→ Topic based	3,874.66
→ Institutional visits	9,780.78
→ Training	16,680.78
→ Lectures	1,665.24
<b>Total</b>	<b>69,980.87</b>
<b>Total Costs</b>	<b>279,980.87</b>

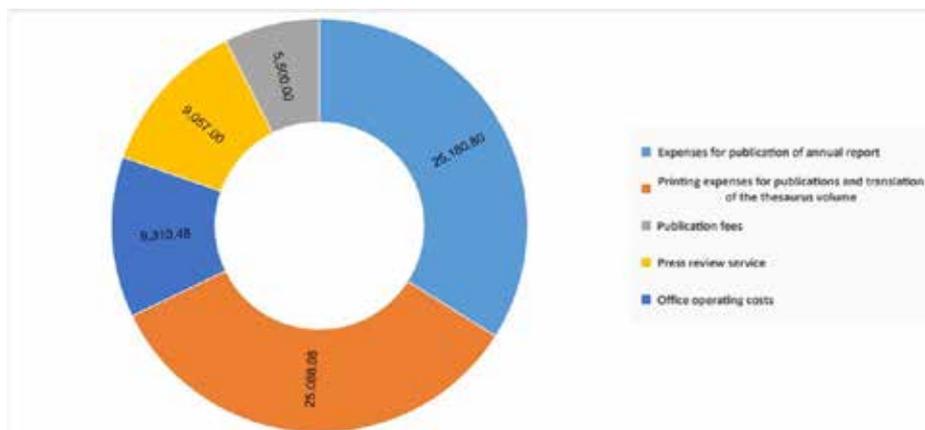
The budget concerns PG1 (Management Plan 1) of the relevant budget chapter.  
 The balance sheet for PG2 is on page 401.  
 Source: National Guarantor for the rights of persons detained or deprived of liberty

**Chart 7.2 - Travel expenses 2019**



Source: National Guarantor for the rights of persons detained or deprived of liberty

**Chart 7.3 - Operating expenses year 2019**



Source: National Guarantor for the rights of persons detained or deprived of liberty

**Table 7.4 - List of pro-bono experts for consulting assignments and for monitoring activities in places of deprivation of liberty (updated 22/02/2019)**

<b>Psychiatric and disability assistance area</b>			
Nadia	Aioub	Maria Grazia	Marinangeli
Calogero	Anzallo	Michele Giacomo Carlo	Passione
Maria Giulia	Bernardini	Daniele	Piccione
Antonella	Calcaterra	Paola	Poeta
Luigi	Colaiani	Pieritalo Maria	Pompili
Francesca	Columbano	Adriano Raffaele	Principe
Carlotta	Craveri	Giovanni	Rossi
Giovanna	Cuzzola	Ciro	Tarantino
Alberto	di Martino	Giovanni	Torrente
Giovanna	Fanci	Pier Luca	Zuppi
Anna	Lorenzetti		
<b>b) Area of health protection in prison</b>			
Laura	Baccaro	Michele	Miravalle
Alessandra	Ballerini	Pieritalo Maria	Pompili
Antonella	Calcaterra	Daniela	Ronco
Laura	Cesaris	Libianchi	Sandro
Maria Lucia	Dell'Anna	Ciro	Tarantino
Ludovico	Grasso	Sonia	Viale
Maria Grazia	Marinangeli		
<b>c) Area of reception and detention of irregular migrants and the completion of related procedures</b>			
Alessandra	Ballerini	Carlotta	Giordani
Ilaria	Boiano	Sergio	Grossi
Francesca	Cancellaro	Maria Donatella	Laricchia
Gabriele	Cinti	Elisa	Maimone
Ettore	D'Ascoli	Alessandro	Pascasio
Elisabetta	de Robertis	Gennaro	Santoro
Maria Lucia	Dell'Anna	Sonia	Viale
Chiara	Fusari		
<b>d) Police's custody area</b>			
Annamaria	Alborghetti		
Carlotta	Giordani		
Antonio	Labianco		
Ferdinando	Lajolo di Cossano		
Libianchi	Sandro		
Silvia	Talini		
<b>e) Area of deprivation of liberty in criminal law for adults or minors</b>			
Yasmine	Adel Refaat	Antonio	Labianco
Annamaria	Alborghetti	Maria Donatella	Laricchia
Calogero	Anzallo	Anna	Lorenzetti
Laura	Baccaro	Michele	Miravalle
Maria	Brucale	Maria Domenica Liliana	Montereale
Laura	Cesaris	Alessandro	Pascasio
Gabriele	Cinti	Michele Giacomo Carlo	Passione
Laura	Crescentini	Giovanna	Perna
Elisabetta	de Robertis	Daniele	Piccione
Luca	Decembrotto	Paola	Poeta
Alberto	di Martino	Daniela	Ronco
Giovanna	Fanci	Nicola	Rossi
Giulia	Fiorelli	Gennaro	Santoro
Chiara	Fusari	Silvia	Talini
Ludovico	Grasso	Giovanni	Torrente
Sergio	Grossi	Giulio	Vasaturo

Source: National Guarantor for the rights of persons detained or deprived of liberty

# Reports from Regional Guarantors



The Abruzzo region appointed the Regional Guarantor for the rights of persons detained or deprived of liberty for the first time on 23 July 2019, with the Law no. 35 of 23 August 2011.

In the regional territory there are 8 institutes and one REMS (Residence for the Execution of Security Measures) with a fluctuating population of about 2,000 inmates in 2019. The average distribution by institute is: Avezzano 93, Chieti 122, L'Aquila 185, Lanciano 234, Pescara 358, Sulmona 403, Teramo 381, Vasto 113.

In his first few months of activity, the Guarantor paid 15 visits to the Abruzzo prisons, participating in meetings with about 190 inmates. In the prison of L'Aquila, on 12 August 2019, just a few days after taking office, he allowed the meeting of an inmate under Art. 41-bis prison regime with his daughter, who would have turned 12 soon, enhancing an important moment of affection.

The guarantor activated and promoted training within the institutes, encouraging enrollment in courses of various types and levels. In addition, 5 inmates of the Pescara prison enrolled at the University of Chieti-Pescara and 6 inmates of the Teramo prison enrolled at the University of Teramo.

In September, he brought the head of Urology Department of Chieti to the workhouse in Vasto, for two specialist consultations for inmates suffering from serious pathologies.

In December, he participated in the Christmas greetings in the prison of Teramo and Chieti, meeting over 100 inmates.

On 17 January 2020, at the University of Chieti, a protocol of understanding was signed between the Regional Guarantor, the Rector of the University and the director of the Chieti Prison, aimed at the observation of subjects affected by paraphilias.

At the beginning of 2020, he brought entrepreneurs to the Vasto workhouse to activate a collaboration, aimed at producing semi-finished products in the tailoring workshops present in the institute.

Noting a lack of attention to the prisoner's right to health, the Guarantor promoted the creation of electronic health records for institutions.

In his first months of activity, the Guarantor mainly focused on the inmates' affectivity and right to health.

The Guarantor also donated four computers to the Teramo and Chieti prisons to encourage training and Skype connection with the prisoners' families. This initiative is to be extended also to other prisons, given the availability of the Regional Council.

<https://www.crabruzzo.it/contenuti/garante-delle-persone-sottoposte-misure-restrittive-della-libert%C3%A0-personale-0>



The Calabria Region appointed the Regional Guarantor for the rights of persons detained or deprived of liberty with Regional Law no. 1 of 29/01/2018 and the appointment procedure was completed with the Decree of the President of the Regional Council no. 5 of 30/07/2019. The work of the Guarantor, therefore, encompasses only a few months of activity. Nonetheless, it was possible to pay monitoring visits to the 12 Calabrian prisons, as well as to the CARA-Regional Hub of Isola Capo Rizzuto (KR) (National Asylum Support Service). A visit to the REMS of Santa Sofia d'Epiro (CS) as well as to other places of deprivation of liberty are scheduled.

The total number of complaints or notifications received by the Guarantor in this first phase is 98, divided as follows by penitentiary institutions: 18 by the "G. Panzera" of Reggio Calabria, of which 7 from "Arghillà" and 11 from "S. Pietro"; 9 from Palmi; 10 from Vibo Valentia; 13 from Catanzaro-Siano; 5 from Crotone; 16 from Rossano; 9 from Cosenza; 8 from Paola; 7 from Castrovillari; 1 from the ICAT of Laureana di Borrello; 2 from Locri.

The main areas of concern were mostly related to problems regarding the protection of health in prison, especially for people with psychiatric problems; secondly, to transfers related to the difficulties of meetings with family members; therefore, to disciplinary sanctions and the application of the special surveillance regime; then, the lack of treatment and work in prison; finally, to the declassification for people restricted in AS1 (High Security) circuits, under the *Art. 41-bis* of the Prison Law regime, while no significant issues were reported regarding the right to religious worship.

In December 2019, in order to identify the most effective possibilities of systemic intervention on these critical elements, the Guarantor called "The General States of Criminal Enforcement in Calabria", which was attended by all the local institutions that interact with the complex problems of the Calabrian penitentiary system: the Prison Administration, the Supervisory Judiciary, the Regional Departments of Health and Training, Labor and Social Policies, Universities, the Third Sector and the trade associations of entrepreneurs.

Following the recommendations made by the Guarantor, the Permanent Regional Observatory for Penitentiary Health was restarted, while the Permanent Regional Observatory for Prison Work and Social Reintegration and the Regional Penitentiary University Center will be set up shortly. Lastly, the signing of the regional protocol «Nati per leggere», in favor of "parenting in prison" is also underway.

In regard to the forms of institutional communication, a web page was specifically set up on the website of the Regional Council of Calabria, while the biggest impact of visibility of the activity of the Guarantor is ensured by social media, including a dedicated Facebook page.

The monitoring of the Guarantor in the places of deprivation of liberty also included the CARA-

Regional Hub of Isola Capo Rizzuto (KR) which, following the renewed management, did not present particular issues in terms of protection of the fundamental rights of foreign citizens, apart from the problems connected with the abolition of humanitarian protection permit.

<http://www.consiglioregionale.calabria.it/portale/Istituzione/GaranteDetenuti/GaranteDetenuti>



In 2019, the Office of the Guarantor for persons deprived of liberty of Campania received 1.131 complaints from the 18 prisons in the region, 634 of which came through the prisons' management reporting and 497 through letters sent by inmates.

In detail, more requests arrived from the Prison of Naples Poggioreale (356), followed by the Prisons of Naples Secondigliano (297), Santa Maria Capua Vetere (169), Carinola (61), Fuorni (51), Benevento (47), Bellizzi Irpino (36), Aversa (32), Arienzo (19), Ariano Irpino (16), Sant'Angelo dei Lombardi (8), Vallo Della Lucania (6), Eboli (4), Lauro (2), Airola (5), and the female Prison of Pozzuoli (22).

Taking charge of the prisoner occurred with one or more actions resulting from the first evaluation of the case and its circumstances.

Most of the inmates who requested the interview were met and listened to many times, even after the problem of the request had been overcome totally or partially.

The cases dealt with, despite their heterogeneity, mainly concerned: the right to health and its protection (429); transfers (211); re-education and treatment activities (96); working issues (93); interviews and relationships with family members (87); the material and hygienic conditions (53); mistreatment (45); internal regulations or service orders (39); disciplinary procedures, sometimes deemed unjustified or inadequate (32); declassification (26); the food which often does not guarantee adequate nutrition for prisoners suffering from particular pathologies (21); requests to be able to access the internet and to use technological tools both for study needs, for meetings with family members or interviews with magistrates (19); extraditions (12); the special surveillance regime (11); interviews with the National Guarantor (6); searches (5); the right to religious worship (1).

During 2019, there were multiple visits to prisons for adults and minors.

Among the various critical elements that emerged in the prisons of Campania, health care remains the main one.

Unfortunately, it must be noted that the right to health remains a pipe dream for the Neapolitan prison population and more generally for that of Campania. In this regard, the Office pointed out the need to urgently implement the presence of specialized nurses in prisons in the

afternoon shift, in order to provide adequate health care within 24 hours.

Furthermore, the Office condemned the difficulty for doctors to take care of detainees on a constant basis due to their lack of stabilization.

Finally, the need to purchase defibrillators, indispensable life-saving devices, was underlined. In this regard, it should be noted that discussion tables have been set up, attended by the representatives of the sanitary area of the prisons of the Municipality of Naples, the general director of ASL Napoli I Centro, the head of the translation unit and the President of the Supervisory Court of Naples.

Thanks to the constant use of Facebook, the office has significantly increased its visibility by making more people participate in the activities carried out. Furthermore, as in the previous year, the initiatives implemented were constantly disseminated through press releases. The mapping of the Campania prison population is computerized. The Office uses IT documentation created and regularly updated.

Regarding the custody suites of the police, during the visits held in 2019, no issues were found. The Office was not aware of any critical events related to the use of the *taser*.

During 2019, reports related to the area of deprivation of liberty and health were received mainly from subjects suffering from psychiatric disorders. They complained of having obtained provisions to be transferred to the REMS but, despite this, continued to serve their sentence unjustly in prisons.

Lastly, the visits in the health field made by the Guarantor or by his support structure were carried out on a fortnightly basis at the psychiatric joints, and on a weekly basis at the SAI (Intensive Care Service). There were 37 health-related visits outside the detention area: AORN Cardarelli (18), San Paolo Hospital (3), Cotugno Hospital (3), Ospedale del Mare (2) and CTO Naples (2). The remainder took place in Campania's four REMS (two provisional facilities) Mondragone (3), Vairano Patenora (2) (two permanent facilities), Calvi Risolta (2) and San Nicola Baronia (2).

<https://www.cr.campania.it/garante-detenuiti/>



During 2019, the Office of the Guarantor for the rights of persons detained or deprived of liberty of the Emilia-Romagna Region received 195 applications regarding the prison situation, with an increase of 24% compared to 2018.

The correspondence between inmates and the Office was intense; they needed to present written complaints and requests for confidential meetings to require action from the Guarantor. About 100 meetings were held, of which 74 on request, mostly on the initiative of the Guarantor, during which the subjects of the reports were also investigated. Quantitatively, the critical issues most brought to the attention of the Office were related to the disregarded principle of territoriality in the execution of the sentence and all the problems that ensued, especially difficulties in family relationships and the decreased possibilities of social reintegration. The phenomenon of 'passive transfer' and removal from places of residence was quite present and had also involved several women, estranged from their family and loved ones.

One of the most common subject in the reports was the relationship with the Supervisory Judge, especially regarding the response times to the requests for early release.

The health complaints highlighted personal health conditions considered incompatible with detention, movement difficulties due to the presence of architectural barriers, hygienic and environmental deficiencies, unavailability of specific foods or dietetic products.

There were no complaints about the food quality, but in the meetings it was reported as poor. The prison commissary was criticized for its prices, considered too high.

As for the work in prison, its scarcity was generally complained about. The allocation methods were also considered unsatisfactory. The recent provision that excluded prisoners from accessing unemployment benefits (NASPI) at the end of their work periods, led to several requests for intervention from social care institutions and the INPS (National Social Welfare Institution).

The number of applications received by each prison is divided as follows: prison of Piacenza (23), Parma (12), Reggio-Emilia (44), Modena (34), by the prison of Castelfranco Emilia (34), Bologna (24), Ferrara (2), Forlì (15), Ravenna (3), Rimini (3) and one from the juvenile prison of Bologna.

Many requests came from the prison of Reggio Emilia, presenting environmental problems and difficulties in relation with the Supervisory Office, due to a serious shortage of staff. It was also important to emphasize the role of the municipal Guarantors of Bologna, Ferrara, Parma and Piacenza, involved with the inmates coming from those prisons and whose activities were not included in the list above.

## Monitoring and recommendations

Thirty-five visits were paid to adult prisons to see the facilities, conduct confidential meetings with inmates or check on their prison conditions. The outcomes of the recommendations were positive in some specific cases, such as the cessation of a situation considered by the Guarantor as 'de facto isolation' and the painting of 2 detention sections which appeared in unacceptable conditions.

On the other hand, general problems highlighted several times in various situations have not yet been solved. For example, the Guarantor noted that the regional territory lacked an institution with reduced custody for imprisoned mothers and that the region lacked a prison with a nursery. The report of the presence in prison of 2 young mothers with their newborn children prompted the placement in an alternative measure.

## Health and deprivation of liberty

During 2019, the issue of mental health in prison received particular attention. At the tables convened for the implementation of psychiatric assistance in prisons, the Guarantor expressed his concern for the risk of overlapping safety issues with mental distress. The concept of mental health based on the creation of a prison environment capable of maintaining the psychic balance of people, guaranteeing the possibility of movement in open spaces for everyone, better rooms and toilets, training, work, and cultural activities is not yet realized.

Regarding the issue of health in prison in Emilia-Romagna, the Guarantor initiated a discussion with the Regional Assistance Service - Prison Area of the Region, on the management of the computerized medical record and the monitoring of diagnostic data in prison health services. The view of the disaggregated data, referring to each individual prison, highlighted important differences that made it necessary to address and coordinate an intervention for a more uniform compilation methodology.

Furthermore, the Guarantor underlined the observation of the European Committee for the Prevention of Torture in the report on the visit carried out in Italy in 2016, which recommended the set-up of a special register, possibly electronic, to obtain a comprehensive overview of the situation regarding the injuries of the detainees observed both on arrival and during detention. The Guarantor was therefore invited to the Regional Round Tables of discussion and coordination of health in prison, committing on overcoming the critical issues mentioned above.

For a period of time, the Guarantor also extended the monitoring activity to situations of deprivation of liberty and health by carrying out in 2019 two visits to psychiatric facilities, 1 visit to a psychiatric residence, 1 visit to the REMS and 1 visit to a residential facility for the elderly. The focus was specifically on "restraint" and no critical issues were found.

The Office dealt with three reports received from guests in psychiatric structures, also organizing an *ad hoc* visit.

## Monitoring of repatriations and places of stay for foreigners

As part of the implementation of the AMIF project Agreement, the expulsion of a foreign citizen in the pre-return and pre-departure phases was monitored from the prison of Ferrara to the airport of Bologna. The temporary detention rooms of the “Guglielmo Marconi” airport in Bologna were found in good conditions.

In addition, the regional Guarantor paid a visit to the hub in Via Mattei in Bologna, which had changed its intended use at the end of 2019, going from First Reception Center to Extraordinary Reception Center. The Guarantor was able to ascertain that improvements were made in the structure compared to the visit carried out in 2018. At the time of the visit there were 200 male adults from Pakistan, Mali, Senegal, Nigeria, Guinea and Iran. The hub’s managers highlighted the intention to keep the number of people below the overcrowding threshold, allowing only an acceptable and appropriate number, in line with the places available.

## Data bank management

For some years now, the office has been using an IT application to manage the requests collected and the procedures launched *ex officio*. Each document related to an instance is inserted and registered and thus becomes part of a dematerialized file. Access to the system is personal and every single operation is tracked. Therefore, it is possible to trace the access to the files and what type of operation was carried out at any time. During 2019, in addition to the anti-corruption document already applied by the Office, an ISO 9001 quality process was launched.

## Communication

For communication to the public, the Guarantor’s Office uses an interactive website, at the address [www.assemblea.emr.it/garante-detenuiti.it](http://www.assemblea.emr.it/garante-detenuiti.it), within the portal of the Emilia-Romagna Region. The website was updated in 2019 with a more immediate URL address than the previous version, which had a single access page for all three guarantee figures of the Emilia-Romagna Region (the Guarantor of persons deprived of liberty, the Guarantor for childhood and adolescence and the Ombudsman). The contents have also been reorganized, to convey the activity of the Guarantor even more clearly.

Three public conferences were organized to raise awareness of the activities of the Guarantor’s Office and contribute to the promotion of the culture of rights in society.

As every year, training courses have been launched for prison workers, specifically on de-escalation techniques, the cycle of aggression, the climate, attitudes, words to use, behaviors to avoid. In two training days, 50 operators were involved.

## Collaborations

In 2019, a collaboration was activated with ANCI Emilia-Romagna aimed at promoting relationships between the Prisons and the Municipalities for the implementation of Municipal

Services in prisons and the diffusion of the culture of legality in schools. The Office of the Guarantor partnered with the National Association of civil status and registry officers, to carry out training sessions about the right for detained persons to maintain or change their domicile address, depending on their specific situation.

<https://www.assemblea.emr.it/garante-detenuti>



In 2019, reports and written requests were sent by inmates, their families, associations and lawyers. The issues addressed included transfer requests, 4 health problems, 7 meeting requests, 2 prison lighting problems, 2 mistreatments, 3 rights to study, 1 receipt of correspondence, 1 internal regulation, 1 work outside prison, 1 religious cult, 3 lack of re-education work in prison (in particular for inmates pursuant to article 41-*bis* of the Prison law).

In Friuli-Venezia Giulia there are also municipal Guarantors for the rights of the persons detained or deprived of liberty (Udine and Trieste) who meet them and collect their requests.

The Office received 23 reports, divided as follows: 1 from the prison of Gorizia, 1 signed by all the prisoners and concerning the issues of the facility, 4 from the prison of Pordenone, 15 from the prison of Tolmezzo, 2 from the prison of Trieste. There was also a report sent by an invalid person in home detention, living in Udine.

Two visits were made to the prison of Tolmezzo (followed by meetings with the inmates/prisoners), one to the prison of Pordenone and one to the prison of Udine. The issues reported and ascertained were brought to the attention of the Directors of the Institutes and to the various Authorities (DAP, National Guarantor, Supervisory Judges). There is no confirmation on the outcomes of the recommendations made, nor have regional tables been set up on critical issues.

The main problems encountered are as follows:

- difficulty in managing several facilities by the Directors of the regional prisons (3 out of 5 Institutes),
- difficult living conditions of the inmates (overcrowding, degradation, etc.) also due to the old age of many facilities,
- lack of socio-educational staff and prison police,
- dysfunctions in health care,
- critical situation, due to the presence of the “protected” section in Pordenone,

- lack of work for inmates pursuant to article 41-*bis*, which does not allow to evaluate their rehabilitation process (Tolmezzo).

The only CPR (Immigration Removal Center) in Friuli-Venezia Giulia, in Gradisca d'Isonzo, was inaugurated at the end of December 2019 and no new openings are planned.

No visits were made to the security rooms of the police, and there is no report of critical events related to the use of the taser, as well as related to deprivation of liberties or health. A problem of severe psychological distress was found in an inmate of the prison of Pordenone.

The Office also received reports of health problems by some inmates.

The web page of the Regional Guarantor (which protects persons deprived of liberty, minors and persons at risk of discrimination) has been updated to make it more functional, also following the establishment of the new holder of the office, which occurred on 1 October 2019. The Guarantor has no social communication channels, relying only on press releases, also published on the website.

The Office uses a confidential protocol, also for privacy reasons, in relation to the delicate subject matter addressed.

<https://www.consiglio.regione.fvg.it/cms/pagine/garante-diritti-persona/>



### **Thematic area and number of reports/complaints**

Embassy/Consulate 6, educational area 4, conditions of detention 46, extradition/expulsion 15, security measure 10, alternative measures 37, social benefits 15, internal issues 27.

Administrative matters (IDs/registry certificates/etc.) 18, legal issues (lawyers/sentences/proceedings/etc.) 32, reintegration (work/accommodation/etc.) 8, interview request 20, healthcare 77, school/university 106, transfer 65, other 24, for a total of 510 reports/complaints.

### **Institutes and numbers of reports**

Cassino 14, Civitavecchia remand Prison 76, Civitavecchia prison 14; Civitavecchia female prison 1; Frosinone 16; Latina prison 5; Latina female prison 10; Rebibbia third prison 2; Rebibbia prison 44; Rebibbia female prison 106; Rebibbia new prison 71; Regina Coeli 29; Rieti 15; Velletri 18; Viterbo 59; REMS 9; for a total of 489

*National Guarantor: «As part of the monitoring visits carried out in prisons for adults and minors, what (if any) were the results of the recommendations made, on a regional or national level? - Have regional “tables” been set up for discussions on these critical elements?»*

In addition to the Regional Observatory on penitentiary health (established by the Lazio Region as required by the Prime Ministerial Decree of 2008) which meets on a regular basis, joint technical tables (Guarantor, Local Health Department, Psychiatric Institutes) have been established on penitentiary health in all the Local Health Units competent for the various psychiatric Institutes of Lazio. At present, the technical Tables of Viterbo, Civitavecchia and Rieti are particularly active.

*National Guarantor: «Have there been any updates regarding the institutional web page (new address, for example?) Can you provide news on other social communication channels (Facebook, YouTube, twitter, etc.) possibly used? Which of the forms of communication adopted have had the greatest impact on the visibility and activity of the office?»*

There have been no substantial updates to the institutional web page. The Guarantor of the Lazio Region has a Facebook page: @garanteprivatilibertalazio, a Twitter account @Garantedetenuti, a YouTube channel ([https://www.youtube.com/channel/UCmAdaSHpcKECH\\_SdmSbEXrA](https://www.youtube.com/channel/UCmAdaSHpcKECH_SdmSbEXrA)), and regularly publishes, via mailing-list, a newsletter to which users can subscribe through the website.

Among the forms of communication adopted, the one that probably had the greatest impact on the visibility and activity of the office was probably the newsletter.

*National Guarantor: «Do you manage or use computerized databases related to the people, territorial facilities or Office activities?»*

We do not manage databases directly, but we use information and data from the Stats section of the Ministry of Justice related to the numbers, characteristics and flows of prisoners (adults and minors) present in prisons, and to the structural and organizational situation of the individual institutions, through the prisons' information sheets updated periodically by the DAP (Department of Prison Administration).

We also have some recently implemented monitoring activities concerning hospitalizations, Involuntary Placement Orders and the situation of the Psychiatric Services, as well as a regular relationship with the Health Department of the Lazio Region which provides us with information regarding hospitalizations, attendance and discharges in REMS.

The data and information collected are also processed to update the statistical section of our website. We have implemented an internal database with MS Access for the computerized management of visits, contacts and reports processed by the office with the related actions and the results that are generated. The data is treated anonymously.

*National Guarantor: «Based on the realities present in the area of competence, have you carried out monitoring activities with respect to places dedicated to the permanence and/or detention of migrants pursuant to the Consolidated Immigration Act (CPR, hotspot, landing places, suitable facilities/premises provided for in article 13, paragraph 5 bis of the Consolidated Immigration Act, waiting rooms at border crossing points)?» If so, what are the major criticalities identified in terms of the protection of fundamental rights of foreign citizens?».*

Since 2009, the Guarantor of persons deprived of liberty of the Lazio Region has also carried out its activity at the Immigration Removal Center of Rome-Ponte Galeria. The main issues recently encountered concern the following:

- detention of those who re-apply for international protection even before the decision of the Commission. Such applications are considered illegitimate by the Police Headquarters,
- contacts with the outside world, due to the seizure of cellphones upon entry (male sector),
- the high number of people coming from prison,
- the absolute absence of activity.

*National Guarantor: «Types of health reports received in 2019»*

## REMS

The following reports come from the operators of the facilities.

- The patient turnover is slow and difficult, especially in defining discharges and new entries. Among the causes, the following points have been highlighted:
  - An excessive number of Magistrates who deal with patients, even within the same structure, above all for the REMS of Palombara Sabina and Subiaco, due to which it is difficult to build a direct and confidential relationship, and to guarantee a homogeneous assessment and resolution of cases. Consequently, in many cases there was a lack of confidence on the part of the magistrates in the assessments of doctors, both of REMS and of the territorial CSM, regarding the discharge of patients.
  - Delays in scheduling review hearings, both regarding the terms of security measures and regarding any communication related to the availability of a residential psychiatric facility.
  - Poor availability of the local mental health services (DSM) in charge of drawing up the PTRI (customized therapy) and of facilitating and managing the rehabilitation process of patients in the area.
  - Presence of provisional measures, for which patients risk going to prison, interrupting the rehabilitation programs in place.
- Other problematic elements concern more properly the entry and stay in REMS:
  - Lack of assessment by the Magistrate on the state of the person before entering REMS – especially in cases where the waiting time has been relatively long and in the meantime the person has undertaken other rehabilitation or social reintegration processes.
  - Assignments sometimes not congruous with respect to the characteristics of the facility – for example, people who do not have a psychiatric disorder but only a previous condition of drug addiction (frequent among ex-inmates convicted with semi-infirmity).
  - Difficulty in managing the relationship between legal, safety and health needs, which are often in contrast. In particular, a report was submitted concerning the obligation to close the doors at night (violating specific CPT-COE recommendations), without being able to see what happens inside, as well as the impossibility for patients to leave, within a treatment path that progresses through phases of increasing autonomy, or to carry out activities outside, including professional, training or work-related activities.

- Lack of open spaces (for the Palombara Sabina facilities) and activities to be carried out during the stay in REMS.
- Hospital food normally provided in REMS is inadequate for a long-term residential regime.
- Lack of contacts with the UEPE offices (Office for the Execution of Sentences in the Community), and consequent difficulties in the event of licenses or any probation measures at home.

### Prisons

- Difficulty in managing the increasing number of inmates with psychiatric disorders, in a context that is not adequate to deal with this type of patient, both from the point of view of the staff and from the point of view of possible interventions.
- Prison of Viterbo – protected ward - presence of a disabled inmate in a wheelchair, inability to access the open space.
- Delays in medical examinations from the outside.
- Failure to supply Group C drugs.
- Lack of escorts to accompany the prisoners to the external facilities for medical examinations.
- Interruption of therapeutic treatments in case of transfer to another prison (scheduled surgeries; medical examinations already booked; therapies adopted; etc.)
- Uneven medicine supplies in the different prisons.

*National Guarantor: «Visits carried out in the health facilities in 2019»*

One visit to SPDC Policlinico Umberto I - Asl Roma due, 3 visits to REMS Merope - Palombara Sabina, 3 visits to the REMS Minerva - Palombara Sabina, 2 visits to REMS Castore – Subiaco, 2 visits REMS Ceccano and Pontecorvo, 7 visits to the Regina Coeli Clinical Center, 18 visits to the G14 ward in new complex prison of Rebibbia, 15 visits to the prison of Rebibbia - psychic minors department (0 visits to the section but meetings with the prisoners), 8 visits to the protected ward of the Pertini Hospital in Rome.

<http://www.garantedetenutilazio.it>



## Lombardia

Carlo Lio

### **Institutional activity - Investigation of intervention requests**

Since the start of the project, the activation of the “Regional Guarantor Desk”, already illustrated in last year’s report, saw a substantial doubling of requests for intervention in the first year compared to previous years.

In 2019, the branches of Brescia Verziano, Brescia Canton Mombello, Lodi, Bergamo and Varese were inaugurated and there was a further increase in applications of about fifty percent (305 requests).

Most of the requests received concerned relations with the managing bodies (179), thus confirming the trend of the past years. The reports for interventions concern, in general, the detention conditions of the prisoners, the treatment process, requests for meetings with family members, ongoing proceedings with INPS or requests for transfers that have remained unanswered.

Within the healthcare area, the reports (76) highlighted dissatisfactions with the following: waiting times for specialist visits, the way the prison handled issues brought to attention by the inmates, hospital admissions, the supervision of the outpatient clinics and the 24-hour coverage of the medical service, which in some Institutes was not always guaranteed, as well as the renewal of the contract for doctors working in the prisons.

Lastly, the requests for intervention in the field of vocational training and job placement (12) remained qualitative unchanged, as well as the reports concerning the protection of family relationships of the prisoners (38).

Requests for intervention are divided into four main areas:

- Relations with managers 59%
- Healthcare area 25%
- Relationships with families 12%
- Job placement and training 4%

### **Requests for intervention in prisons are divided as follows:**

- Prison of Milano Opera no. 84
- Prison of Como no. 52
- Prison of Milano Bollate no. 38
- Prison of Monza no. 38

- Prison of Cremona no. 19
- Prison of Bergamo no. 11
- Prison of Pavia no. 11
- Prison of Voghera no. 11
- Prison of Milano S. Vittore no. 4
- Prison of Brescia no. 2
- Prison of Busto Arsizio no. 2
- Prison of Vigevano no. 2
- Prison of Lecco no. 1
- Prison of Sondrio no. 1
- REMS Castiglione delle Stiviere no. 1

### **Visiting Residences for Execution of Security Measures (REMS)**

The visit to the REMS of Castiglione delle Stiviere was carried out on 22 January 2019 with the Guarantor of the prisoners of the Tuscany Region, Dr. Franco Corleone, Single Commissioner for overcoming the JPH (Judicial Psychiatric Hospital).

While waiting for the opening of the Residencies for the Execution of Security Measures (REMS) in the various Provinces, the former JPH has been converted into a “multi-module system of temporary REMS”: it is a single large REMS that hosts 160 beds, all of which are already occupied.

The presence in the prisons of Lombardy, as well as in the rest of the national territory, of inmates waiting for a place at the REMS is a critical element: in fact, the problem of insufficient places in the Residences for the Execution of Security Measures of different territorial areas is well known to the Lombard health system.

A case dealt with in 2019 involved two parents who requested the intervention of the Guarantor as the REMS would not allow them to meet their detained child: in a note of clarification, a representative of the Institute announced that the psychiatric pathology had led to suspend meetings with the parents for a period of time, exclusively for treatment purposes.

### **Visit to the Medicine Department V San Paolo Hospital**

The visit was carried out following a report received by the relatives of a restricted person who had undertaken abstinence from eating as protest. For the treatment of hunger strikers, the hospital company has drawn up an *ad hoc* protocol, as a corporate procedure on the treatment criteria. The visit was preceded and coordinated by the management staff of the Territorial Health Companies Santi Paolo e Carlo. It is a Hospital Operating Unit, structurally and functionally autonomous, with its own medical, nursing, technical-health auxiliary staff, intended exclusively to accommodate inmates who require services that cannot be made available within the prison. Supervision is carried out by a specifically proposed prison Police Unit.

The Simple Structure of 'Medicina V Protetta' deals with the planned hospitalization for diagnosis and therapy of patients from the districts and prisons of the regional territory.

The Division receives requests for hospitalization mainly from the medical coordinators, if they deem it appropriate to carry out a diagnostic study in the patients evaluated, following a validation by the Regional Penitentiary Administration Superintendency.

The facility is accredited for 22 beds and a section used for the hospitalization of two patients under the 41-*bis* regime. In the ward there is also the possibility of isolating infectious patients or patients with severe immune deficiencies and to control patients who may require constant observation in a sub-intensive regime. This is accompanied by a Day Hospital activity. The cases evaluated embrace any type of internal pathology, especially pathologies of the cardiorespiratory system, liver diseases and metabolic disorders, endocrine and infectious diseases, neoplastic diseases (diagnosed for both surgical and/or chemotherapy treatment).

The Department also deals with the admissions of patients who must undergo surgery, through a pre-admission necessary to satisfy all safety standards, in particular anesthesiology.

- **Meetings with the Councillor, the General Welfare Management and the General Management of the Santi Paolo e Carlo Territorial Health Companies**

During 2019, it was necessary to organize several meetings with the top representatives of the prison healthcare area, also prompted by some Departments of Penitentiary Institutions, to address various critical issues reported, as for some of them there are ongoing projects aimed at their resolution (REMS).

- **Budget meeting/year-end report**

At the end of 2019, the staff of the Guarantor of prisoners organized a meeting with the Directors of the prison of Lombardy and the commanders of the Penitentiary Police to discuss the activity carried out and collect suggestions on future prospects and any critical issues that will need to be addressed in the new year.

### **Institutional communication activities**

The Lombardy regional law entrusts the Regional Ombudsman with the functions of Guarantor for the rights of persons deprived of liberty, therefore the communication channels used by the Guarantor are the same for both institutional figures.

The office uses the website [www.difensoreregionale.lombardia.it](http://www.difensoreregionale.lombardia.it) to share news and information related to the civic defense and the activities of the Guarantor and to forward requests for intervention online. The office has also a Facebook page, "Difensore regionale della Lombardia" to share website information and to advertise events or news related to the activities of the Defender and the Guarantor published by other institutional bodies or the press.

In addition to the online communication channels, the office uses different paper brochures for the Regional Ombudsman and for each of the guarantee functions: every time the

Guarantor visits a prison, he brings with him several copies of the brochure. That has revealed to be a rather effective tool for making the prison population aware of the competences of the authority and the methods of requesting intervention.

<http://www.difensoreregionale.lombardia.it>



The following activities were carried out in the six prison facilities of the regional territory (Ancona-Montacuto, Ancona-Barcaglione, Pesaro-Villa Fastiggi, Fermo, Ascoli Piceno-Marino del Tronto, Fossombrone), which as of 31 December 2019 have a total of 898 inmates, with a regular capacity of 857:

- confidential meetings with inmates,
- inspection of the prison facilities and the living conditions of the inmates (visit to the detention sections and to the rooms of common use),
- monitoring of the prisons of the Marche region and REMS, with a focus on penitentiary healthcare, also carried out by sending, to each institution, a questionnaire for the collection of data related to the number of inmates present, the existence of treatment, school, work and volunteer activities. The monitoring action was also preparatory for the Region body to define some contents of the Regional Social-Health Plan 2020-2022. The information collected was summarized in the Guarantor's annual report, presented at a press conference on January 16, 2020 and available on the institutional website [www.garantediritti.marche.it](http://www.garantediritti.marche.it).

The monthly admissions to prison for meetings were 51 (not counting participation in specific events), for a total number of 410 meetings.

These are the numbers in detail. Ancona Montacuto: 150 of which 33 new; Ancona Barcaglione: 40 of which 15 new; Fossombrone: 47 of which 11 new; Pesaro (Villa Fastiggi): 114 of which 76 new; Ascoli Piceno: 39 of which 18 new; Fermo: 18 of which 1 is new.

The issues most frequently addressed concerned the request for transfers, the possibility of having treatment paths aimed at an adequate social reintegration, including the possibility of being able to work, of having adequate healthcare, the possibility of having a positive environment for their family members on meeting days - especially in the presence of underage children - and to be able to have more frequent telephone contacts with the family (parents, children, spouses) and trusted lawyers. The latter requests have a greater significance when in-person meetings cannot be frequent due to territorial distance.

Visits to prisons and REMS are not formalized in written reports; however, the issues found are dealt with in special meetings during which the Guarantor and his collaborators decide the actions to be taken.

The meetings with the inmates are documented by files containing the prisoner's personal details, the subject of the meeting and the interventions to be carried out. Obviously, authorization is requested for the management and processing of personal and health data.

The reports to the Prison Administration, whether positive or not, have not always received feedback from the DAP, unlike what generally happens with the Superintendency, the Penitentiary Departments and other subjects operating within the system itself, including the healthcare. In those cases, feedback is provided with timelines reasonably adequate to the reminders or recommendations of the Guarantor.

To investigate issues in the penitentiary sector, the Guarantor participated in various Discussion Tables about education and the right to study, health, professional training and voluntary work.

- Organizational Didactic Committee of the University Pole at the Fossombrone prison (implementing the memorandum of understanding for the Fossombrone Regional University Pole between the Regional Superintendency of the Prison Administration of Emilia-Romagna and Marche, University of Urbino, Office of the Guarantor),
- Table with volunteer associations,
- Technical table of the Professional Pole of the Prison of Ancona-Barcaglione (memorandum of understanding between the Marche Region, the Regional Superintendency of the Prison Administration of Emilia-Romagna and Marche, Guarantor's Office),
- Permanent Observatory on Penitentiary Health.

As part of the monitoring action on the activities related to the forced repatriation of foreign citizens illegally present in Italy, in the spring of 2019, the Office participated in the repatriation procedures of a detainee of the Ancona-Montacuto prison which took place in compliance of the rules.

The Office is not aware of the opening of Centers for Repatriation in the regional territory.

The Office is not aware of the use of *Tasers* in prisons.

The Guarantor, in order to fulfill the information and transparency function as well as to improve relations with citizens, has given maximum dissemination of its institutional activities, through various IT channels, complementary to each other, such as the institutional website [www.garantediritti.marche.it](http://www.garantediritti.marche.it), the Facebook page and the YouTube channel, which in 2019 had an increasing trend in the number of visitors.

[www.garantediritti.marche.it](http://www.garantediritti.marche.it)



*National Guarantor: «Can you provide the number of complaints in criminal matters received by your Office, divided by the main areas of criticality - year 2019?»*

The complaints in criminal matters received by the Guarantor in 2019 mainly concern the following:

- transfers to other prison facilities,
- improvement of the conditions of stay inside the prisons, especially related to hygiene and health,
- work assignments,
- obtaining bonus leaves.

Moreover, there were requests regarding:

- access to the internet and increasing the number of phone conversations with family members and lawyers,
- the right to study (in the Campobasso prison only elementary school attendance is provided),
- treatment-rehabilitation activities,
- the need for more suitable spaces for relationships,
- the need for less confined spaces in the cells (reduce the maximum number of inmates, which must not exceed 4 units for each cell).

*National Guarantor: «Can you provide the number of complaints received by your Office, divided by penitentiary institutions - year 2019?»*

The 80% of requests came from the prison of the regional capital (Campobasso); the remainder from those of Larino (10%) and Isernia (10%).

*National Guarantor: «In the context of the monitoring visits carried out in prisons for adults and minors, what (if any) were the results of the recommendations made, at regional or national level? Did your office set up the regional 'tables' for discussion on these critical elements?»*

The Office set up Discussion Tables and signed Memoranda of Understanding with various associations operating on the national territory, such as Antigone, Cittadinanza Attiva and UEPE (Office for the Execution of Sentences in the Community), in order to better coordinate the actions to be taken in response to the requests received.

*National Guarantor: «Are there any updates regarding the institutional website (new address, for example)? Can you provide news of other social communication channels (Facebook,*

*YouTube, Twitter, etc.) that may be used? Which of the forms of communication adopted have had the greatest impact on the Office's visibility and activity?»*

There have been no updates regarding the institutional web page nor can news of other communication channels be provided.

*National Guarantor: «Do you manage or use computerized databases related to the people, territorial facilities or activities of the Office?»*

We do not use computerized databases related to people.

*National Guarantor: «Based on the realities present in the area of competence, did you carry out monitoring activities with respect to places dedicated to the stay and/or detention of migrants pursuant to the Consolidated Immigration Act (CPR, hotspot, landing places, suitable structures/premises provided for in article 13, para. 5 bis of the Consolidated Immigration Act, waiting rooms at border crossing points)? If so, what are the major problems identified in terms of protecting the fundamental rights of foreign citizens?»*

The actual circumstances did not allow to carry out monitoring activities with respect to places dedicated to the stay/detention of migrants pursuant to the Consolidated Immigration Law.

*National Guarantor: «Are you aware of a program for the opening of new centers for repatriation within your area of competence?»*

We are not aware of the opening of new Centers in the area of our competence.

*National Guarantor: «Did you make visits to the security rooms of the police? If so, what critical elements were found, if any?»*

We visited places of temporary detention (custody suites) and the main problems encountered relate to poor hygiene conditions and cramped detention spaces.

*National Guarantor: «Are you aware of critical events related to the use of the Taser that occurred within your area of competence (including any local police operators)?»*

We are not aware of any critical events related to the use of the Taser occurring in the area of our competence.

*National Guarantor: «What are the types of reports received in the last year regarding the deprivation of liberty and health area (REMS, disabled and elderly, IPO or people with psychiatric disorders)?»*

The types of reports received in the last year related to the deprivation of liberty and health area are about situations of disability, accidents occurring within the structures, pathologies arisen, IPO and psychiatric disorders, and numerous cases of self-harm.

*National Guarantor: «What is the number of visits made in the health sector as well as the type of structure visited (if possible, also the name)?»*

Dozens of health monitoring visits were carried out in the hospitals of Campobasso and Isernia.

<https://garantedeidritti.regione.molise.it/garante>



Piedmont is the only Region in which the regional guarantee figure is supported by a municipal Guarantor for each city where the prisons are located. This capillary system ensures that only a few notifications reach the regional office: in fact, smaller and local matters are dealt within the local bodies, through direct discussions with those in charge or the individual departments. Even some more serious situations are dealt with directly by the municipal Guarantor who noted them, often in synergy with the regional Guarantor.

The following is a series of reports highlighted in the period considered, carried out in agreement between the regional and municipal level, with the draft of specific notes. For example, difficulties emerged in the prison of Saluzzo with the decision to relocate the AS (High Security) prisoners from the new pavilion to the old one (January) with regard to the phone calls of the AS prisoners with their lawyer, were addressed with a specific note to the Guarantor of Asti (August), who then solved the problem with the prison's management. Another issue addressed in Asti was the request of fans by the inmates, to cope with the exceptional heat wave (July): a report sent to the PRAP (Prison Administration Regional Board), which started technical checks with the DAP, unfortunately concluded with negative results (September). Lastly, another issue arose regarding the penitentiary health facilities, particularly at Novara (August) and Ivrea (October) prisons, reported to the Regional Department, which - in both cases - intervened asking for a change in internal organizational procedures.

In general, the regional competences - Health, Work, Training, Education, Social Policies - were dealt with centrally, but in close connection with the Piedmontese Coordination of Guarantors: both with the annual reports to the Regional Council (presentation: 10 September) and with written or verbal dialogues with the council Commissions, the various councillors or competent regional managers. The activities - coordinated by the Guarantor - of the "Sub-group for monitoring" within the interinstitutional Technical Group of Prison Health, continued with the drafting of six-monthly summary reports. In the last one (November), the analysis of the situation in the first half of 2019 was updated. Following the notes sent (monitoring 1st and 2nd semester 2017 - 1st and 2nd semester 2018), which were endorsed by the Interinstitutional Group, there was a formal intervention by the Director General of the Health Department with the General Directorates of the relevant local health authorities, recalling the requirements set out in DGR (Resolution of the General Council) no. 26-3383 of 30/5/2016 and requesting technical/organizational changes for the shortcomings highlighted.

A note was sent (October) to the director of the Social-Health Planning and Penitentiary Health Sector, informing the PRAP about the ineffectiveness of the actions taken for the specific health problems of prisoners during sexual gender transitions.

A note (November), addressed to the President of the Region and the Council, highlighted the

direct consequences on the territory and on the Piedmontese services of the reorganization of "penitentiary circuits" decided by the prison Administration. The "Annual dossier of structural weaknesses" of the Piedmontese prisons (December) was made public and sent to the attention of the PRAP and the DAP.

The experience of managing the protected family home for mothers in prison leaving the ICAM with their children was reported to the Regional Councilor for Family Policies (October) to evaluate an extension of project.

A report (November) to the President of the Regional Council and the Assessor responsible for Relations with the Council showed the results of the visit made with the Undersecretary of State in the Turin prison, during which a meeting was also held with the relevant trade unions and the Penitentiary Police. A summary statement on the staff of the Penitentiary Police of the Piedmontese institutes, containing the planned staff and the actual number of those in office, highlighted the shortcomings present in all operational roles.

Various reports were made during the year to the Health Department, together with a request (September) to meet the Councilor to represent the work done to protect people subjected to restrictive measures in the REMS and in the CPR. In particular, the extension of the agreement with the Clinic of Bra (from 18 to 20 beds) which manages the REMS of San Michele has been requested, formally and informally, several times (decision adopted by the Board).

With regard to the Turin CPR, in addition to the specific reports and notifications accrued in the context of the AMIF project and the collaboration with the National Guarantor, work was coordinated with the Turin Guarantor Office, with a monitoring activity shared with UNHCR (August) and a double training course, in collaboration with the National Guarantor (July) and the UNHCR (December). Some notes on specific cases have been sent to the regional bodies to support greater public responsibility for the health issue in the CPR, also enhancing the collaboration proposals of the Medical Association and a formal request for information to the Department (December) regarding the possible Memorandum of Understanding from the Prefecture - Local Health Authority for health services in the CPR.

<http://www.cr.piemonte.it/web/assemblea/organi-istituzionali/garante-dei-detenuiti>



## Apulia

Pietro Rossi

To read about quantitative data, please refer to other parts of the report of the National Guarantor. They testify to the continuing overcrowded conditions in each of the Apulian prisons, except for the Juvenile Prison of Bari and the women's section of the Prison of Trani, a historic building in the city center. Fortunately, this situation did not irremediably compromise the approach of the Guarantor (with reference to the tiring offer of the annual institute projects), but it strongly affected the efficiency of the educational projects (due to the disproportion between the dedicated organic plant and the prison population) and the timeliness of the issuance of the provisions pertaining to the Supervisory Judiciary. In summary, everything ran as usual and according to a system that has become structural over time.

The Regional Guarantor supported and promoted various initiatives in prisons, mainly concerning work inclusion, the reconstruction of parental relationships, the cultural animation and artistic and laboratory expressiveness, in all prisons, in the REMS and in favor of persons in regime of external criminal execution. As mentioned, these projects needed to be evaluated (also through the system of self-assessments by the implementing bodies themselves), in order to induce the regional administrative policy to follow up on planning welfare, healthcare, work and cultural projects that had shown their effectiveness.

Some experimental interventions achieved remarkable results, in this perspective, also providing interesting data regarding the possible improvement of some help processes which remain slow. This is the case of the use of e-mails to communicate with relatives and lawyers, the follow-up plans for migrants on the eve of their release into freedom and totally disoriented about the "after" (both projects were activated in Bari but we intend to activate them throughout Puglia).

Territorial policies regarding prison communities (intended as an overall system of the people who reside there but also of those who work and who go there for family or social and civil voluntary reasons) are improving, to the extent that the designation of the Municipal Guarantor of Lecce (dating back to two years ago) led to the appointment of the first provincial Guarantor in Apulia, active at the Prison of Brindisi, at the Restinco Refugee Stay Center and at the Carovigno Residence for the Execution of Security Measures. In March, a press conference was held to present the municipal notice for the selection of the Guarantor of Trani.

The collaboration with the University of Bari has been increasingly strengthened, allowing for constant scientific and regulatory updating (for the benefit of the organic plant of the Section but also of the group of volunteer experts) and involvement in the research activity on the situation of the administrative detention system for migrants awaiting repatriation. The cultural confrontation at the national level is strongly and effectively supported by the strengthening of the network of regional Guarantors established and organized in coordination by the Board of the National Guarantor and by the continuous dialogue within the Conference of territorial Guarantors.

Any other information related to initiatives promoted by the Guarantor or with his participation, in the context of public debate, seminars and conferences, regional and national interventions in the press and other mass communication media, as well as any other aspect of the curricular institutional action, can be found on the website of the Regional Guarantor of Apulia.

### **Prisons and Residencies for the Executions of Security Measures**

Requests for intervention continue to arrive at the Office at the average rate of about ten per week, coming from the directly concerned, by ordinary mail or on the recommendation of the Management and Treatment Areas, or by family members as well as social voluntary organizations. It should also be noted that, apart from the so-called dedicated network which, thanks to culture and sensitivity to the subject, immediately became familiar with the Office, an unexpected familiarity with the Office is now being consolidated by other sectors of the civil society, the ecclesial world and parish communities, the University, professional registers and the mass media. The well-established collaboration with the Bar Association and the Criminal Divisions, the academic world of all regional universities, the Regional School Office and the National Magistrates Association deserves a separate mention.

Each of these relationships also involves the bestowal of news, demands, requests for action of an individual or collective nature for the benefit of the restricted population or people deprived of liberty.

The exchange of requests for intervention with the territorial Guarantors and with other regional Guarantors has intensified. A structural statistic is now confirmed: the requests collected in writing or during the visits to the prison mainly concern the difficulty of accessing alternative measures due to the lack of results following the monitoring activity or the slowness in judicial rulings, health problems, claim of affectivity connected to territoriality, lack of training and work opportunities and fruitful use of time in general.

With respect to the structural, infrastructural and plant engineering profile of the penitentiary building, the main aspects are the following: Turi and Bari have an obsolete building structure and by now poorly adequate to the residential and operational needs of the administrative and police plant, Brindisi still suffers from the scarcity of spaces dedicated to socializing. In Trani, it has not yet been possible to renovate the so-called blue zone, while the process of transferring the female section within the same complex as the male one is still blocked, whereas Foggia has to deal with a still inadequate water system.

Regarding the institutional activity of control and response to complaints, numerous recommendations were sent also in 2019, most of which promptly acknowledged.

The health care, in general, continues to struggle. An intense confrontation with the regional administration has initiated a profound change in the organizational structure, in the transfer of responsibilities from the Polyclinic Hospital of Bari to the Local Health Authority of Bari, regarding the management of the dedicated hospital ward which, in fact, is now in the process to be transferred from the Polyclinic of Bari to the San Paolo Hospital in Bari. At the end of this restructuring and reorganization process, we will proceed to verify the actual conditions of other Local Health Authorities.

The two remaining REMS - the set up of the third REMS in Accadia (FG) has no longer been

mentioned - respectively in Spinazzola (BAT) and Carovigno (BR), have not been transferred to more suitable premises as expected, but continue to welcome patients under supervision measures. The waiting list decreases, while the number of structures dedicated with the addition of the Psychiatric Assisted Rehabilitation Communities increases. On the numerous visits, no problems were ever encountered either in the health management or in the treatment function. Both structures follow a fairly intense turnover with resignations and transfer of cases to territorial psychiatry. In Spinazzola, intermediate experiments of family fostering and internships in outsourcing were initiated.

## Migrants

In 2019, the AMIF Project of the National Guarantor, which this regional Guarantor adheres to (among others), involved various monitoring both of the pre-return phase and the pre-departure phase, which took place at the CPR and at the Bari Airport. For the first time, last year, monitoring was carried out on international flights. As is now a consolidated method, the activities concerned the examination of files, the control of the phases of returning personal effects to returnees, the observation in the phases of security checks, especially with reference to the use of means of coercion and containment, the control of the conditions of detention in waiting rooms.

It was a particularly dense year for in-depth training on forced return and administrative detention in general. First, in June, with two seminars of the AMIF project, held in Apulia, then with the development of two important cultural events, one at the Regional Council (also dedicated to the presentation of the volume 'Norms and Normativity. Standard for the Deprivation of Liberty of Migrants'), the other in the Aldo Moro Room of the Department of Political Sciences of the University of Bari, on the subject of detention of migrants; the conclusions of the proceedings, in both events, were made by the National Guarantor (events for which detail refers to the website of the regional Guarantor).

Along with the above training, the Office of the Apulian Guarantors also continued the research project in collaboration with the Department of Political Sciences on the migrants situation in Apulia, with a focus on the hotspots situation (including the CARAs and the so-called second level reception), also in the perspective of changes in the national and international legislation on the subject. The research relates on a survey involving one hundred and thirteen SPRAR project sites (today SIPROIMI), almost eight hundred municipal administrations, Taranto's hotspot (which was visited again for research purposes), the CARA centers of Bari and Borgo Mezzanone, and the CPRs of Bari and Restinco. Questionnaires were administered to the operators of the managing bodies, the results of which will be presented and discussed in a seminar, presumably next autumn.

The Bari's center suffered from some vandalizations last year, during three "riots" (without consequences for the safety of detainees or personnel) which reduced its functionality to a single module. The precarious conditions of the structure, in terms of provision of the services included in the specifications, led this Guarantor to release some recommendations addressed to the Prefecture of Bari and, for appropriate information, to the National Guarantor.

In February, the Restinco facility, which - to my knowledge - satisfied the obligations included

in the specifications, suffered from structural damage following protest actions (also in this case with no detrimental effects on people), resulting in a considerable reduction of its capacity of hospitality.

At the end of February, sixteen and fourteen migrants were detained, respectively, in Bari-Palese and Restinco in Puglia. In both Centers, accesses to external operators are currently granted only to language teachers. It is necessary to work on projects of cultural animation and artistic expressiveness, and negotiate their implementation with the Prefecture, which in the past has rarely allowed them.

<https://garantedetenuti.consiglio.puglia.it/>



A total of 393 reports were received from the following prisons: Caltagirone 72, Palermo – Pagliarelli 58, Augusta 57, Trapani 43, Palermo – Ucciardone 32, Siracusa 32, Agrigento 24, Messina 18, Caltanissetta 17, Enna 11, Off-site 10, Catania - Piazza Lanza 8, Barcellona-Pozzo Di Gotto 4, Favignana 4, Giarre 2, house arrest 1. On the basis of subject involved: 124 transfer to nearer facilities, 115 health conditions, 36 material and hygienic conditions, 35 mistreatments – injustices, 29 work, 25 meetings – family relationships, 24 study, 5 miscellaneous.

*National Guarantor: «In the context of the monitoring visits carried out in prisons for adults and minors, what (if any) were the results of the recommendations made at regional or national level? Have regional <tables> been set up to discuss these critical elements?»*

On 30 September 2019, the Sicilian Guarantor of prisoners participated in a meeting called at the Prefecture of Caltanissetta to address the issue of the inadequacy of the REMS (residences for mentally incapable and socially dangerous criminals) in Sicily. The meeting was solicited by the Judicial Authorities of the District of Caltanissetta, also worried about the persistent, long waiting list which causes these subjects to remain in prison even without justification. The Guarantor outlined the current terms of the matter, also summarizing the results of the conference held on Penitentiary Mental Health organized in Palermo, suggesting the need to create at least two new REMS in western Sicily, one of which in Palermo.

At the Regional Health Department, the Guarantor committed to verify the progress of the obligations made in this regard at a political level, expressing concern about the long time required to implement and establish new structures. In this perspective, it is vital to have greater collaboration between the Judicial Authorities, Penitentiary Authorities and Health

Authorities, to promote also through specific memoranda of understanding. Following the outcome of the meeting in Caltanissetta, it was decided to proceed as soon as possible with the drafting of an operational protocol between the judicial and health authorities.

Moreover, thanks to the persistent action of the Sicilian Guarantor, on 4 December 2019 the table of the Regional Penitentiary Health Observatory finally met (after an 11-month break). In this circumstance, following a report by the Guarantor, all the elements of criticalities that persist in penitentiary health were discussed, in addition to the issue of the lack of places in the Sicilian REMS, which puts our region at the forefront for the long waiting list of recipients of security measures forcibly detained in unsuitable places. Taking as case in point the Agrigento Prison, and considering the Guidelines on organizational systems in the penitentiary health sector of the Sicilian Region, the Guarantor underlined aspects of persistent inefficiency on the part of the Provincial Health Department of Agrigento - such as, for example, the inability to organize, despite the programmatic forecast, specialist cardiology, diabetology, gynecology, infectious disease, dentistry, pulmonary, psychiatry and psychology visits within the prison - causing a significant increase in outpatient visits - with the related organizational problems of translation services and the increase in the risk to public safety – which, in fact, extended the intervention times at the expense of the protection of the prisoners' right to health. Similarly, despite the solicitations of the Sicilian Guarantor and the same regional penitentiary administration, no concrete response was made by the Regional Health Department to the request to provide for the prompt reopening of the special detention department at the Hospital S. Giovanni di Dio of Agrigento.

In addition, common criticalities persist in the various institutes on the island, reported briefly as follows:

- For the ATSM (mental health) sections of Barcellona-Pozzo di Gotto and Palermo Pagliarelli, we note the failure of the relevant provincial health authorities to take charge of the health measure of surveillance on sight or, in any case, of the intensification of health care prescribed for the restricted individual;
- Regarding the prisons of Caltanissetta, San Cataldo and Gela, insufficiency and inefficiency of psychiatric assistance and inadequate health assistance, deriving from the inability to ensure continuous health assistance 24 hours a day, despite the requests made by the same institutes;
- Lack of specialized branches guaranteed *intramoenia* (within the walls) - again in clear violation of the regional guidelines - at the prisons of Enna, Piazza Armerina and Augusta. Furthermore, there is a constant non-regular supply of medicines at the Enna prison;
- Failure to appoint the figure of Coordinator Physician (expressly provided for by the Guidelines) at the Palermo PRAP and failure to formalize the appointment of the Chief Physician at all three Palermo prisons and a continuous alternation of the Chief Physician of Augusta.

*National Guarantor: «What are the types of reports received in the last year concerning the deprivation of liberty and health area (REMS, disabled and elderly, IPO or people with psychiatric disorders)?»*

The applications received were 115, with percentages, respectively, of about 5% for the REMS, approximately 20% for the disabled and elderly, and around 25% for patients with

psychiatric disorders. No cases of IPO were reported.

*National Guarantor: «What is the number of visits made in the health sector as well as the type of structure visited (also including the name if possible)?»*

The Sicilian Guarantor never restricts the visits to the penitentiary institutes of the island to one theme only: in general, all visits deal with health protection and provide for an on-site inspection of the internal health structure and verification of the medical treatment reserved to particular prisoners who have reported dysfunctions, deficiencies or, worse, insufficient assistance.

[http://pti.regione.sicilia.it/portal/page/portal/PIR\\_PORTALE/PIR\\_LaStrutturaRegionale/PIR\\_PresidenzaRegionale/PIR\\_UffGarantedetenuti](http://pti.regione.sicilia.it/portal/page/portal/PIR_PORTALE/PIR_LaStrutturaRegionale/PIR_PresidenzaRegionale/PIR_UffGarantedetenuti)



The contribution to the report (activity 2019) is given by the Regional Guarantor for the rights of prisoners **Franco Corleone**, in office from October 2013 until 24 January 2020.

As of 31 December 2019, the inmates in Tuscany were 3,572 (including 111 women and 1,751 foreigners), data that confirms the continued growth of the prison population (166 more inmates compared to the same date in 2018) and the over-representation of foreigners compared to the total of the population (49.02% of the prisoners are foreigners).

The Guarantor Franco Corleone, currently no longer in office, has regularly received requests from inmates, which arrived mainly by letter, from Tuscan prisons.

In 2019, a total of 162 complaints were received, in different critical areas: in the examination of the requests, the individual applications have been encased into a single category for simplification purposes; however, the letters often touch on different critical areas. There were 40 requests concerning treatment-rehabilitation activities: support is frequently requested to access alternative measures of detention. There was an intense exchange of letters with two detainees as they kept the office informed of their progress throughout the year. The instances concerning health and its protection within the prisons were 23, 13 the relationships with family members, in particular the difficulty of accessing visits with relatives, 22 unsuitable material and hygienic conditions: among them there were also 3 collective letters, presented by about 40 inmates who addressed the condition of the section where they were confined. Thirty of them requested to be transferred to another institution, 3 concerned work and one the subject of searches, 3 more addressed episodes of mistreatment. One letter complained about the problems related to the right to education, 2 about the problem of nutrition, 4

addressed disciplinary proceedings that were considered unfair. The remaining 13 required only a meeting with the Guarantor; however, it is reported that 48 restricted, in addition to the 13 mentioned above, have expressed their willingness to carry out a meeting with the Guarantor, thus bringing the total of requests for this category to 61.

The 162 applications received came mainly from people held in penal institutions in Tuscany: 12 from the prison of Sollicciano, 15 from the prison of Mario Gozzini, 20 from the prison of Prato, 2 from Volterra, 22 from Massa Carrara, 1 from Gorgona, 6 from Pisa, 1 from Pistoia, 1 from Siena, 3 from Livorno, 4 from Porto Azzurro, 25 letters were received from San Gimignano, one of which was collective, and 15 from Lucca, of which 2 were collective. Outside the Tuscan territory: 3 letters from Perugia, 2 from Orvieto, 2 from Spoleto and 1 from Pescara; 1 from Vibo Valentia and 1 from Campobasso.

In addition, 16 people wrote from places of external criminal execution, including 4 in the community to carry out probationary assignments to social service and 16 in home detention.

The requests received are filed both in paper and computerized form; the latter is created through an Excel file in which the significant data of the application is recorded (name and surname, date of application, protocol, sender, type of sending, legal position, institution of internal criminal execution, place and type of external penitentiary execution, complaints, meeting requests, death threats, actions taken).

The Guarantor visits the prisons of Tuscany regularly, to verify its conditions and meet the inmates, receiving fundamental support from the municipal Guarantors, who currently cover many of the prison cities (Florence, Livorno, Lucca, Pisa, Porto Azzurro, San Gimignano, Siena). The mandate of the Prato Guarantor just expired and is being newly appointed, while unfortunately the expired Guarantors in Pistoia and Massa have not been reassigned. The health facility for psychiatric patients Casa Iris in Florence and the REMS in Volterra were also visited.

The Guarantor reported some critical issues in the conditions of the Tuscan prison facilities to the Superintendency. He received an answer which was only partly satisfactory, some issues being postponed to future deadlines. The Guarantor also asked for an update on some pending matters, such as the protection of the privacy of prisoners' health data, the changes of the legislation to make assisted repatriation applicable to subjects in criminal execution, the methods of carrying out IPO on detained persons, the implementation of Article 11 of Legislative Decree 123/2018 on the subject of civil registration for prisoners in the Municipality where they are located. He received an answer on these issues, meaning that the procedures were activated at the competent institutions regarding the first, second and fourth points; as for the procedures for IPO, it was claimed that they can only be carried out in health facilities and no longer in prison.

The institutional web page is constantly updated, but social networks only used indirectly. The communication of the activities of the Guarantor takes place through the publication and dissemination of texts, the organization of conferences and seminars. A research on drugs was carried out, with an investigation in some Tuscan prisons on entries and presences for violation of Presidential Decree no. 309/90, with particular attention to minor facts (article 73, para. 5). Starting from this research, the publication "Droghe" was created. To tackle its damages, the introduction of a new article 73-*bis* has been proposed, in which

to transpose the content of 73, para. 5, to enhance the autonomy of these circumstances. Another research concerned safety measures, both psychiatric, with a focus on the REMS of Volterra, and for imputable persons, with the workhouse of Vasto as a case study. The research results were included in the publication *Archeologia Criminale*. A broader reflection on the institution of non-imputability and on the advisability of proceeding with a reform of the Criminal Code concluded the activities of 2019. The content of the research was published in the volume *Il Muro dell'Imputabilità*. The above-mentioned publications are all available on the website.

On the Tuscan territory there are no places dedicated to the stay/detention of migrants and we are not aware of any opening programs.

The security rooms of the police were subject to indirect monitoring, through the request for data to all the Police Headquarters and Prefectures of Tuscany. The data we have received offer a rather clear overview of the current situation: at the moment there are 184 security rooms in Tuscany. Unfortunately, only 98 rooms are currently accessible. Major criticalities are also found in terms of access to the rooms by the disabled and in relation to the frequent absence of toilets; furthermore, many rooms size do not respect the parameters determined by the European Committee for the Prevention of Torture and inhuman or degrading treatment.

The use of the *Taser* gave rise to a problematic case in the Santa Maria Annunziata Hospital in Florence, where some Municipal Police operators used it on a person suffering from psychiatric problems. The case aroused criticism from the Guarantor and was brought to the attention of the Regional Council, which approved a motion that commits the Regional Council to provide for the prohibition of using the *Taser* in health facilities, as its use has potentially fatal consequences on subjects with psychiatric and related pathologies.

Regarding the use of force during police stops, the Guarantor wrote to the Police Chief of Florence to understand the dynamics of the case of the young man who died in Empoli during a police operation, in which he was immobilized not only with handcuffs but also with his legs tied with a rope. The commissioner replied that the intervention was carried out in full compliance with the operating procedures that envisage the possible use of a multipurpose strap band.

In the last year, the Guarantor received numerous reports regarding the very complex case of a young woman hospitalized in a structure for psychiatric patients: the patient had been interdicted, with every matter concerning her care and family relations entrusted to her guardian and deprived of her personal liberty. The question, which may collide with the constitutional principles as implemented by Law no. 833/78 in the matter of involuntary treatments, was brought to the attention of Court of Florence and we are currently awaiting their response.

A monitoring was carried out on the IPO front: data was requested from the Health Department to highlight compliance with the guarantees provided for by Law no. 833/1978 in protection of the right to health and personal liberty while undergoing the IPO.

In 2018, 223 people were subjected to IPO in Tuscany, some of them several times, in fact there are 3 subjects with 3 resignations and 17 subjects with 2 resignations, for a total of 246 treatments, whereas the average hospital stay is 14,2 days.

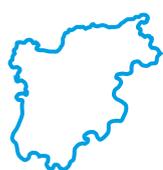
The comparison between the three ASLs of Tuscany highlighted differences in the use of the

IPO, both in terms of the number of treatments carried out compared to the total population (54 in the Central Tuscany Local Health Authority, which has about 1,500,000 residents, to which the 14 of the Careggi Hospital in Florence can be added; 113 in the North-West Tuscany USL, which has about 1,200,000 residents; 65 in the South-East Tuscany USL, which has about 850,000 residents), and in terms of number of hospital stays, with the greater propensity to the IPO that brings with it longer involuntary hospitalizations (USL Toscana Centro: 11,13 days, Careggi: 4,93 days, USL North-West Tuscany: 17 days, USL South- East Tuscany: 13,98 days).

The issue of restraint also received specific attention: the Guarantor, consulted on 8 May during the approval phase of the Regional Health Plan 2018-2020 by the Regional Council, highlighted the need to include in the Plan a strong provision regarding the objective and the overcoming of the use of restraint and the introduction of registers of the restraints carried out. The indication was followed by the Regional Council, which modified the Plan accordingly.

Finally, the Guarantor promoted the adoption by the Regional Council of the proposal for a Law to Parliament about affectivity in prison: the proposal was approved in the session of 11 February with DCR no. 7/2020.

<http://www.consiglio.regione.toscana.it/oi/default?idc=42&nome=gdetenuti>



Autonomous Province of Trento  
(Trentino Alto Adige)

Antonia Menghini

There were no changes to the Law establishing the figure of the Guarantor for prisoners. Upon request, however, the Legislative Office of the Council recently provided a reading of the instituting law, according to which the competence of the Guarantor is more extended to the protection of rights of individuals deprived of liberty, not only to persons detained, to those in alternative measures and those restricted in the REMS.

On one occasion, the Guarantor visited the facilities of the REMS of Perugia, whereas there were about sixty visits at the Spini di Gardolo prison, mostly functional to individual meetings with the inmates, followed by the preliminary investigation and related reports. More visits were made to the S. Chiara Hospital in Trento, in the detention department.

In 2019 there were 454 meetings, and 238 people were heard (about 71% compared to

those present on 12/31/19). The issues/requests expressed during the meetings were 500, of which 30% related to prison life, 16% related to external execution, 12% related to meetings and correspondence, 10% related to work, 10% related to health, the remainder divided between judicial measures, money, education, documents and lawyer. Within the main item "life in prison", 25% were related to the matter of transfers, followed by disciplinary measures, bonus permits, section 32 of Implementing Regulation.

With respect to the critical elements, subject to specific reports by the Guarantor, we note the following:

**Prevention of suicidal behaviour:** With the resolution of the Provincial Government no. 545 of 19 April 2019, the provincial Plan for the prevention of suicidal behaviour related to the prison system for adults was approved. On 5 December 2019, the Permanent Provincial Observatory on Penitentiary Health approved the Local Plan for the Prevention of Suicidal Behaviour. The Guarantor's Office actively participated to its drafting, which is currently in the signing phase.

**New organizational model of healthcare in prison:** Adopted following the serious events of December 2018, this model provided for, in a nutshell, the passage of healthcare in prison from the emergency medicine area to the primary care of local services (currently we are still in the transition phase from freelancers to a permanent service unit), the strengthening of the continuity of care to ensure doctors' presence 24 hours a day (starting from 20 January 2020), the strengthening of specialist assistance with particular attention to that dedicated to mental health. In particular, the hours of psychiatry are currently 20 and a new full-time psychologist has been added to the one already present and to the three experts ex article 80 Prison Law.

**Memorandum of understanding for social reintegration:** By resolution of the Provincial Government no. 1479 of 27 September 2019, the outlined Memorandum of Understanding was approved by the Autonomous Province of Trento, the Autonomous Region of Trentino-Alto Adige/Südtirol and the Ministry of Justice for the social and work reintegration of people subjected to measures restricting personal liberty and for the development of criminal mediation and comparative justice paths. By resolution of the Council of the Autonomous Region of Trentino-Alto Adige/Südtirol no. 256 of 28 November 2019, the same outline of the Memorandum of Understanding was approved. Currently, the subscription by the Ministry of Justice is pending.

**Persons waiting to be released:** In order to strengthen the social reintegration paths in the area in favor of awaiting release from the Spini di Gardolo prison, with the determination of the Head of the Health and Social Policy Department of the Autonomous Province of Trento no. 25 of 11 November 2019, an ad hoc work table was established, with the Guarantor's Office as a member.

**Work and former prisoners:** In response to a specific report from the Guarantor, we highlight the changes introduced to the Document of labor policy interventions of the XVI Legislature, adopted by the Provincial Government with resolution no. 75 of 24 January 2020, and in particular the redefinition of the concept of "disadvantaged", extended to people whose prison or liberty restrictions have ceased for no more than 24 months (instead of the 6 provided for in the previous version) and further clarification that the disadvantage will be assessed, in this

case, only in consideration of a document bearing the termination of the custodial measure or restriction of liberty, without the need for a notification of social services.

The Guarantor for the rights of prisoners of the Autonomous Province of Trento mainly uses two computerized databases: one for document management through the PI.Tre IT protocol, and one for the management of meetings with persons in criminal execution. This last database, created with open-source software, enables to record the meetings requests collected within the Spini di Gardolo prison and those received from persons in external criminal execution. It also enables to schedule meetings, insert for each meetings the individual requests, monitor the outcome according to the activities carried out and obtain statistical data divided by type of request.

The institutional page can be consulted on the home page of the Council of the Autonomous Province of Trento or directly at the following new address: <https://www.consiglio.provincia.tn.it/at-the-council/guarantor-prisoners>

In addition to numerous documents and links of interest, the institutional website provides a brief description of the activity of the Guarantor for the rights of prisoners of the Autonomous Province of Trento and the procedures for requesting his intervention. The news related to the activities of the Guarantor for the rights of the prisoners of the Autonomous Province of Trento are published on the homonymous home page; this allows for greater visibility to the information. During 2019, accesses to the institutional website were approximately 2,800, while those to the news section of the Council of the Autonomous Province of Trento were approximately 4,500.

<https://www.consiglio.provincia.tn.it/preso-il-consiglio/garante-detenuti/>



*National Guarantor: «Can you provide the numbers of complaints in criminal matters received by your Office, divided by main areas of criticality - year 2019?»*

In criminal matters, within the reference period (31/12/2018 – 31/12/2019), this Office received:

- no. 20 instances related to transfers
- no. 27 instances related to healthcare
- no. 13 instances related to material and hygienic conditions
- no. 11 instances related to meetings/relationships with family members
- no. 5 instances related to mistreatment

- no. 5 instances related to extraditions
- no. 4 instances related to study
- no. 3 work-related instances
- no. 3 instances related to disciplinary proceedings
- no. 2 instances related to the internal regulations
- no. 1 instance related to correspondence with the defender
- no. 1 instance related to the right of worship

*National Guarantor: «Can you provide the numbers of the complaints received by your Office, divided by penitentiary institutions - year 2019?»*

Overall, in the mentioned period, this Office received no. 97 complaints, divided as follows:

- no. 35 instances from the Perugia Capanne prison
- no. 32 instances from the Terni prison
- no. 27 instances from the Spoleto prison
- no. 3 instances from the Orvieto prison

*National Guarantor: «In the context of the monitoring visits carried out in prisons for adults and minors, what (if any) were the results of the recommendations made, at regional or national level? Have regional 'tables' been set up for discussion on these critical elements?»*

In continuity with what was done the previous year, the Guarantor participated in regional round tables related to the area of health and mental health in prison.

After recommending their immediate installation, the Guarantor participated in the inter-institutional Observatory on penitentiary health for the purpose of effective planning of resources and interventions in the regional penitentiary system. In this regard, the Guarantor recommended the need to:

- Advertise the Health Services Charter of each prison pursuant to Art. 11, para. 3, Prison Law;
- Implement the computerized medical record with the ability to communicate between prison and territory and between prisons in different regions;
- Strengthen specialist consultancy services on payment and spread forms of telemedicine.

*National Guarantor: «Have there been any updates regarding the institutional website (new address, for example)? Can you provide news of other social communication channels (Facebook, YouTube, Twitter, etc.) that may be used? Which of the forms of communication adopted have had the greatest impact on the Office's visibility and activity?»*

The institutional web page of the Guarantors for persons detained in Umbria (<http://www.regione.umbria.it/sociale/garante-dei-detenuiti>) has not been updated recently. As of now, no other forms of social communication are being used (Facebook, YouTube, Twitter etc.)

*National Guarantor: «Do you manage or use computerized databases related to the people, territorial facilities or activities of the Office?»*

As for the operating procedures, in addition to the regional protocol, this Office uses an internal protocol to monitor the incoming and outgoing correspondence of the Guarantor. Furthermore, the positions in charge are filed on paper with the preparation of documents for each case. The latter are monitored by recording the last observed condition and any necessary actions on a computerized database.

*National Guarantor: «Based on the realities of the area of competence, have you carried out monitoring activities in the places dedicated to the stay and/or detention of migrants pursuant to the Consolidated Immigration Act (CPR, hotspot, landing places, suitable facilities/premises provided for by Art. 13, para. 5 bis of the Consolidated Immigration Act, waiting rooms at border crossings)? If so, what are the major problems identified in terms of protecting the fundamental rights of foreign citizens?»*

In the area of competence there are no places dedicated to the stay and/or detention of migrants pursuant to the Consolidated Immigration Law.

*National Guarantor: «Have you visited the Police security rooms? What critical elements have you found?»*

In 2019, a survey of the security rooms in the area of competence was carried out. At present, in the Province of Perugia, the State Police has security rooms accessible at the Perugia Police Headquarters and the Foligno PS Police Station; in the Offices of the State Police of the Province of Terni there are two security rooms, as well as at the Terni Police Headquarters, and two more at the Orvieto PS Police Station. This year, the Guarantor has planned monitoring visits at each of the facilities indicated above.

*National Guarantor: «Are you aware of critical events related to the use of the Taser that occurred within the area of competence (including any local police operators)?»*

Within the area of competence there were no critical events related to the use of the Taser.

*National Guarantor: «What are the types of reports received in the last year concerning the deprivation of liberty and health area (REMS, disabled and elderly, TSO or people with psychiatric disorders)?»*

As for the deprivation of liberty and health area, this Office received reports on both cases of IPO and hospitalization at the Residences for the Execution of Security Measures. The choice not to activate those Residences in the regional territory and to delegate to an agreement with the Tuscany Region the hospitality of people with mental disorders at the time of the crime, or those defined as socially dangerous in the therapeutic-rehabilitative or socio-rehabilitative facilities, combined with the unavailability of the latter due to lack of space, continues to produce significant inconveniences in the internment of residents of the Umbrian territory in residences located in very distant Regions (during 2019, there were cases of residents of Perugia transferred for internment at the REMS of Caltagirone in Sicily).

*National Guarantor: «What is the number of visits made in the health sector as well as the type of structure visited (if possible, can you also provide the name)?»*

In 2019, a survey of the SPDC (Diagnosis and Care Prevention Service) was activated in the area of competence and in December 2019 a visit was made to the SPDC department of Terni located inside the Hospital.

<http://www.regione.umbria.it/sociale/garante-dei-detenuiti>

In Valle d'Aosta there is only one prison, located in the Municipality of Brissogne, with a capacity of 181 units and the presence of 228 inmates, with numbers updated to 31 December 2019.

In 2019, the Guarantor of Valle d'Aosta faced 259 cases. The main areas of intervention were the conditions of the prison (e.g. the malfunctioning of showers, heating or the poor quality of the mattresses), the conditions of detention (e.g. incompatibility with the prison system, issues related to the provision of economic benefits and deposits), health services (such as critical issues regarding psychological support, internal visits and visits to the First-Aid station) and the scarcity of work and training opportunities, which unfortunately concern a clear minority of prisoners.

The reference framework has not changed compared to 2018.

The absence of a titular director and a titular Commander continues to persist, so that often the reference figure within the prison is a Superior Inspector. The leading figures are vicariates from managers on mission from other prisons.

It should be added that the Brissogne prison has a constant *turnover*. In fact, it has basically become the "backup solution" to overcrowding in neighboring prisons. As result, it welcomes a very heterogeneous population, with a percentage of foreigners - even diverse among themselves - equal to about double the national average. This situation, together with the lack of management figures of reference, considerably hinders the implementation of planning, work, training and recreational activities. In short, it is a prison without an identity.

The health service, which passes through the Local Health Authority and is managed under contract, is also critical from the point of view of both the offer and, according to what is informally reported, the connection with the prison administration figures. Some areas with strong needs are lacking support, especially psychological and psychiatric, the latter improved only at the beginning of 2020.

The social service is also lacking, with only two social workers, one of which is contracted.

Some inmates believe the Brissogne Institute to be more livable than others, due to the relationship with the prison police.

The Guarantor has made several recommendations, in relation to the critical issues set out above. The main and long-range recommendation was to give the structure an identity again, making it a prison with reduced custody, with the possibility of work, training and culture. On the other hand, this choice would make the prison more appealing, which is much needed both for prisoners and staff. Currently, the recommendations made have not been followed up, apart from some maintenance interventions.



## Veneto

Mirella Gallinaro

During 2019, the subject of the reports received from people deprived of liberty or their families concerned the following main areas:

Health: treatments not carried out/specialist visits not granted/delays in requests for visits to the prison/prosthesis requests. Work: lack of transparency criteria for assigning internal or external work/requests for pensions or subsidies/disability visits. Treatment: lack or late summary report for the request for benefits/failure or late response to the requests for meetings with the director or educator/residence permits. Education/Training: delays in allocating funds for study grants/lack of training courses. Detention life: cell space or services/food/overcrowding/smoking areas/prison commissary/postal and parcel service. Affectivity: meetings with family members. Request for Information: general requests related to processes or not related to detention.

As for the reports, in Belluno, Rovigo, Venice and Verona, it is the municipal Guarantors who carry out an efficient work at a territorial level with regional coordination on a quarterly basis. For the regional level, during 2019 the issues opened were 53: 11 correctional facility of Padua, 9 prison of Padua, 1 ICAT (Institute of Custody) of Padua, 0 prison of Rovigo; 18 prison of Treviso; 2 prison of Venice and 0 correctional facility of Venice; 4 prison of Vicenza, 2 prison of Verona; 1 prison of Belluno; 2 alternative measures. The reports that took place: 19 cases with meetings, 29 cases with written communications, 5 through phone meetings.

Among the various activities carried out during the year 2019, there were three unannounced visits: 1 to the prison of Vicenza on 27 February; 1 at the prison of Treviso on 6 March; 1 at the prison of Vicenza on 5 November.

As for the forms of communication adopted that have had the greatest impact on the visibility of the office, we would like to mention the training event of 29 November 2019 organized in collaboration with the PRAP (Penitentiary Administration Board), entitled "*La complessità del sistema penitenziario: occuparsi degli uomini che agiscono violenza di genere*". The conference was the second stage of a path of reflection on the *Complexity of the penitentiary system* which began with the event organized in collaboration with the Penitentiary Health of Veneto, called "*La complessità del sistema penitenziario: disagio psichico nelle criticità del sistema*", held in December 2018, followed by training meetings organized in agreement with the PRAP and the University of Padua for the prison staff.

As for communication, the office updates the institutional website on a weekly basis with news relating to its activity, and on a quarterly basis with the data on the presence of prisoners.

The office participates in the Interinstitutional Permanent Observatory for health in prison, which has created the technical table for the management of patients subjected to REMS safety measures.

In addition to this, the office participates in the permanent table on restorative justice and criminal mediation, the "Stretta di mano" project, in the regional coordination table to prevent and fight violence against women, in the regional bioethics committee, and lastly he participates in the meetings of the Regional Labor Directorate for the announcement on *Cassa ammende*.

Finally, in 2019 the memorandum of understanding was reactivated to proceed with *the activation of forms of hospitality for children in prison with their mother*.